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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO POACHING
PROVISIONS

(THE ORIGINAL PACAKE HOUSE
FRANCHISING, INC.)

NO. 18-2-57773-4 SEA

THE ORIGINAL PANCAKE
HOUSE FRANCHISING, 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 January 2018, the Attorney General initiated an investigation into The Original Pancake House Franchising, Inc. relating to its hiring practices.

1.2 The Original Pancake House Franchising, Inc. is an S corporation with its principal office or place of business in Oregon. The Original Pancake House Franchising, Inc. is in the business of franchising restaurants which offer a variety of food products and services for sale to the general public for consumption on the restaurant's premises and for takeout.

1.3 For the purposes of this AOD, The Original Pancake House Franchising, 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 The Original Pancake House Franchising, Inc. has seven (7) stores in
3 Washington. All seven (7) of these stores are owned and operated by franchisees and none are
4 owned and operated by The Original Pancake House Franchising, Inc.

5 2.2 For years, The Original Pancake House Franchising, Inc. has included language
6 in its franchise agreements that restricted a franchisee's ability to solicit or hire workers from
7 another The Original Pancake House franchisee ("no-poaching provision"). Specifically, the
8 standard The Original Pancake House franchise agreement stated that a franchisee shall not
9 "Recruit or hire any current employee of COMPANY or of any THE ORIGINAL PANCAKE
10 HOUSE restaurant operated by COMPANY, an affiliate of COMPANY or another franchisee
11 of COMPANY without obtaining the prior written permission of COMPANY or such
12 franchisee." A no-poaching provision restricted franchisees from hiring both employees from a
13 competing franchisee and from The Original Pancake House Franchising, Inc.'s corporate-
14 owned stores.

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

1 III. ASSURANCE OF DISCONTINUANCE

2 3.1 Subject to Paragraph 2.4 above, The Original Pancake House Franchising, Inc.
3 agrees:

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

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

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

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

14 3.2 Within 60 days of entry of this AOD, The Original Pancake House Franchising,
15 Inc. will have amended all existing franchise agreements with entities in Washington to remove
16 any no-poaching provisions in its existing franchise agreements. If any franchise owner is
17 unwilling to consent to the change to its franchise agreement, prior to the 60-day deadline, The
18 Original Pancake House Franchising, Inc. shall provide the name and address of the resisting
19 franchisee and the name and address of the franchisee's registered agent to the Office of the
20 Attorney General.

21 3.3 As they come up for either renewal or renegotiation during the ordinary course
22 of business, The Original Pancake House Franchising, Inc. will amend all of its existing
23 franchise agreements on a nationwide basis to remove any no-poaching provision.

24 3.4 Within 30 days of the conclusion of the time periods referenced in this section
25 III, The Original Pancake House Franchising, Inc. will submit a declaration to the Attorney
26

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

3 **IV. ADDITIONAL PROVISIONS**

4 4.1 This AOD is binding on, and applies to The Original Pancake House
5 Franchising, Inc., including each of its respective directors, officers, managers, agents acting
6 within the scope of their agency, and employees, as well as their respective successors and
7 assigns, controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, or
8 other entities through which The Original Pancake House Franchising, Inc. may now or
9 hereafter act with respect to the conduct alleged in this AOD.

10 4.2 This is a voluntary agreement and it shall not be construed as an admission of
11 law, fact, liability, misconduct, or wrongdoing on the part of The Original Pancake House
12 Franchising, Inc. By entering into this AOD, The Original Pancake House Franchising, Inc.
13 neither agrees nor concedes that the claims, allegations and/or causes of action which have or
14 could have been asserted by the Attorney General have merit and The Original Pancake House
15 Franchising, Inc. expressly denies any such claims, allegations, and/or causes of action.
16 However, proof of failure to comply with this AOD shall be *prima facie* evidence of a violation
17 of RCW 19.86.030, thereby placing upon the violator the burden of defending against
18 imposition by the Court of injunctions, restitution, costs and reasonable attorney's fees, and
19 appropriate civil penalties under the Consumer Protection Act.

20 4.3 The Original Pancake House Franchising, Inc. will not, nor will it authorize any of
21 its officers, employees, representatives, or agents to state or otherwise contend that the State of
22 Washington or the Attorney General has approved of, or has otherwise sanctioned, the conduct
23 described in Paragraph 2.2 with respect to the no-poaching provision in The Original Pancake
24 House Franchising, Inc.'s franchise agreement.

25 4.4 This AOD resolves all issues raised by the State of Washington and the Antitrust
26 Division of the Attorney General's Office under the Consumer Protection Act and any other

1 related statutes pertaining to the acts set forth in Paragraphs 2.1 – 2.3 above that may have occurred
2 before the date of entry of this AOD and concludes the investigation thereof. Subject to Paragraph
3 4.2, the State of Washington and the Antitrust Division of the Attorney General’s Office shall not
4 file suit or take any further investigative or enforcement action with respect to the acts set forth
5 above that occurred before the date of entry of this AOD.


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APPROVED ON this _____ day of _____, 2018.

JUDGE/COURT COMMISSIONER

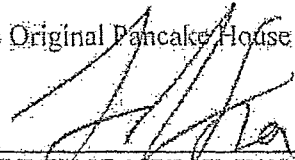
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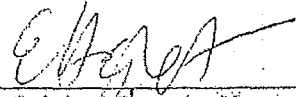
2 ROBERT W. FERGUSON
3 Attorney General

4 
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13 *Attorneys for State of Washington*

14 Agreed to and approved for entry by:

15 The Original Pancake House Franchising, Inc.

16 
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24 
25 The Original Pancake House Franchising, Inc.
26 Elizabeth Hight, Secretary, Treasurer &
General Counsel