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EXP07

**FILED**  
KING COUNTY, WASHINGTON  
AUG 20 2018  
SUPERIOR COURT CLERK

**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

IN RE: FRANCHISE NO POACHING  
PROVISIONS

NO. **18-2-20764-9SEA**  
JAMBA JUICE COMPANY'S  
ASSURANCE OF  
DISCONTINUANCE

The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney General (the "Attorney General"), and Eric S. Newman, 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 Jamba Juice Company ("Jamba") relating to certain provisions in its franchise agreement.

1.2 Jamba is a California corporation with its principal offices or place of business in Frisco, Texas. Jamba is a franchisor, and its corporate and franchisee-operated locations are in the business of offering blended-to-order smoothies, other specialty beverages, and portable food items, among other beverages and food products, for sale to consumers.

1.3 For purposes of this AOD, Jamba shall include its directors, officers, managers, agents acting within the scope of their agency, and employees, as well as its successors and assigns, controlled subsidiaries, sister companies, and predecessor franchisor entities.

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## II. INVESTIGATION

2.1 There are approximately 28 Jamba stores located in the State of Washington as of the date hereof. All of these stores are independently owned and operated by franchisees.

2.2 Jamba previously included language in its franchise agreements that limited a franchisee's ability to interfere with the employment relations between Jamba or other franchisees and any persons they respectively employed in executive, managerial, or operational positions ("no interference with employment relations provision"). Specifically, the standard Jamba franchise agreement provided that "[w]ithout [Jamba's] prior written consent, during the Term of this Agreement (and for 24 months following its termination or expiration), Franchisee shall not employ or seek to employ, or otherwise directly or indirectly induce to leave his or her employment, any person who is at the time or was at any time during the prior 6 months employed by [Jamba] or any of its Affiliates, or by any person or Business Entity operating a business under a license or franchise from [Jamba] in an executive, managerial, or operational position." (hereinafter, "No Interference with Employment Relations Provision").

2.3 Jamba removed the No Interference with Employment Relations Provision from its standard form of franchise agreement by May 16, 2018 in connection with its annual update of its franchise disclosure document. Since that date, Jamba has not included the No Interference with Employment Relations Provision in newly executed franchise agreements.

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

2.5 Jamba and its current and former franchisees expressly deny that 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 or regulation, and expressly deny they have engaged in conduct that constitutes a contract, combination, or conspiracy in restraint of trade, or violates any other law or regulation. Jamba enters into this

1 AOD to avoid protracted and expensive litigation. Pursuant to RCW 19.86.100, neither this  
2 AOD nor its terms shall be construed as an admission of law, fact, liability, misconduct, or  
3 wrongdoing on the part of Jamba or any of its current or former franchisees.

### 4 III. ASSURANCE OF DISCONTINUANCE

5 3.1 Subject to Paragraph 2.5 above, Jamba agrees:

6 3.1.1. It will no longer include the No Interference with Employment Relations  
7 Provision in any of its franchise agreements in the United States signed after the date hereof.

8 3.1.2. It will not enforce the No Interference with Employment Relations  
9 Provision in any of its existing franchise agreements in the United States, and will not seek to  
10 intervene in any action brought by the Attorney General's Office against a current franchisee in  
11 Washington to defend an existing No Interference with Employment Relations Provision,  
12 provided such action is brought in accordance with, and consistent with, the provisions of this  
13 AOD.

14 3.1.3. It will notify all of its current franchisees in the United States of the  
15 entry of this AOD and make a copy available to them.

16 3.1.4. If, after the 21-day period set forth in Paragraph 3.2 below, Jamba  
17 becomes aware of a franchisee with a store located in the State of Washington attempting to  
18 enforce the No Interference with Employment Relations Provision, and Jamba is unable to  
19 persuade such franchisee to desist from enforcing or attempting to enforce such provision,  
20 Jamba will notify the Attorney General.

21 3.2 Within 21 days of entry of this AOD, Jamba will send a letter to all of its  
22 current franchisees with stores located in the State of Washington, stating that the Attorney  
23 General has requested that the existing No Interference with Employment Relations Provision  
24 be removed from existing franchise agreements. The letter that Jamba will send to its current  
25 franchisees in the State of Washington will be substantially in the form of the letter attached  
26 hereto as Exhibit A. That letter will enclose the proposed amendment that Jamba is requesting

1 that each of its franchisees in the State of Washington agree to, which amendment will remove  
2 the No Interference with Employment Relations Provision. The proposed amendment that will  
3 be included with each letter will be substantially in the form of the amendment attached hereto  
4 as Exhibit B.

5 3.3 In addition to sending the letter to its current franchisees in the State of  
6 Washington pursuant to Paragraph 3.2 above, Jamba will respond promptly to any inquiries  
7 from such franchisees regarding the request to amend the terms of the franchise agreement and  
8 will convey its recommendation that its current franchisees in the State of Washington sign the  
9 proposed amendment. However, for the avoidance of doubt, Jamba is under no obligation to  
10 offer its franchisees any consideration—monetary or otherwise—in order to induce them to  
11 sign the proposed amendment, nor will Jamba be required to take, or threaten to take, any  
12 adverse action against such franchisees if they refuse to do so. Within 120 days of entry of this  
13 AOD, Jamba will provide copies of all executed amendments it has obtained with its current  
14 franchisees in the State of Washington to the Attorney General's Office. A decision by a  
15 franchisee not to amend its franchise agreement, or not to do so within 120 days of this AOD,  
16 shall not mean that Jamba has not complied with its obligations under this AOD.

17 3.4 If Jamba learns that a current franchisee in the State of Washington intends in  
18 good faith to sign the proposed amendment but is unable to do so within the time period  
19 specified in Paragraph 3.3, Jamba will notify the Attorney General's Office to seek a mutually  
20 agreeable extension. During any such extension, the Attorney General's Office will not take  
21 further investigative or enforcement action against a franchisee.

22 3.5 As they come up for renewal during the ordinary course of business, Jamba will  
23 remove the No Interference with Employment Relations Provision from all of its existing  
24 franchise agreements in the United States with its franchisees on a nationwide basis, unless  
25 expressly prohibited by law. In addition, Jamba will not include the No Interference with  
26

1 Employment Relations Provision in any franchise agreement it signs in the United States after  
2 the date of this AOD.

3 3.6 Within 30 days of the conclusion of the time periods referenced in paragraph  
4 3.3, Jamba will submit a declaration to the Attorney General's Office signed under penalty of  
5 perjury stating whether all provisions of this agreement have been satisfied.

#### 6 IV. ADDITIONAL PROVISIONS

7 4.1 This AOD is binding on, and applies to Jamba, including each of its respective  
8 directors, officers, managers, agents acting within the scope of their agency, and employees, as  
9 well as their respective successors and assigns, controlled subsidiaries, predecessor franchisor  
10 entities, or other entities through which Jamba may now or hereafter act with respect to the  
11 conduct alleged in this AOD.

12  
13 4.2 This is a voluntary agreement and it shall not be construed as an admission of  
14 law, fact, liability, misconduct, or wrongdoing on the part of Jamba or any of its current or  
15 former franchisees. Jamba and its current and former franchisees neither agree nor concede  
16 that the claims, allegations and/or causes of action which have or could have been asserted by  
17 the Attorney General have merit and Jamba and its current and former franchisees expressly  
18 deny any such claims, allegations, and/or causes of action. However, proof of failure to comply  
19 with this AOD shall be *prima facie* evidence of a violation of RCW 19.86.030, thereby placing  
20 upon the violator the burden of defending against imposition by the Court of injunctions,  
21 restitution, costs and reasonable attorney's fees, and civil penalties of up to \$2,000.00 per  
22 violation.

23 4.3 Jamba will not, nor will it authorize any of its officers, employees,  
24 representatives, or agents to, state or otherwise contend that the State of Washington or the  
25 Attorney General has approved of, or has otherwise sanctioned, the conduct described in  
26

1 Paragraph 2.2 with respect to the No Interference with Employment Relations Provision in  
2 Jamba's franchise agreement.

3 4.4 This AOD resolves all issues raised by the State of Washington and the Antitrust  
4 Division of the Attorney General's Office under the Consumer Protection Act and any other  
5 related statutes pertaining to the acts of Jamba and its current and former franchisees as set forth  
6 in Paragraph 2.1 – 2.3 above that may have occurred before the date of entry of this AOD, or that  
7 occur between the date of the entry of this AOD and the conclusion of the 120-day period  
8 identified in Paragraph 3.3 above, and concludes the investigation thereof. Subject to Paragraph  
9 4.2, the State of Washington and the Antitrust Division of the Attorney General's Office shall not  
10 file suit or take any further investigative or enforcement action with respect to the acts set forth  
11 above that occurred before the date of entry of this AOD, or that occurs between the date of the  
12 entry of this AOD and the conclusion of the 120-day period identified in Paragraph 3.3 above,  
13 against Jamba or any of its current franchisees in the State of Washington that sign the proposed  
14 amendment described in Section III, any of its former franchisees in the State of Washington, or  
15 any of its current or former franchisees located outside the State of Washington. The Attorney  
16 General reserves the right to take further investigative or enforcement action against any current  
17 franchisee in the State of Washington identified pursuant to Paragraph 3.1.4 or any current  
18 franchisee in the State of Washington that does not sign the proposed amendment described in  
19 Section III.

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21 APPROVED ON this \_\_\_\_\_ day of 8/20, 2018.

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23  
24 HENRY H. JUDSON

  
JUDGE/COURT COMMISSIONER

25 AUG 20 2018

26 COURT COMMISSIONER

1 Presented by:

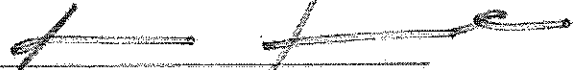
2 ROBERT W. FERGUSON  
3 Attorney General


4  WSBA: 38051  
For: \_\_\_\_\_

5 ERIC S. NEWMAN, WSBA #  
6 Assistant Attorney General  
7 Chief Litigation Counsel  
8 Antitrust Division  
9 Attorneys for State of Washington  
Office of the Attorney General  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104

10 Agreed to and approved for entry by:

11 JAMBA JUICE COMPANY

12   
13 Angelo J. Calfo, WSBA #27079  
14 CALFO EAKES & OSTROVSKY, PLLC  
15 1301 Second Avenue, Suite 2800  
Seattle, WA 98101

  
\_\_\_\_\_  
16 Josh Nicolsia  
17 General Counsel  
18 Jamba Juice Company

16 ---and---

17 Scott McIntosh  
18 QUARLES & BRADY LLP  
19 1701 Pennsylvania Avenue NW, Suite 700  
20 Washington, DC 20006

21 *Attorneys for Jamba Juice Company*

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**EXHIBIT A**



[Franchisee name and address]

Re: Notice Regarding Amendment to Franchise Agreement(s)

Dear [Franchisee]:

This letter is being sent to you because you own one or more Jamba Juice stores located in the State of Washington. As you may be aware, the Attorney General of the State of Washington began an investigation into the use by franchisors, with locations in Washington, of agreement provisions that restrict franchisees from soliciting or hiring employees of the franchisor or other franchisees. The franchise agreements of numerous franchise companies, including Jamba Juice, have been included in the investigation.

After significant discussions and negotiations, we were able to reach an agreement with the Attorney General that we think serves the best interests of our franchisees, as well as Jamba. While we do not believe that we or our franchisees have acted in any way that is unlawful or improper, we think that a settlement is in the best interests of our franchise system, to avoid the potentially significant costs and uncertainty of litigation.

As you may be aware, we had already removed the "Interference With Employment Relations" provision from all new franchise agreements entered after May 16, 2018, as part of our annual update to our franchise agreement and our franchise disclosure document. As part of the settlement, we have committed to not include such a provision in any future agreements that we enter on a nationwide basis. We have also committed to not enforcing the Interference with Employment Relations provision on a nationwide basis. In addition, the Attorney General has required that we ask all franchisees with Jamba stores in the State of Washington to execute an amendment to their franchise agreements, which amendment deletes the Interference With Employment Relations provision from their franchise agreements.

We have enclosed a copy of the amendment for each of your Jamba franchise(s). If you enter into this amendment, then pursuant to our agreement with the Attorney General, the State of Washington will not file suit against you, or take any investigative or enforcement action against you, relating to any Interference With Employment Relations provision in your franchise agreement(s), up to and including the date upon which you sign the amendment, provided that you do so within 120 days. By executing the amendment(s) you are not admitting any liability, fault, or wrongdoing. If you decide not to execute the amendment(s), the Attorney General has indicated it will reserve the right to investigate your franchises for any actions taken under the Interference With Employment Relations provisions, and to pursue any litigation or enforcement actions it deems appropriate. We strongly encourage you to sign the enclosed amendment(s).

Please review the amendment(s) with your legal counsel and return the executed amendment(s) to Josh Nicosia, General Counsel, VP of Development, at [JNicosia@jambajuice.com](mailto:JNicosia@jambajuice.com) or mail it to Josh at the address above. If you have questions regarding the attached amendment(s) or this letter, please contact Josh at (469) 294-9746.

We appreciate your prompt attention to this matter.

Best regards,

[name]

[title]

**EXHIBIT B**

**AMENDMENT TO  
FRANCHISE AGREEMENT**

The **Jamba Juice Company** Franchise Agreement between **Jamba Juice Company** ("Franchisor") and \_\_\_\_\_ ("Franchisee") dated \_\_\_\_\_ (the "Agreement") shall be amended in accordance with the following terms, which shall be considered an integral part of the Agreement (the "Amendment"):

1. Background. We and you are parties to the Agreement and you operate one or more franchised Jamba stores in the State of Washington under the Agreement. We have determined that it is in the best interests of the franchise system to not enforce Section 12.4 of the Agreement (titled "Interference With Employment Relations"). The purpose of this Amendment to the Agreement is to document this change. All initial capitalized terms used but not defined in this Amendment shall have the meanings set forth in the Agreement.

2. Modification of Terms. As of the Effective Date (defined below), of this Amendment, we and you agree that Section 12.4 of the Agreement is hereby deleted from the Agreement and is of no further force or effect.

3. Miscellaneous. Except as specifically modified by this Amendment, the provisions of the Agreement shall remain in full force and effect. This Amendment is an amendment to, and forms a part of, the Agreement, and satisfies the requirements for amendments to the Agreement set forth in Section 19.8 of the Agreement. If there is an inconsistency between this Amendment and the Agreement, the terms of this Amendment shall control. This Amendment contains all of the terms and conditions agreed upon by the parties hereto with reference to the subject matter hereof. No other agreements oral or otherwise shall be deemed to exist or to bind any of the parties hereto and all prior agreements, understandings and representations are merged herein and superseded hereby. This Amendment inures to the benefit of the parties hereto and each of their respective successors and assigns. This Amendment may be executed in multiple counterparts, but all such counterparts together shall be considered one and the same instrument.

*<Signatures on Following Page>*

IN WITNESS WHEREOF, the Franchisee on behalf of itself and its owners, acknowledges that it has read and understands the contents of this Amendment, that it has had the opportunity to obtain the advice of counsel, and that it intends to comply with this Amendment and be bound thereby. The parties have duly executed and delivered this Amendment to the Agreement, effective as of \_\_\_\_\_, 2018 (the "Effective Date").

FRANCHISOR:  
Jamba Juice Company  
a California Corporation

FRANCHISEE:  
\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_