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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO POACHING
PROVISIONS

(ZEEK'S RESTAURANTS, INC.)

19-2-04326-1 SEA

ZEEK'S RESTAURANTS, INC.
ASSURANCE OF
DISCONTINUANCE

The State of Washington (State), 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 the "In re Franchise No Poaching Provisions Investigation," which included investigation of the hiring practices of franchisors and franchisees in the state of Washington, including Zeek's Restaurants, Inc.

1.2 Zeek's Restaurants, Inc. (ZRI) is a Washington corporation with its principal office or place of business in Washington. ZRI is in the business of operating a franchise system for pizza restaurants under the "Zeeks Pizza®" trademark.

1.3 ZRI includes its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its successors and assigns, controlled subsidiaries,

ZEEK'S RESTAURANTS, INC.
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ATTORNEY GENERAL OF WASHINGTON
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1 divisions, groups, affiliates, partnerships, and joint ventures. ZRI does not include independent
2 franchise operators.

3 II. INVESTIGATION

4 2.1 There are seventeen Zeeks Pizza® restaurants in Washington. Nine of these
5 restaurants are independently owned and operated by ZRI's franchisees (two locations of
6 which are currently under construction); and the other eight restaurants are owned and operated
7 by ZRI's affiliate Zeeks Pizza, Inc.

8 2.2 Before August 2018, ZRI included in its franchise agreements one or more of
9 the following restrictive covenants related to the solicitation or hiring of certain employees,
10 which the Attorney General considers to be "no-poaching provisions":

- 11 a. "Neither Franchisee nor any Covered Person shall, directly or indirectly, for
12 itself or on behalf of any other person ... employ or seek to employ any person
13 who is at that time employed by Franchisor, Franchisor's Affiliates or another
14 franchisee of Franchisor or otherwise directly or indirectly induce or seek to
15 induce the person to leave his or her employment."
- 16 b. "Franchisee shall not solicit, employ, divert or attempt to employ any employee
17 of Franchisor, Franchisor's Affiliates or other franchisees of Franchisor."
- 18 c. "Therefore, other than the ZEEK'S PIZZA Restaurant licensed herein or
19 authorized by separate agreement with the Franchisor, neither the Franchisee
20 nor any of the Franchisee's officers, directors, shareholders, equity owners,
21 members, managers or partners, nor any member of his or their immediate
22 families, shall during the term of this Agreement: ... divert or attempt to divert
23 the employment of any employee of the Franchisor or another franchisee
24 licensed by the Franchisor to use the Marks and Licensed Methods, to any
25 Competitive Business by any direct inducement or otherwise."
26

2.3 In August 2018—several months before the Attorney General issued its civil investigative demand to ZRI—ZRI removed from its standard franchise agreement the restrictive covenant language noted above in paragraph 2.2.

2.4 The Attorney General asserts that the contract provisions in paragraph 2.2 constitute a contract, combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act, RCW 19.86.030.

2.5 ZRI expressly denies that inclusion of the restrictive covenants described above in franchise agreements 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. ZRI also expressly denies it has engaged in any conduct that constitutes a contract, combination, or conspiracy in restraint of trade because (a) it has never enforced the restrictive covenant provisions noted in paragraph 2.2, and (b) it has already removed the restrictive covenant language from its standard franchise agreements going forward. Nevertheless, ZRI enters into this AOD to memorialize the understandings between the parties. 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 ZRI.

III. ASSURANCE OF DISCONTINUANCE

3.1 Subject to the paragraphs above, ZRI affirms that:

3.1.1. It will not include no-poaching provisions in any of its future franchise agreements;

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

3.1.3. Within 14 days after the entry of this AOD, it will notify all of its franchisees of the entry of this AOD and make a copy available if requested;

1 3.1.4. It will notify the Attorney General's Office if it learns of any effort by a
2 franchisee in Washington to enforce any existing no-poaching provision.

3 3.2 Within 90 days of entry of this AOD, ZRI will attempt to amend all existing
4 franchise agreements with its franchisees to remove any no-poaching provisions in its existing
5 franchise agreements. However, for the avoidance of doubt, ZRI is under no obligation to offer
6 its franchisees any consideration, monetary or otherwise, in order to induce them to sign the
7 proposed amendment, nor will ZRI be required to take, or threaten to take, any adverse action
8 against any such franchisee if the franchisee refuses to do so. If any franchise owner declines
9 to amend its franchise agreement within seven days prior to the 90-day deadline, ZRI shall
10 provide the name and address of any such franchise owner to the Office of the Attorney
11 General. A decision by a ZRI franchisee not to amend its franchise agreement, or not to do so
12 within 90 days after entry of this AOD, shall not mean that ZRI has failed to comply with its
13 obligations under this AOD. This provision shall be deemed satisfied with regard to each
14 Zeeks Pizza® franchisee by either the amendment of such franchisee's franchise agreement(s)
15 to remove the no-poaching provision or by ZRI providing the name and address of such
16 franchisee to the Office of the Attorney General.

17 3.3 As they come up for renewal during the ordinary course of business, ZRI
18 affirms that, to the extent ZRI renews a franchise, it will renew the franchise on a form of
19 franchise agreement that does not contain a no-poaching provision.

20 3.4 Within 30 days of the conclusion of the time period referenced in paragraph 3.2,
21 ZRI will submit a declaration to the Attorney General's Office signed under penalty of perjury
22 stating that paragraph 3.2 of this agreement has been satisfied.

23 **IV. ADDITIONAL PROVISIONS**

24 4.1 This AOD is binding on, and applies to ZRI, including each of its respective
25 directors, officers, managers, agents acting within the scope of their agency, and employees, as
26 well as their respective successors and assigns, controlled subsidiaries, divisions, groups,

1 affiliates, partnerships, and joint ventures, or other entities through which ZRI may now or
2 hereafter 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 ZRI. By entering into this AOD,
5 ZRI neither agrees nor concedes that the claims, allegations and/or causes of action, which
6 have or could have been asserted by the Attorney General, have merit and ZRI expressly
7 denies any such claims, allegations, and/or causes of action. However, proof of failure to
8 comply with this AOD shall be *prima facie* evidence of a violation of RCW 19.86.030, thereby
9 placing upon the violator the burden of defending against imposition by the Court of
10 injunctions, restitution, costs and reasonable attorney's fees, and appropriate civil penalties
11 under the Consumer Protection Act.

12 4.3 ZRI will not, nor will it authorize any of its officers, employees, representatives, or
13 agents to state or otherwise contend that the State of Washington or the Attorney General has
14 approved of, or has otherwise sanctioned, the conduct described in paragraph 2.2 with respect to
15 the provisions in ZRI's franchise agreement.

16 4.4 This AOD resolves all issues raised by the State of Washington and the Antitrust
17 Division of the Attorney General's Office under the Consumer Protection Act and any other
18 related statutes pertaining to the acts set forth in paragraphs 2.1 – 2.5 above that may have
19 occurred before the date of entry of this AOD and concludes the investigation thereof. Subject to
20 paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's
21 Office shall not file suit or take any further investigative or enforcement action with respect to the
22 acts set forth above that occurred before the date of entry of this AOD, or that occurs between the
23 date of the entry of this AOD and the conclusion of the 90 day period identified in paragraph 3.2
24 above, against ZRI or any of its current franchisees in the state of Washington that sign the
25 proposed amendment. The Attorney General reserves the right to take further investigative or
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enforcement action against any current franchisee in the state of Washington that does not consent to the proposed amendment.

APPROVED ON this ____ day of _____, 2019.

JUDGE/COURT COMISSIONER


1 Presented by:

2 ROBERT W. FERGUSON
3 Attorney General

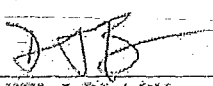
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14 Agreed to and approved for entry by:
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21 *Attorneys for Zeek's Restaurants, Inc.*

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25 Zeek's Restaurants, Inc.

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