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

9 IN RE: FRANCHISE NO POACHING
10 PROVISIONS

11 (SIZZLER USA FRANCHISE, INC.)
12

NO. 19-2-25528-5

SIZZLER USA FRANCHISE, INC.,
ASSURANCE OF
DISCONTINUANCE

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

16 **I. PARTIES**

17 1.1. In August 2019, the Attorney General initiated an investigation into Sizzler USA
18 Franchise, Inc. ("Sizzler USA") relating to the hiring practices of Sizzler USA's franchisees.

19 1.2. Sizzler USA is a Delaware corporation with its principal office or place of
20 business in California. Sizzler USA is in the business of granting franchises for independent
21 businesses to establish and operate retail restaurants identified by the SIZZLER® trademarks.

22 1.3. For the purposes of this AOD, "Sizzler" means Sizzler USA, its directors,
23 officers, managers, agent, and employees (all of the foregoing, as acting within the scope of their
24 duties to Sizzler USA) as well as its successor and assigns, controlled subsidiaries, divisions,
25 affiliates, partnerships, and joint ventures.
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II. INVESTIGATION

2.1. Sizzler USA has franchised three restaurants in Washington, which are owned and operated by independent franchisees. Neither Sizzler USA nor its affiliates own or operate any restaurants in Washington.

2.2. During a portion of the period of the State of Washington's investigation, Sizzler USA has included language in its franchise agreements in Washington that restricted a franchisee's ability to solicit or hire managerial workers from another franchisee for a limited time-period. ("No-Poaching Provision"). Specifically, from the beginning of the relevant time period until October 22, 2018, the standard Sizzler USA franchise agreement registered in Washington contained a provision titled "Interference with Employment Relations" that stated that, "During the term of this Agreement, neither we nor you may 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 employed in any type of managerial position by the other party or any of its affiliates, or by any franchisee in the system." The No-Poaching Provision restricted franchisees from hiring managerial employees of Sizzler USA, an affiliate of Sizzler USA, or another franchisee.

2.3. Prior to the initiation of the State of Washington's investigation in 2019, in Sizzler USA's 2018 renewal of its franchise disclosure documents ("FDD"), Sizzler USA removed the No-Poaching Provision from its U.S. form franchise agreement. Sizzler USA's form franchise agreement registered in Washington has not included the No-Poaching Provision since October 22, 2018.

2.4. The Attorney General asserts that the No-Poaching Provision in franchise agreements that Sizzler USA entered with its franchisees, prior to the issuance of the 2018 renewal FDD, constitutes a contract, combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act, RCW 19.86.030.

2.5. Sizzler expressly denies the conduct described above constitutes a contract, combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,

1 RCW 19.86.030, or any other law, and expressly denies it has engaged in conduct that constitutes
2 a contract, combination, or conspiracy in restraint of trade. Sizzler USA viewed the No-Poaching
3 Provision in Sizzler USA's form franchise agreement as a way to reduce potential conflicts
4 among its franchisees that could disrupt the franchise system and the franchisor-franchisee
5 relationship that Sizzler USA has with each of its franchisees. However, the No-Poaching
6 Provision has not been the subject of any dispute in any legal proceeding in Washington. Sizzler
7 USA has never attempted to enforce a No-Poaching Provision with any of its franchisees and is
8 not aware of any of its franchisees in Washington enforcing or attempting to enforce any No-
9 Poaching Provision in their franchise agreements. Sizzler nevertheless enters into this AOD to
10 avoid protracted and expensive litigation. Pursuant to RCW 19.86.100, neither this AOD nor its
11 terms shall be construed as an admission of law, fact, liability, misconduct, or wrongdoing on
12 the part of Sizzler.

13 III. ASSURANCE OF DISCONTINUANCE

14 3.1. Subject to paragraph 2.5 above, Sizzler agrees:

15 3.1.1 Sizzler USA will no longer include no-poaching provisions in any of its
16 future U.S. franchise agreements;

17 3.1.2 Sizzler USA will continue not enforcing no-poaching provisions in any of
18 its existing franchise agreements, and will not seek to intervene or defend in any way the legality
19 of any no-poaching provision in any litigation in which a franchisee may claim third-party
20 beneficiary status rights to enforce an existing no-poaching provision;

21 3.1.3 Sizzler USA will notify all of its U.S. franchisees of the entry of this
22 agreement with the State, and provide them a copy of the AOD upon request;

23 3.1.4 Sizzler USA will notify the Attorney General's Office if it learns of any
24 effort by a franchisee in Washington to enforce any existing no-poaching provision.

25 3.2. Within 60 days of entry of this AOD, Sizzler USA will exercise all reasonable
26 commercial efforts to amend all existing franchise agreements with entities in Washington to

1 remove any no-poaching provisions in its existing franchise agreements. Sizzler USA is under
2 no obligation to offer any franchisee any monetary or non-monetary consideration to induce
3 them to accept the proposed amendment of the franchise, and it shall be under no obligation to
4 take any coercive action against a franchisee that may refuse or decline to agree to any
5 amendment of its franchise agreement. If any franchise owner is unwilling to consent to the
6 change to its franchise agreement, prior to the 60-day deadline, Sizzler USA shall provide the
7 name and address of the resisting franchisee and the name and address of the franchisee's
8 registered agent to the Office of the Attorney General.

9 3.3. Sizzler USA had modified its form franchise agreement it uses on a nationwide
10 basis to remove any no-poaching provision. Any existing franchisee that renews a franchise
11 agreement will be party to a new or amended franchise agreement that will not include a no-
12 poaching provision.

13 3.4. Within 30 days of the conclusion of the time period referenced in Section 3.2,
14 Sizzler USA will submit a declaration to the Attorney General's Office signed under penalty of
15 perjury stating that Section 3.1.3 and 3.2 of this agreement have been satisfied.

16 IV. ADDITIONAL PROVISIONS

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

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 Sizzler, and it is not an order,
25 injunction, or decree. By entering into this AOD, Sizzler neither agrees nor concedes that the
26 claims, allegations and/or causes of action which have or could have been asserted by the

1 Attorney General have merit and Sizzler expressly denies any such claims, allegations, and/or
2 causes of action. However, proof of failure to comply with this AOD shall be *prima facie*
3 evidence of a violation of RCW 19.86.030, thereby placing upon the violator the burden of
4 defending against imposition by the Court of injunctions, restitution, costs and reasonable
5 attorney's fees, and appropriate civil penalties under the Consumer Protection Act.

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

11 4.4. This AOD resolves all issues raised by the State of Washington and the Antitrust
12 Division of the Attorney General's Office under the Consumer Protection Act and any other
13 related statutes pertaining to the acts set forth in paragraph 2.1 – 2.4 above that may have
14 occurred before the date of entry of this AOD and concludes the investigation thereof. Subject
15 to paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's
16 Office shall not file suit or take any further investigative or enforcement action with respect to
17 the acts set forth above that occurred before the date of entry of this AOD.

18 APPROVED ON this ____ day of _____, 2019.
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JUDGE/COURT COMMISSIONER
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Presented by:

ROBERT W. FERGUSON
Attorney General

RAHUL RAO, WSBA #53375
Assistant Attorney General
Antitrust Division
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 442-4499
Rahul.Rao@atg.wa.gov

Attorneys for State of Washington

Agreed to and approved for entry by:

~~Sizzler USA~~

JOSEPH VANCE #25531
Miller Nash Graham & Dunn LLP
2801 Alaskan Way, Suite 300
Seattle, WA 98121
(360) 699-4771
Joe.Vance@millernash.com

Sizzler USA Rep

By: _____

Its: _____

Attorneys for Sizzler USA Franchise, INC.

1 Presented by:

2 ROBERT W. FERGUSON

3 Attorney General

4 *Jonathan Mark #38051*

5 RAHUL RAO, WSBA #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 Rahul.Rao@atg.wa.gov

13

14 *Attorneys for State of Washington*

15 Agreed to and approved for entry by:

16 Sizzler USA

17

18 JOSEPH VANCE #25531

19 Miller Nash Graham & Dunn LLP

20 2801 Alaskan Way, Suite 300

21 Seattle, WA 98121

22 (360) 699-4771

23 Joe.Vance@millernash.com

24

25 *Attorneys for Sizzler USA Franchise, INC.*

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Sizzler USA Rep

By: CHRISTOPHER PERKINS

Its: CHIEF SERVICES OFFICER