

EXP07

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO POACHING
PROVISIONS

NO.
18-2-22883-2SEA
POPEYES LOUISIANA KITCHEN,
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 RCW 19.86.100.

I. PARTIES

1.1 In January 2018, the Attorney General initiated an investigation into Popeyes Louisiana Kitchen, Inc. ("PLKI") relating to certain provisions in its franchise agreements.

1.2 PLKI is a Minnesota corporation with its principal offices or place of business in Miami, Florida. PLKI is a franchisor, and its corporate and franchisee operated locations are in the business of offering fried chicken, among other food products, for sale to consumers.

1.3 For purposes of this AOD, PLKI shall include its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its successor and assigns, controlled subsidiaries, and predecessor franchisor entities.

II. INVESTIGATION

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
4 entry of this AOD and make a copy available to them;

5 3.1.4. If, after the 30 day period set forth in Paragraph 3.2 below, PLKI
6 becomes aware of a franchisee with a store located in the State of Washington attempting to
7 enforce the No-Solicitation Provision, and PLKI is unable to persuade such franchisee to desist
8 from enforcing or attempting to enforce such provision, PLKI will notify the Attorney General.

9 3.2 Within 30 days of entry of this AOD, PLKI will send a letter to all of its current
10 franchisees with stores located in the State of Washington, stating that the Attorney General
11 has requested that the existing No-Solicitation Provision be removed from existing franchise
12 agreements. The letter that PLKI will send to its current franchisees in the State of Washington
13 will be substantially in the form of the letter attached hereto as Exhibit A. That letter will
14 enclose the proposed amendment that PLKI is requesting that each of its franchisees in the
15 State of Washington agree to, which amendment will remove the No-Solicitation Provision.
16 The proposed amendment that will be included with each letter will be substantially in the
17 form of the amendment attached hereto as Exhibit B.

18 3.3 In addition to sending the letter to its current franchisees in the State of
19 Washington pursuant to Paragraph 3.2 above, PLKI will respond promptly to any inquiries
20 from such franchisees regarding the request to amend the terms of the franchise agreement and
21 will encourage its current franchisees in the State of Washington to sign the proposed
22 amendment. However, for the avoidance of doubt, PLKI is under no obligation to offer its
23 franchisees any consideration—monetary or otherwise—in order to induce them to sign the
24 proposed amendment, or take any adverse action against such franchisees if they refuse to do
25 so. Within 120 days of entry of this AOD, PLKI will provide copies of all executed
26 amendments it has obtained with its current franchisees in the State of Washington to the

1 Attorney General's Office. A decision by a franchisee not to amend its franchise agreement, or
2 not to do so within 120 days of this AOD, shall not constitute a breach by PLKI of its
3 obligations under this AOD or a failure by PLKI to comply with this AOD.

4 3.4 If PLKI learns that a current franchisee in the State of Washington intends in
5 good faith to sign the proposed amendment but is unable to do so within the time period
6 specified in Paragraph 3.3, PLKI will notify the Attorney General's Office to seek a mutually
7 agreeable extension. During any such extension, the Attorney General's Office will not take
8 further investigative or enforcement action against a franchisee.

9 3.5 In addition, as they come up for renewal during the ordinary course of business,
10 PLKI will remove the No-Solicitation Provision from all of its existing franchise agreements in
11 the United States with its franchisees on a nationwide basis, unless expressly prohibited by
12 law.

13 3.6 Within 30 days of the conclusion of the time period referenced in Paragraph 3.3,
14 PLKI will submit a declaration to the Attorney General's Office signed under penalty of
15 perjury stating whether all provisions of this agreement have been satisfied.

16 IV. ADDITIONAL PROVISIONS

17 4.1 This AOD is binding on, and applies to PLKI, including each of its respective
18 directors, officers, managers, agents acting within the scope of their agency, and employees, as
19 well as their respective successors and assigns, controlled subsidiaries, predecessor franchisor
20 entities, or other entities through which PLKI may now or hereafter act with respect to the
21 conduct alleged in this AOD.
22

23 4.2 This is a voluntary agreement and it shall not be construed as an admission of
24 law, fact, liability, misconduct, or wrongdoing on the part of PLKI or any of its current or
25 former franchisees. PLKI and its current and former franchisees neither agree nor concede that
26 the claims, allegations and/or causes of action which have or could have been asserted by the

1 Attorney General have merit, and PLKI and its current and former franchisees expressly deny
2 any such claims, allegations, and/or causes of action. However, proof of failure to comply with
3 this AOD shall be *prima facie* evidence of a violation of RCW 19.86.030, thereby placing upon
4 the violator the burden of defending against imposition by the Court of injunctions, restitution,
5 costs and reasonable attorney's fees, and civil penalties of up to \$2,000.00 per violation.

6 4.3 PLKI will not, nor will it authorize any of its officers, employees, representatives,
7 or agents to, state or otherwise contend that the State of Washington or the Office of the Attorney
8 General has approved of, or has otherwise sanctioned, the conduct described in Paragraph 2.2
9 with respect to the No-Solicitation Provision in PLKI's franchise agreement.

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

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APPROVED ON this _____ day of 9/13, 2018.



JUDGE/COURT COMMISSIONER

HENRY H. JUDSON

SEP 13 2018

COURT COMMISSIONER

1 Presented by:

2 ROBERT W. FERGUSON
3 Attorney General



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

11 Agreed to and approved for entry by:
12 POPEYES LOUISIANA KITCHEN, INC.



13 ANTHONY TODARO, WSBA #30391
14 DLA PIPER LLP (US)
15 701 Fifth Avenue, Suite 7000
16 Seattle, WA 98104-7044
17 (206) 839-4830

18 *Attorneys for Popeyes Louisiana Kitchen, Inc.*



19 SETH FINCK
20 Counsel, Franchising, and Real Estate US
21 *Popeyes, Burger King, & Tim Hortons Brands*

EXHIBIT A

Dear Popeyes Franchisee,

In February 2018, Popeyes Louisiana Kitchen, Inc. ("PLKI") 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 PLKI 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 PLKI will, among other things, no longer include in any U.S. franchise agreement or renewal signed after the date of our agreement with the Attorney General's Office any provisions that restrict the hiring or solicitation of employees. The agreement also provides that PLKI 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 PLKI 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

Sincerely,

Popeyes Louisiana Kitchen, Inc.

EXHIBIT B

AMENDMENT TO FRANCHISE AGREEMENTS

The franchise agreement(s) between Popeyes Louisiana Kitchen, Inc. ("We") and the undersigned franchisee ("You") listed in Exhibit A hereto (as at any time amended, the "Franchise Agreement(s)") shall be amended in accordance with the following terms.

1. Background. We and You are parties to the Franchise Agreement(s), 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 Sections 13.02.B. and Section 13.03.B. of the Franchise Agreement(s) as described below. For your reference only, the language of Sections 13.02.B. and Section 13.03.B. as set forth in our franchise disclosure document as of September 1, 2018, is set forth on Appendix A attached hereto. The purpose of this Amendment is to document this change.

2. Amendment of Franchise Agreements. As of the Effective Date (defined below) of this Amendment, We and You hereby agree that Sections 13.02.B. and Section 13.03.B. are hereby deemed deleted from each Franchise Agreement and are of no further force or effect; provided, that, for the avoidance of doubt, the introductory language preceding such sections will not be deleted and shall remain in full force and 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 two or more counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, and shall become effective when one or more counterparts have been signed by each of the parties and delivered (by telecopy, electronic delivery or otherwise) to the other parties. Signatures to this Amendment transmitted by facsimile transmission, by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Amendment, effective as of _____, 2018 (the "Effective Date").

**POPEYES LOUISIANA KITCHEN,
INC.**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

APPENDIX A

13.02. Franchisee acknowledges that, pursuant to this Agreement, Franchisee will receive valuable specialized training and confidential information, including information regarding the operational, sales, promotional, and marketing methods, procedures and techniques of Franchisor and the System. Franchisee covenants that, during the term of this Agreement, Franchisee (who, unless otherwise specified, shall include, for purposes of this Section XIII, collectively and individually: (i) all officers, directors and holders of a legal or beneficial interest of ten percent (10%) or more of the securities with voting rights of Franchisee and of any corporation, directly or indirectly controlling Franchisee, if Franchisee is a corporation; and (ii) the general partner and any limited partners of Franchisee, including any corporation, and the officers, directors and holders of a legal or beneficial interest of ten percent (10%) or more of the securities with voting rights of a corporation which controls, directly or indirectly, any general or limited partner of Franchisee, if Franchisee is a partnership, and (3) any members and managers and holders of a legal or beneficial interest of ten percent (10%) or more of the securities with voting rights of Franchisee and/or any corporation directly or indirectly controlling Franchisee, if Franchisee is a limited liability company) shall not, either directly or indirectly, for itself, or on behalf of, or in conjunction with, any person, persons, partnership, limited liability company, association, corporation, or other entity:

- B. Solicit for employment any person who is, at that time, employed by Franchisor or by any other Popeyes franchisee, or otherwise, directly or indirectly, induce such person to leave his or her employment therewith, provided, that, the foregoing covenant shall not restrict or prohibit Franchisee from (i) making generalized searches for employees (by use of advertisements in print, electronic or social media, the engagement of search firms or otherwise), (ii) continuing its ordinary course hiring practices that are not targeted specifically or directly at employees of Franchisor or any other Popeyes franchisee, or (iii) hiring an employee of Franchisor or any other Popeyes franchisee who first initiates an employment discussion with Franchisee, so long as neither Franchisee nor any of its affiliates have not violated the foregoing covenant regarding solicitation and inducement ((i) through (iii) are hereinafter referred to as the **“Non-Solicitation Exceptions”**). For each instance in which Franchisee or any affiliate of Franchisee hires a manager or assistant manager, or other person who (A) has completed (or is scheduled to complete) PTP for his or her applicable management role at the applicable Popeyes Restaurant, and (B) was employed by Franchisor or another Popeyes franchisee in the same or a contiguous DMA for not less than the immediately preceding twelve (12) consecutive months, then Franchisee shall promptly pay Franchisor or such other Popeyes franchisee (as applicable) the sum of \$5,000, whether or not such hiring violated the foregoing covenant regarding solicitation and inducement. If and to the extent such hiring violated the foregoing covenant, nothing contained herein (including Franchisee’s payment of the foregoing

\$5,000 sum) shall constitute a waiver by Franchisor of any rights or remedies against Franchisee; or

13.03. Franchisee covenants that Franchisee shall not, regardless of the cause for termination, either directly or indirectly, for itself, or through, on behalf of, or in conjunction with any person, persons, partnership, association, corporation or other entity:

- B. Subject to the Non-Solicitation Exceptions set forth in Section 13.02. B., for a period of one (1) year following the termination or expiration of this Agreement, employ or seek to employ any person who is, at the time, employed by Franchisor or by any other Popeyes franchisee, or otherwise, directly or indirectly, induce such person to leave his or her employment therewith.