

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

18-2-55210-2 SEA
18-2-55219-2 SEA

IN RE: FRANCHISE NO POACHING
PROVISIONS

Quiz Holdings LLC

NO.

QUIZ HOLDINGS, LLC
ASSURANCE OF
DISCONTINUANCE

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

I. PARTIES

1.1 In January 2018, the Attorney General initiated an investigation into QFA Royalties LLC ("QFA") relating to certain provisions in its franchise agreement.

1.2 As part of the QUIZNOS® brand and franchise system acquisition in June 2018, Quiz Holdings, LLC ("Quiz") assumed each of the existing franchise agreements between QFA and its franchisees.

1.3 Quiz Holdings, LLC is a Delaware limited liability company with its principal office or place of business in Denver, Colorado. Quiz is a franchisor, and QUIZNOS corporate and franchisee operated locations are in the business of offering submarine sandwiches, among other food products, for sale to consumers.

1 1.4 For purposes of this AOD, Quiz includes its directors, officers, managers,
2 agents acting within the scope of their agency, and employees as well as its successor and
3 assigns, controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures.
4 Franchisees of Quiz are not parties to this AOD.

5 II. INVESTIGATION

6 2.1 There are 21 QUIZNOS franchised restaurants in Washington, all of which are
7 owned and operated by 19 franchisees. None of the QUIZNOS restaurants in Washington are
8 owned and operated by Quiz.

9 2.2 For some time, QFA included language in its franchise agreements that restricts
10 a franchisee's ability to solicit or hire workers from QFA (now Quiz) or another franchisee in
11 the QUIZNOS franchise system. Specifically, prior versions of the standard QFA franchise
12 agreement included the following language:

13
14 Franchisee therefore agrees that, other than the Restaurant, neither Franchisee
15 nor any of Franchisee's officers, directors, shareholders, members, partners or
16 other owners, nor any spouse or other immediate family members of Franchisee
17 or any of these individuals (collectively, "Bound Parties"), shall during the term
18 of this Agreement:... directly or indirectly solicit or employ any person who is
employed by Franchisor, any of Franchisor's affiliates, or another franchisee
without obtaining the employer's prior written consent.

19 For purposes of this AOD, the above quoted language may be referred to as the "No-
20 Poaching Provision." Although Quiz has never included the No-Poaching Provision in
21 its franchise agreements, there are 19 franchisees in the State of Washington that still
22 operate their respective QUIZNOS restaurant under a franchise agreement, which
23 includes the above No-Poaching Provision, that was entered into with QFA prior to
24 Quiz's assumption of QFA's franchise agreements.
25
26

1 3.2 Within 30 days of entry of this AOD, Quiz will send a letter to all its current
2 franchisees with restaurants located in the State of Washington, notifying them of the entry of
3 this AOD and advising that the Attorney General has requested that the existing No-Poaching
4 Provision be removed from existing franchise agreements. The letter that Quiz will send to its
5 current franchisees in the State of Washington will be substantially in the form of the letter
6 attached hereto as Exhibit A. That letter will enclose the proposed amendment that Quiz will
7 request that each of its franchisees in the State of Washington agree to, which amendment will
8 remove the existing No-Poaching Provision. The proposed amendment that will be included
9 with each letter will be substantially in the form of the amendment attached hereto as Exhibit
10 B.

11 3.3 For the avoidance of doubt, Quiz is under no obligation to offer its franchisees
12 any consideration – monetary or otherwise – in order to induce them to sign the proposed
13 amendment, or take, or threaten to take, any adverse action against such franchisees if they
14 refuse to do so. Within 120 days of entry of this AOD, Quiz will provide copies of all
15 executed amendments it has obtained from its current franchisees in the State of Washington to
16 the Attorney General’s Office. A decision by a franchisee not to amend its franchise
17 agreement, or not do so within 120 days of the entry of this AOD, shall not mean that Quiz has
18 not complied with its obligations under this AOD.

19 3.4 If Quiz learns that a current franchisee in the State of Washington intends in
20 good faith to sign the proposed amendment but is unable to do so within the time period
21 specified in Paragraph 3.3, Quiz will notify the Attorney General’s Office to seek a mutually
22 agreeable extension. During any such extension, the Attorney General’s Office will not take
23 any investigative or enforcement action against Quiz or its franchisees.

24 3.5 As Quiz renews existing franchise agreements for locations in the United States
25 in the ordinary course of business, or enters into new franchise agreements, the No-Poaching
26 Provision will not be included in any franchise agreements.

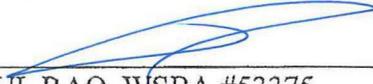
1 related statutes pertaining to the acts set forth in Paragraphs 2.1 – 2.3 above that may have
2 occurred before the date of entry of this AOD, or that occur between the date of the entry of this
3 AOD and the conclusion of the 120-day period identified in Paragraph 3.3 above, and concludes
4 the investigation thereof. Subject to Paragraph 4.2, the State of Washington and the Antitrust
5 Division of the Attorney General’s Office shall not file suit or take any further investigative or
6 enforcement action with respect to the acts set forth above that occurred before the date of entry of
7 this AOD, or that occurs between the date of the entry of this AOD and the conclusion of the 120-
8 day period identified in Paragraph 3.3 above, against Quiz, QFA, any of Quiz’s or QFA’s
9 affiliates, directors, officers, managers, employees or agents, any of Quiz’s current franchisees in
10 the State of Washington that sign the proposed amendment described in Section III, any of Quiz’s
11 or QFA’s former franchisees in the State of Washington, any of Quiz’s current franchisees located
12 outside the State of Washington, or any of Quiz’s or QFA’s former franchisees located outside the
13 State of Washington.

14
15 APPROVED ON this _____ day of _____, 2018.

16
17
18 _____
19 JUDGE/COURT COMMISSIONER
20
21
22
23
24
25
26

1 Presented by:

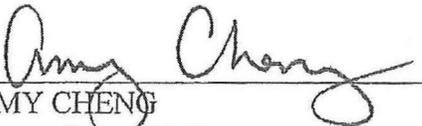
2 ROBERT W. FERGUSON
3 Attorney General

4 
5 RAHUL RAO, WSBA #53375
6 Assistant Attorney General
7 Antitrust Division
8 Attorneys for State of Washington
9 Office of the Attorney General
10 800 Fifth Avenue, Suite 2000
11 Seattle, WA 98104

12 Agreed to and approved for entry by:
13 QUIZ HOLDINGS, LLC

14 
15 JOHN R. "RICK" POTTER
16 Heurlin, Potter, Jahn, Leatham,
17 Holtmann & Stoker, P.S.
18 211 E. McLoughlin Blvd.
19 Suite 100
20 Vancouver, WA 98663

21 -and-

22 
23 AMY CHENG
24 Cheng Cohen LLC
25 311 N. Aberdeen St.
26 Suite 400
Chicago, IL 60607

Attorneys for Quiz Holdings, LLC


Bruce Vermilyea
Chief Financial Officer
Quiz Holdings, LLC

EXHIBIT A

Dear [Franchisee Name]:

Earlier this year, QFA Royalties LLC (“QFA”) received a Civil Investigative Demand from the Attorney General’s Office of the State of Washington (“Attorney General”) seeking information regarding whether there are any provisions in QFA’s franchise agreements that restrict the hiring and solicitation of employees (sometimes referred to as “no-poaching” clauses). After the acquisition of the Quiznos® franchise system, Quiz Holdings, LLC (“we” or “us”) continued to cooperate fully with the investigation and promptly answered the Attorney General’s inquiries. We understand this is part of a broader investigation into the use of such clauses in the franchise industry.

The Attorney General contends that these “no-poaching” provisions suppress wages or serve some other anti-competitive purpose. We continue to take the position that these provisions – which are very common in franchise agreements – help encourage investment in franchises generally, as well as allowing franchisees to recruit, train and develop talented employees. Such provisions were never intended to suppress wages or to serve any other anti-competitive end, and we strongly reject any suggestion otherwise. However, to avoid unnecessary and expensive litigation and to protect our franchisees against such litigation, we have decided to efficiently end this dispute by reaching an agreement with the Attorney General.

The agreement with the Attorney General provides that we, without admitting that we or our franchisees violated any law or regulation, or acted improperly in any respect, will, among other things, continue to exclude any provisions that restrict the hiring or solicitation of employees in any U.S. franchise agreements or renewals signed after the date of our agreement with the Attorney General. The agreement also provides that we will not enforce any such provisions in any of our existing franchise agreements in the U.S.

Our agreement with the Attorney General also includes a requirement that we request, from franchisees with locations in the State of Washington, to amend existing franchise agreements to remove the “no-poaching” provisions. Enclosed for your signature is an amendment to your franchise agreement(s) with us to satisfy that requirement. To the extent that you agree to this amendment to your franchise agreement(s), the Attorney General has committed to not pursue any further investigative or enforcement action against you, for conduct relating to the “no-poaching” provision in your franchise agreement(s). Please sign and return the amendment to me as soon as possible. If you decided not to sign the enclosed amendment, the Attorney General has indicated that it may further investigate you and/or pursue additional enforcement actions against you relating to the “no-poaching” provisions.

Should you have any questions regarding this matter, please contact me at [email address].

If you receive any media inquiries regarding this matter, please refer them to [email address].

EXHIBIT B

AMENDMENT TO FRANCHISE AGREEMENT

THIS AMENDMENT to the Franchise Agreement (the "**Amendment**") is entered into as of this ___ day of _____, 20___ (the "**Effective Date**"), by and between QUIZ HOLDINGS, LLC, a Delaware limited liability company ("**Franchisor**") and _____, a(n) _____ ("**Franchisee**").

RECITALS

WHEREAS, Franchisor and Franchisee have entered into that certain Franchise Agreement dated _____, _____ (the "**Franchise Agreement**"), pursuant to which Franchisor granted Franchisee the right to own and operate a QUIZNO'S® Franchised Restaurant ("**Restaurant**");

WHEREAS, Franchisor and the Attorney General's Office of the State of Washington ("**AGO**") have mutually agreed, among other things, that any provisions related to the hiring and solicitation of employees ("no-poaching provisions") be removed from any franchise agreements entered into with franchisees that own QUIZNO'S® franchised restaurants within the State of Washington; and

WHEREAS, for the best interest of the QUIZNO'S franchise system, Franchisor and Franchisee agree to certain modifications of the Franchise Agreement to remove no-poaching provisions from the Franchise Agreement as set forth below.

AGREEMENT

FOR AND IN CONSIDERATION of the mutual covenants and promises contained herein and such other and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties agree as follows:

1. **Recitals.** Franchisor and Franchisee agree that the recitals to this Amendment are true and correct and are incorporated herein and made a part hereof by this reference.

2. **No-Poaching.** Section 20.1(d) of the Franchise Agreement is hereby deleted in its entirety.

3. **Miscellaneous.**

(a) The terms of this Amendment form an integral part, and are incorporated into and made a part, of the Franchise Agreement. In the event of a conflict between the terms contained in the Franchise Agreement and this Amendment, the terms and conditions of this Amendment shall govern, control, and supersede any inconsistent or conflicting terms of the Franchise Agreement.

(b) Except as amended by this Amendment, the terms and conditions of the Franchise Agreement are hereby confirmed, ratified and approved in their entirety, and shall continue in full force and effect, as amended and modified by this Amendment.

(c) This Amendment may be signed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument. Signature by facsimile is hereby authorized and shall have the same force and effect as an original. References to the Franchise Agreement shall mean the Franchise Agreement as amended and modified by this Amendment.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and made effective as of the Effective Date.

QUIZ HOLDINGS, LLC

By: _____

Title: _____

Date: _____

FRANCHISEE:

Sign here if you are taking the franchise as an **INDIVIDUAL(S)**

(Note: use these blocks if you are an individual or a partnership but the partnership is not a separate legal entity)

Signature

Print Name: _____

Date: _____

Sign here if you are taking the franchise as a **CORPORATION, LIMITED LIABILITY COMPANY OR PARTNERSHIP**

Print Name of Legal Entity

By: _____

Signature

Print Name: _____

Title: _____

Date: _____