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7 **STATE OF WASHINGTON**  
8 **KING COUNTY SUPERIOR COURT**

9 IN RE: FRANCHISE NO POACHING  
10 PROVISIONS

NO. 19-2-25546-3

11 KRISPY KREME DOUGHNUT  
12 CORPORATION

KRISPY KREME DOUGHNUT  
CORPORATION ASSURANCE OF  
DISCONTINUANCE

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

16 **I. PARTIES**

17 1.1 In January 2019, the Attorney General initiated an investigation into Krispy  
18 Kreme Doughnut Corporation (“KKDC”) relating to its hiring practices.

19 1.2 KKDC is a North Carolina corporation with its principal office or place of  
20 business in North Carolina. KKDC is in the business of operating and franchising doughnut  
21 stores.

22 1.3 For the purposes of this AOD, KKDC includes its directors, officers, managers,  
23 agents acting within the scope of their agency, and employees as well as its successor and  
24 assigns, controlled subsidiaries, divisions, groups, controlled affiliates, partnerships, and joint  
25 ventures.

## II. INVESTIGATION

1  
2 2.1 KKDC has 8 stores in Washington. All 8 of these stores are owned and operated  
3 by franchisees. However, KKDC owns an indirect minority interest in 6 of these stores.

4 2.2 For years, KKDC has included language in its franchise agreements that restricted  
5 a franchisee's ability to solicit workers from another franchised or non-franchised Krispy Kreme  
6 store ("no-poaching provision"). Specifically, the standard KKDC franchise agreement stated  
7 that neither a franchisee nor certain individuals or entities associated with a franchisee may  
8 "induce or attempt to induce any Person who is Franchisor's employee or the employee of a  
9 Krispy Kreme Store or Commissary Facility to discontinue working for Franchisor or such  
10 Krispy Kreme Store or Commissary Facility as the case may be."

11 2.3 The Attorney General asserts that the foregoing conduct constitutes a contract,  
12 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,  
13 RCW 19.86.030.

14 2.4 KKDC has confirmed to the Attorney General that (1) it is not aware of any past  
15 or current efforts by KKDC to enforce a no-poaching provision in its franchise agreements, (2)  
16 it never intended that a no-poaching provision in its franchise agreements adversely affect  
17 employee wages or job prospects, and (3) it is not aware of any actual adverse affect on employee  
18 wages or job prospects caused by such a no-poach provision. Moreover, prior to being advised  
19 of any inquiry by the Attorney General into KKDC's use of no-poaching provisions, KKDC (a)  
20 proactively removed any such no-poaching provision from its then-current form of franchise  
21 agreement, (b) waived any such no-poaching provision from its existing franchise agreements,  
22 and (c) notified all of its franchisees of (a) and (b).

23 2.5 KKDC expressly denies the conduct described above constitutes a contract,  
24 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,  
25 RCW 19.86.030, or any other law, and expressly denies it has engaged in conduct that constitutes  
26 a contract, combination, or conspiracy in restraint of trade. KKDC enters into this AOD to avoid

1 protracted and expensive litigation. Pursuant to RCW 19.86.100, neither this AOD nor its terms  
2 shall be construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part  
3 of KKDC.

### 4 III. ASSURANCE OF DISCONTINUANCE

5 3.1 Subject to paragraph 2.4 above, KKDC agrees:

6 3.1.1 It will not include no-poach provisions in any of its future franchise  
7 agreements;

8 3.1.2 It will not enforce the no-poach provisions of its existing franchise  
9 agreements, and will not seek to intervene or defend in any way the legality of any no-poach  
10 provision in any litigation in which a franchisee may claim third-party beneficiary rights to  
11 enforce an existing no-poach provision;

12 3.1.3 It will advise all franchisees that it has reached an agreement with the  
13 State of Washington not to enforce any no-poach provisions in any of its existing franchise  
14 agreements and, further, that it will provide a copy of this AOD upon request by any franchisee.

15 3.1.4 It will notify the Attorney General's Office if it learns of any effort by a  
16 franchisee in Washington to enforce any existing no-poach provision.

17 3.2 Within 60 days of entry of this AOD, KKDC will endeavor to amend all existing  
18 franchise agreements with franchisees in the State of Washington to remove any no-recruiting  
19 provision in their existing franchise agreements. Within 21 days of the entry of this AOD, KKDC  
20 will send a letter to all of its franchisees in the State of Washington enclosing a proposed  
21 amendment. KKDC will respond promptly to any inquiries from such franchisees regarding the  
22 request to amend the terms of the franchise agreement and will encourage its current franchisees  
23 in the State of Washington to sign the proposed amendment. However, for the avoidance of  
24 doubt, KKDC is under no obligation to offer its franchisees any consideration—monetary or  
25 otherwise—in order to induce them to sign the proposed amendment, or take any adverse action  
26 against such franchisees if they refuse to do so. If any franchisee is unwilling to consent to the

1 amendment to its franchise agreement within 60 days of this entry to this AOD, KKDC shall  
2 provide the name and address of the resisting franchisee and the name and address of the  
3 franchisee's registered agent to the Office of the Attorney General. Once KKDC complies with  
4 this paragraph, it shall have no further obligation to seek to amend any existing franchise  
5 agreement with franchisees in the State of Washington to remove any no-recruiting provisions.

6 3.3 As they come up for either renewal or renegotiation during the ordinary course  
7 of business, KKDC will amend all of its existing franchise agreements on a nationwide basis to  
8 remove any no-poach provision.

9 3.4 Within 60 days of the conclusion of all time periods referenced in this Section III,  
10 KKDC will submit a declaration to the Attorney General's Office signed under penalty of perjury  
11 stating that it has complied with all provisions of this AOD or, if circumstances beyond KKDC's  
12 control prevent compliance with any paragraph within the specified time frame, KKDC will  
13 describe its efforts to satisfy the paragraphs' requirements and the relevant extenuating  
14 circumstances.

#### 15 IV. ADDITIONAL PROVISIONS

16 4.1 This AOD is binding on, and applies to KKDC, including each of its respective  
17 directors, officers, managers, agents acting within the scope of their agency, and employees, as  
18 well as their respective successors and assigns, controlled subsidiaries, divisions, groups,  
19 controlled affiliates, partnerships, and joint ventures, or other entities through which KKDC may  
20 now or hereafter act with respect to the conduct alleged in this AOD.

21 4.2 This is a voluntary agreement and it shall not be construed as an admission of  
22 law, fact, liability, misconduct, or wrongdoing on the part of KKDC. By entering into this AOD,  
23 KKDC neither agrees nor concedes that the claims, allegations and/or causes of action which  
24 have or could have been asserted by the Attorney General have merit and KKDC expressly  
25 denies any such claims, allegations, and/or causes of action. However, proof of failure to comply  
26 with this AOD shall be *prima facie* evidence of a violation of RCW 19.86.030, thereby placing

1 upon the violator the burden of defending against imposition by the Court of injunctions,  
2 restitution, costs and reasonable attorney's fees, and appropriate civil penalties under the  
3 Consumer Protection Act.

4 4.3 KKDC will not, nor will it authorize any of its officers, employees,  
5 representatives, or agents to state or otherwise contend that the State of Washington or the  
6 Attorney General has approved of, or has otherwise sanctioned, the conduct described in  
7 Paragraph 2.2 with respect to the No-Poach Provision in KKDC's franchise agreement.

8 4.4 This AOD resolves all issues raised by the State of Washington and the Antitrust  
9 Division of the Attorney General's Office under the Consumer Protection Act and any other  
10 related statutes pertaining to the acts set forth in paragraph 2.1 – 2.3 above that may have  
11 occurred before the date of entry of this AOD and concludes the investigation thereof. Subject  
12 to paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's  
13 Office shall not file suit or take any further investigative or enforcement action with respect to  
14 the acts set forth above that occurred before the date of entry of this AOD.

15  
16 APPROVED ON this \_\_\_\_ day of \_\_\_\_\_, 2019.

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18  
19 \_\_\_\_\_  
JUDGE/COURT COMMISSIONER

1 Presented by:

2 ROBERT W. FERGUSON  
3 Attorney General

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7 Antitrust Division  
8 Office of the Attorney General  
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12 Justin.Wade@atg.wa.gov

13 *Attorneys for State of Washington*

14 Agreed to and approved for entry by:  
15 Krispy Kreme Doughnut Corporation

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\_\_\_\_\_ KKDC Rep

By: \_\_\_\_\_

Its: \_\_\_\_\_

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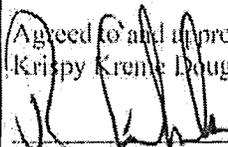
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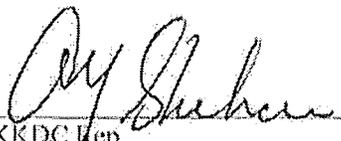
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KKDC Rep

By: ANDREW G. SKEHAN

Its: PRESIDENT, VS & CHAIRMAN