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EXP07

FILED
KING COUNTY, WASHINGTON

AUG 20 2018

SUPERIOR COURT CLERK

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO POACHING
PROVISIONS

NO. **18-2-20767-3**

FIVE GUYS FRANCHISOR, 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 an investigation into Five Guys Enterprises, LLC relating to certain provisions of its franchise agreements.

1.2 Prior to June 2017, Five Guys Enterprises, LLC was the franchisor in the United States of the FIVE GUYS® BURGERS AND FRIES fast casual restaurant concept.

1.3 In June 2017, all existing FIVE GUYS® BURGERS AND FRIES franchise agreements relating to restaurants in the United States were transferred to Five Guys Franchisor, LLC, a newly formed affiliate of Five Guys Enterprises, LLC, which thereafter became the franchisor of the FIVE GUYS® BURGERS AND FRIES fast casual restaurant concept ("FRANCHISOR").

1 1.4 FRANCHISOR is a Delaware limited liability company with its principal office
2 or place of business in Lorton, Virginia.

3 1.5 FRANCHISOR as used in this AOD, includes its directors, officers, managers,
4 agents acting within the scope of their agency, and employees as well as its successor and
5 assigns, controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures.

6 II. INVESTIGATION

7 2.1 There are currently 26 FIVE GUYS® BURGERS AND FRIES restaurants in
8 Washington State, all of which are owned and operated by franchisees.

9 2.2 For years, FRANCHISOR has included language in its franchise agreements
10 that conditioned or restricted the franchisee's ability to solicit or hire workers from another
11 FIVE GUYS® BURGERS AND FRIES franchisee-owned or FRANCHISOR-owned restaurant
12 under certain circumstances ("no-poach provision"). Specifically, FRANCHISOR'S standard
13 franchise agreement provides that (i) if a franchisee hires a manager or recent manager of
14 another FIVE GUYS® BURGERS AND FRIES restaurant, the former employer shall be
15 entitled to compensation for the reasonable costs and expenses that it incurred in connection
16 with the training of the manager hired, and (ii) for two years after the termination or expiration
17 of the franchise agreement, the franchisee is not to employ or seek to employ an employee or
18 recent employee of FRANCHISOR or any other FIVE GUYS® BURGERS AND FRIES
19 franchisee.

20 2.3 The Attorney General asserts that the foregoing conduct constitutes a contract,
21 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,
22 RCW 19.86.030.

23 2.4 FRANCHISOR expressly denies that the conduct described above constitutes a
24 contract, combination, or conspiracy in restraint of trade in violation of the Consumer
25 Protection Act, RCW 19.86.030, or any other law, and expressly denies that it has engaged in
26 conduct that constitutes a contract, combination, or conspiracy in restraint of trade.

1 FRANCHISOR enters into this AOD to avoid protracted and expensive litigation. Pursuant to
2 RCW 19.86.100, neither this AOD nor its terms shall be construed as an admission of law,
3 fact, liability, misconduct, or wrongdoing on the part of FRANCHISOR.

4 **III. ASSURANCE OF DISCONTINUANCE**

5 3.1 Subject to paragraph 2.4 above, FRANCHISOR agrees:

6 3.1.1. It will no longer include no-poach provisions in any of its future
7 franchise agreements;

8 3.1.2. It will no longer enforce the no-poach provisions of its existing franchise
9 agreements, and will not seek to intervene or defend in any way the legality of any no-poach
10 provision in any litigation in which a franchisee may claim third-party beneficiary rights to
11 enforce an existing no-poach provision;

12 3.1.3. It will notify all of its Washington State franchisees of the entry of this
13 AOD and provide them a copy;

14 3.1.4. It will notify the Attorney General's Office if it learns of any effort by a
15 Washington State franchisee to enforce any existing no-poach provision after having been
16 advised by FRANCHISOR of the existence of this AOD.

17 3.2 Within 90 days of entry of this AOD, FRANCHISOR will attempt to have
18 amended all existing franchise agreements with entities in Washington State to remove any no-
19 poach provisions in its existing franchise agreements. FRANCHISOR will respond promptly
20 to any inquiries from such franchisees regarding the request to amend the terms of the
21 franchise agreement and will encourage its current franchisees in the State of Washington to
22 sign the proposed amendment. If any franchise owner in Washington State is unwilling to
23 consent to the amendment of its franchise agreement prior to the 90-day deadline,
24 FRANCHISOR shall provide the name and address of the resisting franchisee and the name
25 and address of the franchisee's registered agent to the Office of the Attorney General.
26

1 Attorney General has approved of, or has otherwise sanctioned, the conduct described in
2 Paragraph 2.2 with respect to the no-poach provision in FRANCHISOR's franchise agreement.
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4

5 4.4 This AOD resolves all issues raised by the State of Washington and the Antitrust
6 Division of the Attorney General's Office under the Consumer Protection Act and any other
7 related statutes pertaining to the acts set forth in paragraph 2.1 – 2.3 above that may have occurred
8 before the date of entry of this AOD and concludes the investigation thereof. Subject to
9 paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's
10 Office shall not file suit or take any further investigative or enforcement action with respect to the
11 acts set forth above that occurred before the date of entry of this AOD.

12
13 APPROVED ON this _____ day of 8/20, 2018.

14
15 HENRY H. JUDSON

16 AUG 20 2018

17 COURT COMMISSIONER
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JUDGE/COURT COMMISSIONER

1 Presented by:

2 ROBERT W. FERGUSON

3 Attorney General


4 FOR: WSBA: 38051

5 ERIC S. NEWMAN, WSBA #

6 Assistant Attorney General

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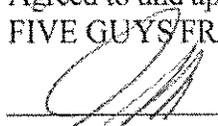
12 Seattle, WA 98104

13 ph

14 em

15 Agreed to and approved for entry by:

16 FIVE GUYS FRANCHISOR, LLC

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By: Jane K. Murrell

Title: Secretary/Treasurer

GP:4811-9188-0302 v3