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STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

NO. 18-2-57781-1 SDA

IN RE: FRANCHISE NO POACHING  
PROVISIONS  
(MENCHIE'S GROUP, INC.)

MENCHIE'S GROUP, INC.  
ASSURANCE OF  
DISCONTINUANCE

The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney General, and Rahul Rao, Assistant Attorney General, files this Assurance of Discontinuance (AOD) under RCW 19.86.100.

I. PARTIES

1.1 In January 2018, the Attorney General initiated an investigation into Menchie's Group, Inc. relating to its hiring practices.

1.2 Menchie's Group, Inc. is a California corporation with its principal office or place of business in 17555 Ventura Boulevard, Suite 200, Encino, CA. Menchie's Group, Inc. is in the business of franchising Menchie's Frozen Yogurt Stores ("Menchie's Stores").

1.3 For the purposes of this AOD, Menchie's Group, Inc. includes its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its successor and assigns, controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures.

MENCHIE'S GROUP, INC.  
ASSURANCE OF DISCONTINUANCE

ATTORNEY GENERAL OF WASHINGTON  
Antitrust Division  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104-3188  
(206) 464-7744

1 II. INVESTIGATION

2 2.1 Menchie's Group, Inc. does not have any Menchie's Store operating in  
3 Washington that are operated by Menchie's Group, Inc. Currently, there are 31 Menchie's Stores  
4 located in Washington which are owned and operated by franchisees. In addition, there are 14  
5 Franchise Agreements for Menchie's Stores to be operated in Washington, which have been  
6 signed by Menchie's Group, Inc. and franchisees where the Menchie's Stores have not opened  
7 yet.

8 2.2 For years, Menchie's Group, Inc. has included language in its franchise  
9 agreements that restricted a franchisee's ability to solicit or hire workers from Menchie's Group,  
10 Inc. or its affiliates ("no-poaching provision"). Specifically, the standard Menchie's Group, Inc.  
11 franchise agreement stated the following:

12 You may not employ or seek to employ, directly or indirectly, any person who is at  
13 the time or was at any time during the prior 6 months was employed in any type of  
14 managerial position by us or our affiliates unless you compensates us for all costs and  
15 expenses incurred in losing and replacing the employee up to a maximum of \$25,000,  
16 plus attorneys' fees and expenses.

17 The no-poaching provision restricted franchisees from hiring employees from Menchie's Group,  
18 Inc. or its affiliate-owned stores.

19 2.3 The Attorney General asserts that the foregoing conduct constitutes a contract,  
20 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,  
21 RCW 19.86.030.

22 2.4 Menchie's Group, Inc. expressly denies the conduct described above constitutes a  
23 contract, combination, or conspiracy in restraint of trade in violation of the Consumer Protection  
24 Act, RCW 19.86.030, or any other law, and expressly denies it has engaged in conduct that  
25 constitutes a contract, combination, or conspiracy in restraint of trade. Menchie's Group, Inc.  
26 enters into this AOD to avoid protracted and expensive litigation. Pursuant to RCW 19.86.100,  
neither this AOD nor its terms shall be construed as an admission of law, fact, liability,  
misconduct, or wrongdoing on the part of Menchie's Group, Inc.

1           2.5     Prior to being contacted by the Washington Attorney General's office regarding  
2 the no-poaching provision, Menchie's Group, Inc. had already notified by email its franchisees  
3 that it will not enforce the no-poaching provision in their Franchise Agreements. Historically,  
4 Menchie's Group, Inc. has never enforced the no-poaching provision and in fact, has allowed  
5 one of its employee to work for a franchisee without requiring the franchisee to pay Menchie's  
6 Group, Inc. any money as provided for under the no-poaching provision.

7                                   **III.     ASSURANCE OF DISCONTINUANCE**

8           3.1     Subject to Paragraph 2.4 above, Menchie's Group, Inc. agrees:

9                       3.1.1. It will no longer include no-poaching provisions in any of its future  
10 franchise agreements;

11                      3.1.2. It will not enforce no-poaching provisions in any of its existing franchise  
12 agreements, and will not seek to intervene or defend in any way the legality of any no-poaching  
13 provision in any litigation in which a franchisee may claim third-party beneficiary status rights to  
14 enforce an existing no-poaching provision;

15                      3.1.3. It will notify all of its existing franchisees of the entry of this AOD and  
16 provide them a copy upon request by the franchisee;

17                      3.1.4. It will notify the Attorney General's Office if it learns of any effort by a  
18 franchisee in Washington to enforce any existing no-poaching provision.

19           3.2     Within 90 days of entry of this AOD, Menchie's Group, Inc. will attempt to have  
20 all existing franchise agreements with entities in Washington amended to remove any no-  
21 poaching provisions in its existing franchise agreements. If any franchise owner is unwilling to  
22 consent to the change to its franchise agreement, prior to the 90-day deadline, Menchie's Group,  
23 Inc. shall provide the name and address of the resisting franchisee and the name and address of  
24 the franchisee's registered agent to the Office of the Attorney General.



1           4.4    This AOD resolves all issues raised by the State of Washington and the Antitrust  
2 Division of the Attorney General's Office under the Consumer Protection Act and any other related  
3 statutes pertaining to the acts set forth in Paragraphs 2.1 – 2.3 above that may have occurred before  
4 the date of entry of this AOD and concludes the investigation thereof. Subject to Paragraph 4.2, the  
5 State of Washington and the Antitrust Division of the Attorney General's Office shall not file suit or  
6 take any further investigative or enforcement action with respect to the acts set forth above that  
7 occurred before the date of entry of this AOD.

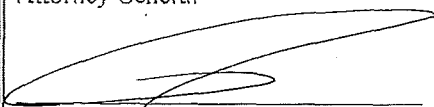
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APPROVED ON this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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JUDGE/COURT COMMISSIONER

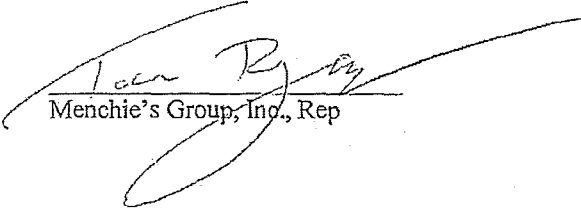
1 Presented by:

2 ROBERT W. FERGUSON  
3 Attorney General

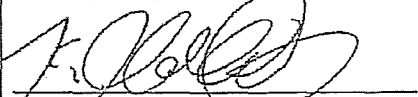
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14 Agreed to and approved for entry by:  
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MENCHIE'S GROUP, INC.  
ASSURANCE OF DISCONTINUANCE