

STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO POACHING  
PROVISIONS

(MIO SUSHI INTERNATIONAL, INC.)

NO. 19-2-20771-0 SEA

MIO SUSHI INTERNATIONAL,  
INC. ASSURANCE OF  
DISCONTINUANCE

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

I. PARTIES

1.1 In July 2019, the Attorney General initiated an investigation into MIO SUSHI INTERNATIONAL, INC. relating to its hiring practices.

1.2 MIO SUSHI INTERNATIONAL, INC. is an Oregon corporation with its principal office or place of business in the State of Oregon. MIO SUSHI INTERNATIONAL, INC. is in the business of franchising a system for the operation of sushi and Asian fusion food restaurants.

1.3 For the purposes of this AOD, MIO SUSHI INTERNATIONAL, INC. includes its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its successor and assigns, controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures.

1 **II. INVESTIGATION**

2 2.1 MIO SUSHI INTERNATIONAL, INC. has three outlets in Washington. All of  
3 these outlets are owned and operated by franchisees.

4 2.2 For years, MIO SUSHI INTERNATIONAL, INC. has included language in its  
5 franchise agreements that restricted a franchisee's ability to solicit or hire workers from another  
6 Mio Sushi outlet ("no-poaching provision"). Specifically, the standard MIO SUSHI  
7 INTERNATIONAL, INC. franchise agreement stated that a franchisee "will assure that  
8 [franchisee] and [franchisee's] Related Parties and employees, during the term of this Agreement  
9 and for a period of 2 years after expiration or termination of this Agreement do not: ...employ  
10 or seek to employ any person we employ or any other person who is at that time operating or  
11 employed by or at any of our franchises or otherwise directly or indirectly induce these persons  
12 to leave their employment." A no-poaching provision restricted franchisees from hiring both  
13 employees from a competing franchisee and from MIO SUSHI INTERNATIONAL, INC.'s  
14 corporate-owned outlets.

15 2.3 The Attorney General asserts that the foregoing conduct constitutes a contract,  
16 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,  
17 RCW 19.86.030.

18 2.4 MIO SUSHI INTERNATIONAL, INC. expressly denies the conduct described  
19 above constitutes a contract, combination, or conspiracy in restraint of trade in violation of the  
20 Consumer Protection Act, RCW 19.86.030, or any other law, and expressly denies it has engaged  
21 in conduct that constitutes a contract, combination, or conspiracy in restraint of trade. MIO  
22 SUSHI INTERNATIONAL, INC. enters into this AOD to avoid protracted and expensive  
23 litigation. Pursuant to RCW 19.86.100, neither this AOD nor its terms shall be construed as an  
24 admission of law, fact, liability, misconduct, or wrongdoing on the part of MIO SUSHI  
25 INTERNATIONAL, INC.  
26

1 **III. ASSURANCE OF DISCONTINUANCE**

2 3.1 Subject to paragraph 2.4 above, MIO SUSHI INTERNATIONAL, INC. agrees:

3 3.1.1. It will no longer include no-poach provisions in any of its future  
4 franchise agreements;

5 3.1.2. It will no longer enforce no-poaching provisions in any of its existing  
6 franchise agreements, and will not seek to intervene or defend in any way the legality of any no-  
7 poach provision in any litigation in which a franchisee may claim third-party beneficiary status  
8 rights to enforce an existing no-poach provision;

9 3.1.3. It will notify all of its franchisees of the entry of this AOD and provide  
10 them a copy;

11 3.1.4. It will notify the Attorney General's Office if it learns of any effort by a  
12 franchisee in Washington to enforce any existing no-poach provision.

13 3.2 Within 60 days of entry of this AOD, MIO SUSHI INTERNATIONAL, INC.  
14 will have taken affirmative action to amend all existing franchise agreements with entities in  
15 Washington to remove any no-poaching provisions in its existing franchise agreements. If any  
16 franchise owner is unwilling to consent to the change to its franchise agreement, prior to the 60-  
17 day deadline, MIO SUSHI INTERNATIONAL, INC. shall provide the name and address of the  
18 resisting franchisee and the name and address of the franchisee's registered agent to the Office  
19 of the Attorney General.

20 3.3 As they come up for either renewal or renegotiation during the ordinary course  
21 of business, MIO SUSHI INTERNATIONAL, INC. will amend all of its existing franchise  
22 agreements on a nationwide basis to remove any no-poach provision.

23 3.4 Within 30 days of the conclusion of the time periods referenced in this section  
24 III, MIO SUSHI INTERNATIONAL, INC. will submit a declaration to the Attorney General's  
25 Office signed under penalty of perjury stating that all provisions of this agreement have been  
26 satisfied.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

#### IV. ADDITIONAL PROVISIONS

4.1 This AOD is binding on, and applies to MIO SUSHI INTERNATIONAL, INC., 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, divisions, groups, affiliates, partnerships, and joint ventures, or other entities through which MIO SUSHI INTERNATIONAL, INC. 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 MIO SUSHI INTERNATIONAL, INC. By entering into this AOD, MIO SUSHI INTERNATIONAL, INC. 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 MIO SUSHI INTERNATIONAL, INC. 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 MIO SUSHI INTERNATIONAL, INC. 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-Poach Provision in MIO SUSHI INTERNATIONAL, INC.'s franchise agreement.

4.4 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 related statutes pertaining to the acts set forth in paragraph 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

1 State of Washington and the Antitrust Division of the Attorney General's Office shall not file suit  
2 or take any further investigative or enforcement action with respect to the acts set forth above that  
3 occurred before the date of entry of this AOD.

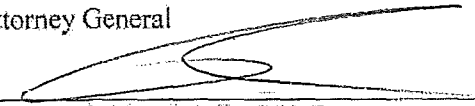
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

APPROVED ON this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
JUDGE/COURT COMISSIONER

Presented by:

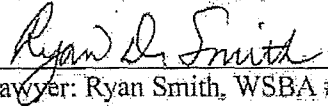
ROBERT W. FERGUSON  
Attorney General



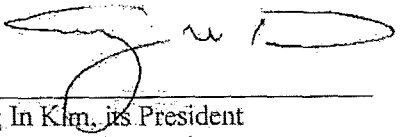
RAHUL RAO, WSBA #53375  
Assistant Attorney General  
Antitrust Division  
Office of the Attorney General  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104  
206.442.4499  
rahulr@atg.wa.gov

*Attorneys for State of Washington*

Agreed to and approved for entry by:  
MIO SUSHI INTERNATIONAL, INC.

  
\_\_\_\_\_  
Lawyer: Ryan Smith, WSBA #51902

Firm: Peak Law Group, LLC  
Address: PO Box 1112, Sherwood, OR 97140  
Email: ryan@peakfranchiselaw.com  
Attorney for MIO SUSHI INTERNATIONAL, INC.

  
\_\_\_\_\_  
Sung In Kim, its President