FILED
KING COUNTY, WASHINGTON

AUG 20 2018

EXP07

SUPERIOR COURT CLERK

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO POACHING PROVISIONS

NO. 18-2-20768-1

LITTLE CAESAR ENTERPRISES, INC. 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 to 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 Little Caesar Enterprises, Inc. ("Little Caesar"). The investigation relates to a provision in Little Caesar's franchise agreements that states that franchisees should not seek to employ those who have been employed at the managerial level in the past six months by Little Caesar or, in some cases, other franchisees.

1.2 Little Caesar is a Michigan corporation with its principal place of business in Detroit, Michigan. It enters into franchise agreements with franchisees who operate independently owned and managed restaurants using Little Caesar's trademarks and trade name.

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(206) 464-7744

1.3 "Little Caesar" includes Little Caesar's directors, officers, managers, agents acting within the scope of their agency, and employees, as well as its successor and assigns, controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures. "Little Caesar" does not include independent franchisees.

II. INVESTIGATION

2.1 There are ninety Little Caesars restaurants in Washington. All of these restaurants are owned and operated by independent franchisees; none are owned or operated by Little Caesar.

2.2 For a number of years, Little Caesar included language in Section 15.2.3 of its franchise agreements that provided that franchisees may not employ or seek to employ any person who served in a managerial position during the prior six months at a restaurant owned by any other franchisee or by Little Caesar. Since 2017, Section 15.2.3 has applied only to persons at the level of restaurant general manager or above who worked for Little Caesar during the prior six months.

2.3 The Attorney General asserts that Section 15.2.3 constitutes a contract, combination, or conspiracy in restraint of trade in violation of the Washington Consumer Protection Act, RCW 19.86.030.

2.4 Little Caesar expressly denies that Section 15.2.3 violates the Consumer Protection Act, RCW 19.86.030, or any other law. It further denies that Section 15.2.3 had any adverse effect on competition in the industry or on the wages earned by its own or its franchisees' employees. Little Caesar enters into this AOD to avoid protracted and expensive litigation. Pursuant to RCW 19.86.100, neither this AOD nor its terms shall be construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part of Little Caesar.

III. ASSURANCE OF DISCONTINUANCE

3.1 Subject to paragraph 2.4 above, Little Caesar agrees:

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3.1.1 It will no longer include Section 15.2.3 or similar provisions in any of its future franchise agreements in the United States;

3.1.2 It will no longer enforce Section 15.2.3 or similar provisions in any of its existing franchise agreements in the United States, nor seek to intervene in any litigation in the United States where a franchisee has claimed third-party beneficiary status rights to enforce Section 15.2.3 or similar provisions;

3.1.3 It will notify all of its franchisees in the United States of the entry of this AOD and make a copy of it available to them;

3.1.4 It will notify the Attorney General's Office if it learns of any effort by a franchisee in Washington to enforce franchise agreement provisions similar to Section 15.2.3.

3.2 Within 21 days of entry of this AOD, Little Caesar will send a letter to all of its current franchisees with restaurants located in the State of Washington, stating that the Attorney General has requested that Section 15.2.3 be removed from existing franchise agreements. The letter will be substantially in the form of the letter attached hereto as Exhibit A and will enclose a proposed franchise agreement amendment removing Section 15.2.3, attached hereto as Exhibit B. The letter will contain language encouraging its recipients to sign the proposed amendment.

3.2.1 Little Caesar has no obligation to offer its franchisees any consideration—monetary or otherwise—in order to induce them to sign the proposed amendment, or to take any adverse action against such franchisees if they refuse to do so;

3.2.2 Within 120 days of entry of this AOD, Little Caesar will provide copies of all executed amendments it has obtained with its current franchisees in the State of Washington to the Attorney General's Office. If any franchisee does not sign the amendment to its franchise agreement, Little Caesar will provide the name and address of the non-signing franchisee and the name and address of the franchisee's registered agent to the Office of the Attorney General;

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3.2.3 If Little Caesar learns that a current franchisee in the State of Washington intends in good faith to sign the proposed amendment but is unable to do so within the time period specified in Paragraph 3.2.2, Little Caesar may notify the Attorney General's Office to seek a mutually agreeable extension. During any such extension, the Attorney General's Office will not take further investigative or enforcement action against that franchisee.

3.3 Little Caesar will remove Section 15.2.3 from its new franchise agreements executed anywhere in the United States after the date of this AOD, including any renewal franchise agreements, unless expressly prohibited by law.

3.4 Within 30 days of the conclusion of the time period referenced in section 3.2.2, Little Caesar will submit a declaration to the Attorney General's Office signed under penalty of perjury stating that all provisions of this AOD have been satisfied or, if circumstances beyond Little Caesar's control prevent satisfaction of any paragraph within the specified time frame, Little Caesar will describe its efforts to satisfy the paragraph's requirements and the relevant extenuating circumstances.

IV. ADDITIONAL PROVISIONS

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

4.2 This is a voluntary agreement and it shall not be construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part of Little Caesar. By entering into this AOD, Little Caesar neither agrees nor concedes that the claims, allegations, and/or causes of action that have or could have been asserted by the Attorney General have merit and Little

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Caesar expressly denies any such claims, allegations, and/or causes of action. However, proof of failure to comply with this AOD shall be *prima facie* evidence of a violation of RCW 19.86.030, thereby placing upon the violator the burden of defending against imposition by the Court of injunctions, restitution, costs and reasonable attorney's fees, and civil penalties of up to $2,000.00 per violation.

4.3 Little Caesar will not, nor will it authorize any of its officers, employees, representatives, or agents to, state or otherwise contend that the State of Washington or the Attorney General has approved of, or has otherwise sanctioned, the conduct described in Paragraph 2.2 with respect to Section 15.2.3 in Little Caesar's franchise agreement.

4.4 This AOD resolves all issues raised by the State of Washington and the Antitrust Division of the Attorney General's Office under the Consumer Protection Act and any other statutes or law pertaining to the acts set forth above that may have occurred before the date of entry of this AOD, and concludes the investigation thereof. Subject to paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's Office shall not file suit or take any further investigative or enforcement action or seek any monetary relief against Little Caesar with respect to the acts set forth above that occurred before the date of entry of this AOD. Further, the State of Washington and the Antitrust Division of the Attorney General's Office shall not file suit or take any further investigative or enforcement action or seek any monetary relief with respect to the acts set forth above against independent franchisees who operate Little Caesars restaurants in Washington, if those franchisees agree to the amendment described in paragraph 3.2 above within 120 days of the entry of this AOD.

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

HENRY H. JUDSON

AUG 20 2018

JUDGE/COURT COMMISSIONER

COURT COMMISSIONER

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Agreed to and approved for entry by:
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Exhibit A

August __, 2018

Franchisee name
Address
City, State, ZIP
Attention:

Re: **NOTICE OF AMENDMENT OF FRANCHISE AGREEMENTS**

Dear Franchisee:

The Attorney General for the State of Washington has recently undertaken an investigation into certain clauses in franchise agreements that restrict hiring or solicitation of employees. Earlier this year, as part of that investigation, the Washington Attorney General sent an inquiry to Little Caesar and a number of other franchisors who sell franchises in the State of Washington. After significant negotiations, Little Caesar has entered into an Assurance of Discontinuance to resolve the investigation. This communication, sent to all franchisees in Washington, was an agreed-upon component of that resolution, and we ask that you give it your full consideration.

As you know, Section 15.2.3 of each franchise agreement contains language restricting your ability to hire managerial employees currently or recently employed by Little Caesar and, in some cases, other franchisees. Little Caesar denies that this clause, or its enforcement, is unlawful in any way, or harmful to Little Caesar franchisees or their employees. Nevertheless, to avoid costly and protracted litigation and because it has determined that it is in the best interests of the franchise system, Little Caesar has agreed not to enforce the clause nationwide, to remove it from new franchise agreements and renewals, and to amend its Washington franchise agreements through the attached Amendment.

PLEASE NOTE: The Washington Attorney General has agreed that if you sign the attached Amendment, it will not file suit against you, or take any investigative or enforcement action against you, for conduct related to Section 15.2.3, up to the date when you sign the Amendment. Under the Assurance of Discontinuance, by [INSERT DATE], Little Caesar is required to provide to the Washington Attorney General a list of all franchisees who decline to sign the Amendment, and the Attorney General has reserved its right to take any enforcement action that it deems appropriate against such franchisees. Little Caesar also is required to notify the Attorney General if it learns of any effort by a franchisee in Washington to enforce Section 15.2.3. Please review the amendment with your attorney and return the executed amendment to XXX as

soon as possible but no later than DATE, so that Little Caesar will have sufficient time to notify the Attorney General of your compliance.

While you should consult with your attorney, we encourage you to sign the enclosed amendment to avoid enforcement action by the Washington Attorney General. If you have any questions regarding the amendment or this Notice, or if you would like a copy of the Assurance of Discontinuance, please contact XXX.

Sincerely,

LITTLE CAESAR ENTERPRISES, INC.

Erin Martin
Vice President and General Counsel

Exhibit B

AMENDMENT TO LITTLE CAESARS® FRANCHISE AGREEMENTS

The Franchise Agreements for the LITTLE CAESARS® franchised restaurants in the State of Washington between Little Caesar Enterprises, Inc. ("LCE") and the undersigned franchisee ("Franchisee") are each amended in accordance with the following terms

1. LCE and Franchisee are parties to the Franchise Agreements listed on Exhibit A to this Amendment and incorporated herein by reference (as hereby amended, the "Franchise Agreements"), and Franchisee operates or will operate a franchised Little Caesars outlet in the State of Washington under each Franchise Agreement.
2. LCE has the right under Section 15.5 of the Franchise Agreements to reduce the scope of any covenant or any portion thereof set forth in Sections 15.2 and 15.3 of the Franchise Agreements, without Franchisee's consent, effective immediately upon receipt by Franchisee of written notice thereof; and Franchisee agrees that it shall comply forthwith with any covenant as so modified, which shall be fully enforceable notwithstanding the provisions of Section 21 of the Franchise Agreements
3. LCE has determined that it is in the best interests of the franchise system to delete and not to enforce Section 15.2.3 of the Franchise Agreement. The purpose of this Amendment is to document this change.
4. As of the Effective Date (defined below) of this Amendment, Franchisee and LCE agree that Section 15.2.3 is deleted from the Franchise Agreements and is of no further force or effect.
5. Except as specifically modified by this Amendment, the terms of the Franchise Agreements remain in full force and effect. This document is an amendment to, and forms a part of, the Franchise Agreements. If there is an inconsistency between this Amendment and the Franchise Agreements, the terms of this Amendment will control. This Amendment constitutes the entire agreement between Franchisee and LCE relating to the subject matter of this Amendment, 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 on the parties 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, Franchisee and LCE have executed and delivered this Amendment effective as of _____, 2018 (the "Effective Date").

FRANCHISEE **(Franchise #_____)**

By: _____

Title: _____

LITTLE CAESAR ENTERPRISES, INC.

By: _____

Title: _____