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7 **STATE OF WASHINGTON**
8 **KING COUNTY SUPERIOR COURT**

9 IN RE: FRANCHISE NO POACHING
10 PROVISIONS
11 (TAN REPUBLIC FRANCHISE
12 COMPANY LLC)

NO. 19-2-24817-3

TAN REPUBLIC FRANCHISE
COMPANY LLC ASSURANCE OF
DISCONTINUANCE

13 The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney
14 General, and Justin Wade, Assistant Attorney General, files this Assurance of Discontinuance
15 (AOD) under RCW 19.86.100.

16 **I. PARTIES**

17 1.1 In August 2019, the Attorney General initiated an investigation into Tan
18 Republic Franchise Company LLC (Tan Republic) relating to its hiring practices.

19 1.2 Tan Republic is an Oregon limited liability company with its principal office or
20 place of business in Oregon. Tan Republic is in the business of franchising stores that offer
21 upscale tanning, skin care, beauty treatments, and related spa services and merchandise.

22 1.3 For the purposes of this AOD, Tan Republic includes its directors, officers,
23 managers, agents acting within the scope of their agency, and employees as well as its successor
24 and assigns, controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint
25 ventures.

1 **II. INVESTIGATION**

2 2.1 Tan Republic has five stores in Washington. Five of these stores are owned and
3 operated by franchisees and none are owned and operated by Tan Republic.

4 2.2 For years, Tan Republic has included language in its franchise agreements that
5 restricted a franchisee's ability to solicit or hire workers from another Tan Republic stores ("no-
6 poaching provision"). Specifically, the standard Tan Republic franchise agreement stated that:

7 "You [the franchisee] will assure that you and your owners, directors, officers,
8 partners, shareholders, members, employees, consultants, and agents, during
9 the term of this Agreement and for a period of two years after expiration or
10 termination of this Agreement do not:

- 11 A. divert or directly or indirectly attempt to divert any of
12 our business or any of our customers to any competing
13 establishment;
- 14 B. employ or seek to employ any person we employ or any
15 other person who is at that time operating or employed
16 by or at any of our franchises or otherwise directly or
17 indirectly induce these persons to leave their
18 employment; nor
- 19 C. do or perform, directly or indirectly, any other act
20 injurious or prejudicial to our goodwill associated with
21 the Marks and System.

22 If, for any reason, any provision set forth in Sections 17.2 or 17.3 is determined
23 to exceed any lawful scope or limit as to duration, geographic coverage, or
24 otherwise, it is agreed that the provision will nevertheless be binding to the full
25 scope or limit allowed by law or by a court of law. The duration, geographic
26 coverage and scope allowable by law or court of law will apply to this
Agreement.

A no-poaching provision restricted franchisees from hiring both employees from a competing
franchisee and from Tan Republic corporate-owned stores.

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

2.4 Tan Republic expressly denies the conduct described above constitutes a
contract, combination, or conspiracy in restraint of trade in violation of the Consumer Protection

1 Act, RCW 19.86.030, or any other law, and expressly denies it has engaged in conduct that
2 constitutes a contract, combination, or conspiracy in restraint of trade. Tan Republic enters into
3 this AOD to avoid protracted and expensive litigation. Pursuant to RCW 19.86.100, neither this
4 AOD nor its terms shall be construed as an admission of law, fact, liability, misconduct, or
5 wrongdoing on the part of Tan Republic.

6 III. ASSURANCE OF DISCONTINUANCE

7 3.1 Subject to paragraph 2.4 above, Tan Republic agrees:

8 3.1.1. It will no longer include no-poach provisions in any of its future
9 franchise agreements;

10 3.1.2. It will no longer enforce no-poaching provisions in any of its existing
11 franchise agreements, and will not seek to intervene or defend in any way the legality of any
12 no-poach provision in any litigation in which a franchisee may claim third-party beneficiary
13 status rights to enforce an existing no-poach provision;

14 3.1.3. It will notify all of its franchisees of the entry of this AOD and provide
15 them a copy;

16 3.1.4. It will notify the Attorney General's Office if it learns of any effort by a
17 franchisee in Washington to enforce any existing no-poach provision.

18 3.2 Within 60 days of entry of this AOD, Tan Republic will have amended all
19 existing franchise agreements with entities in Washington to remove any no-poaching
20 provisions in its existing franchise agreements. If any franchise owner is unwilling to consent
21 to the change to its franchise agreement, prior to the 60-day deadline, Tan Republic shall
22 provide the name and address of the resisting franchisee and the name and address of the
23 franchisee's registered agent to the Office of the Attorney General.

24 3.3 As they come up for either renewal or renegotiation during the ordinary course
25 of business, Tan Republic will amend all of its existing franchise agreements on a nationwide
26 basis to remove any no-poach provision.

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the State of Washington and the Antitrust Division of the Attorney General's Office shall not file suit or take any further investigative or enforcement action with respect to the acts set forth above that occurred before the date of entry of this AOD.

APPROVED ON this ____ day of September, 2019.

JUDGE/COURT COMMISSIONER

1 Presented by:

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