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FILED
KING COUNTY, WASHINGTON

SEP 13 2018

SUPERIOR COURT CLERK

EXP07

**SUPERIOR COURT OF WASHINGTON
KING COUNTY SUPERIOR COURT**

IN RE: FRANCHISE NO POACHING
PROVISIONS

No. **18-2-22891-3871**

**WINGSTOP RESTAURANTS INC.
ASSURANCE OF DISCONTINUANCE**

The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney General (the "Attorney General"), and Eric S. Newman, Assistant Attorney General, files this Assurance of Discontinuance ("AOD") pursuant to RCW 19.86.100.

I. PARTIES

1.1 In January 2018, the Attorney General initiated an investigation into Wingstop Restaurants Inc. ("Wingstop ") relating to certain provisions in its franchise agreement.

1.2 Wingstop is a Texas corporation with its principal offices or place of business in Dallas, Texas. Wingstop is a franchisor, and its corporate and franchisee operated locations are in the business of offering chicken wings and other food products for sale to consumers.

1.3 For purposes of this AOD, Wingstop shall include its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its successors and assigns, controlled subsidiaries, affiliates and predecessor franchisor entities.

WINGSTOP RESTAURANTS INC.
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ATTORNEY GENERAL OF WASHINGTON
Antitrust Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
Tel: 206.467.7744

1 **II. INVESTIGATION**

2 2.1 There are twelve (12) operating Wingstop stores located in the State of
3 Washington as of the date hereof. All of these stores are independently owned and operated by
4 franchisees.

5 2.2 Since 2013, the franchise agreements entered into between Wingstop and its
6 franchisees have provided that franchisees subject to such agreements may not solicit
7 employees of Wingstop or, in some cases, employees of other Wingstop franchisees to
8 terminate or reduce their employment with Wingstop or the other franchisees. Specifically, the
9 franchise agreement stated that a franchisee may “not, directly or through others, contact,
10 solicit, or offer any inducements to any employee of [Wingstop], a [Wingstop] Affiliate, or
11 another Wingstop franchisee, for the purpose of persuading or attempting to persuade the
12 employee to accept employment by Franchisee in any capacity” or similar language (the “No-
13 Solicitation Provision”).

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

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

25 **III. ASSURANCE OF DISCONTINUANCE**

26 3.1 Subject to Paragraph 2.4 above, Wingstop agrees:

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1 3.1.1 It will no longer include the No-Solicitation Provision in any of its
2 franchise agreements in the United States signed after the date hereof.

3 3.1.2 It will not enforce the No-Solicitation Provision in any of its existing
4 franchise agreements in the United States, and will not seek to intervene in any action brought
5 by the Attorney General's Office against a current franchisee in Washington to defend an
6 existing No-Solicitation Provision, provided such action is brought in accordance with, and
7 consistent with, the provisions of this AOD.

8 3.1.3 It will notify all of its current franchisees in the United States of the entry
9 of this AOD and make a copy available to them.

10 3.1.4 If, after the 21 day period set forth in Paragraph 3.2 below, Wingstop
11 becomes aware of a franchisee with a store located in the State of Washington attempting to
12 enforce the No-Solicitation Provision, and Wingstop is unable to persuade such franchisee to
13 desist from enforcing or attempting to enforce such provision, Wingstop will notify the
14 Attorney General.

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

24 3.3 In addition to sending the letter to its current franchisees in the State of
25 Washington pursuant to Paragraph 3.2 above, Wingstop will respond promptly to any inquiries
26 from such franchisees regarding the request to amend the terms of the franchise agreement and

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1 predecessor franchisor entities, or other entities through which Wingstop may now or hereafter
2 act with respect to the conduct alleged in this AOD.

3 4.2 This is a voluntary agreement and it shall not be construed as an admission of
4 law, fact, liability, misconduct, or wrongdoing on the part of Wingstop or any of its current or
5 former franchisees. Wingstop and its current and former franchisees neither agree nor concede
6 that the claims, allegations and/or causes of action which have or could have been asserted by
7 the Attorney General have merit and Wingstop and its current and former franchisees expressly
8 deny any such claims, allegations, and/or causes of action. However, proof of failure to comply
9 with this AOD shall be *prima facie* evidence of a violation of RCW 19.86.030, thereby placing
10 upon the violator the burden of defending against imposition by the Court of injunctions,
11 restitution, costs and reasonable attorney's fees, and civil penalties of up to \$2,000.00 per
12 violation.

13 4.3 Wingstop will not, nor will it authorize any of its officers, employees,
14 representatives, or agents to, state or otherwise contend that the State of Washington or the
15 Attorney General has approved of, or has otherwise sanctioned, the conduct described in
16 Paragraph 2.2 with respect to the No-Solicitation Provision in Wingstop franchise agreement.

17 4.4 This AOD resolves all issues raised by the State of Washington and the Antitrust
18 Division of the Attorney General's Office under the Consumer Protection Act and any other
19 related statutes pertaining to the acts of Wingstop and its current and former franchisees as set
20 forth in Paragraph 2.1 — 2.3 above that may have occurred before the date of entry of this
21 AOD, or that occur between the date of the entry of this AOD and the conclusion of the 120
22 day period identified in Paragraph 3.3 above, and concludes the investigation thereof. Subject
23 to Paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's
24 Office shall not file suit or take any further investigative or enforcement action with respect to
25 the acts set forth above that occurred before the date of entry of this AOD, or that occurs
26 between the date of the entry of this AOD and the conclusion of the 120 day period identified

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1 in Paragraph 3.3 above, against Wingstop or any of its current franchisees in the State of
2 Washington that sign the proposed amendment described in Section III, any of its former
3 franchisees in the State of Washington, or any of its current or former franchisees located
4 outside the State of Washington. The Attorney General reserves the right to take further
5 investigative or enforcement action against any current franchisee in the State of Washington
6 identified pursuant to Paragraph 3.1.4 or any current franchisee in the State of Washington that
7 does not sign the proposed amendment described in Section III.

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APPROVED ON this ___ day of 9/13/18.



JUDGE/COURT COMMISSIONER

HENRY H. JUDSON

SEP 13 2018

COURT COMMISSIONER


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1 Presented by:


2 ROBERT W. FERGUSON
3 Attorney General

4 ERIC S. NEWMAN, WSBA 31521
5 Assistant Attorney General
6 Chief Litigation Counsel
7 Antitrust Division
8 Attorneys for State of Washington
9 Office of the Attorney General
10 800 Fifth Avenue, Suite 2000
11 Seattle, WA 98104

12 Agreed to and approved for entry by:
13 WINGSTOP RESTAURANTS INC.

14 
15 Anthony Todaro
16 DLA PIPER LLP (US)
17 701 Fifth Avenue, Suite 7000
18 Seattle, Washington 98104-7044

19 
20 David H. Bamberger
21 DLA PIPER LLP (US)
22 500 8th Street, NW
23 Washington, DC 20004

24 
25 DARRYL MARSCH
26 SR. VP, GENERAL COUNSEL &
SECRETARY
WINGSTOP RESTAURANTS INC.

WINGSTOP RESTAURANTS INC.
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EXHIBIT A

Form Letter to Wingstop Restaurants Inc. Franchisees in the State of Washington

Dear [Franchisee Name]

In February 2018, Wingstop received a Civil Investigative Demand from the Attorney General's Office of the State of Washington seeking information regarding whether there are any provisions in our franchise agreements that restrict the hiring or solicitation of employees (sometimes referred to as "no poaching" clauses). We understand that this is part of a broader investigation into the use of such clauses in the restaurant industry and perhaps other franchised industries. We have cooperated fully with the investigation.

Without admitting that Wingstop or its franchisees violated any law or regulation, or acted improperly in any respect, we have reached an agreement with the Attorney General's Office. This agreement provides that Wingstop will, among other things, no longer include in any U.S. franchise agreement or renewal any provisions that restrict the hiring or solicitation of employees. The agreement also provides that Wingstop will not enforce any such provisions in any of our existing franchise agreements in the U.S.

We believe the system's interests are best served by resolving the investigation quickly and cooperatively on these terms, and avoiding the uncertainty and cost of protracted litigation.

Our agreement with the Attorney General's Office also includes a requirement that we request, from franchisees with locations in the State of Washington, that they agree to amend their existing franchise agreements to remove the provisions, if any, that restrict the hiring or solicitation of employees. Enclosed for your signature is an amendment to your franchise agreement(s) with Wingstop to satisfy that requirement. To the extent that you agree to this amendment to your franchise agreement, the Attorney General has committed to not pursue any suit, or take any investigative or enforcement action against you, for conduct relating to the relevant provisions of your franchise agreement, up to and including the date you sign the amendment. Please sign and return the amendment to me as soon as possible. If you decide not to sign the enclosed amendment, the Attorney General's Office has indicated that it will reserve the right to investigate you and/or pursue enforcement actions against you relating to the contractual provisions described above.

Should you have any questions regarding this matter, please contact me at [e-mail of appropriate person]

If you receive any media inquiries regarding this matter, please refer them to [e-mail of appropriate person]

[SIGNATURE BLOCK FOR APPROPRIATE PERSON]

EXHIBIT B

AMENDMENT
WINGSTOP RESTAURANTS INC. FRANCHISE AGREEMENT

The Wingstop Restaurants Inc. ("Wingstop ") Franchise Agreement(s) between Wingstop ("We") and the undersigned franchisee ("You") listed in Exhibit A hereto (as amended, the "Franchise Agreement(s)") shall be amended in accordance with the following terms.

1. Background. We and you are parties to each Franchise Agreement and you operate one or more franchised outlets in the State of Washington under the Franchise Agreement(s). We have determined that it is in the best interests of the franchise system to not enforce Section 7(c)(10) of the Franchise Agreements. The purpose of this Amendment to your Franchise Agreement(s) 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 Agreement(s).

2. Modification of Terms. As of the Effective Date (defined below) of this Amendment, you and we agree that Section 7(c)(10) is hereby deleted from each Franchise Agreement, and is of no further force or effect.

3. Miscellaneous. Except as specifically modified by this Amendment, the provisions of the Franchise Agreement(s) shall remain in full force and effect. This document is an amendment to, and forms a part of, each Franchise Agreement. If there is an inconsistency between this Amendment and any Franchise Agreement, 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 of _____, 2018 (the "Effective Date").

WINGSTOP RESTAURANTS INC.

[FRANCHISEE'S NAME]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____