

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

IN RE: FRANCHISE NO POACHING
PROVISIONS

NO.
FIREHOUSE OF AMERICA, LLC
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 RCW 19.86.100.

I. PARTIES

1.1 In August 2018, the Attorney General initiated an investigation into Firehouse of America, LLC (“Firehouse”) relating to certain provisions in its franchise agreement.

1.2 Firehouse is a Florida limited liability company with its principal offices or place of business in Jacksonville, Florida. Firehouse is a franchisor, and its corporate- and franchisee-operated locations are in the business of operating restaurants specializing in serving large portion hot submarine style sandwiches at an economical price.

1.3 For purposes of this AOD, Firehouse 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, divisions, groups, affiliates, sister companies, and predecessor franchisor entities.

1 **II. INVESTIGATION**

2 2.1 As of September 20, 2018, there are nine Firehouse restaurants located in the
3 State of Washington, with one signed franchise agreement for a restaurant that has yet to open,
4 as well as one area representative. All of these restaurants are independently owned and
5 operated by franchisees.

6 2.2 For at least the last 5 years, Firehouse has included language in its franchise
7 agreements and area representative agreements (collectively, “Franchise Agreements”) that
8 restricted the ability of a franchisee or an area representative (collectively, “Franchisees”) to
9 solicit or hire workers from another Firehouse restaurant (“no-poaching provision”).
10 Specifically, the standard Firehouse Franchise Agreement provided that Franchisees could not
11 “recruit or hire any person who is [Firehouse’s] employee or the employee of any
12 FIREHOUSE SUBS® Restaurant without obtaining the prior written permission of that
13 person’s employer” or similar language. (hereinafter, “No-Poaching Provisions”)

14 2.3 The Attorney General asserts that the No-Poaching Provisions constitute a
15 contract, combination, or conspiracy in restraint of trade in violation of the Consumer
16 Protection Act, RCW 19.86.030.

17 2.4 Firehouse expressly denies that the No-Poaching Provisions constitute a
18 contract, combination, or conspiracy in restraint of trade in violation of the Consumer
19 Protection Act, RCW 19.86.030, or any other law or regulation, and expressly denies it has
20 engaged in conduct that constitutes a contract, combination, or conspiracy in restraint of trade,
21 or violates any other law or regulation. Firehouse enters into this AOD to avoid protracted and
22 expensive litigation. Pursuant to RCW 19.86.100, neither this AOD nor its terms shall be
23 construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part of
24 Firehouse or any of its current or former Franchisees.

25 **III. ASSURANCE OF DISCONTINUANCE**

26 3.1 Subject to Paragraph 2.4 above, Firehouse agrees:

1 3.1.1. It will no longer include the No-Poaching Provisions 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-Poaching Provisions 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-Poaching 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
9 entry of this AOD and make a copy available to them.

10 3.1.4. It will notify the Attorney General's Office if it learns of any effort by a
11 Washington State Franchisee to enforce any existing No-Poaching Provision after having been
12 advised by Firehouse of the existence of this AOD.

13 3.2 Within 21 days of entry of this AOD, Firehouse will send a letter to all of its
14 current Franchisees with stores or representative operations located in the State of Washington,
15 stating that the Attorney General has requested that the existing No-Poaching Provisions be
16 removed from existing Franchise Agreements. The letter that Firehouse will send to its current
17 Franchisees in the State of Washington will be substantially in the form of the letter attached
18 hereto as Exhibit A. That letter will enclose the proposed amendment that Firehouse is
19 requesting that each of its Franchisees in the State of Washington agree to, which amendment
20 will remove the No-Poaching Provisions. The proposed amendment that will be included with
21 each letter will be substantially in the form of the amendment attached hereto as Exhibit B.

22 3.3 In addition to sending the letter to its current Franchisees in the State of
23 Washington pursuant to Paragraph 3.2 above, Firehouse will respond promptly to any inquiries
24 from such Franchisees regarding the request to amend the terms of the Franchise Agreement,
25 and will convey its recommendation that its current Franchisees in the State of Washington
26 sign the proposed amendment. However, for the avoidance of doubt, Firehouse is under no

1 entities through which Firehouse may now or hereafter act with respect to the conduct alleged
2 in this AOD.

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

13 4.3 Firehouse 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-Poaching Provisions in Firehouse's Franchise Agreements.

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 Firehouse 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 AOD, or
21 that occur between the date of the entry of this AOD and the conclusion of the 120-day period
22 identified in Paragraph 3.3 above, and concludes the investigation thereof. Subject to Paragraph
23 4.2, the State of Washington and the Antitrust Division of the Attorney General's Office shall not
24 file suit or take any further investigative or enforcement action with respect to the acts set forth
25 above that occurred before the date of entry of this AOD, or that occurs between the date of the
26 entry of this AOD and the conclusion of the 120 day period identified in Paragraph 3.3 above,

1 against Firehouse or any of its current Franchisees in the State of Washington that sign the
2 proposed amendment described in Section III, any of its former Franchisees in the State of
3 Washington, or any of its current or former Franchisees located outside the State of Washington.
4 The Attorney General reserves the right to take further investigative or enforcement action against
5 any current Franchisee in the State of Washington that does not sign the proposed amendment
6 described in Section III.

7
8 APPROVED ON this _____ day of _____, 2018.

9
10 _____
11 JUDGE/COURT COMMISSIONER
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

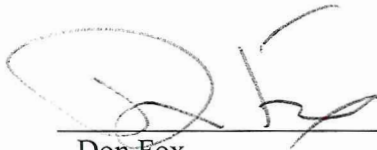
1 Presented by:

2 ROBERT W. FERGUSON
3 Attorney General

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

13 Agreed to and approved for entry by:

14 FIREHOUSE OF AMERICA, LLC
15 _____
16 Angelo J. Calfo, WSBA #27079
17 CALFO EAKES & OSTROVSKY, PLLC
18 1301 Second Avenue, Suite 2800
19 Seattle, WA 98101

20 _____
21 
22 Don Fox
23 Chief Executive Officer
24 Firehouse of America, LLC

25 ---and---

26 Scott McIntosh
QUARLES & BRADY LLP
1701 Pennsylvania Avenue NW, Suite 700
Washington, DC 20006

Attorneys for Firehouse of America, LLC

Exhibit A

[FIREHOUSE OF AMERICA, LLC LETTERHEAD]

September ____, 2018

VIA EMAIL [Individual's Email Address]

[Name of Individual]

[Name of Franchise Owner Entity]

_____, WA _____

Re: Amendment to Franchise Agreement / Washington Assurance of Discontinuance

Dear _____:

As you know from prior communications, we have agreed with the Attorney General of the State of Washington (the "**WAG**") to provide amendments to the franchise and area representative agreements with our Washington franchise owners to eliminate any restriction on a franchisee's ability to solicit or hire workers from another Firehouse Subs® Restaurant or from us (the "**Hiring Restriction**"). In that connection, attached are the following:

- (1) Copy of the Assurance of Discontinuance, dated _____, 2018 (the "**AOD**") between us and the WAG; and
- (2) Form of amendment to your agreement solely to remove the Hiring Restrictions (the "**Amendment**").

We recommend that you sign 2 copies of the Amendment and return 1 original to us. Based on the AOD, you should return the signed amendment to us no later than _____, 2018 (120 days after the AOD's effective date). We will provide the WAG with a copy.

Thank you in advance for your cooperation.

Sincerely yours,

FIREHOUSE SUBS OF AMERICA, LLC

Don Fox
Chief Executive Officer

Exhibit B

**AMENDMENT TO
FIREHOUSE OF AMERICA, LLC
FRANCHISE AGREEMENT
BETWEEN FIREHOUSE OF AMERICA, LLC
AND _____**

THIS AMENDMENT (this “**Amendment**”) is effective as of _____, 20____ (the “**Effective Date**”) (regardless of the actual date of signature) and amends the Franchise Agreement dated as of _____, 20____ (the “**Agreement**”) between **FIREHOUSE OF AMERICA, LLC**, a Florida limited liability company, with its principal business address at 12735 Gran Bay Parkway, Suite 150, Jacksonville, Florida 32258 (referred to in this Agreement as “**we,**” “**us**” “**our**” or the “**Franchisor**”), and _____, whose Restaurant address is _____, Washington (referred to in this Amendment as “**you,**” “**your**” or “**Franchise Owner**”).

1. **Precedence and Defined Terms.** This Amendment is an integral part of, and is incorporated into, the Agreement. Nevertheless, this Amendment supersedes any inconsistent or conflicting provisions of the Agreement. Terms not otherwise defined in this Amendment have the meanings as defined in the Agreement.

2. **No Hiring Restriction.** The parties confirm that you are solely responsible for all terms of employment for your Restaurant employees; including hiring, firing, compensation, scheduling, etc. Accordingly, the parties agree that we do not restrict your hiring of any employees of ours, our affiliates or other Franchisees and therefore subsection 9(e) of the Agreement is deleted.

3. **Remaining Terms Unaffected.** The remaining terms of the Agreement are unaffected by this Amendment and remain binding on the parties.

Intending to be bound, the parties sign and deliver this Amendment to each other as shown below:

“**US**”:

“**YOU**”:

FIREHOUSE OF AMERICA, LLC

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____