1 2 3 4 5	RECEIVED In King County Superior Court Clerks FEB 15 2019 Ceshier Section Superior Court Clerk	
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7	STATE OF WASHINGTON KING COUNTY SUPERIOR COURT	
9	IN RE: FRANCHISE NO POACHING	NO.19-2-0431 5-6 SEA
10	PROVISIONS	EINSTEIN BROS. BAGELS
11	(FRANCHISE CORPORATION ASSURANCE OF
12	(EINSTEIN BROS. BAGELS)	DISCONTINUANCE
13		
14	The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney	
-15	General, and Rahul Rao, Assistant Attorney General, files this Assurance of Discontinuance	
16	(AOD) under RCW 19.86.100.	
17	I. PARTIES	
18	¹ 1.1 In November 2018, the Attorney General initiated an investigation into Einstein	
19	Bros. Bagels Franchise Corporation (EBBFC) relating to its hiring practices.	
20	1.2 EBBFC is a Colorado corporation with its principal office or place of business	
21	in Lakewood, Colorado. EBBFC is in the business of offering and selling franchises for (and	
22	operating) restaurants that principally feature bagel and coffee products and that operate under	
23	the name and mark "Einstein Bros. Bagels".	
24	1.3 For the purposes of this AOD, EBBFC includes its directors, officers, managers,	
25	agents acting within the scope of their agency, and employees, as well as its successor and	
26	assigns, controlled subsidiaries, and predecessor franchisor entities.	
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II. INVESTIGATION

2.1 EBBFC currently has eighteen (18) stores in Washington, of which seven (7) are owned and operated by EBBFC, nine (9) are owned and operated by licensees, and two (2) are now-closed stores formerly operated by franchisees.

2.2 For years until April 2018, EBBFC has included language in its franchise agreements that restricted a franchisee's ability to solicit or hire workers from another "Einstein Bros. Bagel" store ("no-poaching provision"). In pertinent part, the 2017 standard EBBFC franchise agreement included language that stated that a franchisee would not "[e]mploy or seek to employ any person who is then employed by us or any other Einstein Bros. Bagel Restaurant franchisee or developer, or otherwise directly or indirectly induce such person to leave his or her employment." A no-poaching provision restricted franchisees from hiring both employees from a competing franchisee and from EBBFC's corporate-owned stores. EBBFC removed the no-poaching provision from its new franchise agreements in April 2018. EBBFC did not generally have a no-poaching provision in its license agreements except for those entered into with the Army & Air Force Exchange Service for units located on U.S. military bases.

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

2.4 EBBFC expressly denies the conduct described above constitutes a contract, combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act, RCW 19.86.030, or any other law, and expressly denies that it has engaged in conduct that constitutes a contract, combination, or conspiracy in restraint of trade, or in violation of any other law or regulation. EBBFC also expressly denies that the Consumer Protection Act, RCW 19.86.030, applies to contracts that EBBFC has entered into with parties outside of Washington. EBBFC enters into this AOD to avoid protracted and expensive litigation.

EINSTEIN BROS. BAGELS FRANCHISE CORPORATION ASSURANCE OF DISCONTINUANCE 2

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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 EBBFC.

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III. ASSURANCE OF DISCONTINUANCE

3.1 Subject to paragraph 2.4 above, EBBFC agrees that:

3.1.1. It will continue its current practice of not including no-poaching provisions in its future franchise agreements in the U.S. after the date of this AOD;

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

3.1.3. It will notify all of its current franchisees in the U.S. of the entry of this AOD and advise them that this AOD was entered into with the Attorney General; and

3.1.4. If EBBFC becomes aware of a franchisee or licensee with a store located in the state of Washington attempting to enforce the no-poaching provision, and EBBFC is unable to persuade such franchisee or licensee to desist from enforcing or attempting to enforce such provision, EBBFC will notify the Attorney General.

3.2 Within 60 days of entry of this AOD, EBBFC will send a letter to all of its current franchisees and licensees in the state of Washington with agreements that contain a no-poaching provision, exercising EBBFC's unilateral contractual right under its franchise agreements to reduce the scope of the covenant against competition, specifically by deleting the no-poaching provisions in those franchise agreements, and citing the relevant provisions of the underlying franchise or license agreement (including the no third-party beneficiary clause).

3.3 As they come up for either renewal or renegotiation during the ordinary course of business, EBBFC will amend all of its existing franchise and license agreements on a nationwide basis to remove the no-poaching provisions (if any) that are included in the current versions of those agreements.

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EINSTEIN BROS. BAGELS FRANCHISE CORPORATION ASSURANCE OF DISCONTINUANCE ATTORNEY GENERAL OF WASHINGTON Antitrust Division 800 Fifth Avenue, Suite 2000 Seattle, WA 98104-3188 (206) 464-7744 3.4 Within 30 days of the conclusion of the time periods referenced in paragraphs 3.1 and 3.2 above, EBBFC will submit a declaration to the Attorney General's Office signed under penalty of perjury stating that all provisions of this agreement have been satisfied.

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IV. ADDITIONAL PROVISIONS

4.1 This AOD is binding on, and applies to EBBFC, including each of its respective directors, officers, managers, agents acting within the scope of their agency, and employees, as well as their respective successors and assigns, controlled subsidiaries, predecessor franchisor entities, or other entities through which EBBFC may now or hereafter act with respect to the conduct alleged in this AOD.

4.2 This is a voluntary agreement and it shall not be construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part of EBBFC. By entering into this AOD, EBBFC neither agrees nor concedes that the claims, allegations and/or causes of action which have or could have been asserted by the Attorney General have merit and EBBFC expressly denies any such claims, allegations, and/or causes of action. However, proof of failure to comply with this AOD shall be *prima facie* evidence of a violation of RCW 19.86.030, thereby placing upon the violator the burden of defending against imposition by the Court of injunctions, restitution, costs and reasonable attorney's fees, and appropriate civil penalties under the Consumer Protection Act.

4.3 This AOD is not an injunction and does not require EBBFC to make disclosure of this voluntary agreement in Item 3 of its franchise disclosure documents.

4.4 EBBFC will not, nor will it authorize any of its officers, employees, representatives, or agents to state or otherwise contend that the State of Washington or the Attorney General has approved of, or has otherwise sanctioned, the conduct described in paragraph 2.2 with respect to the no-poaching provision in EBBFC's franchise agreement.

4.5 This AOD resolves all issues raised by the State of Washington and the Antitrust Division of the Attorney General's Office under the Consumer Protection Act and any other

EINSTEIN BROS. BAGELS FRANCHISE CORPORATION ASSURANCE OF DISCONTINUANCE ATTORNEY GENERAL OF WASHINGTON Antitrust Division 800 Fifth Avenue, Suite 2000 Seattle, WA 98104-3188 (206) 464-7744 related statutes pertaining to the acts set forth in paragraphs 2.1 – 2.3 above that may have
occurred before the date of entry of this AOD and concludes the investigation thereof. Subject to
paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's
Office shall not file suit or take any further investigative or enforcement action with respect to the
acts set forth above that occurred before the date of entry of this AOD.

APPROVED ON this _____ day of ______, 201___.

JUDGE/COURT COMMISSIONER

EINSTEIN BROS. BAGELS FRANCHISE CORPORATION ASSURANCE OF DISCONTINUANCE ATTORNEY GENERAL OF WASHINGTON Antitrust Division 800 Fifth Avenue, Suite 2000 Seattle, WA 98104-3188 (206) 464-7744

Presented by: 1 2 ROBERT W. FERGUSON Attorney General 3 4 RAHUL RAO, WSBA #53375 5 Assistant Attorney General Antitrust Division 6 Attorneys for State of Washington Office of the Attorney General 7 800 Fifth Avenue, Suite 2000 Seattle, WA 98104 8 206.442.4499 9 rahulr@atg.wa.gov 10 Agreed to and approved for entry by: 11 EINSTEIN BROS. BAGELS FRANCHISE CORPORATION 12 13 MICHAELÓAVIS General Counsel 14 Einstein Bros. Bagels Franchise Corporation 555 Zang Street, Suite 300 15 Lakewood, Colorado 80228 303.763.2037 16 mdavis@einsteinnoah.com 17 18 Approved as to form: 19 ALAN S. MIDDLETON, WSBA #181 18 LEE J. PLAVE 20Law Offices of Alan S. Middleton PLLC Plave Koch PLC 21 10605 SE 240th St. PMB 444 12005 Sunrise Valley Drive Kent, Washington 98031 Reston, Virginia 20191 22 703.774.1203 206.533.0490 alanscottmiddleton@comcast.net lplave@plavekoch.com 23 Attorneys for Einstein Bros. Bagels Franchise Attorneys for Einstein Bros. Bagels Franchise 24 Corporation Corporation 25 26 EINSTEIN BROS. BAGELS FRANCHISE ATTORNEY GENERAL OF WASHINGTON CORPORATION ASSURANCE OF Annuast Division 800 Fifth Avenue, Suite 2000 Scattle, WA 98104-3188 DISCONTINUANCE (206) 464-7744