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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

IN RE: FRANCHISE NO POACHING
PROVISIONS

NO.

JIMMY JOHN’S FRANCHISOR SPV,
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 RCW 19.86.100.

I. PARTIES

1.1 In January 2018, the Attorney General initiated an investigation into Jimmy John’s Franchisor SPV, LLC (“Jimmy John’s”) relating to certain provisions in its franchise agreement.

1.2 Jimmy John’s is a Delaware limited liability company with its principal offices or place of business in Champaign, Illinois. Jimmy John’s is a franchisor, and its corporate- and franchisee-operated locations are in the business of offering sandwiches made with fresh, high-quality ingredients, among other food products, for sale to consumers.

1.3 For purposes of this AOD, Jimmy John’s shall include its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its

1 successors and assigns, controlled subsidiaries, sister companies, and predecessor franchisor
2 entities.

3 II. INVESTIGATION

4 2.1 There are approximately 96 Jimmy John's® Gourmet Sandwich stores located
5 in the State of Washington as of the date hereof, plus another approximately 33 signed
6 franchise agreements for stores that have yet to open. All of these stores are independently
7 owned and operated by franchisees.

8 2.2 Since on or about 1994, the franchise agreements entered into between Jimmy
9 John's and its franchisees have provided that franchisees subject to such agreements may not
10 recruit, solicit, or, in some versions of the franchise agreements, hire, any employee of Jimmy
11 John's, or of other Jimmy John's franchisees, then employed, or, in some versions of the
12 franchise agreements, employed within the immediately preceding twelve (12) months, by
13 Jimmy John's or the other franchisees (the "No-Poaching Provision").

14 2.3 The Attorney General asserts that the foregoing conduct of Jimmy John's and
15 its franchisees constitutes a contract, combination, or conspiracy in restraint of trade in
16 violation of the Consumer Protection Act, RCW 19.86.030.

17 2.4 Jimmy John's, on behalf of itself and its current and former franchisees,
18 expressly denies that the conduct described above constitutes a contract, combination, or
19 conspiracy in restraint of trade in violation of the Consumer Protection Act, RCW 19.86.030,
20 or any other law or regulation, and expressly denies it has engaged in conduct that constitutes a
21 contract, combination, or conspiracy in restraint of trade, or violates any other law or
22 regulation. Jimmy John's enters into this AOD to avoid protracted and expensive litigation.
23 Pursuant to RCW 19.86.100, neither this AOD nor its terms shall be construed as an admission
24 of law, fact, liability, misconduct, or wrongdoing on the part of Jimmy John's or any of its
25 current or former franchisees.

1 **III. ASSURANCE OF DISCONTINUANCE**

2 3.1 Subject to Paragraph 2.4 above, Jimmy John’s agrees:

3 3.1.1. It will no longer include the No-Poaching Provision in any of its
4 franchise agreements in the United States signed after the date hereof.

5 3.1.2. It will not enforce the No-Poaching Provision in any of its existing
6 franchise agreements in the United States, and will not seek to intervene in any action brought
7 by the Attorney General’s Office against a current franchisee in Washington to defend an
8 existing No-Poaching Provision, provided such action is brought in accordance with, and
9 consistent with, the provisions of this AOD.

10 3.1.3. It will notify all of its current franchisees in the United States of the
11 entry of this AOD and make a copy available to them.

12 3.1.4. If, after the 21-day period set forth in Paragraph 3.2 below, Jimmy
13 John’s becomes aware of a franchisee with a store located in the State of Washington
14 attempting to enforce the No-Poaching Provision, and Jimmy John’s is unable to persuade such
15 franchisee to desist from enforcing or attempting to enforce such provision, Jimmy John’s will
16 notify the Attorney General.

17 3.2 Within 21 days of entry of this AOD, Jimmy John’s will send a letter to all of its
18 current franchisees with stores located in the State of Washington, stating that the Attorney
19 General has requested that the existing No-Poaching Provision be removed from existing
20 franchise agreements. The letter that Jimmy John’s will send to its current franchisees in the
21 State of Washington will be substantially in the form of the letter attached hereto as Exhibit A.
22 That letter will enclose the proposed amendment that Jimmy John’s is requesting that each of
23 its franchisees in the State of Washington agree to, which amendment will remove the No-
24 Poaching Provision. The proposed amendment that will be included with each letter will be
25 substantially in the form of the amendment attached hereto as Exhibit B.

1 3.3 In addition to sending the letter to its current franchisees in the State of
2 Washington pursuant to Paragraph 3.2 above, Jimmy John's will respond promptly to any
3 inquiries from such franchisees regarding the request to amend the terms of the franchise
4 agreement and will convey its recommendation that its current franchisees in the State of
5 Washington to sign the proposed amendment. However, for the avoidance of doubt, Jimmy
6 John's is under no obligation to offer its franchisees any consideration—monetary or
7 otherwise—in order to induce them to sign the proposed amendment, nor will Jimmy John's be
8 required to take, or threaten to take, any adverse action against such franchisees if they refuse
9 to do so. Within 120 days of entry of this AOD, Jimmy John's will provide copies of all
10 executed amendments it has obtained with its current franchisees in the State of Washington to
11 the Attorney General's Office. A decision by a franchisee not to amend its franchise
12 agreement, or not to do so within 120 days of this AOD, shall not mean that Jimmy John's has
13 not complied with its obligations under this AOD.

14 3.4 If Jimmy John's learns that a current franchisee in the State of Washington
15 intends in good faith to sign the proposed amendment but is unable to do so within the time
16 period specified in Paragraph 3.3, Jimmy John's will notify the Attorney General's Office to
17 seek a mutually agreeable extension. During any such extension, the Attorney General's
18 Office will not take further investigative or enforcement action against a franchisee.

19 3.5 As they come up for renewal during the ordinary course of business, Jimmy
20 John's will remove the No-Poaching Provision from all of its existing franchise agreements in
21 the United States with its franchisees on a nationwide basis, unless expressly prohibited by
22 law. In addition, Jimmy John's will not include the No-Poaching Provision in any franchise
23 agreement it signs in the United States after the date of this AOD.

24 3.6 Within 30 days of the conclusion of the time periods referenced in paragraph
25 3.3, Jimmy John's will submit a declaration to the Attorney General's Office signed under
26 penalty of perjury stating whether all provisions of this agreement have been satisfied.

1 **IV. ADDITIONAL PROVISIONS**

2 4.1 This AOD is binding on, and applies to Jimmy John’s, including each of its
3 respective directors, officers, managers, agents acting within the scope of their agency, and
4 employees, as well as their respective successors and assigns, controlled subsidiaries,
5 predecessor franchisor entities, or other entities through which Jimmy John’s may now or
6 hereafter act with respect to the conduct alleged in this AOD.
7

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

18 4.3 Jimmy John’s will not, nor will it authorize any of its officers, employees,
19 representatives, or agents to, state or otherwise contend that the State of Washington or the
20 Attorney General has approved of, or has otherwise sanctioned, the conduct described in
21 Paragraph 2.2 with respect to the No-Poaching Provision in Jimmy John’s franchise agreement.

22 4.4 This AOD shall have a term of twenty-five (25) years.

23 4.5 This AOD resolves all issues raised by the State of Washington and the Antitrust
24 Division of the Attorney General’s Office under the Consumer Protection Act and any other
25 related statutes pertaining to the acts of Jimmy John’s and its current and former franchisees as set
26 forth in Paragraph 2.1 – 2.3 above that may have occurred before the date of entry of this AOD, or

1 that occur between the date of the entry of this AOD and the conclusion of the 120-day period
2 identified in Paragraph 3.3 above, and concludes the investigation thereof. Subject to Paragraph
3 4.2, the State of Washington and the Antitrust Division of the Attorney General's Office shall not
4 file suit or take any further investigative or enforcement action with respect to the acts set forth
5 above that occurred before the date of entry of this AOD, or that occurs between the date of the
6 entry of this AOD and the conclusion of the 120 day period identified in Paragraph 3.3 above,
7 against Jimmy John's or any of its current franchisees in the State of Washington that sign the
8 proposed amendment described in Section III, any of its former franchisees in the State of
9 Washington, or any of its current or former franchisees located outside the State of Washington.
10 The Attorney General reserves the right to take further investigative or enforcement action against
11 any current franchisee in the State of Washington identified pursuant to Paragraph 3.1.4 or any
12 current franchisee in the State of Washington that does not sign the proposed amendment
13 described in Section III.

14
15 APPROVED ON this _____ day of _____, 2018.

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17 _____
18 JUDGE/COURT COMISSIONER
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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

13 Agreed to and approved for entry by:

14 JIMMY JOHN'S FRANCHISOR SPV, LLC

15 _____
16 Angelo J. Calfo, WSBA #27079
17 Damon C. Elder, WSBA #46754
18 CALFO EAKES & OSTROVSKY, PLLC
19 1301 Second Avenue, Suite 2800
20 Seattle, WA 98101

21 _____
22 Todd Labinsky
23 General Counsel & Secretary
24 Jimmy John's Franchisor SPV, LLC

25 —and—

26 Robert A. Atkins
27 Adam J. Bernstein
28 PAUL, WEISS, RIFKIND, WHARTON
29 & GARRISON, LLP
30 1285 Avenue of the Americas
31 New York, NY 10019

32 —and—

33 Kenneth A. Gallo
34 PAUL, WEISS, RIFKIND, WHARTON
35 & GARRISON, LLP
36 2001 K Street, NW
37 Washington, DC 20006

38 *Attorneys for Jimmy John's Franchisor SPV, LLC*

EXHIBIT A

TO: Washington Franchisees

FROM: James North, President & CEO, Jimmy John's Franchise, LLC

RE: Washington Attorney General Civil Investigative Demand Regarding "Anti-Poaching" Provisions in the Jimmy John's Franchise Agreement.

Earlier this year Jimmy John's Franchise, LLC ("JJF") received a Civil Investigative Demand from the Attorney General's Office of the State of Washington ("OAG") requesting information regarding whether JJF's franchise agreements contain any restrictions on the hiring or solicitation of employees among franchisees (sometimes referred to as "no poaching provisions"). We understand the OAG's inquiry was part of a broader investigation into the use of such clauses in the restaurant industry. After significant negotiations, JJF has entered into an Assurance of Discontinuance with the OAG to resolve the OAG's investigation. This communication, with each of you, was an agreed-upon component of that resolution, and we ask that you give it your full consideration.

The OAG has taken the position that provisions in franchise agreements that restrict the hiring or solicitation of employees violate Washington law. As you know, JJF has such a provision in its standard Franchise Agreement (*See* Section 7(d)), including the Franchise Agreements that each of you executed for your Restaurants. JJF disagrees with OAG's view of these provisions, and believes that it has acted lawfully and appropriately at all times. JJF's position is that these provisions—which are very common in franchise agreements—help to encourage investment in franchises generally, as well as investments in recruiting, training, and developing employees. This provision was never intended to help suppress wages or to serve any other anti-competitive end, and JJF strongly rejects any suggestion otherwise.

Nevertheless, continuing to respond to the OAG's inquiry and defending any subsequent allegations on their merits would require a costly expenditure of time and resources on the part of JJF, and, potentially, our franchisees. So, while JJF believes that Section 7(d) is lawful and provides value to the franchise system, after weighing that value against these potential costs, JJF has agreed to take the following steps, among others:

1. JJF will no longer include Section 7(d), or any provision that contains any restrictions on the hiring or solicitation of employees, in any Jimmy John's Franchise Agreement that is signed after the date of the Assurance of Discontinuance.
2. As to Franchise Agreements that are currently in effect in the State of Washington, the OAG has required JJF to propose to each franchisee that the parties enter into the attached Amendment to Jimmy John's Franchisor SPV, LLC's Franchise Agreement. As you will see, the proposed Amendment simply removes Sections 7(d) and 14.B(18) (which references Section 7(d)) from the Franchise Agreements that you executed. To the extent

you sign this proposed Amendment, the OAG has agreed that it will not file suit, or take any investigative or enforcement action against you relating to this provision. If you do not sign this proposed Amendment, the OAG has indicated that it will reserve the right to either file suit, or take investigative or enforcement action against you relating to this provision. We strongly encourage you to sign the proposed Amendment and return it to us promptly.

3. JJF will not enforce any rights that it might have with respect to Section 7(d), in any existing Franchise Agreement.

If you have any questions about the issues raised in this correspondence, please call our General Counsel, Todd Labinsky, at 217-356-9900. Please understand that we will not be able to provide any legal advice regarding this matter.

Thanks,

James

EXHIBIT B

**AMENDMENT TO
JIMMYJOHN’S FRANCHISOR SPV, LLC FRANCHISE AGREEMENT**

The Jimmy John’s Franchisor SPV, LLC Franchise Agreement for JIMMY JOHN’S® Restaurant No. _____ between Jimmy John’s Franchisor SPV, LLC (“We”) and the undersigned franchisee (“You”), dated _____, _____ (as amended, the “Franchise Agreement”), shall be amended in accordance with the following terms.

1. Background. We and you are parties to the Franchise Agreement, pursuant to which you operate, or have been granted the right to operate, a JIMMY JOHN’S® Restaurant in the State of Washington. We and you have determined that it is in the best interests of the JIMMY JOHN’S® franchise system to not enforce Sections 7(d) or 14.B(18) of the Franchise Agreement. The purpose of this Amendment to your Franchise 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 Franchise Agreement.

2. Modification of Terms. As of the Effective Date (defined below) of this Amendment, you and we agree that Section 7(d) and Section 14.B(18) are hereby deleted from the Franchise Agreement and are of no further force or effect.

3. Miscellaneous. Except as specifically modified by this Amendment, the provisions of the Franchise Agreement shall remain in full force and effect. This document is an amendment to, and forms a part of, the Franchise Agreement. If there is an inconsistency between this Amendment and the Franchise 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 to their respective successors and assigns and will be binding upon the parties hereto and each of their respective successors, assigns, and legal representatives. 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”).

JIMMY JOHN’S FRANCHISOR SPV, LLC

[FRANCHISEE ENTITY NAME]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____