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DEPARTMENT OF
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**STATE OF WASHINGTON**
**KING COUNTY SUPERIOR COURT**

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| IN RE: FRANCHISE NO POACHING PROVISIONS<br><br>(HBG FRANCHISE, LLC) | NO. 19-2-23495-4 SEA<br><br>HBG FRANCHISE, LLC<br>ASSURANCE OF<br>DISCONTINUANCE |

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

## I. PARTIES

1.1 In January 2019, the Attorney General initiated an investigation into HBG Franchise, LLC, d/b/a Habit Burger (Habit Burger) relating to its hiring practices.

1.2 Habit Burger is a Delaware limited liability company with its principal office or place of business in Irvine, California. Habit Burger is in the business of franchising The Habit Burger Grill restaurants located throughout the United States.

1.3 For the purposes of this AOD, Habit Burger 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.

## II. INVESTIGATION

2.1 Habit Burger has 8 restaurants in Washington. All of these restaurants are owned and operated by franchisees.



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2.2 For years, Habit Burger has included language in its franchise agreements that restricted a franchisee's ability to solicit or hire workers from another Habit Burger ("no-poaching provision"). For example, the standard Habit Burger franchise agreement previously contained a section at 7.B entitled "Non-Solicitation of Employees" and a section at 7.A(d) (or, alternatively, a section at 7(d) depending on the form of franchise agreement) that precluded franchisees from soliciting for hire certain employees from Habit Burger or its affiliates.

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 Habit Burger 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. Habit Burger 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 Habit Burger.

## III. ASSURANCE OF DISCONTINUANCE

3.1 Subject to paragraph 2.4 above, Habit Burger agrees:

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

3.1.2. It will no longer 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-poach provision in any litigation in which a franchisee may claim third-party beneficiary status rights to enforce an existing no-poach provision;

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



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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-poach provision.

3.2 Within 60 days of entry of this AOD, Habit Burger will have sought to amend all existing franchise agreements with entities in Washington 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 60-day deadline, Habit Burger 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, Habit Burger will amend all of its existing franchise agreements on a nationwide basis to remove any no-poach provision.

3.4 Within 30 days of the conclusion of the time periods referenced in section 3.2, Habit Burger 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 Habit Burger, 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 Habit Burger 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 Habit Burger. By entering into this AOD, Habit Burger 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 Habit Burger 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 Habit Burger 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-Poach Provision in Habit Burger'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 related statutes pertaining to the acts set forth in paragraph 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_____, 2019.

_____
JUDGE/COURT COMISSIONER



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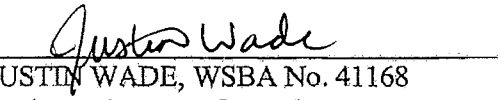
Presented by:

ROBERT W. FERGUSON
Attorney General



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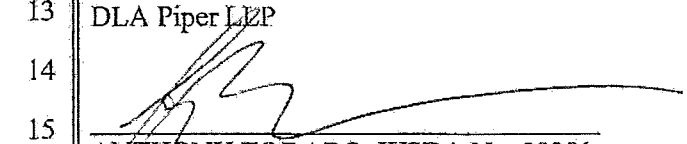
Agreed to and approved for entry by:

DLA Piper LLP



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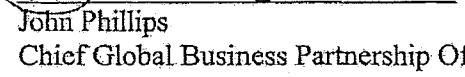
HBG FRANCHISE, LLC



John Phillips
Chief Global Business Partnership Officer