

FILED
MAY 16 2023

Billie A. Maggard
YAKIMA COUNTY CLERK

STATE OF WASHINGTON
YAKIMA COUNTY SUPERIOR COURT

STATE OF WASHINGTON,

Plaintiff,

v.

GREENWOOD MUSHROOM
SUNNYSIDE IA, LLC,

Defendant.

NO. **2320113339**

ASSURANCE OF
DISCONTINUANCE

The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney General, Alfredo González Benítez, Emily C. Nelson, and Teri Healy, Assistant Attorneys General, accepts this Assurance of Discontinuance from Greenwood Mushroom Sunnyside IA, LLC (Greenwood Mushroom), pursuant to RCW 19.86.100. All communications related to this Assurance of Discontinuance may be directed to the Wing Luke Civil Rights Division, Office of the Attorney General, 800 Fifth Avenue, Suite 2000, Seattle, WA 98104.

I. INVESTIGATION AND RELATED PROCEEDING

1.1. In August 2022, the State of Washington filed an action against Ostrom Mushroom Farms, LLC (Ostrom) to enforce the Consumer Protection Act, RCW 19.86 (CPA), and the Washington Law Against Discrimination, RCW 49.60 (WLAD). *See* Complaint in *State*

ASSURANCE OF
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1 of *Washington v. Ostrom Mushroom Farms, LLC, et al.*, No. 22-2-01708-39 (Yakima Sup. Ct.,
2 Aug. 17, 2022).

3 1.2. In December 2022, the State filed a First Amended Complaint adding Asellus-
4 Sunnyside, LLC (Asellus-Sunnyside) as a defendant. *See* First Amended Complaint in *State v.*
5 *Ostrom et al.*, No. 22-2-01708-39 (Yakima Co. Sup. Ct., Dec. 12, 2022).

6 1.3. In its action, the State alleged that between approximately January 2021 and
7 December 2022, Ostrom and Asellus-Sunnyside engaged in unfair practices in trade or
8 commerce in violation of the CPA, RCW 19.86.020, and engaged in unfair and discriminatory
9 employment practices in violation of the WLAD, RCW 49.60.030, .180, and .210, through their
10 operation of the companies' mushroom farming, packaging, and shipping facility, located at
11 1111 Midvale Road, Sunnyside, Washington 98944 (Sunnyside Facility).

12 1.4. On February 14, 2023, while the State's action against Ostrom and Asellus-
13 Sunnyside was still pending, Greenwood Mushroom purchased certain tangible and intangible
14 assets, properties, and rights which related to or were used in connection with the Sunnyside
15 Facility. Greenwood Mushroom is an independent business unaffiliated with Ostrom and
16 Asellus-Sunnyside.

17 1.5. Greenwood Mushroom is a for-profit business that owns and operates its business
18 at the Sunnyside Facility. Greenwood Mushroom employs eight or more persons and is an
19 "employer" for purposes of RCW 49.60.040(11).

20 1.6. Greenwood Mushroom's principal place of business is Sunnyside, Washington.

21 1.7. Following Greenwood Mushroom's purchase of the Sunnyside Facility, the
22 parties voluntarily agree to enter this Assurance of Discontinuance, without further proceedings,
23 to strengthen Greenwood Mushroom's commitment to fair trade and commerce practices and
24 existing prohibitions against discrimination, harassment, and retaliation.

1 1.8. On the date of entry of this Assurance of Discontinuance, the State also resolves
2 the allegations in its First Amended Complaint against Ostrom and Asellus-Sunnyside in a
3 Consent Decree filed in this Court under Cause No. 22-2-01708-39.

4 II. ASSURANCE OF DISCONTINUANCE

5 2.1. The AGO deems and Greenwood Mushroom acknowledges the following
6 constitute unfair and discriminatory employment practices in violation of the CPA and the
7 WLAD:

8 2.1.1. Misrepresenting to current and prospective employees the terms and
9 conditions of employment, including job eligibility requirements, wages, and the
10 availability of work;

11 2.1.2. Applying more stringent employment eligibility requirements to
12 prospective domestic employees than to employees recruited through the H-2A
13 Temporary Agricultural Worker Program;

14 2.1.3. Failing to hire, refusing to hire, or discharging employees on the basis of
15 sex, citizenship, immigration status, or any other protected class under the
16 WLAD;

17 2.1.4. Discriminating in the terms and conditions of employment on the basis of
18 sex, citizenship, or immigration status, or any other protected class under the
19 WLAD; and

20 2.1.5. Retaliating against employees who engage in protected activity under the
21 WLAD.

22 2.2. Greenwood Mushroom agrees not to engage in the unfair practices described in
23 paragraph 2.1, which the State alleged against Ostrom and Asellus.

24 2.3. Greenwood Mushroom understands and agrees that this Assurance of
25 Discontinuance applies to Greenwood Mushroom and its principals, officers, agents, managers,
26

1 general managers, employees, representatives, successors, and assigns, while acting personally
2 or through any corporation or other business entity.

3 III. NONDISCRIMINATION POLICY

4 3.1. Within sixty (60) days of entry of this Assurance of Discontinuance, Greenwood
5 Mushroom shall:

6 3.1.1. Adopt policies against unlawful harassment, discrimination, and
7 retaliation ("Nondiscrimination Policy") for all employees. Greenwood
8 Mushroom shall provide the AGO with the opportunity to review and comment
9 on the Nondiscrimination Policy prior to its adoption. The Nondiscrimination
10 Policy shall include the workplace complaint and workplace investigation
11 procedures described in paragraphs 3.3 and 3.4. Greenwood Mushroom will
12 make the Nondiscrimination Policy available in English and Spanish.

13 3.1.2. Distribute a copy of this Assurance of Discontinuance and the
14 Nondiscrimination Policy to all principals, managers, general managers,
15 executives, supervisors, and officers. Greenwood Mushroom shall secure a
16 signed statement, in the form of Appendix A attached hereto, from each
17 individual listed in this paragraph acknowledging that they have received and
18 read the Assurance of Discontinuance and Nondiscrimination Policy and agree to
19 abide by both documents. Greenwood Mushroom shall submit copies of the
20 signed statements, in one batch, to the AGO within sixty (60) days of entry of this
21 Assurance of Discontinuance.

22 3.2. Greenwood Mushroom shall distribute English and Spanish versions of the
23 Nondiscrimination Policy to every current employee within sixty (60) days of the filing of this
24 Assurance of Discontinuance. Thereafter, and for the duration of this Assurance of
25 Discontinuance, Greenwood Mushroom shall provide all new employees with a copy of the
26 Nondiscrimination Policy in English and Spanish within ten (10) days of the employee beginning

1 work for Greenwood Mushroom. Within thirty (30) days, and for the duration of this Assurance
2 of Discontinuance, Greenwood Mushroom will post in a conspicuous place at the Sunnyside
3 Facility, in a location where Greenwood Mushroom habitually posts employee announcements,
4 an English and Spanish notice of workers' rights to be free from discrimination in the workplace.

5 3.3. The Nondiscrimination Policy shall include workplace complaint procedures for
6 reporting harassment, discrimination, and retaliation. The procedures shall: 1) provide clear
7 instructions to employees about where and how to make a complaint in writing, by phone, or in
8 person, including providing names, locations, addresses, and phone numbers; 2) allow
9 complaints to be submitted verbally or in writing in the preferred language of the employee, and
10 for verbal complaints, Greenwood Mushroom may request that the complaint be reduced to
11 writing, including by offering the complainant assistance from Greenwood's Human Resources
12 (or from the complainant's immediate supervisor if the complainant or complainees are relatives,
13 personal friends, or otherwise have a close relationship with the Human Resources employee
14 who would normally assist) to document the complaint; 3) require Greenwood Mushroom to
15 provide interpretation for the complaining employee by a neutral interpreter or translator if the
16 employee so requests (For the avoidance of doubt, "neutral interpreter or translator" means any
17 person other than the complainees, witnesses involved in the complaint, manager, or any person
18 who is a relative, personal friend, or otherwise has a close relationship with the complainant or
19 complainees, and who speaks the language at a professional working proficiency.); 4) provide a
20 method for employees to make anonymous complaints of harassment, discrimination or
21 retaliation via voicemail or written complaint; and 5) require that all individuals who receive
22 complaints of harassment, discrimination, or retaliation must report such complaint promptly to
23 Greenwood's Human Resources. The procedures shall also include a statement from Greenwood
24 Mushroom owners and/or management encouraging employees to report complaints of
25 harassment, discrimination, and retaliation, and reiterating the prohibition against such conduct.
26

3.4. The Nondiscrimination Policy shall include a procedure to ensure fair and competent investigations of complaints of harassment, discrimination, and retaliation. The procedures shall, at a minimum, include requirements that: 1) Greenwood Mushroom will begin the investigation of a complaint of harassment, discrimination, or retaliation within five (5) business days after Greenwood's Human Resources receives the complaint; 2) Greenwood Mushroom will take prompt corrective action to protect the complainant from any ongoing harassment, discrimination, or retaliation during the pendency of the investigation; 3) all investigations will be conducted by a Greenwood Human Resources employee who has received training on how to conduct workplace investigations for complaints of harassment, discrimination, and retaliation within the prior year; 4) interviews of the complainant, complaine, and witnesses will be conducted in a private room at the Sunnyside Facility; 5) Greenwood Mushroom will provide interpretation as necessary for all interviews by a neutral and qualified interpreter (as defined above); 6) identities of complaints and witness, and the facts of the complaint, will be kept confidential to the extent possible; 7) the complaine will be instructed that he or she must refrain from any action that might dissuade a potential witness from cooperating with any investigation; 8) the complainant and witnesses will not suffer retaliatory actions by Greenwood Mushroom, including, but not limited to, termination or reduction in pay or hours; and 9) Greenwood Mushroom will determine appropriate disciplinary action for any employee found to have engaged in harassment, discrimination, or retaliation.

IV. TRAINING

4.1. Within three (3) months of entry of this Assurance of Discontinuance, Greenwood Mushroom shall provide a training to all executives, managers, general managers, and anyone with supervisory or decision-making authority at the Sunnyside Facility (collectively, Managers) regarding their obligations under the CPA and the WLAD. Subsequent trainings for all Managers at the Sunnyside Facility shall take place annually thereafter, for the duration of this Assurance of Discontinuance.

1 4.2. The trainings shall be conducted by an independent third party regularly engaged
2 in the business of providing workplace training courses. Greenwood Mushroom shall provide
3 the AGO with thirty (30) days' notice of the party selected to provide training. Should the AGO
4 determine that the party is not qualified, the AGO will notify Greenwood Mushroom within
5 fourteen (14) days' receipt of the notice of trainer selection.

6 4.3. The purpose of the training will be to educate Managers on unfair or deceptive
7 job advertisements and recruiting practices; the definitions of harassment, discrimination, and
8 retaliation; examples of conduct that constitute harassment, discrimination, and retaliation;
9 appropriate responses to complaints of such conduct; and the rights and responsibilities of
10 Managers and employees when a complaint of harassment, discrimination, or retaliation is made.
11 Greenwood Mushroom shall bear any expenses associated with these trainings.

12 4.4. Greenwood Mushroom shall maintain a record of the attendees at all trainings
13 described in paragraph 4.1, and for each attendee: (1) the attendee's name, (2) date of attendance,
14 (3) name of the course, and (4) name of the instructor. Copies of these records shall be provided
15 with the Annual Compliance Reports described in paragraph 5.2.1.

16 4.5. Greenwood Mushroom shall provide training to all current employees about the
17 terms of the Nondiscrimination Policy within sixty (60) days of entry of this Assurance of
18 Discontinuance, and the process for reporting discrimination at work, and shall train all new
19 employees on the same upon their beginning work for Greenwood Mushroom.

20 **V. RECORD KEEPING AND REPORTING**

21 5.1. For the duration of this Assurance of Discontinuance, Greenwood Mushroom
22 shall preserve all records related to its obligations under this Assurance of Discontinuance in a
23 centralized location, whether in paper or electronic form, that relate to the following:

24 5.1.1. Any records relating to recruitment of domestic workers and any
25 applications submitted by Greenwood Mushroom to participate in the H-2A
26 Temporary Agricultural Worker Program.

1 5.1.2. Records related to hiring, discipline, suspension, and/or termination of
2 workers at the Sunnyside Facility, including job applications, interview notes,
3 employee files, disciplinary records, and records of termination.

4 5.1.3. Records related to any complaints regarding discrimination, harassment,
5 retaliation, or violations of the Consumer Protection Act, made by workers related
6 to their employment.

7 5.2. For a period of three (3) years following entry of this Assurance of
8 Discontinuance, Greenwood Mushroom shall provide the AGO with:

9 5.2.1. Annual Compliance Reports, on the yearly anniversary of this Assurance
10 of Discontinuance, which shall (1) identify and describe any and all changes to
11 Greenwood Mushrooms' discrimination policies and/or practices, and (2) provide
12 a copy of the training materials used and records of attendance for all trainings
13 held pursuant to paragraph 4.1.

14 5.2.2. Records of any complaint(s) by workers as described in paragraph 5.1.3.

15 5.2.3. Records of any application(s) to the H-2A Temporary Agricultural
16 Worker Program, as well as records of any decisions regarding such
17 application(s).

18 5.3. Upon reasonable notice to Greenwood Mushroom, representatives of the AGO
19 shall be permitted to access, inspect, and/or copy all records maintained by Greenwood
20 Mushroom pursuant to paragraph 5.1.

21 5.4. Greenwood Mushroom shall notify the State at least thirty (30) days prior to any
22 change in control of Greenwood Mushroom that would change the identity of the corporate entity
23 responsible for compliance obligations arising under this Assurance of Discontinuance,
24 including but not limited to dissolution, assignment, sale, merger, or other action that would
25 result in the emergence of a successor corporation; or the creation or dissolution of a subsidiary,
26

1 parent, or affiliate that engages in any acts or practices subject to this Assurance of
2 Discontinuance.

3 VI. ENTRY AND DURATION

4 6.1. This Assurance of Discontinuance shall be in effect for a period of three (3) years
5 from the date of its entry. The Court shall retain jurisdiction for the duration of this Assurance
6 of Discontinuance to enforce its terms.

7 6.2. Greenwood Mushroom and the AGO agree that no provision of the Assurance of
8 Discontinuance operates as a penalty, forfeiture, or punishment under the laws of Washington.
9 This Assurance of Discontinuance shall not be considered an admission of violation for any
10 purposes, but failure to comply with this Assurance of Discontinuance shall be prima facie evidence
11 of violations of RCW 19.86.020 for which the AGO may seek injunctive relief, restitution, civil
12 penalties of up to \$7,500 per violation, plus applicable enhancements, and costs, including
13 reasonable attorneys' fees. Notwithstanding this paragraph, Greenwood Mushroom does not
14 waive its right to appeal any orders or judgments arising from any enforcement proceedings
15 related to this Assurance of Discontinuance.

16 VII. ADDITIONAL PROVISIONS

17 7.1. Greenwood Mushroom acknowledges and agrees that no other promises,
18 representations, or agreements of any nature have been made or entered into by the parties. The
19 parties further acknowledge that this Assurance of Discontinuance constitutes a single and entire
20 agreement that is not severable or divisible, except that if any provisions herein are found to be
21 legally insufficient or unenforceable, the remaining provisions shall continue in full force and
22 effect.

23 7.2. The parties agree that as of the date of the entry of this Assurance of
24 Discontinuance, litigation is not "reasonably foreseeable" concerning the matters described
25 above. To the extent that either party previously implemented a litigation hold to preserve
26 documents, electronically stored information ("ESI"), or things related to the matters described

1 above, the party is no longer required to maintain such litigation hold. Nothing in this paragraph
2 relieves either party of any other obligations imposed by this Assurance of Discontinuance.

3 7.3. Nothing in this Assurance of Discontinuance shall be construed to limit or bar
4 any other governmental entity or person from pursuing other available legal remedies against
5 Greenwood Mushroom. Each party shall bear its own attorneys' fees and costs arising from or
6 related to the negotiation and execution of this Assurance of Discontinuance, unless otherwise
7 explicitly provided herein.

8 DATED this _____ day of _____, 2023.

9
10
11 _____
12 Superior Court Judge

13 Presented by:

14 ROBERT W. FERGUSON
15 Attorney General

16 
17 _____
18 ALFREDO GONZÁLEZ BENÍTEZ, WSBA #54364

19 EMILY C. NELSON, WSBA #48440

20 TERI HEALY, WSBA # 60367

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1 Agreed to and approved for entry by:

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21 *Attorneys for Greenwood Mushroom*
22 *Sunnyside IA, LLC*
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APPENDIX A
ACKNOWLEDGMENT OF RECEIPT OF ASSURANCE OF DISCONTINUANCE
AND NONDISCRIMINATION POLICY

I acknowledge that on _____, 20____, I was provided copies of the Assurance of Discontinuance entered by Yakima County Superior Court in *State v. Greenwood Mushroom Sunnyside IA, LLC*, and Greenwood Mushroom's Nondiscrimination Policy. I have read and understand these documents and have had my questions about these documents answered. I understand my legal responsibilities and shall comply with those responsibilities.

Signature

Print Name

Job Title/Position

Date

FILED
MAY 16 2023

Billie A. Maggard
YAKIMA COUNTY CLERK

**STATE OF WASHINGTON
YAKIMA COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

v.

GREENWOOD MUSHROOM
SUNNYSIDE IA, LLC,

Defendant.

No. **2320113339**

~~PROPOSED~~ ORDER APPROVING
ENTRY OF ASSURANCE OF
DISCONTINUANCE

The Court hereby approves the Assurance of Discontinuance between the State of Washington and Greenwood Mushroom Sunnyside IA, LLC, pursuant to RCW 19.86.100, and enters it into the Court's record.

DATED this 16 day of May 2023.

Susan C. Arb
Court Commissioner

Superior Court Judge

1 Respectfully submitted by:

2 ROBERT W. FERGUSON
3 Attorney General

4
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