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7 8	STATE OF WASHING KING COUNTY SUPERIOR	ı	
9	THE STATE OF WASHINGTON,	NO 18 - 2 - 25822 - 1	7
10	Plaintiff,	COMPLAINT FOR CIVIL	
11	v.	PENALTIES, INJUNCTION, AND OTHER RELIEF	
12	JERSEY MIKE'S FRANCHISE SYSTEMS, INC.; AUBURN JM, LLC; BCG-	UNDER THE WASHINGTON STATE CONSUMER PROTECTION ACT, RCW	
13	NORTHWEST, LLC, BERRY INVESTMENT GROUP, LTD.; ELSTERLY, LLC; FM	19.86	
14	RESTAURANTS, INC.; FOOD ADVENTURES, INC.; GOLDEN SPRINGS,		
15	LLC; JM NORTHTOWN, LLC; JM PUYALLUP, INC.; JM RESTAURANTS,		
16	INC.; JM SILVERDALE, LLC; JM SPOKANE, LLC; LARSON & ASSOCIATES, LLC;		
17	MAJESTIC EAGLE, LLC; PATRIKOR CORP.; RED POLO VENTURES, LLC; TIN		
18	STAR SUBS, LLC; TRIEB, LLC; DOE 1; DOE 2; DOE 3; DOE 4; and DOE 5,		
19	Defendants.		
20	Plaintiff, State of Washington, through its Attorney General, brings this action against Jersey Mike's Franchise Systems, Inc. ("Jersey Mike's") and against Jersey Mike's Franchisees		
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22	in the State of Washington to recover civil penalties, costs and fees, and injunctive relief.		
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24	I. JURISDICTION AN		
25	1. This action alleges violations of the Consumer Protection Act ("CPA"), RCW		
26	19.86. Subject matter jurisdiction exists pursuant to RCV	W 19.86.160.	

- 2. Personal jurisdiction is proper because Defendants conduct business in the State of Washington, each Defendant has a business location, agent, and/or employees based in the State of Washington, the Defendants' and their co-conspirators' activities were intended to, and did have, a substantial and foreseeable effect on Washington State trade and commerce, and the conspiracy alleged herein negatively impacted the labor market in Washington and limited opportunities for workers in Washington, including in King County.
- 3. Venue is proper in King County because a significant portion of the acts giving rise to this action occurred in King County, many of the Defendants conduct business in King County, there are more Jersey Mike's restaurants in King County than any other county in Washington, and many of the Defendants' primary places of business are in King County.

II. DEFINITIONS

- 4. As used herein,
- a. "No-Poach Provision" means the language in the Defendants' franchise agreements used in the United States that is the same as or similar to the language under the heading "COVENANTS," which reads:

Franchisee covenants that during the term of this Agreement and any renewal thereof, except as otherwise approved in writing by Franchisor, Franchisee shall not, either directly or indirectly, for itself, or through, on behalf of or in conjunction with any person, persons, partnership, corporation, limited liability company or other entity....Employ or seek to employ any person who is at that time employed by Franchisor or by any Affiliate of Franchisor, or by any other franchisee of Franchisor, or otherwise directly or indirectly induce or seek to induce such person to leave his or her employment thereat.

- b. "Franchisee" means an individual or entity that has entered into a franchise agreement with Jersey Mike's Franchise Systems, Inc. to independently operate one or more Jersey Mike's branded restaurants in the United States.
- c. "Franchisor" is Jersey Mike's Franchise Systems, Inc. who has entered into franchise agreements with individuals and entities allowing for the independent operation of one or more Jersey Mike's branded restaurants.

d. "Conspiracy Period" means the period beginning at least five years prior to the filing of this complaint through the present.

III. THE PARTIES

A. Plaintiff

5. Plaintiff is the State of Washington by and through its Attorney General. The State of Washington has a quasi-sovereign interest in maintaining the integrity of markets and protecting its citizens from anticompetitive and unlawful practices, and supporting the general welfare of its citizens and its economy. The State has authority to bring this action under the CPA, RCW 19.86.080.

B. Defendants

- 6. Defendant Jersey Mike's Franchise Systems, Inc. is a New Jersey corporation with its principal place of business in Manasquan, NJ. During the Conspiracy Period, Jersey Mike's operated Jersey Mike's branded restaurants throughout the United States and is the Franchisor to Franchisees operating Jersey Mike's branded restaurants throughout the United States, including in Washington.
- 7. Defendant Auburn JM, LLC is a Washington limited liability company with its principal place of business in Fall City, King County, WA. During the Conspiracy Period, Auburn JM, LLC was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded restaurant in Auburn, King County, Washington.
- 8. Defendant BCG-Northwest, LLC is a Washington limited liability company with its principal place of business in Vancouver, WA. During the Conspiracy Period, BCG-Northwest, LLC was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded restaurant in Vancouver, Washington.
- 9. Defendant Berry Investment Group, Ltd. is a Washington corporation with its principal place of business in Edmonds, WA. During the Conspiracy Period, Berry Investment

Group, Ltd. was and is a Jersey Mike's Franchisee operating three Jersey Mike's branded restaurants in Mukilteo, Lynnwood, and Shoreline, Washington.

- 10. Defendant Elsterly, LLC is a Washington limited liability company with its principal place of business in Bellevue, King County, WA. During the Conspiracy Period, Elsterly, LLC was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded restaurant in Redmond, King County, Washington.
- 11. Defendant FM Restaurants, Inc. is a Washington corporation with its principal place of business in Graham, WA. During the Conspiracy Period, FM Restaurants, Inc. was and is a Jersey Mike's Franchisee operating four Jersey Mike's branded restaurants in University Place, Olympia, Lacey, and Lakewood, Washington.
- 12. Defendant Food Adventures, Inc. is a Washington corporation with its principal place of business in Seattle, King County, WA. During the Conspiracy Period, Food Adventures, Inc. was and is a Jersey Mike's Franchisee operating three Jersey Mike's branded restaurants in Fife, Kent, and Burien, in Pierce and King Counties, Washington.
- 13. Defendant Golden Springs, LLC is a Washington limited liability company with its principal place of business in Redmond, King County, WA. During the Conspiracy Period, Golden Springs, LLC was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded restaurant in Issaquah, King County, Washington.
- 14. Defendant JM Northtown, LLC is a Washington limited liability company with its principal place of business in Chelan, WA. During the Conspiracy Period, JM Northtown, LLC was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded restaurant in Spokane, Washington.
- 15. Defendant JM Puyallup, Inc. is a Washington corporation with its principal place of business in Chelan, WA. During the Conspiracy Period, JM Puyallup, Inc. was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded restaurant in Puyallup, Washington.

- 16. Defendant JM Restaurants, Inc. is a Washington corporation with its principal place of business in Graham, WA. During the Conspiracy Period, JM Restaurants, Inc. was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded restaurant in Puyallup, Washington.
- 17. Defendant JM Silverdale, LLC is a Washington limited liability company with its principal place of business in Chelan, WA. During the Conspiracy Period, JM Silverdale, LLC was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded restaurant in Silverdale, Washington.
- 18. Defendant JM Spokane, LLC is a Washington limited liability company with its principal place of business in Chelan, WA. During the Conspiracy Period, JM Spokane, LLC was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded restaurant in Spokane, Washington.
- 19. Defendant Larson & Associates, LLC is a Washington limited liability company with its principal place of business in Bothell, WA. During the Conspiracy Period, Larson & Associates, LLC was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded restaurant in Everett, Washington.
- 20. Defendant Majestic Eagle, LLC is a Washington limited liability company with its principal place of business in Auburn, King County, WA. During the Conspiracy Period, Majestic Eagle, LLC was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded restaurant in Kent, King County, Washington.
- 21. Defendant Patrikor Corp. is a Washington corporation with its principal place of business in Lake Tapps, WA. During the Conspiracy Period, Patrikor Corp. was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded restaurant in Bonney Lake, Washington.
- 22. Defendant Red Polo Ventures, LLC is a Washington limited liability company with its principal place of business in Fall City, King County, WA. During the Conspiracy

Period, Red Polo Ventures, LLC was and is a Jersey Mike's Franchisee operating at least nine Jersey Mike's branded restaurants in Monroe, Woodinville, Mill Creek, North Bend, Mount Vernon, Sammamish, Lake Stevens, Tukwila, and Renton, Washington.

- 23. Defendant TinStar Subs, LLC is a Washington limited liability company with its principal place of business in Federal Way, King County, WA. During the Conspiracy Period, TinStar Subs, LLC was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded restaurant in Oak Harbor, Washington.
- 24. Defendant Trieb, LLC is a Washington, limited liability company with its principal place of business in Bothell, WA. During the Conspiracy Period, Trieb, LLC was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded restaurants in Kirkland, Washington.
- 25. Defendant Doe 1 is an unknown individual or entity. During the Conspiracy Period, Doe 1 was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded restaurant at 3704 172nd St. NE, Arlington, Washington.
- 26. Defendant Doe 2 is an unknown individual or entity. During the Conspiracy Period, Doe 2 was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded restaurant at 17309 SE 270th Place, Covington, King County, Washington.
- 27. Defendant Doe 3 is an unknown individual or entity. During the Conspiracy Period, Doe 3 was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded restaurant at 4819 Point Fosnick Drive NW, Gig Harbor, Washington.
- 28. Defendant Doe 4 is an unknown individual or entity. During the Conspiracy Period, Doe 4 was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded restaurant at 8820 36th Avenue NE, Marysville, Washington.

29. Defendant Doe 5 is an unknown individual or entity. During the Conspiracy Period, Doe 5 was and is a Jersey Mike's Franchisee operating one Jersey Mike's branded restaurant at 15230 NE 24th Street, Redmond, King County, Washington.

IV. CO-CONSPIRATORS AND AGENTS

- 30. Various other persons, unknown to plaintiff at present, including, but not necessarily limited to, all Franchisees in the United States who are not named as defendants in this Complaint, who signed a No-Poach Provision, conspired with the Defendants in violation of the laws alleged in this complaint. These co-conspirators engaged in conduct and made statements in furtherance of the conspiracy alleged herein.
- 31. Any reference herein to any action, transaction, or statement by a corporation means that that corporation engaged in such activity through its officers, directors, employees, agents, or representatives while representing the corporation.
- 32. Defendants are also liable for acts committed by companies acquired through merger, acquisition, or otherwise, in furtherance of the alleged conspiracy.

V. NATURE OF THE CASE

- 33. This action challenges a conspiracy between and among Defendants, Jersey Mike's and its Franchisees, as well as their non-defendant co-conspirators, to suppress and eliminate competition for workers between and among Franchisees and Franchisor. Specifically, Defendants have agreed in their standard franchise agreement to a No-Poach Provision, pursuant to which Jersey Mike's and their Franchisees agreed not to solicit or hire each other's workers. This action also challenges additional actions and/or inaction taken by Defendants and their co-conspirators to further the conspiracy memorialized by the No-Poach Provision, which was to suppress workers' wages, mobility, and opportunities to improve working conditions.
- 34. Jersey Mike's was ultimately involved in forming, monitoring, and enforcing this anti-competitive contract, combination, or conspiracy. Jersey Mike's orchestrated, dispersed,

and enforced the agreement among itself or affiliates and all Franchisees, at least in part, through an explicit contractual prohibition contained in standard Jersey Mike's franchise agreements. As further described below, this was not merely a one-way agreement by franchisees to not solicit or hire away Jersey Mike's corporate and affiliated workers or workers from company-owned stores, which alone violates the CPA, it also prevented Franchisees from soliciting or hiring workers of other Franchisees with the understanding that the other Franchisees were bound by the same agreement.

A. Background

- 35. Jersey Mike's is one of the fastest growing submarine-type sandwich restaurant chains in the United States, with more than 1,300 locations nationwide.
- 36. Defendants and their co-conspirators have hundreds of workers in the State of Washington and more than ten thousand workers nationwide.
- 37. In the United States, more than 90% of Jersey Mike's restaurants are franchise businesses that are independently owned and operated by Franchisees, and are separate and distinct entities from Jersey Mike's. Jersey Mike's operates approximately 80 corporate-owned restaurants in the United States.
- 38. Jersey Mike's Chairman and CEO currently operates Jersey Mike's restaurants through affiliated corporations or limited liability companies in which he owns a controlling interest.
- 39. The vast majority of Jersey Mike's profits hinge on the success or failure of its Franchisees. Franchisees pay royalty fees to Jersey Mike's based on gross receipts. Workers are critical to the success of Jersey Mike's Franchisees and Jersey Mike's corporate-owned restaurants. A significant component of making a Jersey Mike's restaurant profitable is hiring qualified, motivated, and superior workers. Therefore, it is in the independent interest of each Jersey Mike's restaurant to compete for the most talented and experienced restaurant workers.

B. The Conspiracy

40. The Jersey Mike's franchise agreements signed by all Defendants during the Conspiracy Period all contained the same or similar language that stated:

Franchisee covenants that during the term of this Agreement and any renewal thereof, except as otherwise approved in writing by Franchisor, Franchisee shall not, either directly or indirectly, for itself, or through, on behalf of or in conjunction with any person, persons, partnership, corporation, limited liability company or other entity....Employ or seek to employ any person who is at that time employed by Franchisor or by any Affiliate of Franchisor, or by any other franchisee of Franchisor, or otherwise directly or indirectly induce or seek to induce such person to leave his or her employment thereat.

Agreements containing this or similar language were executed by Franchisor and Franchisees up until the time that the Attorney General's Office began its investigation and informed Jersey Mike's its practices violated the CPA. In response to this investigation, Jersey Mike's removed the No-Poach Provision from its standard franchise agreement on a going-forward basis, but it did not amend its existing franchise agreements. Without an injunction, nothing prevents Jersey Mike's from including the No-Poach Provision in its future franchise agreements, and nothing prevents any of the Defendants from enforcing the provisions in the current franchise agreements.

41. Franchisor and Franchisees are independent entities and competitors. It is made clear in their franchise agreements that the "Agreement does not constitute Franchisee as an agent, legal representative, joint venture, partner, employee, or servant of Franchisor for any purpose whatsoever." In Jersey Mike's Franchise Disclosure Document, it warns its Franchisees, "you are not granted an exclusive territory, and may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive business that we own."

C. The Conspiracy Is A Per Se Violation Of Antitrust Law

42. As the Department of Justice Antitrust Division and Federal Trade Commission's joint *Antitrust Guidance for Human Resource Professionals* (October 2016) states: "Naked

wage-fixing or no-poaching agreements among employers, whether entered into directly or through a third party intermediary, are *per se* illegal under the antitrust laws." The *Guidance* further elaborates:

From an antitrust perspective, firms that compete to hire or retain employees are competitors in the employment marketplace, regardless of whether the firms make the same products or compete to provide the same services. It is unlawful for competitors to expressly or implicitly agree not to compete with one another, even if they are motivated by a desire to reduce costs.

- 43. The principle of free competition applies to the labor market as well as to trade. In terms of suppressing competition, companies agreeing not to compete for each other's employees is the same as companies agreeing not to compete for each other's customers.
- 44. No-poaching agreements can limit turnover and reduce labor market competition. Restricting workers' outside options will shift the share of the net returns from training in the direction of employers.
- 45. No-poaching agreements are unfair to workers, and such a pact benefits the companies at the expense of their employees. Such agreements are illegal and violate both antitrust and employment laws because companies could achieve the same results by making it attractive enough for employees not to leave.
- 46. The collusion of employers to refrain from hiring each other's workers restricts worker mobility and competition in the labor market. This raises employers' power at the expense of workers and diminishes worker bargaining power within franchise chains. This is especially harmful to workers of Jersey Mike's and its Franchisees, as those workers are usually paid below a living wage, and their marketable skills acquired through their work at Jersey Mike's primarily have value only to other Jersey Mike's restaurants and do not transfer as well to other fast food restaurants or similar businesses.
- 47. This No-Poach Provision between and among Jersey Mike's and Jersey Mike's Franchisees, pursuant to which Jersey Mike's and its Franchisees agreed not to recruit each

other's workers (even those workers that approached another Jersey Mike's restaurant for a job on their own volition) eliminated Franchisees' and Franchisor's incentives and ability to compete for workers, and restricted workers' mobility. This agreement harmed workers by tending to lower salaries and benefits workers otherwise would have commanded in an open marketplace, and deprived such workers of better job growth or mobility opportunities.

- 48. This No-Poach Provision is in the collective interest of the conspirators as a whole when acting together to the detriment of workers. By acting in concert Franchisees and Franchisor artificially protect themselves from having their own workers poached by other franchises or locations that see additional value in those workers, such as their training, experience and/or work ethic. This allows Franchisees or Franchisor to retain their best workers without having to pay market wages to these workers or compete in the market place relative to working conditions and promotion opportunities.
- 49. The No-Poach Provision does not serve the interests of ensuring that Jersey Mike's restaurants produce a quality product.
- 50. The No-Poach Provision harms workers because it does not incentivize Jersey Mike's Franchisees and Jersey Mike's corporate-owned restaurants to invest in higher wages, benefits, and working conditions. It also dis-incentivizes workers to perform their best work as their opportunities by doing so are limited. Conversely, competition among employers helps actual and potential workers through higher wages, better benefits, or other terms of employment.
- 51. Consumers can gain from competition among employers because a more competitive workforce may create more or better goods and services.
- D. Employment with Non-Jersey Mike's Brands is Not a Reasonable Substitute for Jersey Mike's Workers
- 52. If Franchisees and Jersey Mike's corporate-owned restaurants had to either pay and promote good workers, or lose them to competitor locations, they would have incentives to

pay competitive wages and provide competitive promotion opportunities. However, because of the No-Poach Provision, and because the education, training and experience within the Jersey Mike's enterprise are unique to Jersey Mike's and not transferrable to other restaurants, Franchisees and Jersey Mike's corporate-owned restaurants do not have to compete with non-Jersey Mike's businesses for their workers except at the entry-level position.

- 53. Training, education, and experience within the Jersey Mike's system are not transferrable to other restaurants for a number of reasons. Jersey Mike's Franchisees utilize Jersey Mike's own proprietary methods and techniques for inventory and cost controls, record keeping and reporting, personnel management, purchasing, sales promotion and advertising, special recipes, formulas, menus, food and beverage storage, preparation and service procedures and techniques, and operating procedures for sanitation and maintenance. Knowledge regarding all of these procedures and techniques obtained on the job at one Jersey Mike's restaurant would be quite valuable to another Jersey Mike's restaurant, but would have little if any value to a restaurant outside the Jersey Mike's system.
- 54. Jersey Mike's also uses proprietary software that manages its customer loyalty program, text messaging, their email club, their online order program, and the food and labor management program. Knowledge regarding the use and operation of this software obtained on the job at one Jersey Mike's restaurant would be quite valuable to another Jersey Mike's restaurant, but would have little if any value to a restaurant outside the Jersey Mike's system.
- 55. Jersey Mike's also uses proprietary training that includes the Confidential Operations Manual and other materials containing the System Standards and suggested specifications, standards, operating procedures and rules relative to how to operate a Jersey Mike's restaurant. Knowledge regarding these System Standards obtained on the job at one Jersey Mike's restaurant would be quite valuable to another Jersey Mike's restaurant, but would have little if any value to a restaurant outside the Jersey Mike's system.

- 56. A No-Poach Provision like the one in Jersey Mike's franchise agreements reduces workers' outside options and lowers their quit rate, increasing the share of net-returns captured by employers. Further, a franchise-wide No Poach Provision increases the specificity of human capital investment, as training that is productive throughout the franchise chain can only be used at one Franchisee under the agreement.
- 57. Because workers at Jersey Mike's restaurants are unable to transfer their skills and experience to a competing Jersey Mike's restaurant for more money or better job conditions, their only other option is to stay in a job with suppressed wages or quit and start over at an entry-level job and salary in another industry or restaurant system.

VI. ANTICOMPETITIVE CONDUCT

- 58. Defendants and co-conspirators, through their officers, directors and employees, effectuated a contract, combination, trust, or conspiracy in restraint of trade among themselves nationwide by participating in agreements that limited the mobility of workers that put downward pressure on wages and limited workers' ability to improve their working conditions.
- 59. Each of the Defendants and co-conspirators was a party to joint ventures and other cooperative arrangements. Defendants and co-conspirators had a continuing opportunity to implement and regulate the illegitimate agreements to suppress wages and limit workers' opportunity to improve working conditions during the Conspiracy Period.
- 60. In the five years preceding the filing of this Complaint, Defendants utilized formal agreements in the form of franchise agreements to carry out their conspiracy.
- 61. Defendants engaged in predatory and anticompetitive behavior by restricting competition among and between Franchisees and Franchisor in corporate-owned restaurants and Franchisor's corporate or affiliate workers, which unfairly suppressed worker wages, and unreasonably restrained trade.

- 62. Defendants perpetrated the scheme with the specific intent of lowering costs to the benefit of Defendants.
- 63. The franchise agreements document a "hub and spoke" contract, combination, and/or conspiracy to restrain trade and commerce in which all Defendant Franchisees agreed with the Franchisor not to solicit or hire other Franchisees' workers. Because the agreement is standard and because the terms of the franchise agreement are made public, Franchisees know the basic contents of each other's agreements.
- 64. The franchise agreements also documented a horizontal contract, combination, and/or conspiracy to restrain trade and commerce in which the Franchisees agreed with the Franchisor not to solicit or hire Franchisor's workers. Because Franchisor operates corporate owned Jersey Mike's stores and because the No-Poach Provision prevents Franchisees from hiring Franchisor's corporate or affiliate workers, Franchisor and Franchisee are direct competitors for workers, and the No-Poach Clause in the franchise agreement creates a naked horizontal restraint on competition for workers among competitors.
- 65. Defendants' contracts, combinations, and/or conspiracies are *per se* violations of the CPA, which requires no further inquiry into the practice's actual effect on the market or the intentions of those individuals who engaged in the practice.
- 66. In the alternative, Defendants are liable under a "quick look" analysis where an observer with even a rudimentary understanding of economics could conclude that the arrangements in question would have an anticompetitive effect on workers and labor markets.

VII. CAUSE OF ACTION

Per se Violation of the Consumer Protection Act, RCW 19.86.030

67. The State adopts the allegations listed above and incorporates them herein as a violation of the CPA.

1	DATED this 15 th day of October, 2018.	
2	BITTED time to day of second, 2010.	ROBERT W. FERGUSON Attorney General
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