

1  
2 **FILED**  
3 **KING COUNTY, WASHINGTON**

4 **AUG 20 2018**

**EXP07**

5 **SUPERIOR COURT CLERK**

6 **SUPERIOR COURT OF WASHINGTON**  
7 **KING COUNTY SUPERIOR COURT**

8 **IN RE: FRANCHISE NO POACHING**  
9 **PROVISIONS**

No.

**18-2-20760-6SEA**

**CAJUN OPERATING COMPANY**  
**(CHURCH'S CHICKEN)**  
**ASSURANCE OF DISCONTINUANCE**

10  
11  
12  
13 The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney  
14 General (the "Attorney General"), and Eric S. Newman, Assistant Attorney General, files this  
15 Assurance of Discontinuance ("AOD") pursuant to RCW 19.86.100.

16 **I. PARTIES**

17 1.1 In January 2018, the Attorney General initiated an investigation into Cajun  
18 Operating Company ("COC") and its affiliate Cajun Global LLC ("Global") (COC and Global  
19 are sometimes collectively referred to herein as "Church's Chicken") relating to certain  
20 provisions in its form franchise agreements.

21 1.2 COC is a Delaware corporation, and Global is a Delaware limited liability  
22 company both with their principal offices or place of business in Atlanta, Georgia. Church's  
23 Chicken owns, operates and franchises restaurants that offer fried chicken and other food  
24 products for sale to consumers.

25 1.3 For purposes of this AOD, Church's Chicken shall include its directors, officers,  
26 managers, agents acting within the scope of their authority, and employees as well as its  
successors and assigns, controlled subsidiaries, affiliates and predecessor franchisor entities.

CAJUN OPERATING COMPANY  
(CHURCH'S CHICKEN)  
ASSURANCE OF DISCONTINUANCE - 1

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 three (3) Church's Chicken restaurants located in the State of  
3 Washington as of the date hereof. All of these restaurants are independently owned and  
4 operated by franchisees.

5 2.2 In the State of Washington, since 2013, the franchise agreements entered into  
6 between Church's Chicken and its franchisees have provided that franchisees subject to such  
7 agreements may not solicit employees of Church's Chicken or, in some cases, employees of  
8 other Church's Chicken franchisees, to terminate or reduce their employment with Church's  
9 Chicken or the other franchisees (the "No-Solicitation Provision"). Specifically, the franchise  
10 agreements stated that a franchisee shall not "knowingly employ or seek to employ any person  
11 then employed by Church's or any franchisee of Church's, or otherwise directly or indirectly  
12 induce such person to leave his or her employment without Church's prior consent" and shall  
13 not "knowingly employ or seek to employ any person employed by Church's or any franchisee  
14 of Church's, for six (6) months after such person leaves the employ of Church's or any  
15 franchisee of Church's without Church's prior consent " (or similar language).

16 2.3 The Attorney General asserts that the foregoing conduct of Church's Chicken  
17 and its franchisees constitutes a contract, combination, or conspiracy in restraint of trade in  
18 violation of the Consumer Protection Act, RCW 19.86.030.

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

1 **III. ASSURANCE OF DISCONTINUANCE**

2 3.1 Subject to Paragraph 2.4 above, Church's Chicken agrees:

3 3.1.1 It will no longer include the No-Solicitation Provision in any of its  
4 franchise agreements signed after the date hereof for restaurants located in the United States of  
5 America.

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

11 3.1.3 It will notify all of its current franchisees of restaurants located in the  
12 United States of its commitment to no longer enforce the No-Solicitation Provision, as  
13 described in section 3.1.2 above, and will make a copy of this AOD available to them upon  
14 written request.

15 3.1.4 If, after the 21 day period set forth in Paragraph 3.2 below, Church's  
16 Chicken becomes aware of a franchisee with a restaurant located in the State of Washington  
17 attempting to enforce the No-Solicitation Provision, and Church's Chicken is unable to  
18 persuade such franchisee to desist from enforcing or attempting to enforce such provision,  
19 Church's Chicken will notify the Attorney General.

20 3.2 Within 21 days of entry of this AOD, Church's Chicken will send a letter to all  
21 of its current franchisees with restaurants located in the State of Washington, stating that the  
22 Attorney General has requested that the existing No-Solicitation Provision be removed from  
23 existing franchise agreements. The letter that Church's Chicken will send to its current  
24 franchisees with restaurants located in the State of Washington will be substantially in the form  
25 of the letter attached hereto as Exhibit A. That letter will enclose the proposed amendment that  
26 Church's Chicken is requesting that each of its franchisees with restaurants located in the State

1 of Washington agree to, which amendment will remove the No-Solicitation Provision. The  
2 proposed amendment that will be included with each letter will be substantially in the form of  
3 the amendment attached hereto as Exhibit B.

4           3.3     In addition to sending the letter to its current franchisees with restaurants located  
5 in the State of Washington pursuant to Paragraph 3.2 above, Church's Chicken will respond  
6 promptly to any inquiries from such franchisees regarding the request to amend the terms of the  
7 franchise agreement and will encourage its current franchisees with restaurants located in the  
8 State of Washington to sign the proposed amendment. However, for the avoidance of doubt,  
9 Church's Chicken is under no obligation to offer its franchisees any consideration—monetary  
10 or otherwise—in order to induce them to sign the proposed amendment, or take any adverse  
11 action against such franchisees if they refuse to do so. Within 120 days of entry of this AOD,  
12 Church's Chicken will provide copies of all executed amendments it has obtained with its  
13 current franchisees with restaurants located in the State of Washington to the Attorney  
14 General's Office. A decision by a franchisee not to amend its franchise agreement, or not to do  
15 so within 120 days of this AOD, shall not mean that Church's Chicken has not complied with  
16 its obligations under this AOD.

17           3.4     If Church's Chicken learns that a current franchisee with a restaurant located in  
18 the State of Washington intends in good faith to sign the proposed amendment but is unable to  
19 do so within the time period specified in Paragraph 3.3, Church's Chicken will notify the  
20 Attorney General's Office to seek a mutually agreeable extension. During any such extension,  
21 the Attorney General's Office will not take further investigative or enforcement action against a  
22 franchisee.

23           3.5     As they come up for renewal during the ordinary course of business, Church's  
24 Chicken will remove the No-Solicitation Provision from all of its existing franchise agreements  
25 for restaurants located in the United States on a nationwide basis, unless expressly prohibited  
26 by law. In addition, Church's Chicken will not include the No-Solicitation Provision in any

1 franchise agreement it signs for restaurants located in the United States after the date of this  
2 AOD.

3 3.6 Within 30 days of the conclusion of the time periods referenced in paragraph  
4 3.3, Church's Chicken will submit a declaration to the Attorney General's Office signed under  
5 penalty of perjury stating whether all provisions of this agreement have been satisfied.

#### 6 IV. ADDITIONAL PROVISIONS

7 4.1 This AOD is binding on, and applies to Church's Chicken, including each of its  
8 respective directors, officers, managers, agents acting within the scope of their agency, and  
9 employees, as well as their respective successors and assigns, controlled subsidiaries,  
10 predecessor franchisor entities, or other entities through which Church's Chicken may now or  
11 hereafter act with respect to the conduct alleged in this AOD.

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

22 4.3 Church's Chicken will not, nor will it authorize any of its officers, employees,  
23 representatives, or agents to, state or otherwise contend that the State of Washington or the  
24 Attorney General has approved of, or has otherwise sanctioned, the conduct described in  
25 Paragraph 2.2 with respect to the No-Solicitation Provision in Church's Chicken franchise  
26 agreement.

1           4.4     This AOD resolves all issues raised by the State of Washington and the Antitrust  
2 Division of the Attorney General's Office under the Consumer Protection Act and any other  
3 related statutes pertaining to the acts of Church's Chicken and its current and former  
4 franchisees as set forth in Paragraph 2.1 — 2.3 above that may have occurred before the date of  
5 entry of this AOD, or that occur between the date of the entry of this AOD and the conclusion  
6 of the 120 day period identified in Paragraph 3.3 above, and concludes the investigation thereof  
7 Subject to Paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney  
8 General's Office shall not file suit, or take any enforcement action or further investigative  
9 action, with respect to the acts set forth above that occurred before the date of entry of this  
10 AOD, or that occurs between the date of the entry of this AOD and the conclusion of the 120  
11 day period identified in Paragraph 3.3 above, against Church's Chicken or any of its current  
12 franchisees in the State of Washington that sign the proposed amendment described in Section  
13 III, any of its former franchisees in the State of Washington, or any of its current or former  
14 franchisees located outside the State of Washington. The Attorney General reserves the right to  
15 take further investigative or enforcement action against any current franchisee in the State of  
16 Washington identified pursuant to Paragraph 3.1.4 or any current franchisee in the State of  
17 Washington that does not sign the proposed amendment described in Section III.

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

APPROVED ON this \_\_\_ day of 8/20/18

**HENRY H. JUDSON**

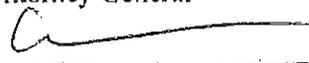
  
\_\_\_\_\_  
JUDGE/COURT COMMISSIONER

AUG 20 2018

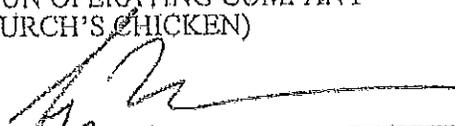
COURT COMMISSIONER

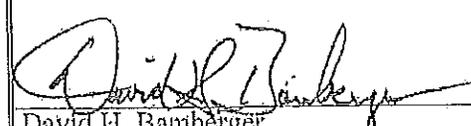
1 Presented by:

2 ROBERT W. FERGUSON  
3 Attorney General

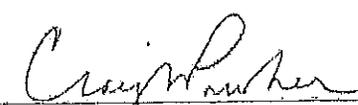
4   
5 ERIC S. NEWMAN, WSBA 31521  
6 Assistant Attorney General  
7 Chief Litigation Counsel  
8 Antitrust Division  
9 Attorneys for State of Washington  
10 Office of the Attorney General  
11 800 Fifth Avenue, Suite 2000  
12 Seattle, WA 98104

13 Agreed to and approved for entry by:  
14 CAJUN OPERATING COMPANY  
15 (CHURCH'S CHICKEN)

16   
17 Anthony Todaro  
18 DLA PIPER LLP (US)  
19 701 Fifth Avenue, Suite 7000  
20 Seattle, Washington 98104-7044

21   
22 David H. Bamberger  
23 DLA PIPER LLP (US)  
24 500 8th Street, NW  
25 Washington, DC 20004

26 CAJUN OPERATING COMPANY  
(CHURCH'S CHICKEN)  
ASSURANCE OF DISCONTINUANCE - 2

  
CRAIG S. PRUSHER  
EXECUTIVE VICE PRESIDENT  
CHIEF LEGAL OFFICER

CAJUN OPERATING COMPANY  
CAJUN GLOBAL LLC (CHURCH'S  
CHICKEN)

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

## **EXHIBIT A**

Form Letter to Church's Chicken Franchisees in the State of Washington

Dear [Franchisee Name]

In February 2018, Church's Chicken 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 Church's Chicken 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 Church's Chicken 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 Church's Chicken will not enforce any such provisions in any of our existing franchise agreements for restaurants located 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 restaurants located 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 Church's Chicken 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**  
**CAJUN GLOBAL LLC (CHURCH'S CHICKEN) LICENSE AGREEMENT**

The Church's Chicken Franchise Agreement between Cajun Global LLC ("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 the sub-sections described in Appendix A attached hereto. 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 Effective Date (defined below) of this Amendment, You and We agree that the sub-sections described in Appendix A attached hereto are hereby deleted from each Franchise Agreement and are 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").

**CAJUN GLOBAL LLC**

**[FRANCHISEE'S NAME]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Appendix A

**Provisions being deleted:**

**License Agreements for Restaurants Nos. 10538 and 10333**

Subsections 17(D)(2)(b) and (c), 17(D)(3)(b)

**License Agreement for Restaurant No. 10474**

Subsections 17(C)(2)(b), 17(C)(3)(b)