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January 5, 2022

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RE: Fichter Comments supporting proposed Statement of Policy re Franchise Questionnaires and Acknowledgments dated December 6, 2021

Dear NASAA members:

I am writing to you to express my strong support for NASAA's proposed Statement of Policy Regarding the Use of Franchise Questionnaires and Acknowledgement ("SOP"). I'm a second-generation franchise attorney in Seattle, Washington. I represent both franchisees and franchisors in transactional matter and litigation. In addition to my legal practice, I have served as the chair of the American Bar Association Forum on Franchising Litigation and Dispute Resolution Committee and I am a current member of the American Bar Association Forum on Franchising Governing Committee. I have spoken at the American Bar Association Forum on Franchising and published in the Franchise Law Journal. I identify as a franchise law nerd and suspect I am not alone in that classification.

I am writing this letter to join the letter that my senior partner, Howard Bundy, wrote in support of the SOP. He provides an excellent summary of legal reasons why the SOP is needed. I would like to use my letter to describe how bad actor franchisors use acknowledgements, disclaimers, and waivers to prevent defrauded franchisees from accessing the legal system.

In my ten years of practice, I've represented more than 100 franchisees who have been defrauded in the franchise sales process. My clients educational and professional backgrounds have ranged from high-school sweethearts who bought a franchise after graduation to a former army officer with a MBA, and a computer programmer who graduated from college at sixteen. I've represented schoolteachers, stay at home moms,

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doctors, and even a few lawyers. One key thing my clients have had in common (with one exception in ten years) is that they could not sift through the bad actor franchisor's statements to determine how to accurately fill out their franchise disclosure questionnaire.

Generally, the document the franchisor has titled a franchise "acknowledgement" or "questionnaire" is inserted at the very end of a two or three hundred page document and requires the franchisee to, with perfect accuracy, recall each and every statement made by their franchise broker, salesperson, the franchisor employees they met at discovery day, the current franchisees that they may or may not have been steered to in due diligence, and any other person representing or associated with the franchise and determine whether or not any of those statements conflict with, extend or supplement the language of the FDD or the franchise agreement. For example, the prospective franchisee has to independently determine if the salesperson saying, "we'll provide you with state-of-the-art training and a cutting-edge customer management system" contradicts the language in the FDD which states that the franchisor "may in their discretion provide additional support." A prospective franchisee should not have to parse a contract with the skill of an experienced attorney.

Frequently, prospective franchisees sign the "acknowledgment" or "questionnaire" under the watchful eye (and assistance) of a representative of the franchisor. I had one client who signed her franchise agreement, including an acknowledgment, at her kitchen table with the franchise sales representative sitting next to her. At her deposition, she explained that she did not understand that things the sales representative told her while he walked her through the FDD and the franchise agreement were not part of the agreement itself. The single client I've represented who was able to realize that something a salesperson told him contradicted the acknowledgment called the franchisor to ask what he should do. The franchisor representative told him that the document was "a formality" and that he needed to say no to every question to purchase the franchise. He did and lost most of his retirement.

The idea that a "questionnaire" or "acknowledgement" would put a prospective franchisee on notice that they have been lied to is based on the pernicious idea that intelligent, careful people cannot be the victims of fraud, which has never been true. It is perpetuated by franchise attorneys, judges, and arbitrators who by relying on such documents to dismiss a franchisee's fraud claims, require prospective franchisees to review documents with perfect recollection and a litigator's keen eye. The reality is that intelligent, careful people can be defrauded as well as anyone else. I'm writing this letter a few days after the verdict in the Elizabeth Holmes trial. Ms. Holmes defrauded investors included Rupert Murdoch and Larry Ellison and her board of directors included Henry Kissinger, Jim Mattis and George Shultz. Anyone can be victim of fraud and if they are they should be allowed to bring their claims in court, not dismissed prior to discovery because of an artfully drafted "questionnaire."

Sincerely,

Caroline Fichter

Caroline B. Fichter