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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO-POACHING
PROVISIONS

(BONEFISH GRILL, LLC)

19-2-01112-2SEA

BONEFISH GRILL, 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 November 2018, the Attorney General contacted Bonefish Grill, LLC inquiring about the terms of its franchise agreement.

1.2 Bonefish Grill, LLC is a Florida Limited Liability Company with its principal office or place of business in Florida. Bonefish Grill, LLC operates a nationwide chain of polished casual seafood restaurants.

1.3 For the purposes of this AOD, Bonefish Grill, LLC includes its successor and assigns, controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures.

II. INVESTIGATION

2.1 Bonefish Grill, LLC has four (4) stores in Washington. All of these stores are owned and operated by a franchisee.

1 2.2 For years, Bonefish Grill, LLC has included language in its franchise agreements
2 that restricted a franchisee's ability to solicit or hire workers from other franchisees of Bonefish
3 Grill, LLC and from Bonefish Grill, LLC's corporate-owned stores. Specifically, the standard
4 Bonefish Grill, LLC franchise agreement stated that a franchisee shall not,

5 employ or seek to employ any person who is at that time, or within six (6) months
6 of such employment or solicitation was, employed by Franchisor, any Affiliate of
7 Franchisor, or any other franchisee or developer of Franchisor, or otherwise
8 directly or indirectly induce such person to leave his or her employment.

(The "No-Poaching Provision.")

9 2.3 The Attorney General asserts that the foregoing conduct constitutes a contract,
10 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,
11 RCW 19.86.030.

12 2.4 Bonefish Grill, LLC expressly denies the conduct described above constitutes a
13 contract, combination, or conspiracy in restraint of trade in violation of the Consumer
14 Protection Act, RCW 19.86.030, or any other law, and expressly denies it has engaged in
15 conduct that constitutes a contract, combination, or conspiracy in restraint of trade. In fact,
16 Bonefish Grill, LLC denies that it has ever enforced the No-Poaching Provision and further
17 denies that any franchisee, none of which have ever had overlapping geographic territories or
18 have competed with each other, has ever refrained from recruiting or hiring employees from
19 another franchisee of Bonefish Grill, LLC or from recruiting or hiring employees from Bonefish
20 Grill, LLC's corporate-owned restaurants. Bonefish Grill, LLC enters into this AOD to avoid
21 protracted and expensive litigation. Pursuant to RCW 19.86.100, neither this AOD nor its terms
22 shall be construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part
23 of Bonefish Grill, LLC.

24 III. ASSURANCE OF DISCONTINUANCE

25 3.1 Subject to Paragraph 2.4 above, Bonefish Grill, LLC agrees:

1 3.1.1. It will no longer include the No-Poaching Provision in any of its future
2 franchise agreements;

3 3.1.2. It will continue to refrain from enforcing the No-Poaching Provision in
4 any of its existing franchise agreements, and will not seek to intervene or defend in any way the
5 legality of the No-Poaching Provision in any litigation in which a franchisee may claim third-
6 party beneficiary status rights to enforce it;

7 3.1.3. It will notify all of its franchisees of the entry of this AOD and provide
8 them a copy;

9 3.1.4. It will notify the Attorney General's Office if it learns of any effort by a
10 franchisee to enforce the existing No-Poaching Provision.

11 3.2 Within 60 days of entry of this AOD, Bonefish Grill, LLC will have amended all
12 existing franchise agreements with entities in Washington to remove the No-Poaching
13 Provisions in its existing franchise agreements. If any franchise owner is unwilling to consent to
14 the change to its franchise agreement, prior to the 60-day deadline, Bonefish Grill, LLC shall
15 provide the name and address of the resisting franchisee and the name and address of the
16 franchisee's registered agent to the Office of the Attorney General.

17 3.3 As they come up for either renewal or renegotiation during the ordinary course
18 of business, Bonefish Grill, LLC will amend all of its existing franchise agreements on a
19 nationwide basis to remove the No-Poaching Provision.

20 3.4 Within 30 days of the conclusion of the time periods referenced in this section
21 III, Bonefish Grill, LLC will submit a declaration to the Attorney General's Office signed under
22 penalty of perjury stating that all provisions of this agreement have been satisfied.

23 IV. ADDITIONAL PROVISIONS

24 4.1 This AOD is binding on, and applies to Bonefish Grill, LLC, including each of
25 its respective successors and assigns, controlled subsidiaries, divisions, groups, affiliates,
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1 partnerships, and joint ventures, or other entities through which Bonefish Grill, LLC may now
2 or hereafter act with respect to the conduct alleged in this AOD.

3 4.2 This is a voluntary agreement and it shall not be construed as an admission of
4 law, fact, liability, misconduct, or wrongdoing on the part of Bonefish Grill, LLC. By entering
5 into this AOD, Bonefish Grill, LLC neither agrees nor concedes that the claims, allegations
6 and/or causes of action, which have or could have been asserted by the Attorney General have
7 merit and Bonefish Grill, LLC expressly deny any such claims, allegations, and/or causes of
8 action. However, proof of failure to comply with this AOD shall be *prima facie* evidence of a
9 violation of RCW 19.86.030, thereby placing upon the violator the burden of defending against
10 imposition by the Court of injunctions, restitution, costs and reasonable attorney's fees, and
11 civil penalties of up to \$2,000.00 per violation.


12 4.3 Bonefish Grill, LLC will not, nor will it authorize any of its officers, employees,
13 representatives, or agents to state or otherwise contend that the State of Washington or the
14 Attorney General has approved of, or has otherwise sanctioned, the conduct described in Paragraph
15 2.2 with respect to the No-Poach Provision in Bonefish Grill, LLC's franchise agreement.

16 4.4 This AOD resolves all issues raised by the State of Washington and the Antitrust
17 Division of the Attorney General's Office under the Consumer Protection Act and any other
18 related statutes pertaining to the acts set forth in Paragraphs 2.1 – 2.3 above that may have occurred
19 before the date of entry of this AOD and concludes the investigation thereof. Subject to Paragraph
20 4.2, the State of Washington and the Antitrust Division of the Attorney General's Office shall not
21 file suit or take any further investigative or enforcement action with respect to the acts set forth
22 above that occurred before the date of entry of this AOD.

23 APPROVED ON this _____ day of 1/14, 2018.

24 **HENRY H. JUDSON**

25 JAN 14 2019

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JUDGE/COURT COMMISSIONER

BONEFISH GRILL, LLC ASSURANCE
OF DISCONTINUANCE

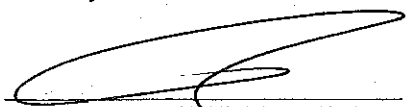
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