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FILED
KING COUNTY, WASHINGTON

SEP 13 2018

EXP07

SUPERIOR COURT CLERK

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO POACHING
PROVISIONS

NO. **18-2-22885-9SEA**

TIM HORTONS USA, INC.
ASSURANCE OF
DISCONTINUANCE

The State of Washington (State), by and through its attorneys, Robert W. Ferguson, 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 Tim Hortons USA Inc. ("THUSA") relating to certain provisions in its franchise agreements.

1.2 THUSA is a Florida corporation with its principal offices or place of business in Miami, Florida. THUSA is a franchisor, and its corporate and franchisee operated locations are in the business of offering coffee drinks and baked goods, among other food products, for sale to consumers.

1.3 For purposes of this AOD, THUSA shall include 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.

1 **II. INVESTIGATION**

2 2.1 There are zero (0) THUSA stores located in the State of Washington as of the
3 date hereof.

4 2.2 For years, the franchise agreements entered between THUSA and its franchisees
5 have provided that franchisees subject to such agreements may not employ or seek to employ
6 any person who is at that time employed by THUSA or by any other THUSA franchisee
7 operating the same or any other business, or otherwise directly or indirectly to induce such
8 person to leave his or her employment (the "No-Solicitation Provision").

9 2.3 The Attorney General asserts that the foregoing conduct of THUSA and its
10 franchisees constitutes a contract, combination, or conspiracy in restraint of trade in violation
11 of the Consumer Protection Act, RCW 19.86.030.

12 2.4 THUSA and its current and former franchisees expressly deny that the conduct
13 described above constitutes a contract, combination, or conspiracy in restraint of trade in
14 violation of the Consumer Protection Act, RCW 19.86.030, or any other law, rule, or
15 regulation, and expressly deny they have engaged in conduct that constitutes a contract,
16 combination, or conspiracy in restraint of trade, or violates any other law, rule, or regulation.
17 THUSA enters into this AOD to avoid protracted and expensive litigation. Pursuant to RCW
18 19.86.100, neither this AOD nor its terms shall be construed as an admission of law, fact,
19 liability, misconduct, or wrongdoing on the part of THUSA or any of its current or former
20 franchisees.

21 **III. ASSURANCE OF DISCONTINUANCE**

22 3.1 Subject to Paragraph 2.4 above, THUSA agrees:

23 3.1.1. It will no longer include the No-Solicitation Provision in any of its
24 franchise agreements in the United States signed after the date hereof;

25 3.1.2. It will not enforce the No-Solicitation Provision in any of its existing
26 franchise agreements in the United States, and it will not seek to intervene in any action

1 brought by the Attorney General's Office against a current franchisee in Washington to defend
2 an existing No-Solicitation Provision, provided such action is brought in accordance with, and
3 consistent with, the provisions of this AOD;

4 3.1.3. It will notify all of its current franchisees in the United States of the
5 entry of this AOD and make a copy available to them;

6 3.2 In addition, as they come up for renewal during the ordinary course of business,
7 THUSA will remove the No-Solicitation Provision from all of its existing franchise agreements
8 in the United States with its franchisees on a nationwide basis, unless expressly prohibited by
9 law.

10 IV. ADDITIONAL PROVISIONS

11 4.1 This AOD is binding on, and applies to THUSA, including each of its
12 respective directors, officers, managers, agents acting within the scope of their agency, and
13 employees, as well as their respective successors and assigns, controlled subsidiaries,
14 predecessor franchisor entities, or other entities through which THUSA may now or hereafter
15 act with respect to the conduct alleged in this AOD.
16

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

1 4.3 THUSA will not, nor will it authorize any of its officers, employees,
2 representatives, or agents to, state or otherwise contend that the State of Washington or the Office
3 of the Attorney General has approved of, or has otherwise sanctioned, the conduct described in
4 Paragraph 2.2 with respect to the No-Solicitation Provision in THUSA's franchise agreement.

5 4.4 This AOD resolves all issues raised by the State of Washington and the Antitrust
6 Division of the Attorney General's Office under the Consumer Protection Act and any other
7 related statutes pertaining to the acts of THUSA and its current and former franchisees as set forth
8 in Paragraphs 2.1 - 2.3 above that may have occurred before the date of entry of this AOD and
9 concludes the investigation thereof. Subject to Paragraph 4.2, the State of Washington and the
10 Antitrust Division of the Attorney General's Office shall not file suit or take any further
11 investigative or enforcement action against THUSA with respect to the acts set forth above that
12 occurred before the date of entry of this AOD.

13
14 APPROVED ON this _____ day of 9/13, 2018.

15 **HENRY H. JUDSON**

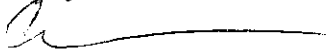
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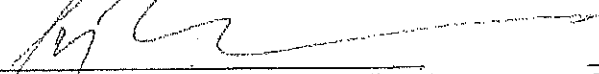
1 Presented by:

2 ROBERT W. FERGUSON
3 Attorney General

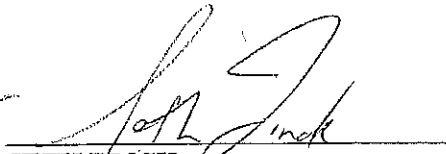


4 _____
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8 Antitrust Division
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11 Agreed to and approved for entry by:
12 TIM HORTONS USA, INC.



13 _____
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22 *Attorneys for Tim Hortons USA, Inc.*

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