STATE OF WASHINGTON KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO POACHING **PROVISIONS**

(MENCHIE'S GROUP, INC.)

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8-2-57781-1804

MENCHIE'S GROUP, INC. ASSURANCE OF DISCONTINUANCE

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

Ī. **PARTIES**

- In January 2018, the Attorney General initiated an investigation into Menchie's 1.1 Group, Inc. relating to its hiring practices.
- Menchie's Group, Inc. is a California corporation with its principal office or place of business in 17555 Ventura Boulevard, Suite 200, Encino, CA. Menchie's Group, Inc. is in the business of franchising Menchie's Frozen Yogurt Stores ("Menchie's Stores").
- For the purposes of this AOD, Menchie's Group, Inc. includes its 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.

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

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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.

MENCHIE'S GROUP, INC. ASSURANCE OF DISCONTINUANCE ATTORNEY GENERAL OF WASHINGTON Antitrust Division 800 Fifth Avenue, Suite 2000 Senttle, WA 98104-3188 (206) 464-7744 2.5 Prior to being contacted by the Washington Attorney General's office regarding the no-poaching provision, Menchie's Group, Inc. had already notified by email its franchisees that it will not enforce the no-poaching provision in their Franchise Agreements. Historically, Menchie's Group, Inc. has never enforced the no-poaching provision and in fact, has allowed one of its employee to work for a franchisee without requiring the franchisee to pay Menchie's Group, Inc. any money as provided for under the no-poaching provision.

III. ASSURANCE OF DISCONTINUANCE

- 3.1 Subject to Paragraph 2.4 above, Menchie's Group, Inc. agrees:
- 3.1.1. It will no longer include no-poaching provisions in any of its future franchise agreements;
- 3.1.2. It will not enforce no-poaching provisions in any of its existing franchise agreements, and will not seek to intervene or defend in any way the legality of any no-poaching provision in any litigation in which a franchisee may claim third-party beneficiary status rights to enforce an existing no-poaching provision;
- 3.1.3. It will notify all of its existing franchisees of the entry of this AOD and provide them a copy upon request by the franchisee;
- 3.1.4. It will notify the Attorney General's Office if it learns of any effort by a franchisee in Washington to enforce any existing no-poaching provision.
- 3.2 Within 90 days of entry of this AOD, Menchie's Group, Inc. will attempt to have all existing franchise agreements with entities in Washington amended to remove any no-poaching provisions in its existing franchise agreements. If any franchise owner is unwilling to consent to the change to its franchise agreement, prior to the 90-day deadline, Menchie's Group, Inc. shall provide the name and address of the resisting franchisee and the name and address of the franchisee's registered agent to the Office of the Attorney General.

- 3.3 As they come up for either renewal or renegotiation during the ordinary course of business, Menchie's Group, Inc. will amend its existing franchise agreements on a nationwide basis to remove any no-poaching provision.
- 3.4 Within 30 days of the conclusion of the time periods referenced in this section III, Menchie's Group, Inc. will submit a declaration to the Attorney General's Office signed under penalty of perjury stating that all provisions of this agreement have been satisfied.

IV. ADDITIONAL PROVISIONS

- 4.1 This AOD is binding on, and applies to Menchie's Group, Inc. 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 Menchie's Group, Inc. 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 Menchie's Group, Inc. By entering into this AOD, Menchie's Group, Inc. neither agrees nor concedes that the claims, allegations and/or causes of action which have or could have been asserted by the Attorney General have merit and Menchie's Group, Inc. 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 appropriate civil penalties under the Consumer Protection Act.
- 4.3 Menchie's Group, Inc. 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 the no-poaching provision in Menchie's Group, Inc.'s franchise agreement.

1	4.4 This AOD resolves all issues raised by the State of Washington and the Antitrust
2	Division of the Attorney General's Office under the Consumer Protection Act and any other related
3	statutes pertaining to the acts set forth in Paragraphs $2.1-2.3$ above that may have occurred before
4	the date of entry of this AOD and concludes the investigation thereof. Subject to Paragraph 4.2, the
5	State of Washington and the Antitrust Division of the Attorney General's Office shall not file suit or
6	take any further investigative or enforcement action with respect to the acts set forth above that
7	occurred before the date of entry of this AOD.
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9	APPROVED ON this day of, 2018.
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12	JUDGE/COURT COMMISSIONER
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MENCHIE'S GROUP, INC. ASSURANCE OF DISCONTINUANCE ATTORNEY GENERAL OF WASHINGTON Antitrust Division 800 Fifth Avenuc, Suite 2000 Scattle, WA 98104-3188 (206) 464-7744

1	Presented by:
2	ROBERT W. FERGUSON Attorney General
3	
5	RAHUL RAO, WSBA No. 53375
. 6	Assistant Attorney General Antitrust Division
7	Office of the Attorney General 800 Fifth Avenue, Suite 2000
8	Seattle, WA 98104
	(206) 442-4499
9	rahulr@atg.wa.gov
10	Attorneys for State of Washington
11	Agreed to and approved for entry by: Menchie's Group, Inc.
12	
13	I don Ryny
14	Marilyn Nathanson Menchie's Group, Inc., Rep MO Bar No. 27677
15	Lathrop Gage, LLP 7701 Forsyth Blvd., Suite 500
16	St. Louis, MO 63105
17	(314) 613-2513 mnathanson@lathropgage.com
18	mananon@atmopgago.com
19	RYAN, SWANSON & CLEVELAND, PLLC
20	1-000A
21	Kevind, Collette, WSBA No. 10998
	1201 Third Avenue, Suite 3400
22	Seattle, WA 98101-3034
23	(206) 464-4224 collette@ryanlaw.com
24	Attorneys for Menchie's Group, Inc.
25	
26	