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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

IN RE: FRANCHISE NO POACHING
PROVISIONS

NO.

CARL'S JR. RESTAURANTS LLC
ASSURANCE OF
DISCONTINUANCE

The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney General (the "Attorney General"), and Eric S. Newman, Assistant Attorney General, files this Assurance of Discontinuance ("AOD") pursuant to RCW 19.86.100.

I. PARTIES

1.1 In January 2018, the Attorney General initiated an investigation into Carl's Jr. Restaurants LLC ("Carl's Jr.") relating to certain provisions in its franchise agreement.

1.2 Carl's Jr. is a Delaware limited liability corporation with its principal offices or place of business in Franklin, Tennessee. Carl's Jr. is a franchisor, and its corporate and franchisee operated locations are in the business of offering hamburger sandwiches, chicken sandwiches, and breakfast sandwiches, among other food products, for sale to consumers.

1.3 For purposes of this AOD, Carl's Jr. shall include its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its successors and assigns, controlled subsidiaries, and predecessor franchisor entities.

1 **II. INVESTIGATION**

2 2.1 There are 33 Carl’s Jr. stores located in the State of Washington as of the date
3 hereof. All of these stores are independently owned and operated by franchisees.

4 2.2 For decades, the franchise agreements entered into between Carl’s Jr. and its
5 franchisees have provided that franchisees subject to such agreements may not solicit the
6 managerial-level employees of Carl’s Jr. or of other Carl’s Jr. franchisees (the “No-Solicitation
7 Provision”) or hire the managerial-level employees of Carl’s Jr. or of other Carl’s Jr.
8 franchisees (the “No-Hire Provision”).

9 2.3 The Attorney General asserts that the foregoing conduct of Carl’s Jr. and its
10 franchisees constitutes a contract, combination, or conspiracy in restraint of trade in violation
11 of the Consumer Protection Act, RCW 19.86.030.

12 2.4 Carl’s Jr. and its current and former franchisees expressly deny that the conduct
13 described above constitutes a contract, combination, or conspiracy in restraint of trade in
14 violation of the Consumer Protection Act, RCW 19.86.030, or any other law or regulation, and
15 expressly deny they have engaged in conduct that constitutes a contract, combination, or
16 conspiracy in restraint of trade, or violates any other law or regulation. Carl’s Jr. enters into
17 this AOD to avoid protracted and expensive litigation. Pursuant to RCW 19.86.100, neither
18 this AOD nor its terms shall be construed as an admission of law, fact, liability, misconduct, or
19 wrongdoing on the part of Carl’s Jr. or any of its current or former franchisees.

20 **III. ASSURANCE OF DISCONTINUANCE**

21 3.1 Subject to Paragraph 2.4 above, Carl’s Jr. agrees:

22 3.1.1. It will no longer include the No-Solicitation Provision or the No-Hire
23 Provision in any of its franchise agreements in the United States signed after the date hereof.

24 3.1.2. It will not enforce the No-Solicitation Provision or the No-Hire
25 Provision in any of its existing franchise agreements in the United States, and will not seek to
26 intervene in any action brought by the Attorney General’s Office against a current franchisee in

1 Washington to defend an existing No-Solicitation Provision or No-Hire Provision, provided
2 such action is brought in accordance with, and consistent with, the provisions of this AOD.

3 3.1.3. It will notify all of its current franchisees in the United States of the
4 entry of this AOD and make a copy available to them.

5 3.1.4. If, after the 21 day period set forth in Paragraph 3.2 below, Carl's Jr.
6 becomes aware of a franchisee with a store located in the State of Washington attempting to
7 enforce the No-Solicitation Provision or the No-Hire Provision, and Carl's Jr. is unable to
8 persuade such franchisee to desist from enforcing or attempting to enforce such provision,
9 Carl's Jr. will notify the Attorney General.

10 3.2 Within 21 days of entry of this AOD, Carl's Jr. will send a letter to all of its
11 current franchisees with stores located in the State of Washington, stating that the Attorney
12 General has requested that the existing No-Solicitation Provision and No-Hire Provision be
13 removed from existing franchise agreements. The letter that Carl's Jr. will send to its current
14 franchisees in the State of Washington will be substantially in the form of the letter attached
15 hereto as Exhibit A. That letter will enclose the proposed amendment that Carl's Jr. is
16 requesting that each of its franchisees in the State of Washington agree to, which amendment
17 will remove the No-Solicitation Provision and the No-Hire Provision. The proposed
18 amendment that will be included with each letter will be substantially in the form of the
19 amendment attached hereto as Exhibit B.

20 3.3 In addition to sending the letter to its current franchisees in the State of
21 Washington pursuant to Paragraph 3.2 above, Carl's Jr. will respond promptly to any inquiries
22 from such franchisees regarding the request to amend the terms of the franchise agreement and
23 will encourage its current franchisees in the State of Washington to sign the proposed
24 amendment. However, for the avoidance of doubt, Carl's Jr. is under no obligation to offer its
25 franchisees any consideration—monetary or otherwise—in order to induce them to sign the
26 proposed amendment, or take any adverse action against such franchisees if they refuse to do

1 so. Within 120 days of entry of this AOD, Carl's Jr. will provide copies of all executed
2 amendments it has obtained with its current franchisees in the State of Washington to the
3 Attorney General's Office. A decision by a franchisee not to amend its franchise agreement, or
4 not to do so within 120 days of this AOD, shall not mean that Carl's Jr. has not complied with
5 its obligations under this AOD.

6 3.4 If Carl's Jr. learns that a current franchisee in the State of Washington intends in
7 good faith to sign the proposed amendment but is unable to do so within the time period
8 specified in Paragraph 3.3, Carl's Jr. will notify the Attorney General's Office to seek a
9 mutually agreeable extension. During any such extension, the Attorney General's Office will
10 not take further investigative or enforcement action against a franchisee.

11 3.5 As they come up for renewal during the ordinary course of business, Carl's Jr.
12 will remove the No-Solicitation Provision and the No-Hire Provision from all of its existing
13 franchise agreements in the United States with its franchisees on a nationwide basis, unless
14 expressly prohibited by law. In addition, Carl's Jr. will not include the No-Solicitation
15 Provision or the No-Hire Provision in any franchise agreement it signs in the United States
16 after the date of this AOD.

17 3.6 Within 30 days of the conclusion of the time periods referenced in paragraph
18 3.3, Carl's Jr. will submit a declaration to the Attorney General's Office signed under penalty
19 of perjury stating whether all provisions of this agreement have been satisfied.

20 **IV. ADDITIONAL PROVISIONS**

21 4.1 This AOD is binding on, and applies to Carl's Jr., including each of its
22 respective directors, officers, managers, agents acting within the scope of their agency, and
23 employees, as well as their respective successors and assigns, controlled subsidiaries,
24 predecessor franchisor entities, or other entities through which Carl's Jr. may now or hereafter
25 act with respect to the conduct alleged in this AOD.
26

1 4.2 This is a voluntary agreement and it shall not be construed as an admission of
2 law, fact, liability, misconduct, or wrongdoing on the part of Carl's Jr. or any of its current or
3 former franchisees. Carl's Jr. and its current and former franchisees neither agree nor concede
4 that the claims, allegations and/or causes of action which have or could have been asserted by
5 the Attorney General have merit and Carl's Jr. and its current and former franchisees expressly
6 deny any such claims, allegations, and/or causes of action. However, proof of failure to comply
7 with this AOD shall be *prima facie* evidence of a violation of RCW 19.86.020, thereby placing
8 upon the violator the burden of defending against imposition by the Court of injunctions,
9 restitution, costs and reasonable attorney's fees, and civil penalties of up to \$2,000.00 per
10 violation.

11 4.3 Carl's Jr. will not, nor will it authorize any of its officers, employees,
12 representatives, or agents to, state or otherwise contend that the State of Washington or the
13 Attorney General has approved of, or has otherwise sanctioned, the conduct described in
14 Paragraph 2.2 with respect to the No-Solicitation Provision and the No-Hire Provision in Carl's
15 Jr.'s franchise agreement.

16 4.4 This AOD shall have a term of twenty-five (25) years.

17 4.5 This AOD resolves all issues raised by the State of Washington and the Antitrust
18 Division of the Attorney General's Office under the Consumer Protection Act and any other
19 related statutes pertaining to the acts of Carl's Jr. and its current and former franchisees as set
20 forth in Paragraph 2.1 – 2.3 above that may have occurred before the date of entry of this AOD, or
21 that occur between the date of the entry of this AOD and the conclusion of the 120 day period
22 identified in Paragraph 3.3 above, and concludes the investigation thereof. Subject to Paragraph
23 4.2, the State of Washington and the Antitrust Division of the Attorney General's Office shall not
24 file suit or take any further investigative or enforcement action with respect to the acts set forth
25 above that occurred before the date of entry of this AOD, or that occurs between the date of the
26 entry of this AOD and the conclusion of the 120 day period identified in Paragraph 3.3 above,

1 against Carl's Jr. or any of its current franchisees in the State of Washington that sign the
2 proposed amendment described in Section III, any of its former franchisees in the State of
3 Washington, or any of its current or former franchisees located outside the State of Washington.
4 The Attorney General reserves the right to take further investigative or enforcement action against
5 any current franchisee in the State of Washington identified pursuant to Paragraph 3.1.4 or any
6 current franchisee in the State of Washington that does not sign the proposed amendment
7 described in Section III.

8
9 APPROVED ON this _____ day of _____, 2018.


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12 JUDGE/COURT COMMISSIONER
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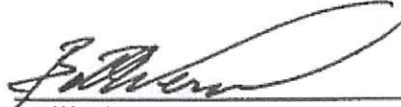
1 Presented by:

2 ROBERT W. FERGUSON
3 Attorney General

4 _____
5 ERIC S. NEWMAN, WSBA #
6 Assistant Attorney General
7 Chief Litigation Counsel
8 Antitrust Division
9 Attorneys for State of Washington
10 Office of the Attorney General
11 800 Fifth Avenue, Suite 2000
12 Seattle, WA 98104

10 Agreed to and approved for entry by:
11 CARL'S JR. RESTAURANTS LLC

12 
13 Angelo J. Calfo, WSBA #27079
14 Damon C. Elder, WSBA #46754
15 CALFO EAKES & OSTROVSKY, PLLC
16 1301 Second Avenue, Suite 2800
17 Seattle, WA 98101


18 Bill Werner
19 General Counsel

20 Carl's Jr. Restaurants LLC

16 —and—

17 Robert A. Atkins
18 Adam J. Bernstein
19 PAUL, WEISS, RIFKIND, WHARTON
20 & GARRISON, LLP
21 1285 Avenue of the Americas
22 New York, NY 10019

21 —and—

22 Kenneth A. Gallo
23 PAUL, WEISS, RIFKIND, WHARTON
24 & GARRISON, LLP
25 2001 K Street, NW
26 Washington, DC 20006

Attorneys for Carl's Jr. Restaurants LLC

EXHIBIT A



_____, 2018

Franchisee Name
Address
City, State Zip Code

Re: Washington AG No-Poaching Provisions Investigation

The Attorney General for the State of Washington (the “Washington AG”) has recently undertaken an investigation into certain clauses in franchise agreements that restrict hiring or solicitation of employees, sometimes referred to as a “no-poaching” provisions. Earlier this year, as part of that investigation, the Washington AG sent a Civil Investigative Demand to us and a number of other franchisors who sell franchises in the State of Washington.

As you may know, under Section 17.C.(2)(b) of your franchise agreements you agree that you will not “Knowingly employ or seek to employ any person then employed by CJR or any franchisee of CJR as a shift leader or higher, or otherwise directly or indirectly induce such person to leave his or her employment.” The same language appears in your development agreement, to the extent you have one, in Section 12.C.(2)(b). We do not agree that this clause, or its enforcement, is unlawful in any way. However, to resolve the matter with the Washington AG and avoid costly and protracted litigation, we have agreed to not enforce this provision in existing franchise agreements with any Carl’s Jr. franchisee on a nationwide basis, and to not include the clause in any new Carl’s Jr. franchise agreements that are signed after the date of our agreement with the Washington AG.

The Washington AG has also required that we suggest that you enter into the attached amendment to your franchise agreements to formally remove the relevant language from Section 17.C.(2)(b), and, if you have a development agreement in the State of Washington, to remove the relevant language in that agreement from Section 12.C.(2)(B). The Washington AG has agreed that, to the extent you sign the amendment, it will not assert any claims against you for conduct relating to Section 17.C.(2)(b) of the franchise agreement that occurred up to and including the date you sign the amendment. Accordingly, we strongly encourage that you sign each of the enclosed copies and return them to us. We will return one fully executed amendment to your attention.

Feel free to call me at 615-538-9250 if you have any questions or would like to discuss.



Sincerely,

William R. Werner
Executive Vice President, General Counsel

EXHIBIT B

**AMENDMENT
TO
CARL'S JR. FRANCHISE AGREEMENTS**

The Franchise Agreements for the Carl's Jr. franchised restaurants in the State of Washington between Carl's Jr. LLC ("CJR") and the undersigned franchisee ("Franchisee") shall be amended in accordance with the following terms.

1. Background. CJR and Franchisee are parties to the Franchise Agreements listed on Exhibit A hereto and incorporated herein by reference (as hereby amended, the "Franchise Agreements"), and Franchisee operates a franchised outlet in the State of Washington under each Franchise Agreement. CJR has determined that it is in the best interests of the franchise system to not enforce Section 17.C.(2)(b). The purpose of this Amendment to the Franchise Agreements is to document this change. All initial capitalized terms used but not defined in this Amendment shall have the meanings set forth in the Franchise Agreements.

2. Modification of Terms. As of the Effective Date (defined below) of this Amendment, Franchisee and CJR agree that Section 17.C.(2)(b) is hereby deleted from the Franchise Agreements and is of no further force or effect.

3. Miscellaneous. Except as specifically modified by this Amendment, the provisions of the Franchise Agreements shall remain in full force and effect. This document is an amendment to, and forms a part of, the Franchise Agreements. If there is an inconsistency between this Amendment and the Franchise Agreements, the terms of this Amendment shall control. This Amendment constitutes the entire agreement between the parties hereto, and there are no other oral or written representations, understandings or agreements between them, relating to the subject matter of this Amendment. This Amendment inures to the benefit of the parties hereto and their respective successors and assigns and will be binding upon the parties hereto and each of their respective successors and assigns. This Amendment may be executed in multiple counterparts, but all such counterparts together shall be considered one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement effective as _____, 2018 (the "Effective Date").

CARL'S JR. RESTAURANTS LLC

[FRANCHISEE'S NAME]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

**AMENDMENT
TO
CARL'S JR. RESTAURANT DEVELOPMENT AGREEMENT**

The Carl's Jr. Restaurant Development Agreement between Carl's Jr. LLC ("CJR") and the undersigned developer of Carl's Jr. franchised restaurants ("Developer") dated _____ (as hereby amended, the "Development Agreement") shall be amended in accordance with the following terms.

1. Background. CJR and Developer are parties to the Development Agreement. CJR has determined that it is in the best interests of the franchise system to not enforce Section 12.C.(2)(b). The purpose of this Amendment to the Development Agreement is to document this change. All initial capitalized terms used but not defined in this Amendment shall have the meanings set forth in the Development Agreement.

2. Modification of Terms. As of the Effective Date (defined below) of this Amendment, Franchisee and CJR agree that Section 12.C.(2)(b) is hereby deleted from the Development Agreement and is of no further force or effect.

3. Miscellaneous. Except as specifically modified by this Amendment, the provisions of the Development Agreement shall remain in full force and effect. This document is an amendment to, and forms a part of, the Development Agreement. If there is an inconsistency between this Amendment and the Development Agreement, the terms of this Amendment shall control. This Amendment constitutes the entire agreement between the parties hereto, and there are no other oral or written representations, understandings or agreements between them, relating to the subject matter of this Amendment. This Amendment inures to the benefit of the parties hereto and their respective successors and assigns and will be binding upon the parties hereto and each of their respective successors and assigns. This Amendment may be executed in multiple counterparts, but all such counterparts together shall be considered one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement effective as _____, 2018 (the "Effective Date").

CARL'S JR. RESTAURANTS LLC

[DEVELOPER'S NAME]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____