

EXPO7

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

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

NO. 19-2-01108-4 SEA

IN RE: FRANCHISE NO-POACHING
PROVISIONS

(OUTBACK STEAKHOUSE OF
FLORIDA, LLC)

OUTBACK STEAKHOUSE OF
FLORIDA, 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 Outback Steakhouse of Florida, LLC inquiring about the terms of its franchise agreement.

1.2 Outback Steakhouse of Florida, LLC is a Florida Limited Liability Company with its principal office or place of business in Florida. Outback Steakhouse of Florida, LLC operates a nationwide chain of casual steakhouses.

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

1 II. INVESTIGATION

2 2.1 Outback Steakhouse of Florida, LLC has 16 stores in Washington. All of these
3 stores are owned and operated by a franchisee.

4 2.2 For years, Outback Steakhouse of Florida, LLC has included language in its
5 franchise agreements that restricted a franchisee's ability to solicit or hire workers from other
6 franchisees of Outback Steakhouse of Florida, LLC and from Outback Steakhouse of Florida,
7 LLC's corporate-owned stores. Specifically, the standard Outback Steakhouse of Florida, LLC
8 franchise agreement stated that a franchisee shall not,

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

12 (The "No-Poaching Provision.")

13 2.3 The Attorney General asserts that the foregoing conduct constitutes a contract,
14 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,
15 RCW 19.86.030.

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

1 construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part of
2 Outback Steakhouse of Florida, LLC.

3 III. ASSURANCE OF DISCONTINUANCE

4 3.1 Subject to Paragraph 2.4 above, Outback Steakhouse of Florida, LLC agrees:

5 3.1.1. It will no longer include the No-Poaching Provision in any of its future
6 franchise agreements;

7 3.1.2. It will continue to refrain from enforcing the No-Poaching Provision in
8 any of its existing franchise agreements, and will not seek to intervene or defend in any way the
9 legality of the No-Poaching Provision in any litigation in which a franchisee may claim third-
10 party beneficiary status rights to enforce it;

11 3.1.3. It will notify all of its franchisees of the entry of this AOD and provide
12 them a copy;

13 3.1.4. It will notify the Attorney General's Office if it learns of any effort by a
14 franchisee to enforce the existing No-Poaching Provision.

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

21 3.3 As they come up for either renewal or renegotiation during the ordinary course
22 of business, Outback Steakhouse of Florida, LLC will amend all of its existing franchise
23 agreements on a nationwide basis to remove the No-Poaching Provision.

24 3.4 Within 30 days of the conclusion of the time periods referenced in this section
25 III, Outback Steakhouse of Florida, LLC will submit a declaration to the Attorney General's
26

1 Office signed under penalty of perjury stating that all provisions of this agreement have been
2 satisfied.

3 IV. ADDITIONAL PROVISIONS

4 4.1 This AOD is binding on, and applies to Outback Steakhouse of Florida, LLC,
5 including each of its respective successors and assigns, controlled subsidiaries, divisions,
6 groups, affiliates, partnerships, and joint ventures, or other entities through which Outback
7 Steakhouse of Florida, LLC may now or hereafter act with respect to the conduct alleged in this
8 AOD.

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

19 4.3 Outback Steakhouse of Florida, LLC will not, nor will it authorize any of its
20 officers, employees, representatives, or agents to state or otherwise contend that the State of
21 Washington or the Attorney General has approved of, or has otherwise sanctioned, the conduct
22 described in Paragraph 2.2 with respect to the No-Poach Provision in Outback Steakhouse of
23 Florida, LLC's franchise agreement.

24 4.4 This AOD resolves all issues raised by the State of Washington and the Antitrust
25 Division of the Attorney General's Office under the Consumer Protection Act and any other
26 related statutes pertaining to the acts set forth in Paragraphs 2.1 – 2.3 above that may have occurred

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

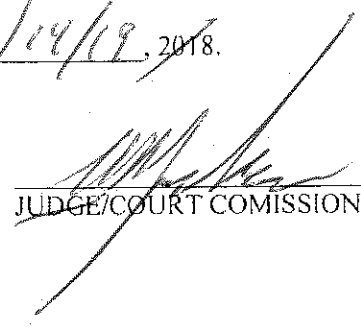
before the date of entry of this AOD and concludes the investigation thereof. Subject to Paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's Office shall not file suit or take any further investigative or enforcement action with respect to the acts set forth above that occurred before the date of entry of this AOD.

APPROVED ON this _____ day of 1/04/19, 2018.

HENRY H. JUDSON

JAN 14 2019

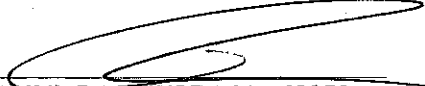
COURT COMMISSIONER




JUDGE/COURT COMMISSIONER

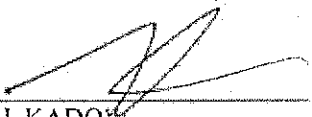
1 Presented by:

2 ROBERT W. FERGUSON
3 Attorney General

4 
5 RAHUL RAO, WSBA No. 53375
6 Assistant Attorney General
7 Antitrust Division
8 Office of the Attorney General
9 800 Fifth Avenue, Suite 2000
10 Seattle, WA 98104
11 206.442.4499
12 rahulr@atg.wa.gov
13 *Attorneys for State of Washington*

11 Agreed to and approved for entry by:
12 Outback Steakhouse of Florida, LLC

13 
14 ANTHONY D. SHAPIRO
15 Hagens Berman Sobol Shapiro, LLP
16 1301 Second Avenue, Suite 2000
17 Seattle, WA 98101
18 *Attorneys for Outback Steakhouse of Florida, LLC*

19 
20 JOSEPH J. KADOW
21 Executive Vice President and Chief
22 Legal Officer
23 Outback Steakhouse of Florida, LLC

17
18
19
20
21
22
23
24
25
26