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STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

18-2-57773-1 SDA

IN RE: FRANCHISE NO  
POACHING PROVISIONS

BUDGET BLINDS, LLC'S 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 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 investigation of the hiring practices of franchisors and franchisees in the State of Washington, including Budget Blinds, LLC.

1.2 Budget Blinds, LLC ("Budget Blinds") is a California limited liability company with its principal office or place of business in Irvine, California. Budget Blinds is in the business of franchising businesses that provide window coverings under the "Budget Blinds®" trademark.

1.3 Budget Blinds includes its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its successors and assigns, controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures. Budget Blinds does not include independent franchise operators.

1 II. INVESTIGATION

2 2.1 Budget Blinds currently has approximately 40 independently owned and  
3 operated franchise locations in Washington. No locations are owned or operated by Budget  
4 Blinds.

5 2.2 Prior to Q1 2018, Budget Blinds included language in paragraph 8.8(c)(ii) of its  
6 franchise agreement that restricted a franchisee's post-termination ability to solicit or hire  
7 workers from another franchisee or Budget Blinds (the "8.8(c)(ii) provision"). Specifically, the  
8 8.8(c)(ii) provision stated:

9 8.8(c) For a continuously uninterrupted period of two years, beginning  
10 with the "beginning date" [expiration, termination or transfer] specified below,  
Franchisee will not, directly or indirectly, for itself, or through, on behalf of or in  
11 conjunction with any other person:

- 12 (ii) Employ, or seek to employ, any person who is at that  
13 time, or has been within the preceding six months,  
14 employed by Franchisor or by any other franchisee or  
15 developer of Franchisor, or otherwise directly or  
indirectly induce those people to leave their  
employment, except as permitted under any existing  
franchise agreement between Franchisor and  
Franchisee.

16 In Q1 2018, Budget Blinds removed this provision from its standard franchise agreement  
17 several months before the Washington Attorney General's investigation into Budget Blinds'  
18 hiring practices.

19 2.3 The Attorney General asserts that the foregoing contract language constitutes a  
20 contract, combination, or conspiracy in restraint of trade in violation of the Consumer  
21 Protection Act, RCW 19.86.030.

22 2.4 Budget Blinds expressly denies that the contract provision described above  
23 constitutes a contract, combination, or conspiracy in restraint of trade in violation of the  
24 Consumer Protection Act, RCW 19.86.030, or any other law, and expressly denies it has  
25 engaged in any conduct that constitutes a contract, combination, or conspiracy in restraint of  
26 trade. Budget Blinds believes that the contract provision was adopted to encourage franchisees

1 to make the investments necessary to develop a well-trained, high quality, and stable  
2 workforce in their locations, which in turn strengthened Budget Blinds' brand and individual  
3 Budget Blinds locations' ability to compete against other branded companies, among other  
4 reasons. Budget Blinds enters into this AOD to formalize its existing practice and accelerate  
5 removal of the provision from its Washington franchise agreements and avoid protracted and  
6 expensive litigation that could be brought by the State if it does not enter into this AOD.  
7 Pursuant to RCW 19.86.100, neither the existence of this AOD nor any of its terms shall be  
8 construed as an admission of law or fact, or any liability, misconduct, or wrongdoing on the  
9 part of Budget Blinds.

### 10 III. ASSURANCE OF DISCONTINUANCE

11 3.1 Subject to the paragraphs above, Budget Blinds agrees:

12 3.1.1. As of Q1 2018, it removed the 8.8(c)(ii) provision from its current  
13 standard franchise agreement and will no longer include 8.8(c)(ii) or other similar provisions  
14 that purport to restrict a franchisee's ability to solicit or hire employees from Budget Blinds or  
15 other franchisees in any future franchise agreement nationwide;

16 3.1.2. As in the past, it will not enforce the 8.8(c)(ii) provision in any of its  
17 existing franchise agreements, and will not seek to intervene or defend in any way the legality  
18 of the 8.8(c)(ii) provision in any litigation in which a franchisee may claim third-party  
19 beneficiary status rights to enforce the 8.8(c)(ii) provision in an existing Budget Blinds  
20 franchise agreement;

21 3.1.3. Within 14 days after the entry of this AOD, it will make all of its  
22 franchisees aware of the entry of this AOD and make a copy available if requested;

23 3.1.4. It will notify the Attorney General's Office if it learns of any effort by a  
24 Washington Budget Blinds franchisee to enforce paragraph 8.8(c)(ii).

25 3.2 Within 90 days of entry of this AOD, Budget Blinds will endeavor to amend all  
26 franchise agreements with Washington Budget Blinds franchisees to remove the 8.8(c)(ii)

1 provision in its existing franchise agreement. However, for the avoidance of doubt, Budget  
2 Blinds is under no obligation to offer its franchisees any consideration, monetary or otherwise,  
3 in order to induce them to sign the proposed amendment, nor will Budget Blinds be required to  
4 take, or threaten to take, any adverse action against any such franchisees if they refuse to do so.  
5 If any Washington franchise owner declines to amend its franchise agreement within 7 days  
6 prior to the 90-day deadline, Budget Blinds shall provide the name and address of any such  
7 franchise owner to the Office of the Attorney General. A decision by a Budget Blinds  
8 franchisee not to amend its franchise agreement, or not to do so within 90 days of this AOD,  
9 shall not mean that Budget Blinds has not complied with its obligations under this AOD. This  
10 provision shall be deemed satisfied with regard to each Washington Budget Blinds franchisee  
11 by either the amendment of such franchisee's franchise agreement(s) to remove the 8.8(c)(ii)  
12 provision or by Budget Blinds providing the name and address of such franchisee to the Office  
13 of the Attorney General.

14 3.3 As of Q1 2018 and going forward, Budget Blinds will not include the 8.8(c)(ii)  
15 provision in its franchise agreement for all franchisees nationwide, including for (a) new  
16 franchisees signing franchise agreements for the first time after the date of this AOD, (b)  
17 existing franchisees whose franchise agreements have expired and/or are otherwise subject to  
18 renewal, rebuild or relocation, and (c) franchisees who are acquiring a Budget Blinds business  
19 or another franchisee's business (*i.e.*, assignment) assuming they sign a new franchise  
20 agreement as part of the transaction.

21 3.4 Within 30 days of the conclusion of all time periods referenced in this section  
22 III, Budget Blinds will submit a declaration to the Attorney General's Office signed under  
23 penalty of perjury stating that it has complied with all provisions of this AOD or, if  
24 circumstances beyond Budget Blinds' control prevent compliance with any paragraph within  
25 the specified time frame, Budget Blinds will describe its efforts to satisfy the paragraph's  
26 requirements and the relevant extenuating circumstances.

1 IV. ADDITIONAL PROVISIONS

2 4.1 This AOD is binding on, and applies to Budget Blinds, 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 divisions, groups, affiliates, partnerships, and joint ventures, or other entities through which  
6 Budget Blinds may now or hereafter act with respect to the conduct alleged in this AOD.

7 4.2 This is a voluntary agreement and it shall not be construed as an admission of  
8 any law, fact, liability, misconduct, evidence of violation or wrongdoing on the part of Budget  
9 Blinds. By entering into this AOD, Budget Blinds does not agree or concede that the claims,  
10 allegations and/or causes of action which were threatened by and/or could have been asserted  
11 by and/or could have been asserted by the Attorney General have any merit and Budget Blinds  
12 expressly denies the existence of any facts pertaining to Budget Blinds that could support any  
13 such claims, allegations, and/or causes of action. However, proof of Budget Blinds' attempt to  
14 enforce the 8.8(c)(ii) provision in Washington after the date of this AOD shall be *prima facie*  
15 evidence of a violation of RCW 19.86.030, thereby placing upon the violator the burden of  
16 defending against imposition by the Court of injunctions, restitution, costs and reasonable  
17 attorney's fees, and civil penalties of up to \$2,000.00 per violation.

18 4.3 Budget Blinds 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 language described in  
21 paragraph 2.2 above with respect to the 8.8(c)(ii) provision in Budget Blinds' franchise  
22 agreement.

23 4.4 Budget Blinds' compliance with this AOD resolves all issues raised by the State of  
24 Washington and the Antitrust Division of the Attorney General's Office under the Consumer  
25 Protection Act and any other statutes relating to the acts set forth in paragraph 2.2 – 2.4 above.  
26 Subject to paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney

1 General's Office shall not file suit or take any further investigative or enforcement action against  
2 Budget Blinds with respect to the acts set forth above that occurred before the date of entry of this  
3 AOD, or against independent Budget Blinds franchisees in Washington who agree to the  
4 amendment described in paragraph 3.2 above within 90 days of the entry of this AOD with  
5 respect to acts that occurred before the date of such amendment.

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7 APPROVED ON this \_\_\_\_ day of \_\_\_\_\_, 2018.

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11 JUDGE/COURT COMMISSIONER  
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1 Presented by:

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