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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

(HOME INSTEAD, INC.)

NO. 19-2-23506-3SEA

HOME INSTEAD, INC.
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, including Home Instead, Inc.

1.2 Home Instead, Inc. (Home Instead) is a Nebraska Corporation with its principal office or place of business in Omaha, NE. Home Instead is in the business of franchising businesses that provide home care and companionship services for seniors under the "Home Instead®" trademark.

1.3 Home Instead 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. Home Instead does not include independent franchise operators.

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II. INVESTIGATION

2.1 Home Instead currently has 15 independently owned and operated franchise locations in Washington. One additional location is owned or operated by a Home Instead affiliate.

2.2 Prior to August 3, 2018, Home Instead included language in paragraphs 6(C)(3) and 17(C)(3) of its franchise agreements that restricted a franchisee's ability to solicit or hire workers from another franchisee or Home Instead (the 6(C)(3) and 17(C)(3) provisions). Specifically, the 6(C)(3) and 17(C)(3) provisions stated:

6(C) Franchisee agrees that during the Term and any Renewal Term, Franchisee shall not

(3) Except as otherwise specifically permitted by the terms of this Franchise Agreement, employ or recruit any person who is employed by Franchisor, an affiliate of Franchisor, or any franchisee of Franchisor (including, if applicable, any developer of Franchisor), or otherwise directly or indirectly induce any such person to leave any such employer;

17(C) Franchisee covenants that commencing upon the expiration or termination of all of Franchisees' interest in the Franchise Agreement, and continuing for one (1) year thereafter, Franchisee shall not directly or indirectly, for itself

(3) Except as otherwise specifically permitted by the terms of this Franchise Agreement, employ or recruit any person in a managerial role who is employed by Franchisor, an affiliate of Franchisor, or any franchisee of Franchisor (including, if applicable, any developer of Franchisor), or otherwise directly or indirectly induce any such person to leave any such employer;

On August 3, 2018, Home Instead informed all of its franchisees in the United States that it was waiving its right to enforce these provisions in all franchise agreements.

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

2.4 Home Instead expressly denies that the contract provisions described above constitutes a contract, combination, or conspiracy in restraint of trade in violation of the

1 Consumer Protection Act, RCW 19.86.030, or any other law, and expressly denies it has
2 engaged in any conduct that constitutes a contract, combination, or conspiracy in restraint of
3 trade. Home Instead believes that the contract provisions were adopted to encourage
4 franchisees to make the investments necessary to develop well-trained, high quality, and stable
5 workforces in their locations, which in turn strengthened Home Instead's brand and individual
6 Home Instead locations' ability to compete against other branded companies, among other
7 reasons. Home Instead enters into this AOD to formalize its practice of not enforcing the
8 6(C)(3) and 17(C)(3) provisions, accelerate removal of the provisions from its Washington
9 franchise agreements and avoid protracted and expensive litigation that could be brought by
10 the State if it does not enter into this AOD. Pursuant to RCW 19.86.100, neither the existence
11 of this AOD nor any of its terms shall be construed as an admission of law or fact, or any
12 liability, misconduct, or wrongdoing on the part of Home Instead.

13 III. ASSURANCE OF DISCONTINUANCE

14 3.1 Subject the paragraphs above, Home Instead agrees:

15 3.1.1. As of August 3, 2018, it waived its right to enforce the 6(C)(3) and
16 17(C)(3) provisions in any of its current franchise agreements nationwide and will no longer
17 include the 6(C)(3) and 17(C)(3) provisions, or other similar provisions that purport to restrict
18 a franchisee's ability to solicit or hire workers from another franchisee or Home Instead, in any
19 of its future franchise agreements nationwide;

20 3.1.2. It will not enforce the 6(C)(3) and 17(C)(3) provisions in any of its
21 franchise agreements and will not seek to intervene or defend in any way the legality of the
22 6(C)(3) and 17(C)(3) provisions in any litigation in which a franchisee may claim third-party
23 beneficiary status rights to enforce the 6(C)(3) and 17(C)(3) provisions in an existing Home
24 Instead franchise agreement;

1 3.1.3. Within 60 days after the entry of this AOD, it will make all of its
2 franchisees aware of this agreement with the state of Washington and make a copy of it
3 available if requested;

4 3.1.4. It will notify the Attorney General's Office if it learns of any effort by a
5 Washington Home Instead franchisee to enforce paragraphs 6(C)(3) and/or 17(C)(3) in any
6 existing franchise agreements.

7 3.2 Within 90 days of entry of this AOD, Home Instead will endeavor to amend all
8 existing franchise agreements with Washington Home Instead franchisees to remove the
9 6(C)(3) and 17(C)(3) provisions in its existing franchise agreements, if applicable. However,
10 for the avoidance of doubt, Home Instead is under no obligation to offer its franchisees any
11 consideration, monetary or otherwise, in order to induce them to sign the proposed amendment,
12 nor will Home Instead be required to take, or threaten to take, any adverse action against any
13 such franchisees if they refuse to do so. If any Washington franchise owner declines to amend
14 its franchise agreement within 7 days prior to the 90-day deadline, Home Instead shall provide
15 the name and address of any such franchise owner to the Office of the Attorney General. A
16 decision by a Home Instead franchisee not to amend its franchise agreement, or not to do so
17 within 90 days of this AOD, shall not mean that Home Instead has not complied with its
18 obligations under this AOD. This provision shall be deemed satisfied with regard to each
19 Washington Home Instead franchisee by either the amendment of such franchisee's franchise
20 agreement(s) to remove the 6(C)(3) and 17(C)(3) provisions or by Home Instead providing the
21 name and address of such franchisee to the Office of the Attorney General.

22 3.3 Going forward, Home Instead will not include the 6(C)(3) and 17(C)(3)
23 provisions in its franchise agreements for all franchisees nationwide, including for (a) new
24 franchisees signing franchise agreements for the first time, (b) existing franchisees whose
25 franchise agreements have expired and/or are otherwise subject to renewal, rebuild or
26 relocation, and (c) franchisees who are acquiring a Home Instead business or another

1 franchisee's business (*i.e.*, assignment) assuming they sign a new franchise agreement as part
2 of the transaction.

3 3.4 Within 30 days of the conclusion of all time periods referenced in this section
4 III, Home Instead will submit a declaration to the Attorney General's Office signed under
5 penalty of perjury stating that it has complied with all provisions of this AOD or, if
6 circumstances beyond Home Instead's control prevent compliance with any paragraph within
7 the specified time frame, Home Instead will describe its efforts to satisfy the paragraph's
8 requirements and the relevant extenuating circumstances.

9 IV. ADDITIONAL PROVISIONS

10 4.1 This AOD is binding on, and applies to Home Instead, including each of its
11 respective directors, officers, managers, agents acting within the scope of their agency, and
12 employees, as well as their respective successors and assigns, controlled subsidiaries,
13 divisions, groups, affiliates, partnerships, and joint ventures, or other entities through which
14 Home Instead may now or hereafter act with respect to the conduct alleged in this AOD.

15 4.2 This is a voluntary agreement and it shall not be construed as an admission of
16 any law, fact, liability, misconduct, or wrongdoing on the part of Home Instead. By entering
17 into this AOD, Home Instead does not agree or concede that the claims, allegations and/or
18 causes of action which were asserted by and/or could have been asserted by the Attorney
19 General have any merit and Home Instead expressly denies the existence of any facts
20 pertaining to Home Instead that could support any such claims, allegations, and/or causes of
21 action. However, proof of failure to comply with this AOD shall be *prima facie* evidence of a
22 violation of RCW 19.86.030, thereby placing upon the violator the burden of defending against
23 imposition by the Court of injunctions, restitution, costs and reasonable attorney's fees, and
24 appropriate civil penalties under the Consumer Protection Act.

25 4.3 Home Instead will not, nor will it authorize any of its officers, employees,
26 representatives, or agents to state or otherwise contend that the State of Washington or the

1 Attorney General has approved of, or has otherwise sanctioned, the language described in
2 paragraph 2.2 above with respect to the 6(C)(3) and 17(C)(3) provisions in Home Instead's
3 franchise agreement.

4 4.4 Compliance with this AOD resolves all issues raised by the State of Washington
5 and the Antitrust Division of the Attorney General's Office under the Consumer Protection Act
6 and any other statutes relating to the acts set forth in paragraph 2.2 – 2.4 above. Subject to
7 paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's
8 Office shall not file suit or take any further investigative or enforcement action against Home
9 Instead with respect to the acts set forth above that occurred before the date of entry of this AOD,
10 or against independent Home Instead franchisees in Washington who agree to the amendment
11 described in paragraph 3.2 above within 90 days of the entry of this AOD with respect to acts that
12 occurred before the date of such amendment.

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14 APPROVED ON this ____ day of _____, 2019.

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JUDGE/COURT COMMISSIONER

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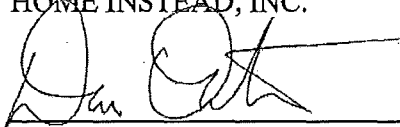
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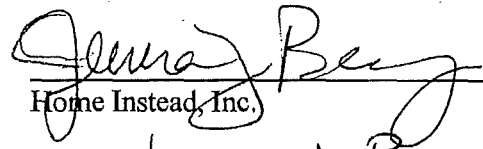
14 Agreed to and approved for entry by:
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