

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO POACHING
PROVISIONS

(FAMOUS DAVE’S OF AMERICA,
INC.)

NO. **19-2-12900-0 SEA**

FAMOUS DAVE’S OF AMERICA,
INC. ASSURANCE OF
DISCONTINUANCE

The State of Washington (State), by and through its attorneys, Robert W. Ferguson,
Attorney General, and Rahul Rao, 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 the “In re Franchise No
Poaching Provisions Investigation,” which included an investigation of the hiring practices of
franchisors and franchisees, including Famous Dave’s of America, Inc.

1.2 Famous Dave’s of America, Inc. (“Famous Dave’s”) is a Minnesota corporation
with its principal office or place of business in Minnetonka, Minnesota. Famous Dave’s is in
the business of franchising down-home barbecue restaurants under the “Famous Dave’s®”
trademark.

1.3 Famous Dave’s includes its directors, officers, managers, agents acting within
the scope of their agency, and employees as well as its successor and assigns, controlled

1 subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures. Famous Dave's does
2 not include independent franchise operators.

3 II. INVESTIGATION

4 2.1 Famous Dave's currently has six Famous Dave's locations in Washington, and
5 all 6 are independently owned and operated franchised locations.

6 2.2 Prior to April 2019, Famous Dave's included language in Section 7.19 of its
7 franchise agreements that restricted a franchisee's ability to solicit or hire workers from
8 another franchisee or Famous Dave's (the "Section 7.19 provisions"). Specifically, the Section
9 7.19 provisions stated:

10 7.19 Recruitment Fees.

11 Franchisee understands and acknowledges that both Famous Dave's
12 and its franchisees regularly incur significant costs in order to train
13 and maintain training of their employees, agents and independent
14 contractors involved in the development, management and/or
15 operation of Famous Dave's® Restaurants (a "Covered Person"). In
16 recognition of that fact, the Parties agree that if Franchisee or
17 Famous Dave's hires or employs any Covered Person who is or was,
18 during the last 12 months, employed by or under contract with the
19 other, at any restaurant that is owned, managed or operated by the
20 other, or at any other Famous Dave's® Restaurant owned or
21 operated by a franchisee or area developer (the "Affected Party"),
22 then Franchisee or Famous Dave's, as applicable, will pay the
23 Affected Party a "Recruitment Fee" of: (i) \$2,500 if the Covered
24 Person was an "active opening units" Trainer; (ii) \$10,000 if the
25 Covered Person was an Assistant Manager or Manager level
26 corporate associate; (iii) \$20,000 if the Covered Person was a
General Manager or Director level corporate associate; or (iv)
\$50,000 if the Covered Person was either a Director of Operations,
Area Director, or Director of Franchise Operations, unless such
Recruitment Fee is waived in writing by the Affected Party.

23 2.3 The Attorney General asserts that the foregoing contract language constitutes a
24 contract, combination, or conspiracy in restraint of trade in violation of the Consumer
25 Protection Act, RCW 19.86.030.

1 3.1.3. Within 60 days after the entry of this AOD, it will make all of its
2 franchisees aware of this agreement with the state of Washington and make a copy of it
3 available if requested;

4 3.1.4. It will notify the Attorney General's Office if it learns of any effort by a
5 Washington Famous Dave's franchisee to enforce the Section 7.19 provisions in any existing
6 franchise agreements.

7 3.2 Within 90 days of entry of this AOD, Famous Dave's will endeavor to amend
8 all existing franchise agreements with Washington Famous Dave's franchisees to remove the
9 Section 7.19 provisions in its existing franchise agreements. However, for the avoidance of
10 doubt, Famous Dave's is under no obligation to offer its franchisees any consideration,
11 monetary or otherwise, in order to induce them to sign the proposed amendment, nor will
12 Famous Dave's be required to take, or threaten to take, any adverse action against any such
13 franchisees if they refuse to do so. If any Washington franchise owner declines to amend its
14 franchise agreement within seven days prior to the 90-day deadline, Famous Dave's shall
15 provide the name and address of any such franchise owner to the Office of the Attorney
16 General. A decision by a Famous Dave's franchisee not to amend its franchise agreement, or
17 not to do so within 90 days of this AOD, shall not mean that Famous Dave's has not complied
18 with its obligations under this AOD. This provision shall be deemed satisfied with regard to
19 each Washington Famous Dave's franchisee by either the amendment of such franchisee's
20 franchise agreement(s) to remove the Section 7.19 provisions or by Famous Dave's providing
21 the name and address of such franchisee to the Office of the Attorney General.

22 3.3 Going forward, Famous Dave's will not include the Section 7.19 provisions in
23 its franchise agreements for all franchisees nationwide, including for (a) new franchisees
24 signing franchise agreements for the first time, (b) existing franchisees whose franchise
25 agreements have expired and/or are otherwise subject to renewal, rebuild or relocation, and (c)

26

1 Presented by:

2 ROBERT W. FERGUSON
3 Attorney General

4 

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 rahulr@atg.wa.gov

13 *Attorneys for State of Washington*

14 Agreed to and approved for entry by:
15 FAMOUS DAVE'S OF AMERICA, INC.

16 
17 DANIEL J. OATES, WSBA #39334
18 Miller Nash Graham & Dunn LLP
19 2801 Alaskan Way, Suite 300
20 Seattle, WA 98121
21 Tel. (206) 777-7537
22 Fax (206) 340-9599
23 Dan.Oates@millernash.com

24 and

25 RYAN R. PALMER
26 Gray Plant Mooty Mooty & Bennett PA
80 South Eighth Street, Suite 500
Minneapolis, MN 55402
Tel. (612) 632-3013
Fax (612) 632-4000
ryan.palmer@gpmlaw.com

Attorneys for Famous Dave's of America, Inc.



Famous Dave's of America, Inc.

By: Michael Medved

Its: Corporate Counsel