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7 STATE OF WASHINGTON
8 KING COUNTY SUPERIOR COURT

9 IN RE: FRANCHISE NO POACHING
10 PROVISIONS

11 (MENCHIE'S GROUP, INC.)
12
13

NO.

18-2-57781-1 SDA

MENCHIE'S GROUP, INC.
ASSURANCE OF
DISCONTINUANCE

14 The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney
15 General, and Rahul Rao, Assistant Attorney General, files this Assurance of Discontinuance (AOD)
16 under RCW 19.86.100.

17 I. PARTIES

18 1.1 In January 2018, the Attorney General initiated an investigation into Menchie's
19 Group, Inc. relating to its hiring practices.

20 1.2 Menchie's Group, Inc. is a California corporation with its principal office or place
21 of business in 17555 Ventura Boulevard, Suite 200, Encino, CA. Menchie's Group, Inc. is in the
22 business of franchising Menchie's Frozen Yogurt Stores ("Menchie's Stores").

23 1.3 For the purposes of this AOD, Menchie's Group, Inc. includes its directors,
24 officers, managers, agents acting within the scope of their agency, and employees as well as its
25 successor and assigns, controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint
26 ventures.

MENCHIE'S GROUP, INC.
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ATTORNEY GENERAL OF WASHINGTON
Antitrust Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

II. INVESTIGATION

2.1 Menchie's Group, Inc. does not have any Menchie's Store operating in Washington that are operated by Menchie's Group, Inc. Currently, there are 31 Menchie's Stores located in Washington which are owned and operated by franchisees. In addition, there are 14 Franchise Agreements for Menchie's Stores to be operated in Washington, which have been signed by Menchie's Group, Inc. and franchisees where the Menchie's Stores have not opened yet.

2.2 For years, Menchie's Group, Inc. has included language in its franchise agreements that restricted a franchisee's ability to solicit or hire workers from Menchie's Group, Inc. or its affiliates ("no-poaching provision"). Specifically, the standard Menchie's Group, Inc. franchise agreement stated the following:

You may not employ or seek to employ, directly or indirectly, any person who is at the time or was at any time during the prior 6 months was employed in any type of managerial position by us or our affiliates unless you compensates us for all costs and expenses incurred in losing and replacing the employee up to a maximum of \$25,000, plus attorneys' fees and expenses.

The no-poaching provision restricted franchisees from hiring employees from Menchie's Group, Inc. or its affiliate-owned stores.

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

2.4 Menchie's Group, Inc. expressly denies the conduct described above constitutes a contract, combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act, RCW 19.86.030, or any other law, and expressly denies it has engaged in conduct that constitutes a contract, combination, or conspiracy in restraint of trade. Menchie's Group, Inc. 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 Menchie's Group, Inc.

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1 2.5 Prior to being contacted by the Washington Attorney General's office regarding
2 the no-poaching provision, Menchie's Group, Inc. had already notified by email its franchisees
3 that it will not enforce the no-poaching provision in their Franchise Agreements. Historically,
4 Menchie's Group, Inc. has never enforced the no-poaching provision and in fact, has allowed
5 one of its employee to work for a franchisee without requiring the franchisee to pay Menchie's
6 Group, Inc. any money as provided for under the no-poaching provision.

7 **III. ASSURANCE OF DISCONTINUANCE**

8 3.1 Subject to Paragraph 2.4 above, Menchie's Group, Inc. agrees:

9 3.1.1. It will no longer include no-poaching provisions in any of its future
10 franchise agreements;

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

15 3.1.3. It will notify all of its existing franchisees of the entry of this AOD and
16 provide them a copy upon request by the franchisee;

17 3.1.4. It will notify the Attorney General's Office if it learns of any effort by a
18 franchisee in Washington to enforce any existing no-poaching provision.

19 3.2 Within 90 days of entry of this AOD, Menchie's Group, Inc. will attempt to have
20 all existing franchise agreements with entities in Washington amended to remove any no-
21 poaching provisions in its existing franchise agreements. If any franchise owner is unwilling to
22 consent to the change to its franchise agreement, prior to the 90-day deadline, Menchie's Group,
23 Inc. shall provide the name and address of the resisting franchisee and the name and address of
24 the franchisee's registered agent to the Office of the Attorney General.

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 related statutes pertaining to the acts set forth in Paragraphs 2.1 – 2.3 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 with respect to the acts set forth above that occurred before the date of entry of this AOD.

APPROVED ON this _____ day of _____, 2018.

JUDGE/COURT COMMISSIONER

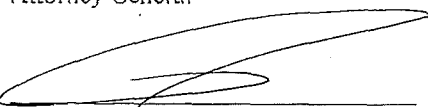
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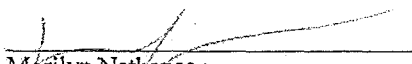
ATTORNEY GENERAL OF WASHINGTON
Antitrust Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

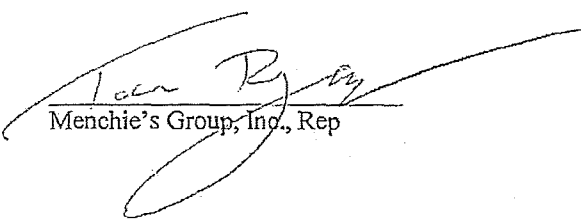
1 Presented by:

2 ROBERT W. FERGUSON
3 Attorney General

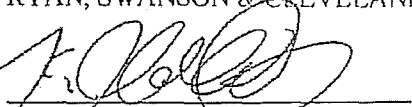
4 
5 RAHUL RAO, WSBA No. 53375
6 Assistant Attorney General
7 Antitrust Division
8 Office of the Attorney General
9 800 Fifth Avenue, Suite 2000
10 Seattle, WA 98104
11 (206) 442-4499
12 rahulr@atg.wa.gov
13 *Attorneys for State of Washington*

14 Agreed to and approved for entry by:
15 Menchie's Group, Inc.

16 
17 Marilyn Nathanson
18 MO Bar No. 27677
19 Lathrop Gage, LLP
20 7701 Forsyth Blvd., Suite 500
21 St. Louis, MO 63105
22 (314) 613-2513
23 mnathanson@lathropgage.com


Menchie's Group, Inc., Rep

24 RYAN, SWANSON & CLEVELAND, PLLC

25 
26 Kevin J. Collette, WSBA No. 10998
1201 Third Avenue, Suite 3400
Seattle, WA 98101-3034
(206) 464-4224
collette@ryanlaw.com
Attorneys for Menchie's Group, Inc.

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