

**FILED**  
KING COUNTY, WASHINGTON

**EXP07**

AUG 20 2018

SUPERIOR COURT OF WASHINGTON  
KING COUNTY SUPERIOR COURT

SUPERIOR COURT CLERK

No.

**18-2-20762-2SEA**

IN RE: FRANCHISE NO POACHING  
PROVISIONS

SONIC FRANCHISING 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 to RCW 19.86.100.

### I. PARTIES

1.1 In January 2018, the Attorney General initiated an investigation into Sonic Franchising LLC ("Sonic") relating to certain provisions in its franchise agreement.

1.2 Sonic is a Delaware limited liability company with its principal offices or place of business in Oklahoma City, Oklahoma. Sonic is a franchisor, and its company-owned and franchisee operated locations are in the business of offering hot dogs, hamburgers, other sandwiches and other food and beverage products for sale to consumers.

1.3 For purposes of this AOD, Sonic 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 and predecessor franchisor entities.

### II. INVESTIGATION

2.1 There are sixteen Sonic restaurants located in the State of Washington as of the date hereof. All of these restaurants are independently owned and operated by franchisees.

2.2 Since 2013, the franchise agreements entered into between Sonic and its franchisees have provided that franchisees subject to such agreements may not solicit employees of Sonic to terminate or reduce their employment with Sonic. Specifically, the franchise agreement states: "During the term of this License, Licensee shall not employ or

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1 seek to employ any person who is at the time employed by SONIC or any its subsidiaries in  
2 a management level position. In addition, during the term of this License, SONIC agrees not  
3 to employ or seek to employ any person who is at the time employed by Licensee in a  
4 management level position. This Subsection 6.08 shall not be violated if such person has  
5 left the employ of any of the foregoing parties for period in excess of six months" or similar  
6 language (the "No-Solicitation Provision").

7       2.3     The Attorney General asserts that the foregoing conduct of Sonic constitutes a  
8 contract, combination, or conspiracy in restraint of trade in violation of the Consumer  
9 Protection Act, RCW 19.86.030.

10       2.4     Sonic expressly denies that the conduct described above constitutes a contract,  
11 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,  
12 RCW 19.86.030, or any other law or regulation, and expressly denies it has engaged in conduct  
13 that constitutes a contract, combination, or conspiracy in restraint of trade, or violates any other  
14 law or regulation. Sonic enters into this AOD to avoid protracted and expensive litigation.  
15 Pursuant to RCW 19.86.100, neither this AOD nor its terms shall be construed as an admission  
16 of law, fact, liability, misconduct, or wrongdoing on the part of Sonic or any of its current or  
17 former franchisees.

### 18                                   III.    ASSURANCE OF DISCONTINUANCE

19       3.1     Subject to Paragraph 2.4 above, Sonic agrees:

20               3.1.1    It will no longer include the No-Solicitation Provision in any of its  
21 franchise agreements for restaurants located in the United States,

22               3.1.2    It will not enforce the No-Solicitation Provision in any of its existing  
23 franchise agreements for restaurants located in the United States or any franchise agreements  
24 for restaurants located in the United States and will not seek to intervene in any action brought  
25 by the Attorney General's Office against a current franchisee in Washington to defend an  
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1 existing No-Solicitation Provision, provided such action is brought in accordance with, and  
2 consistent with, the provisions of this AOD.

3           3.1.3 It will notify all of its current franchisees in the United States of the entry  
4 of this AOD and make a copy available to them.

5           3.1.4 If, after the 21-day period set forth in Paragraph 3.2 below, Sonic  
6 becomes aware of a franchisee with a restaurant located in the State of Washington attempting  
7 to enforce the No-Solicitation Provision, and Sonic is unable to persuade such franchisee to  
8 desist from enforcing or attempting to enforce such provision, Sonic will notify the Attorney  
9 General.

10          3.2 Within 21 days of entry of this AOD, Sonic will send a letter to all of its current  
11 franchisees with restaurants located in the State of Washington, stating that the Attorney  
12 General has requested that the existing No-Solicitation Provision be removed from existing  
13 franchise agreements. The letter that Sonic will send to its current franchisees in the State of  
14 Washington will be substantially in the form of the letter attached hereto as Exhibit A. That  
15 letter will enclose the proposed amendment that Sonic is requesting that each of its franchisees  
16 in the State of Washington agree to, which amendment will remove the No-Solicitation  
17 Provision. The proposed amendment that will be included with each letter will be substantially  
18 in the form of the amendment attached hereto as Exhibit B.

19          3.3 In addition to sending the letter to its current franchisees in the State of  
20 Washington pursuant to Paragraph 3.2 above, Sonic will respond promptly to any inquiries  
21 from such franchisees regarding the request to amend the terms of the franchise agreement and  
22 will encourage its current franchisees in the State of Washington to sign the proposed  
23 amendment. However, for the avoidance of doubt, Sonic is under no obligation to offer its  
24 franchisees any consideration—monetary or otherwise -- in order to induce them to sign the  
25 proposed amendment, or take any adverse action against such franchisees if they refuse to do  
26 so. Within 120 days of entry of this AOD, Sonic will provide copies of all executed

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1 amendments it has obtained with its current franchisees in the State of Washington to the  
2 Attorney General's Office. A decision by a franchisee not to amend its franchise agreement, or  
3 not to do so within 120 days of this AOD, shall not mean that Sonic has not complied with its  
4 obligations under this AOD.

5 3.4 If Sonic learns that a current franchisee in the State of Washington intends in  
6 good faith to sign the proposed amendment but is unable to do so within the time period  
7 specified in Paragraph 3.3, Sonic will notify the Attorney General's Office to seek a mutually  
8 agreeable extension. During any such extension, the Attorney General's Office will not take  
9 further investigative or enforcement action against a franchisee.

10 3.5 As they come up for renewal during the ordinary course of business, Sonic will  
11 remove the No-Solicitation Provision from all of its existing franchise agreements in the United  
12 States with its franchisees on a nationwide basis, unless expressly prohibited by law; provided,  
13 however, if a franchisee refuses to sign the renewal that removes the No-Solicitation Provision  
14 from the franchise agreement, it shall not mean that Sonic has not complied with its obligations  
15 under this AOD. In addition, Sonic will not include the No-Solicitation Provision in any  
16 franchise agreement it signs in the United States after the date of this AOD.

17 3.6 Within 30 days of the conclusion of the time periods referenced in paragraph  
18 3.3, Sonic will submit a declaration to the Attorney General's Office signed under penalty of  
19 perjury stating whether all provisions of this agreement have been satisfied.

#### 20 IV. ADDITIONAL PROVISIONS

21 4.1 This AOD is binding on, and applies to Sonic, including each of its respective  
22 directors, officers, managers, agents acting within the scope of their agency, and employees, as  
23 well as their respective successors and assigns, controlled subsidiaries, predecessor franchisor  
24 entities, or other entities through which Sonic may now or hereafter act with respect to the  
25 conduct alleged in this AOD.

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1           4.2     This is a voluntary agreement and it shall not be construed as an admission of  
2 law, fact, liability, misconduct, or wrongdoing on the part of Sonic or any of its current or  
3 former franchisees or affiliates. Sonic and its current and former franchisees neither agree nor  
4 concede that the claims, allegations and/or causes of action which have or could have been  
5 asserted by the Attorney General have merit and Sonic and its current and former franchisees  
6 expressly deny any such claims, allegations, and/or causes of action. However, proof of failure  
7 to comply with this AOD shall be *prima facie* evidence of a violation of RCW 19.86.030,  
8 thereby placing upon the violator the burden of defending against imposition by the Court of  
9 injunctions, restitution, costs and reasonable attorney's fees, and civil penalties of up to  
10 \$2,000.00 per violation.

11           4.3     Sonic will not, nor will it authorize any of its officers, employees,  
12 representatives, or agents to, state or otherwise contend that the State of Washington or the  
13 Attorney General has approved of, or has otherwise sanctioned, the conduct described in  
14 Paragraph 2.2 with respect to the No-Solicitation Provision in Sonic franchise agreement.

15           4.4     This AOD resolves all issues raised by the State of Washington and the Antitrust  
16 Division of the Attorney General's Office under the Consumer Protection Act and any other  
17 related statutes pertaining to the acts of Sonic and its current and former franchisees as set forth  
18 in Paragraph 2.1 — 2.3 above that may have occurred before the date of entry of this AOD, or  
19 that occur between the date of the entry of this AOD and the conclusion of the 120-day period  
20 identified in Paragraph 3.3 above, and concludes the investigation thereof. Subject to  
21 Paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's  
22 Office shall not file suit or take any further investigative or enforcement action with respect to  
23 the acts set forth above that occurred before the date of entry of this AOD, or that occurs  
24 between the date of the entry of this AOD and the conclusion of the 120 day period identified  
25 in Paragraph 3.3 above, against Sonic or any of its current franchisees in the State of  
26 Washington that sign the proposed amendment described in Section III, any of its former

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1 franchisees in the State of Washington, or any of its current or former franchisees located  
2 outside the State of Washington. The Attorney General reserves the right to take further  
3 investigative or enforcement action against any current franchisee in the State of Washington  
4 identified pursuant to Paragraph 3.1.4 or any current franchisee in the State of Washington that  
5 does not sign the proposed amendment described in Section III.

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APPROVED ON this \_\_\_ day of July

  
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JUDGE/COURT COMMISSIONER

**HENRY H. JUDSON**

AUG 20 2018

COURT COMMISSIONER

SONIC FRANCHISING LLC  
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1 Presented by:

2 ROBERT W. FERGUSON  
3 Attorney General

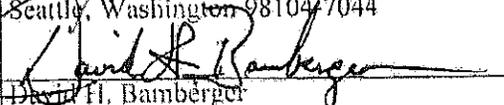
3 ~~For:~~ *WSA: 38051*

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

8 Agreed to and approved for entry by:  
9 SONIC FRANCHISING LLC

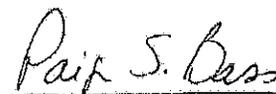
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11 PAIGE S. BASS  
12 SENIOR VICE PRESIDENT AND  
13 GENERAL COUNSEL  
14 SONIC FRANCHISING LLC

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# EXHIBIT A

Form Letter to Sonic Franchising LLC Franchisees in the State of Washington

Dear [Franchisee Name]

In February 2018, Sonic 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 Sonic 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 Sonic 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 Sonic will not enforce any such provisions in any of our existing franchise agreements 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 locations 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 Sonic 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 Bill Dyke, Sonic's Assistant General Counsel, at [bill.dyke@sonicdrivein.com](mailto:bill.dyke@sonicdrivein.com).

If you receive any media inquiries regarding this matter, please refer them to Christi Woodworth, Vice President of Public Relations, at [christi.woodworth@sonicdrivein.com](mailto:christi.woodworth@sonicdrivein.com).

Paige S. Bass  
Senior Vice President and General Counsel  
Sonic Corp. and Subsidiaries  
300 Johnny Bench Drive  
Oklahoma City, OK 73104

**EXHIBIT B**

**AMENDMENT  
TO  
SONIC FRANCHISING LLC LICENSE AGREEMENT**

The Sonic License Agreement(s) between Sonic Franchising LLC ("We") and the undersigned franchisee ("You") listed in Exhibit A hereto (as amended, the "License Agreement(s)") shall be amended in accordance with the following terms.

1. Background. We and you are parties to each License Agreement and you operate one or more franchised outlets in the State of Washington under the License Agreement(s). We have determined that it is in the best interests of the franchise system to not enforce Section 6.08 described below and in Appendix A attached hereto. The purpose of this Amendment to your License 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 License Agreement(s).

2. Modification of Terms. As of the Effective Date (defined below) of this Amendment, you and we agree that Section 6.08 is hereby deleted from each License Agreement, as shown in Appendix A attached hereto, and is of no further force or effect.

3. Miscellaneous. Except as specifically modified by this Amendment, the provisions of the License Agreement(s) shall remain in full force and effect. This document is an amendment to, and forms a part of, each License Agreement. If there is an inconsistency between this Amendment and any License 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").

SONIC FRANCHISING LLC

[FRANCHISEE'S NAME]

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

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

## Appendix A

### Provisions being deleted:

#### License Agreement 6A.1:

Interference with Employment Relations of Others. During the term of this License, Licensee shall not employ or seek to employ any person who is at the time employed by SONIC or any its subsidiaries in a management level position. In addition, during the term of this License, SONIC agrees not to employ or seek to employ any person who is at the time employed by Licensee in a management level position. This Subsection 6.08 shall not be violated if such person has left the employ of any of the foregoing parties for period in excess of six months.

#### License Agreement 7.1:

Interference with Employment Relations of Others. During the term of this Agreement, except upon the prior written consent of Sonic, Licensee shall not employ or seek to employ any person who is at the time or was at any time during the prior six months employed by Sonic or any of its subsidiaries. In addition, during the term of this Agreement, except upon the prior written consent of Licensee, Sonic agrees not to employ or seek to employ any person who is at the time or was at any time during the prior six months employed by Licensee in a management level position.