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STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO POACHING  
PROVISIONS

NO. **18-2-17229-2 SEA**

MCDONALD'S USA, LLC  
ASSURANCE OF  
DISCONTINUANCE

The State of Washington (State), by and through its attorneys, Robert W. Ferguson, 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 January 2018, the Attorney General initiated the "In re Franchise No Poaching Provisions Investigation," which included McDonald's USA, LLC. The investigation relates to a provision within certain of the company's franchise agreements that states that franchise operators "shall not employ or seek to employ any person who is at the time employed by McDonald's, any of its subsidiaries, or by any person who is at the time operating a McDonald's restaurant or otherwise induce, directly or indirectly, such person to leave such employment."

1.2 McDonald's Corporation is a Delaware corporation with its principal place of business in Chicago, Illinois. McDonald's USA, LLC is a Delaware limited liability company with its principal place of business in Chicago, Illinois. McDonald's USA, LLC is a wholly-owned subsidiary of McDonald's Corporation. McDonald's USA, LLC enters into franchise agreements with franchisees who operate independently owned and managed restaurants under

1 the McDonald's brand name. McDonald's Restaurants of Washington, which is a direct  
2 subsidiary of McDonald's USA, LLC, operates other McDonald's-branded restaurants within  
3 Washington. McDonald's Restaurants of Washington is one of 50 state-based subsidiaries  
4 known collectively as McDonald's Operating Companies, which operate McDonald's-branded  
5 restaurants in each state.

6 1.3 McDonald's USA, LLC includes its directors, officers, managers, agents acting  
7 within the scope of their agency, and employees as well as its successor and assigns, controlled  
8 subsidiaries (including McDonald's Operating Companies), divisions, groups, affiliates,  
9 partnerships, and joint ventures. McDonald's USA, LLC does not include independent  
10 franchise operators.

## 11 II. INVESTIGATION

12 2.1 McDonald's Restaurants of Washington operates 38 McDonald's-branded  
13 restaurants in Washington. Independent franchise operators own and operate 233 McDonald's-  
14 branded restaurants in Washington.

15 2.2 McDonald's USA, LLC previously included language in certain franchise  
16 agreements that limited a franchisee's ability to solicit or hire workers from another  
17 McDonald's restaurant. This provision was identified as paragraph 14 in franchise agreements  
18 executed prior to March 2017 (hereinafter "paragraph 14"). Specifically, paragraph 14 stated  
19 that a franchisee "shall not employ or seek to employ any person who is at the time employed  
20 by McDonald's, any of its subsidiaries, or by any person who is at the time operating a  
21 McDonald's restaurant or otherwise induce, directly or indirectly, such person to leave such  
22 employment."

23 2.3 In March 2017, McDonald's USA, LLC communicated to all franchisees that  
24 McDonald's USA, LLC would not enforce paragraph 14 going forward and that the provision  
25 would not be included in future franchise agreements. Since that time, McDonald's USA, LLC  
26 has not included paragraph 14 in newly executed franchise agreements.

1           2.4     The Attorney General believes that paragraph 14 constitutes a contract,  
2 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,  
3 RCW 19.86.030. The Attorney General wants to protect Washington citizens from these types  
4 of provisions. The Attorney General also believes that companies should take independent  
5 corrective action to eliminate these types of provisions.

6           2.5     McDonald's USA, LLC expressly denies that paragraph 14 violates the  
7 Consumer Protection Act, RCW 19.86.030, or any other law, and expressly denies that it has  
8 engaged in conduct that constitutes a contract, combination, or conspiracy in restraint of trade  
9 in violation of the Consumer Protection Act or any other law, or that paragraph 14 had any  
10 anti-competitive effect. That is because, in McDonald's view, paragraph 14 was adopted to  
11 encourage franchisees to make the investments necessary to develop well-trained, high-quality,  
12 and stable workforces in their restaurants, which in turn strengthened McDonald's brand and  
13 individual McDonald's-branded restaurants' ability to compete against other branded  
14 companies, among other reasons. McDonald's USA, LLC also notes that before this  
15 Investigation was initiated, it communicated to its franchisees that it did not intend to enforce  
16 paragraph 14 and took steps to eliminate it from future franchise agreements. McDonald's  
17 USA, LLC enters into this AOD to further formalize its practice of non-enforcement of  
18 paragraph 14, to accelerate paragraph 14's removal from Washington franchise agreements,  
19 and to avoid protracted and expensive litigation. Pursuant to RCW 19.86.100, neither this  
20 AOD nor its terms shall be construed as an admission of law, fact, liability, misconduct, or  
21 wrongdoing on the part of McDonald's USA, LLC.

### 22                           **III.     ASSURANCE OF DISCONTINUANCE**

23           3.1     Subject to the paragraphs above and below, McDonald's USA, LLC agrees:

24                     3.1.1. McDonald's USA, LLC will no longer include paragraph 14 or similar  
25 provisions in any of its future franchise agreements nationwide;  
26

1           3.1.2. McDonald's USA, LLC will continue not to enforce paragraph 14 in any  
2 of its existing franchise agreements nationwide;

3           3.1.3. McDonald's USA, LLC will notify all McDonald's franchise operators  
4 in Washington of the entry of this AOD and provide them a copy;

5           3.1.4. Within 30 days of entry of this AOD, McDonald's USA, LLC will make  
6 best efforts to contact all McDonald's franchise operators in Washington to begin the process  
7 of amending those operators' existing franchise agreements to remove paragraph 14 from those  
8 franchise agreements;

9           3.1.5. Within 60 days of entry of this AOD, McDonald's USA, LLC will  
10 endeavor to amend all existing franchise agreements with McDonald's franchise operators in  
11 Washington to remove paragraph 14 in these operators' existing franchise agreements. If any  
12 franchise operator has not signed an amendment, within 7 days of the end of the modification  
13 period, McDonald's USA, LLC shall provide the name and address of any such franchise  
14 operator and the name and address of that franchise operator's registered agent to the Office of  
15 the Attorney General along with the franchise operator's stated reason, if any, for the  
16 operator's failure to amend. This provision shall be deemed satisfied with regard to each  
17 Washington franchise operator by either the amendment of such franchise operator's franchise  
18 agreement(s) to remove paragraph 14 or by McDonald's USA, LLC's provision of the name  
19 and address of such franchise operator and such franchise operator's registered agent to the  
20 Office of the Attorney General;

21           3.1.6. All of McDonald's USA, LLC's new franchise agreements that have  
22 been signed since March 2017 have not included paragraph 14. Going forward, McDonald's  
23 USA, LLC will continue this practice for all franchise operators nationwide, including for (a)  
24 new franchise operators signing franchise agreements for the first time, (b) existing franchise  
25 operators whose franchise agreements have expired and/or are otherwise subject to renewal,  
26 rebuild or relocation, and (c) franchise operators who are acquiring a McDonald's Operating

1 Companies restaurant business or another franchise operator's restaurant business (*i.e.*,  
2 assignment); and

3 3.1.7. Within 30 days of the conclusion of the time periods referenced in  
4 paragraphs 3.1.3 through 3.1.5, McDonald's USA, LLC will submit a declaration to the  
5 Attorney General's Office signed under penalty of perjury stating that paragraphs 3.1.3 through  
6 3.1.5 of this agreement have been satisfied, or, if circumstances beyond McDonald's USA,  
7 LLC's control prevent satisfaction of any paragraph within the specified time frame,  
8 McDonald's USA, LLC will describe its efforts to satisfy the paragraph's requirements and the  
9 relevant extenuating circumstances.

#### 10 IV. ADDITIONAL PROVISIONS

11 4.1 This AOD is binding on and applies to McDonald's USA, LLC, including each  
12 of its respective directors, officers, managers, agents acting within the scope of their agency,  
13 and employees, as well as their respective successors and assigns, controlled subsidiaries,  
14 divisions, groups, affiliates, partnerships, and joint ventures, or other entities through which  
15 McDonald's USA, LLC may now or hereafter act with respect to the conduct alleged in this  
16 AOD.

17 4.2 This is a voluntary agreement and it shall not be construed as an admission of  
18 law, fact, liability, misconduct, or wrongdoing on the part of McDonald's USA, LLC. By  
19 entering into this AOD, McDonald's USA, LLC neither agrees nor concedes that the claims,  
20 allegations and/or causes of action which have or could have been asserted by the Attorney  
21 General have merit, and McDonald's USA, LLC expressly denies any such claims, allegations,  
22 and/or causes of action.

23 4.3 This AOD is not and may not be considered an admission or evidence of  
24 violation for any purpose. However, proof of failure to comply with this AOD presented by the  
25 Attorney General shall be *prima facie* evidence of a violation of RCW 19.86.020, thereby  
26 placing upon the violator the burden of defending against imposition by the Court of

1 injunctions, restitution, costs and reasonable attorney's fees, and civil penalties of up to  
2 \$2,000.00 per violation.

3 4.4 This AOD may not be used by any third party in any other proceeding and is not  
4 intended, and should not be construed, as an admission of liability by McDonald's USA, LLC.

5 4.5 Under no circumstances shall this AOD or the name of the State of Washington or  
6 the Office of the Attorney General or any of its employees or representatives be used by either  
7 McDonald's USA, LLC, nor by its officers, employees, representatives, or agents in conjunction  
8 with any business activity of McDonald's USA, LLC.

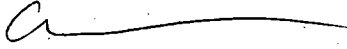
9 4.6 Compliance with this AOD resolves all issues raised by the State of Washington  
10 and the Antitrust Division of the Attorney General's Office under the Consumer Protection Act  
11 related to the acts set forth in paragraphs 2.2-2.5 above Subject to paragraph 4.3, the State of  
12 Washington and the Antitrust Division of the Attorney General's Office shall not file suit or take  
13 any further investigative or enforcement action against McDonald's USA, LLC with respect to the  
14 acts set forth above that occurred before the date of entry of this AOD; or against independent  
15 franchise operators in Washington who agree to the amendment described in paragraph 3.1.5  
16 above within 60 days of the entry of this AOD with respect to acts that occurred before the date of  
17 such amendment.

18  
19 APPROVED ON this 12<sup>th</sup> day of July, 2018.

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21   
22 JUDGE/COURT COMMISSIONER  
23  
24  
25  
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1 Presented by:

2 ROBERT W. FERGUSON  
3 Attorney General

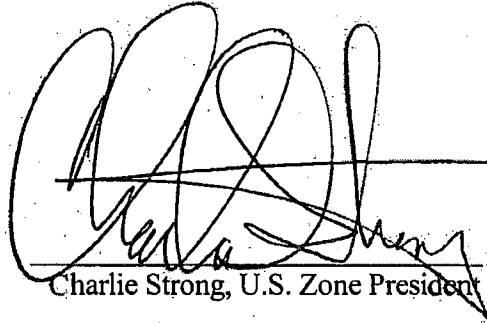
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15 Agreed to and approved for entry by:  
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