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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO POACHING
PROVISIONS

(QDOBA RESTAURANT
CORPORATION)

NO. 19-2-12892-5 SEA

QDOBA RESTAURANT
CORPORATION 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 January 2019, the Attorney General initiated an investigation into Qdoba Restaurant Corporation (QRC) relating to its hiring practices.

1.2 QRC is a Colorado corporation with its principal office or place of business in San Diego, California. QRC is a franchisor, and its corporate and franchisee-operated locations are in the business of offering burritos, tacos, salads, quesadillas, chips, a variety of dips and sauces, and other Mexican-themed food items, among other food products, for sale to customers.

1.3 For the purposes of this AOD, QRC includes its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its successor and assigns, controlled subsidiaries, and predecessor franchisor entities.

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II. INVESTIGATION

2.1 QRC has 27 stores in the state of Washington as of the date hereof. Three of these stores are owned and operated by franchisees and 24 are owned and operated by QRC.

2.2 In the past, the franchise agreements entered into between QRC and its franchisees have provided that franchisees subject to such agreements may not solicit employees of QRC or other Qdoba franchisees (the "No Solicitation Provision") or hire employees of QRC or other Qdoba franchisees within six months after termination of the employment (the "No Hire Provision").

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

2.4 QRC and its current and former franchisees expressly deny 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 deny they have engaged in conduct that constitutes a contract, combination, or conspiracy in restraint of trade, or violates any other law or regulation. QRC enters into this AOD to avoid protracted and expensive litigation. 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 QRC or any of its current or former franchisees.

III. ASSURANCE OF DISCONTINUANCE

3.1 Subject to paragraph 2.4 above, QRC agrees:
3.1.1. It will no longer include the No Solicitation Provision or the No Hire Provision in any of its future franchise agreements after the date hereof;
3.1.2. It will no longer enforce the No Solicitation Provision or the No Hire Provision in any of its existing franchise agreements, and will not seek to intervene or defend in any action brought by the Attorney General's Office against a current franchisee in the state

1 of Washington to defend an existing No Solicitation Provision or No Hire Provision, provided
2 such action is brought in accordance with, and consistent with, the provisions of this AOD;

3 3.1.3. It will notify all its franchise advisory counsel of the entry of this AOD
4 and make a copy available to them;

5 3.1.4. If, after the 21-day period set forth in paragraph 3.2 below, QRC
6 becomes aware of a franchisee with a store located in the state of Washington attempting to
7 enforce the No-Solicitation Provision or the No-Hire Provision, and QRC is unable to persuade
8 such franchisee to desist from enforcing or attempting to enforce such provision, QRC will
9 notify the Attorney General.

10 3.2 Within 21 days of entry of this AOD, QRC will send a letter to all of its current
11 franchisees with stores located in the state of Washington, stating that the Attorney General has
12 requested that the existing No-Solicitation Provision and No-Hire Provision be removed from
13 existing franchise agreements. The letter that QRC will send to its current franchisees in the
14 state of Washington will be substantially in the form of the letter attached hereto as Exhibit A.
15 That letter will enclose the proposed amendment that QRC is requesting that each of its
16 franchisees in the state of Washington agree to, which amendment will remove the No-
17 Solicitation Provision and the No-Hire Provision. The proposed amendment that will be
18 included with each letter will be substantially in the form of the amendment attached hereto as
19 Exhibit B.

20 3.3 In addition to sending the letter to its current franchisees in the state of
21 Washington pursuant to paragraph 3.2 above, QRC will respond promptly to any inquiries
22 from such franchisees regarding the request to amend the terms of the franchise agreement and
23 will encourage its current franchisees in the state of Washington to sign the proposed
24 amendment. However, for the avoidance of doubt, QRC is under no obligation to offer its
25 franchisees any consideration-monetary or otherwise-in order to induce them to sign the
26 proposed amendment, or take any adverse action against such franchisees if they refuse to do

1 so. Within 120 days of entry of this AOD, QRC will provide copies of all executed
2 amendments it has obtained with its current franchisees in the state of Washington to the
3 Attorney General's Office. A decision by a franchisee not to amend its franchise agreement
4 shall not mean that QRC has not complied with its obligations under this AOD.

5 3.4 If QRC learns that a current franchisee in the state of Washington intends in
6 good faith to sign the proposed amendment but is unable to do so within the time period
7 specified in paragraph 3.3, QRC will notify the Attorney General's Office to seek a mutually
8 agreeable extension. During any such extension, the Attorney General's Office will not take
9 further investigative or enforcement action against a franchisee.

10 3.5 As they come up for renewal during the ordinary course of business, QRC will
11 remove the No-Solicitation Provision and the No-Hire Provision from all of its existing
12 franchise agreements with its franchisees, unless expressly prohibited by law. In addition, QRC
13 will not include the No-Solicitation Provision or the No-Hire Provision in any franchise
14 agreement it signs after the date of this AOD.

15 3.6 Within 30 days of the conclusion of the time periods referenced in paragraph
16 3.3, QRC will submit a declaration to the Attorney General's Office signed under penalty of
17 perjury stating whether all provisions of this agreement have been satisfied.

18 **IV. ADDITIONAL PROVISIONS**

19 4.1 This AOD is binding on, and applies to QRC, including each of its respective
20 directors, officers, managers, agents acting within the scope of their agency, and employees, as
21 well as their respective successors and assigns, controlled subsidiaries, predecessor franchisor
22 entities, or other entities through which QRC may now or hereafter act with respect to the
23 conduct alleged in this AOD.

25 4.2 This is a voluntary agreement and it shall not be construed as an admission of
26 law, fact, liability, misconduct, or wrongdoing on the part of QRC or any of its current or

1 former franchisees. QRC and its current and former franchisees neither agree nor concede that
2 the claims, allegations and/or causes of action which have or could have been asserted by the
3 Attorney General have merit and QRC and its current and former franchisees expressly deny
4 any such claims, allegations, and/or causes of action. However, proof of failure to comply with
5 this AOD shall be *prima facie* evidence of a violation of RCW 19.86.030, thereby placing upon
6 the violator the burden of defending against imposition by the Court of injunctions, restitution,
7 costs and reasonable attorney's fees, and appropriate civil penalties under the Consumer
8 Protection Act.

9 4.3 QRC will not, nor will it authorize any of its officers, employees, representatives,
10 or agents to state or otherwise contend that the state of Washington or the Attorney General has
11 approved of, or has otherwise sanctioned, the conduct described in paragraph 2.2 with respect to
12 the No Solicitation Provision and No Hire Provision in QRC's franchise agreement.

13 4.4 This AOD resolves all issues raised by the state of Washington and the Antitrust
14 Division of the Attorney General's Office under the Consumer Protection Act and any other
15 related statutes pertaining to the acts of QRC and its current and former franchisees set forth in
16 paragraphs 2.1 – 2.3 above that may have occurred before the date of entry of this AOD, or that
17 occur between the date of the entry of this AOD and the conclusion of the 120 day period
18 identified in paragraph 3.3 above, and concludes the investigation thereof. Subject to paragraph
19 4.2, the state of Washington and the Antitrust Division of the Attorney General's Office shall not
20 file suit or take any further investigative or enforcement action with respect to the acts set forth
21 above that occurred before the date of entry of this AOD, or that occurs between the date of the
22 entry of this AOD and the conclusion of the 120 day period identified in paragraph 3.3 above
23 against QRC or any of its current franchisees in the state of Washington that sign the proposed
24 amendment described in Section III, any of its former franchisees in the state of Washington, or
25 any of its current or former franchisees located outside the state of Washington. The Attorney
26 General reserves the right to take further investigative or enforcement action against any current

1 franchisee in the state of Washington identified pursuant to paragraph 3.1.4 or any current
2 franchisee in the state of Washington that does not sign the proposed amendment described in
3 Section III.

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APPROVED ON this _____ day of _____, 2019.

JUDGE/COURT COMMISSIONER

1 Presented by:

2 ROBERT W. FERGUSON
3 Attorney General

4 

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

14 *Attorneys for State of Washington*

15 Agreed to and approved for entry by:
16 QDOBA RESTAURANT CORPORATION

17 DocuSigned by:

18 

19 _____
20 RYAN W. DUMM, WSBA No. 46738
21 Schwabe Williamson & Wyatt
22 US Bank Centre
23 1420 Fifth Ave.
24 Suite 3400
25 Seattle, WA 98101
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dumm@schwabe.com

Attorneys for Qdoba Restaurant Corporation

DocuSigned by:



CHARLES A. "CHIP" SEIGEL
Chief Legal Officer
Qdoba Restaurant Corporation

EXHIBIT A

[insert QRC Letterhead]

Franchisee Name, Address, City, State, Zip Code

Re: Washington AG No-Poaching Provisions Investigation

The Attorney General for the State of Washington (the "Washington AG") has recently undertaken an investigation into certain clauses in franchise agreements that restrict hiring or solicitation of employees, sometimes referred to as a "no-poaching" provisions. Earlier this year, as part of that investigation, the Washington AG sent a Civil Investigative Demand to us and a number of other franchisors who sell franchises in the State of Washington.

As you may know, under Section ___ of your franchise agreement(s), you agree that you would not "attempt, directly or indirectly, to entice or induce any employee of QRC or of another franchisee to leave such employment" and that you would not "employ such employee within six (6) months after his or her termination of employment with such employer." We do not agree that these clauses, or their enforcement, are unlawful in any way. However, to resolve the matter with the Washington AG and avoid costly and protracted litigation, we have agreed to not enforce this provision in existing franchise agreements with any Qdoba franchisee on a nationwide basis, and to not include the clause in any new Qdoba franchise agreements that are signed after the date of our agreement with the Washington AG.

The Washington AG has also required that we suggest that you enter into the attached amendment to your franchise agreements to formally remove the relevant language from Section ____. The Washington AG has agreed that, to the extent you sign the amendment, it will not assert any claims against you for conduct relating to Section ___ of the franchise agreement that occurred up to and including the date you sign the amendment. Accordingly, we strongly encourage that you sign each of the enclosed copies and return them to us. We will return one fully executed amendment to your attention.

Feel free to call me at _____ if you have any questions or would like to discuss.

Sincerely,

[signatory]

EXHIBIT B

AMENDMENT

TO

ODOBA RESTAURANT CORPORATION FRANCHISE AGREEMENTS

The Franchise Agreements for the Qdoba Restaurant Corporation franchised restaurants in the state of Washington between Qdoba Restaurant Corporation ("QRC") and the undersigned franchisee ("Franchisee") shall be amended in accordance with the following terms.

1. Background. QRC and Franchisee are parties to the Franchise Agreement(s) listed on Exhibit A hereto and incorporated herein by reference (as hereby amended, the "Franchise Agreements"), and Franchisee operates a franchised outlet in the state of Washington under each Franchise Agreement. QRC has determined that it is in the best interests of the franchise system to not enforce Section _____. The purpose of this Amendment to the Franchise Agreements is to document this change. All initial capitalized terms used but not defined in this Amendment shall have the meanings set forth in the Franchise Agreements.

2. Modification of Terms. As of the Effective Date (defined below) of this Amendment, Franchisee and QRC agree that Section _____ is hereby deleted from the Franchise Agreements and is of no further force or effect.

3. Miscellaneous. Except as specifically modified by this Amendment, the provisions of the Franchise Agreements shall remain in full force and effect. This document is an amendment to, and forms a part of, the Franchise Agreements. If there is an inconsistency between this Amendment and the Franchise Agreements, the terms of this Amendment shall control. This Amendment constitutes the entire agreement between the parties hereto, and there are no other oral or written representations, understandings or agreements between them, relating to the subject matter of this Amendment. This Amendment inures to the benefit of the parties hereto and their respective successors and assigns and will be binding upon 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.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement effective as _____, 2019 (the "Effective Date").

<p>ODOBA RESTAURANT CORPORATION</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>	<p>[FRANCHISEE]</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>
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