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STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

THE STATE OF WASHINGTON,  
  
Plaintiff,

v.

JERSEY MIKE'S FRANCHISE SYSTEMS,  
INC.; AUBURN JM, LLC; BCG-  
NORTHWEST, LLC, BERRY INVESTMENT  
GROUP, LTD.; ELSTERLY, LLC; FM  
RESTAURANTS, INC.; FOOD  
ADVENTURES, INC.; GOLDEN SPRINGS,  
LLC; JM NORTHTOWN, LLC; JM  
PUYALLUP, INC.; JM RESTAURANTS,  
INC.; JM SILVERDALE, LLC; JM SPOKANE,  
LLC; LARSON & ASSOCIATES, LLC;  
MAJESTIC EAGLE, LLC; PATRIKOR  
CORP.; RED POLO VENTURES, LLC; TIN  
STAR SUBS, LLC; TRIEB, LLC; DOE 1; DOE  
2; DOE 3; DOE 4; and DOE 5,  
  
Defendants.

NO. 18 - 2 - 25822 - 7 SEA

COMPLAINT FOR CIVIL  
PENALTIES, INJUNCTION,  
AND OTHER RELIEF  
UNDER THE WASHINGTON  
STATE CONSUMER  
PROTECTION ACT, RCW  
19.86

Plaintiff, State of Washington, through its Attorney General, brings this action against Jersey Mike's Franchise Systems, Inc. ("Jersey Mike's") and against Jersey Mike's Franchisees in the State of Washington to recover civil penalties, costs and fees, and injunctive relief.

**I. JURISDICTION AND VENUE**

1. This action alleges violations of the Consumer Protection Act ("CPA"), RCW 19.86. Subject matter jurisdiction exists pursuant to RCW 19.86.160.



1 d. "Conspiracy Period" means the period beginning at least five years prior  
2 to the filing of this complaint through the present.

3 **III. THE PARTIES**

4 **A. Plaintiff**

5 5. Plaintiff is the State of Washington by and through its Attorney General. The  
6 State of Washington has a quasi-sovereign interest in maintaining the integrity of markets and  
7 protecting its citizens from anticompetitive and unlawful practices, and supporting the general  
8 welfare of its citizens and its economy. The State has authority to bring this action under the  
9 CPA, RCW 19.86.080.

10 **B. Defendants**

11 6. Defendant Jersey Mike's Franchise Systems, Inc. is a New Jersey corporation  
12 with its principal place of business in Manasquan, NJ. During the Conspiracy Period, Jersey  
13 Mike's operated Jersey Mike's branded restaurants throughout the United States and is the  
14 Franchisor to Franchisees operating Jersey Mike's branded restaurants throughout the United  
15 States, including in Washington.

16 7. Defendant Auburn JM, LLC is a Washington limited liability company with its  
17 principal place of business in Fall City, King County, WA. During the Conspiracy Period,  
18 Auburn JM, LLC was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded  
19 restaurant in Auburn, King County, Washington.

20 8. Defendant BCG-Northwest, LLC is a Washington limited liability company with  
21 its principal place of business in Vancouver, WA. During the Conspiracy Period, BCG-  
22 Northwest, LLC was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded  
23 restaurant in Vancouver, Washington.

24 9. Defendant Berry Investment Group, Ltd. is a Washington corporation with its  
25 principal place of business in Edmonds, WA. During the Conspiracy Period, Berry Investment  
26

1 Group, Ltd. was and is a Jersey Mike's Franchisee operating three Jersey Mike's branded  
2 restaurants in Mukilteo, Lynnwood, and Shoreline, Washington.

3 10. Defendant Elsterly, LLC is a Washington limited liability company with its  
4 principal place of business in Bellevue, King County, WA. During the Conspiracy Period,  
5 Elsterly, LLC was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded  
6 restaurant in Redmond, King County, Washington.

7 11. Defendant FM Restaurants, Inc. is a Washington corporation with its principal  
8 place of business in Graham, WA. During the Conspiracy Period, FM Restaurants, Inc. was and  
9 is a Jersey Mike's Franchisee operating four Jersey Mike's branded restaurants in University  
10 Place, Olympia, Lacey, and Lakewood, Washington.

11 12. Defendant Food Adventures, Inc. is a Washington corporation with its principal  
12 place of business in Seattle, King County, WA. During the Conspiracy Period, Food Adventures,  
13 Inc. was and is a Jersey Mike's Franchisee operating three Jersey Mike's branded restaurants in  
14 Fife, Kent, and Burien, in Pierce and King Counties, Washington.

15 13. Defendant Golden Springs, LLC is a Washington limited liability company with  
16 its principal place of business in Redmond, King County, WA. During the Conspiracy Period,  
17 Golden Springs, LLC was and is a Jersey Mike's Franchisee operating one Jersey Mike's  
18 branded restaurant in Issaquah, King County, Washington.

19 14. Defendant JM Northtown, LLC is a Washington limited liability company with  
20 its principal place of business in Chelan, WA. During the Conspiracy Period, JM Northtown,  
21 LLC was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded restaurant in  
22 Spokane, Washington.

23 15. Defendant JM Puyallup, Inc. is a Washington corporation with its principal place  
24 of business in Chelan, WA. During the Conspiracy Period, JM Puyallup, Inc. was and is a Jersey  
25 Mike's Franchisee operating one Jersey Mike's branded restaurant in Puyallup, Washington.  
26

1           16. Defendant JM Restaurants, Inc. is a Washington corporation with its principal  
2 place of business in Graham, WA. During the Conspiracy Period, JM Restaurants, Inc. was and  
3 is a Jersey Mike's Franchisee operating one Jersey Mike's branded restaurant in Puyallup,  
4 Washington.

5           17. Defendant JM Silverdale, LLC is a Washington limited liability company with  
6 its principal place of business in Chelan, WA. During the Conspiracy Period, JM Silverdale,  
7 LLC was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded restaurant in  
8 Silverdale, Washington.

9           18. Defendant JM Spokane, LLC is a Washington limited liability company with its  
10 principal place of business in Chelan, WA. During the Conspiracy Period, JM Spokane, LLC  
11 was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded restaurant in  
12 Spokane, Washington.

13           19. Defendant Larson & Associates, LLC is a Washington limited liability company  
14 with its principal place of business in Bothell, WA. During the Conspiracy Period, Larson &  
15 Associates, LLC was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded  
16 restaurant in Everett, Washington.

17           20. Defendant Majestic Eagle, LLC is a Washington limited liability company with  
18 its principal place of business in Auburn, King County, WA. During the Conspiracy Period,  
19 Majestic Eagle, LLC was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded  
20 restaurant in Kent, King County, Washington.

21           21. Defendant Patrikor Corp. is a Washington corporation with its principal place of  
22 business in Lake Tapps, WA. During the Conspiracy Period, Patrikor Corp. was and is a Jersey  
23 Mike's Franchisee operating one Jersey Mike's branded restaurant in Bonney Lake, Washington.

24           22. Defendant Red Polo Ventures, LLC is a Washington limited liability company  
25 with its principal place of business in Fall City, King County, WA. During the Conspiracy  
26

1 Period, Red Polo Ventures, LLC was and is a Jersey Mike's Franchisee operating at least nine  
2 Jersey Mike's branded restaurants in Monroe, Woodinville, Mill Creek, North Bend, Mount  
3 Vernon, Sammamish, Lake Stevens, Tukwila, and Renton, Washington.

4 23. Defendant TinStar Subs, LLC is a Washington limited liability company with its  
5 principal place of business in Federal Way, King County, WA. During the Conspiracy Period,  
6 TinStar Subs, LLC was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded  
7 restaurant in Oak Harbor, Washington.

8 24. Defendant Trieb, LLC is a Washington, limited liability company with its  
9 principal place of business in Bothell, WA. During the Conspiracy Period, Trieb, LLC was and  
10 is a Jersey Mike's Franchisee operating one Jersey Mike's branded restaurants in Kirkland,  
11 Washington.

12 25. Defendant Doe 1 is an unknown individual or entity. During the Conspiracy  
13 Period, Doe 1 was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded  
14 restaurant at 3704 172<sup>nd</sup> St. NE, Arlington, Washington.

15 26. Defendant Doe 2 is an unknown individual or entity. During the Conspiracy  
16 Period, Doe 2 was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded  
17 restaurant at 17309 SE 270<sup>th</sup> Place, Covington, King County, Washington.

18 27. Defendant Doe 3 is an unknown individual or entity. During the Conspiracy  
19 Period, Doe 3 was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded  
20 restaurant at 4819 Point Fosnick Drive NW, Gig Harbor, Washington.

21 28. Defendant Doe 4 is an unknown individual or entity. During the Conspiracy  
22 Period, Doe 4 was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded  
23 restaurant at 8820 36<sup>th</sup> Avenue NE, Marysville, Washington.



1 and enforced the agreement among itself or affiliates and all Franchisees, at least in part, through  
2 an explicit contractual prohibition contained in standard Jersey Mike's franchise agreements. As  
3 further described below, this was not merely a one-way agreement by franchisees to not solicit  
4 or hire away Jersey Mike's corporate and affiliated workers or workers from company-owned  
5 stores, which alone violates the CPA, it also prevented Franchisees from soliciting or hiring  
6 workers of other Franchisees with the understanding that the other Franchisees were bound by  
7 the same agreement.

8 **A. Background**

9 35. Jersey Mike's is one of the fastest growing submarine-type sandwich restaurant  
10 chains in the United States, with more than 1,300 locations nationwide.

11 36. Defendants and their co-conspirators have hundreds of workers in the State of  
12 Washington and more than ten thousand workers nationwide.

13 37. In the United States, more than 90% of Jersey Mike's restaurants are franchise  
14 businesses that are independently owned and operated by Franchisees, and are separate and  
15 distinct entities from Jersey Mike's. Jersey Mike's operates approximately 80 corporate-owned  
16 restaurants in the United States.

17 38. Jersey Mike's Chairman and CEO currently operates Jersey Mike's restaurants  
18 through affiliated corporations or limited liability companies in which he owns a controlling  
19 interest.

20 39. The vast majority of Jersey Mike's profits hinge on the success or failure of its  
21 Franchisees. Franchisees pay royalty fees to Jersey Mike's based on gross receipts. Workers  
22 are critical to the success of Jersey Mike's Franchisees and Jersey Mike's corporate-owned  
23 restaurants. A significant component of making a Jersey Mike's restaurant profitable is hiring  
24 qualified, motivated, and superior workers. Therefore, it is in the independent interest of each  
25 Jersey Mike's restaurant to compete for the most talented and experienced restaurant workers.  
26



1 **B. The Conspiracy**

2 40. The Jersey Mike's franchise agreements signed by all Defendants during the  
3 Conspiracy Period all contained the same or similar language that stated:

4 Franchisee covenants that during the term of this Agreement and any renewal thereof,  
5 except as otherwise approved in writing by Franchisor, Franchisee shall not, either  
6 directly or indirectly, for itself, or through, on behalf of or in conjunction with any person,  
7 persons, partnership, corporation, limited liability company or other entity: ...Employ or  
8 seek to employ any person who is at that time employed by Franchisor or by any Affiliate  
9 of Franchisor, or by any other franchisee of Franchisor, or otherwise directly or indirectly  
10 induce or seek to induce such person to leave his or her employment thereat.

11 Agreements containing this or similar language were executed by Franchisor and Franchisees up  
12 until the time that the Attorney General's Office began its investigation and informed Jersey  
13 Mike's its practices violated the CPA. In response to this investigation, Jersey Mike's removed  
14 the No-Poach Provision from its standard franchise agreement on a going-forward basis, but it  
15 did not amend its existing franchise agreements. Without an injunction, nothing prevents Jersey  
16 Mike's from including the No-Poach Provision in its future franchise agreements, and nothing  
17 prevents any of the Defendants from enforcing the provisions in the current franchise  
18 agreements.

19 41. Franchisor and Franchisees are independent entities and competitors. It is made  
20 clear in their franchise agreements that the "Agreement does not constitute Franchisee as an  
21 agent, legal representative, joint venture, partner, employee, or servant of Franchisor for any  
22 purpose whatsoever." In Jersey Mike's Franchise Disclosure Document, it warns its  
23 Franchisees, "you are not granted an exclusive territory, and may face competition from other  
24 franchisees, from outlets that we own, or from other channels of distribution or competitive  
25 business that we own."

26 **C. The Conspiracy Is A *Per Se* Violation Of Antitrust Law**

42. As the Department of Justice Antitrust Division and Federal Trade Commission's  
joint *Antitrust Guidance for Human Resource Professionals* (October 2016) states: "Naked

1 wage-fixing or no-poaching agreements among employers, whether entered into directly or  
2 through a third party intermediary, are *per se* illegal under the antitrust laws.” The *Guidance*  
3 further elaborates:

4 From an antitrust perspective, firms that compete to hire or retain employees are  
5 competitors in the employment marketplace, regardless of whether the firms make the  
6 same products or compete to provide the same services. It is unlawful for competitors to  
7 expressly or implicitly agree not to compete with one another, even if they are motivated  
8 by a desire to reduce costs.

9 43. The principle of free competition applies to the labor market as well as to trade.  
10 In terms of suppressing competition, companies agreeing not to compete for each other’s  
11 employees is the same as companies agreeing not to compete for each other’s customers.

12 44. No-poaching agreements can limit turnover and reduce labor market  
13 competition. Restricting workers’ outside options will shift the share of the net returns from  
14 training in the direction of employers.

15 45. No-poaching agreements are unfair to workers, and such a pact benefits the  
16 companies at the expense of their employees. Such agreements are illegal and violate both  
17 antitrust and employment laws because companies could achieve the same results by making it  
18 attractive enough for employees not to leave.

19 46. The collusion of employers to refrain from hiring each other’s workers restricts  
20 worker mobility and competition in the labor market. This raises employers’ power at the  
21 expense of workers and diminishes worker bargaining power within franchise chains. This is  
22 especially harmful to workers of Jersey Mike’s and its Franchisees, as those workers are usually  
23 paid below a living wage, and their marketable skills acquired through their work at Jersey  
24 Mike’s primarily have value only to other Jersey Mike’s restaurants and do not transfer as well  
25 to other fast food restaurants or similar businesses.

26 47. This No-Poach Provision between and among Jersey Mike’s and Jersey Mike’s  
Franchisees, pursuant to which Jersey Mike’s and its Franchisees agreed not to recruit each

1 other's workers (even those workers that approached another Jersey Mike's restaurant for a job  
2 on their own volition) eliminated Franchisees' and Franchisor's incentives and ability to compete  
3 for workers, and restricted workers' mobility. This agreement harmed workers by tending to  
4 lower salaries and benefits workers otherwise would have commanded in an open marketplace,  
5 and deprived such workers of better job growth or mobility opportunities.

6 48. This No-Poach Provision is in the collective interest of the conspirators as a whole  
7 when acting together to the detriment of workers. By acting in concert Franchisees and  
8 Franchisor artificially protect themselves from having their own workers poached by other  
9 franchises or locations that see additional value in those workers, such as their training,  
10 experience and/or work ethic. This allows Franchisees or Franchisor to retain their best workers  
11 without having to pay market wages to these workers or compete in the market place relative to  
12 working conditions and promotion opportunities.

13 49. The No-Poach Provision does not serve the interests of ensuring that Jersey  
14 Mike's restaurants produce a quality product.

15 50. The No-Poach Provision harms workers because it does not incentivize Jersey  
16 Mike's Franchisees and Jersey Mike's corporate-owned restaurants to invest in higher wages,  
17 benefits, and working conditions. It also dis-incentivizes workers to perform their best work as  
18 their opportunities by doing so are limited. Conversely, competition among employers helps  
19 actual and potential workers through higher wages, better benefits, or other terms of  
20 employment.

21 51. Consumers can gain from competition among employers because a more  
22 competitive workforce may create more or better goods and services.

23 **D. Employment with Non-Jersey Mike's Brands is Not a Reasonable Substitute for**  
24 **Jersey Mike's Workers**

25 52. If Franchisees and Jersey Mike's corporate-owned restaurants had to either pay  
26 and promote good workers, or lose them to competitor locations, they would have incentives to

1 pay competitive wages and provide competitive promotion opportunities. However, because of  
2 the No-Poach Provision, and because the education, training and experience within the Jersey  
3 Mike's enterprise are unique to Jersey Mike's and not transferrable to other restaurants,  
4 Franchisees and Jersey Mike's corporate-owned restaurants do not have to compete with non-  
5 Jersey Mike's businesses for their workers except at the entry-level position.

6 53. Training, education, and experience within the Jersey Mike's system are not  
7 transferrable to other restaurants for a number of reasons. Jersey Mike's Franchisees utilize  
8 Jersey Mike's own proprietary methods and techniques for inventory and cost controls, record  
9 keeping and reporting, personnel management, purchasing, sales promotion and advertising,  
10 special recipes, formulas, menus, food and beverage storage, preparation and service procedures  
11 and techniques, and operating procedures for sanitation and maintenance. Knowledge regarding  
12 all of these procedures and techniques obtained on the job at one Jersey Mike's restaurant would  
13 be quite valuable to another Jersey Mike's restaurant, but would have little if any value to a  
14 restaurant outside the Jersey Mike's system.

15 54. Jersey Mike's also uses proprietary software that manages its customer loyalty  
16 program, text messaging, their email club, their online order program, and the food and labor  
17 management program. Knowledge regarding the use and operation of this software obtained on  
18 the job at one Jersey Mike's restaurant would be quite valuable to another Jersey Mike's  
19 restaurant, but would have little if any value to a restaurant outside the Jersey Mike's system.

20 55. Jersey Mike's also uses proprietary training that includes the Confidential  
21 Operations Manual and other materials containing the System Standards and suggested  
22 specifications, standards, operating procedures and rules relative to how to operate a Jersey  
23 Mike's restaurant. Knowledge regarding these System Standards obtained on the job at one  
24 Jersey Mike's restaurant would be quite valuable to another Jersey Mike's restaurant, but would  
25 have little if any value to a restaurant outside the Jersey Mike's system.  
26







1 DATED this 15<sup>th</sup> day of October, 2018.

2 ROBERT W. FERGUSON  
3 Attorney General

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