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KING COUNTY, WASHINGTON  
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DEPARTMENT OF  
JUDICIAL ADMINISTRATION

STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO POACHING  
PROVISIONS

(THE MELTING POT  
RESTAURANTS, INC.)

NO. 19-2-23510-1SEA

THE MELTING POT® RESTAURANTS,  
INC. ASSURANCE OF  
DISCONTINUANCE

The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney General, and Rahul Rao, Assistant Attorney General, files this Assurance of Discontinuance (AOD) under RCW 19.86.100.

I. PARTIES

1.1 In August 2019, the Attorney General initiated an investigation into The Melting Pot Restaurants, Inc. (TMPRI) relating to its hiring practices.

1.2 TMPRI is a Florida corporation with its principal office or place of business at 7886 Woodland Center Blvd., Tampa, Florida 33637. TMPRI is the Franchisor of a fondue restaurant concept with one-hundred and four restaurants across the United States, including three in the state of Washington.

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

1 **II. INVESTIGATION**

2 2.1 As stated, TMPRI has three stores in Washington, all of which are owned and  
3 operated by franchisees, and none of which are owned and operated by TMPRI.

4 2.2 For many years, TMPRI has included language in its franchise agreements that  
5 restrict a franchisee's ability to solicit or hire workers from other Melting Pot® Restaurants (no-  
6 poaching provision). Specifically, the standard Melting® Pot franchise agreement states that a  
7 franchisee "hire, solicit to hire, or engage the services of anyone who is employed, or was  
8 employed within the 6-month period before such hiring, solicitation or engagement, by  
9 COMPANY, its affiliates, or any other franchisees without the previous employer's prior written  
10 consent." The no-poaching provision restricts franchisees from hiring both employees from a  
11 competing franchisee and from TMPRI's corporate-owned stores.

12 2.3 The Attorney General asserts that the foregoing conduct constitutes a contract,  
13 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,  
14 RCW 19.86.030.

15 2.4 TMPRI expressly denies the conduct described above constitutes a contract,  
16 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,  
17 RCW 19.86.030, or any other law, and expressly denies it has engaged in conduct that constitutes  
18 a contract, combination, or conspiracy in restraint of trade. TMPRI enters into this AOD to avoid  
19 protracted and expensive litigation. Pursuant to RCW 19.86.100, neither this AOD nor its terms  
20 shall be construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part  
21 of TMPRI.

22 **III. ASSURANCE OF DISCONTINUANCE**

23 3.1 Subject to paragraph 2.4 above, TMPRI agrees:

24 3.1.1. It will no longer include no-poach provisions in any of its future franchise  
25 agreements;

26

1           3.1.2. It will no longer enforce no-poaching provisions in any of its existing  
2 franchise agreements, and will not seek to intervene or defend in any way the legality of any no-  
3 poach provision in any litigation in which a franchisee may claim third-party beneficiary status  
4 rights to enforce an existing no-poach provision;

5           3.1.3. It will notify all of its franchisees of the entry of this agreement with the  
6 State, and provide them a copy of the AOD upon request;

7           3.1.4. It will notify the Attorney General's Office if it learns of any effort by a  
8 franchisee in Washington to enforce any existing no-poach provision.

9           3.2     Within 60 days of entry of this AOD, TMPRI will exercise all reasonable  
10 commercial efforts to amend all existing franchise agreements with entities in Washington to  
11 remove any no-poaching provisions in its existing franchise agreements. TMPRI is under no  
12 obligation to offer any franchisee any monetary or non-monetary consideration to induce them  
13 to accept the proposed amendment of the franchise, and it shall be under no obligation to take  
14 any coercive action against a franchisee that may refuse or decline to agree to any amendment  
15 of its franchise agreement. If any franchise owner is unwilling to consent to the change to its  
16 franchise agreement, prior to the 60-day deadline, TMPRI shall provide the name and address of  
17 the resisting franchisee and the name and address of the franchisee's registered agent to the  
18 Office of the Attorney General.

19           3.3     As they come up for either renewal or renegotiation during the ordinary course  
20 of business, TMPRI will amend all of its existing franchise agreements on a nationwide basis to  
21 remove any no-poach provision.

22           3.4     Within 30 days of the conclusion of the time periods referenced in this section  
23 III, TMPRI will submit a declaration to the Attorney General's Office signed under penalty of  
24 perjury stating that all provisions of this agreement have been satisfied.

1 IV. ADDITIONAL PROVISIONS

2 4.1 This AOD is binding on, and applies to TMPRI, including each of its respective  
3 directors, officers, managers, agents acting within the scope of their agency, and employees, as  
4 well as their respective successors and assigns, controlled subsidiaries, divisions, groups,  
5 affiliates, partnerships, and joint ventures, or other entities through which TMPRI may now or  
6 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 law, fact, liability, misconduct, or wrongdoing on the part of TMPRI. By entering into this AOD,  
9 TMPRI neither agrees nor concedes that the claims, allegations and/or causes of action which  
10 have or could have been asserted by the Attorney General have merit and TMPRI expressly  
11 denies any such claims, allegations, and/or causes of action. However, proof of failure to comply  
12 with this AOD shall be *prima facie* evidence of a violation of RCW 19.86.030, thereby placing  
13 upon the violator the burden of defending against imposition by the Court of injunctions,  
14 restitution, costs and reasonable attorney's fees, and appropriate civil penalties under the  
15 Consumer Protection Act.

16 4.3 TMPRI will not, nor will it authorize any of its officers, employees, representatives,  
17 or agents to state or otherwise contend that the State of Washington or the Attorney General has  
18 approved of, or has otherwise sanctioned, the conduct described in Paragraph 2.2 with respect to  
19 the No-Poach Provision in TMPRI'S franchise agreement.

20 4.4 This AOD resolves all issues raised by the State of Washington and the Antitrust  
21 Division of the Attorney General's Office under the Consumer Protection Act and any other related  
22 statutes pertaining to the acts set forth in paragraph 2.1 – 2.3 above that may have occurred before  
23 the date of entry of this AOD and concludes the investigation thereof. Subject to paragraph 4.2, the  
24 State of Washington and the Antitrust Division of the Attorney General's Office shall not file suit  
25 or take any further investigative or enforcement action with respect to the acts set forth above that  
26 occurred before the date of entry of this AOD.

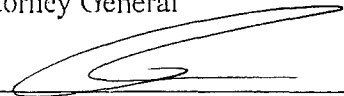
1 APPROVED ON this \_\_\_\_\_ day of August 2019.

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4 JUDGE/COURT COMMISSIONER  
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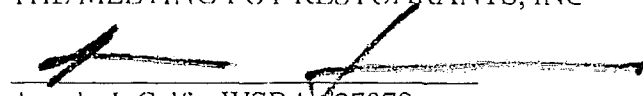
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