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7 STATE OF WASHINGTON
8 KING COUNTY SUPERIOR COURT

9 IN RE: FRANCHISE NO POACHING
10 PROVISIONS

11 (KF TEA FRANCHISING LLC)

NO. 19-2-24770-3

KF TEA FRANCHISING LLC
ASSURANCE OF
DISCONTINUANCE

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

15 I. PARTIES

16 1.1. In July 2019, the Attorney General initiated an investigation into KF TEA
17 FRANCHISING LLC relating to its hiring practices.

18 1.2. KF TEA FRANCHISING LLC (KFT) is a Delaware limited liability company
19 with its principal office or place of business in New York. KFT franchises the operation of Kung
20 Fu Tea retail shops selling a variety of oriental style brew tea, bubble tea, coffee, juices,
21 smoothies and other hot and cold drinks.

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

2.1. KFT has four stores in Washington. All of these stores are owned and operated by franchisees and none are owned and operated by KFT.

2.2. Since December 17, 2013, the date that KFT was first registered in the State of Washington to sell franchises, KFT has included language in its franchise agreements that restricted a franchisee's ability to solicit or hire workers from KFT or from another Kung Fu Tea franchisee (no-poaching provision). Specifically, the standard KFT franchise agreement stated that a franchisee agrees, both during the term of the franchise agreement and for a period of two years following the expiration, termination or transfer of the agreement, that neither the franchisee nor any of its affiliates or owners or members of the immediate family of an owner, will "recruit or hire any person who is our [*i.e.*, KFT's] employee or the employee of any Kung Fu Tea shop (whether company or affiliate owned or franchised) or who has been our employee or the employee of any Kung Fu Tea shop within the six month period before such recruiting or hiring without the prior written permission of that person's employer." This no-poaching provision restricted franchisees from hiring both employees from another franchised Kung Fu Tea shop and from KFT's company-owned stores.

2.3. KFT removed this no-poaching language from its standard franchise agreement in April 2019. KFT has never sought to enforce the no-poaching provisions of any of its franchise agreements.

2.4. The Attorney General asserts that the conduct described in paragraph 2.2 above constitutes a contract, combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act, RCW 19.86.030.

2.5. KFT expressly denies the conduct described above constitutes a contract, combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act, RCW 19.86.030, or any other law, and expressly denies it has engaged in conduct that constitutes a contract, combination, or conspiracy in restraint of trade. KFT enters into this AOD to avoid

1 protracted and expensive litigation. Pursuant to RCW 19.86.100, neither this AOD nor its terms
2 shall be construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part
3 of KFT.

4 III. ASSURANCE OF DISCONTINUANCE

5 3.1. Subject to paragraph 2.4 above, KFT agrees:

6 3.1.1 It will continue to refrain from including no-poach provisions in any of
7 its future franchise agreements;

8 3.1.2 It will continue to refrain from enforcing or attempting to enforce no-
9 poaching provisions in any of its existing franchise agreements, and will not seek to intervene
10 or defend in any way the legality of any no-poach provision in any litigation in which a
11 franchisee may claim third-party beneficiary status rights to enforce an existing no-poach
12 provision;

13 3.1.3 It will notify all of its franchisees of the entry of this agreement with the
14 State, and provide them a copy of the AOD upon request;

15 3.1.4 It will notify the Attorney General's Office if it learns of any effort by a
16 franchisee in Washington to enforce any existing no-poach provision.

17 3.2. Within 60 days of entry of this AOD, KFT will exercise all reasonable
18 commercial efforts to amend all existing franchise agreements with entities in Washington to
19 remove any no-poaching provisions in its existing franchise agreements. KFT is under no
20 obligation to offer any franchisee any monetary or non-monetary consideration to induce them
21 to accept the proposed amendment of the franchise, and it shall be under no obligation to take
22 any coercive action against a franchisee that may refuse or decline to agree to any amendment
23 of its franchise agreement. If any franchise owner is unwilling to consent to the change to its
24 franchise agreement, prior to the 60-day deadline, KFT shall provide the name and address of
25 the resisting franchisee to the Office of the Attorney General.
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3.3. As they come up for either renewal or renegotiation during the ordinary course of business, KFT will amend all of its existing franchise agreements on a nationwide basis to remove any no-poach provision.

3.4. Within 30 days of the conclusion of the time period referenced in this Section 3.2, KFT will submit a declaration to the Attorney General's Office signed under penalty of perjury stating that KFT has complied with the requirements of Sections 3.1.3 and 3.2 of this agreement and that KFT has complied and will continue to comply with the provisions of Sections 3.1.1, 3.1.2 and 3.3 of this agreement.

IV. ADDITIONAL PROVISIONS

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

4.2. This is a voluntary agreement and it shall not be construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part of KFT. By entering into this AOD, KFT neither agrees nor concedes that the claims, allegations and/or causes of action which have or could have been asserted by the Attorney General have merit and KFT expressly denies any such claims, allegations, and/or causes of action. However, proof of failure to comply with this AOD shall be *prima facie* evidence of a violation of RCW 19.86.030, thereby placing upon the violator the burden of defending against imposition by the Court of injunctions, restitution, costs and reasonable attorney's fees, and appropriate civil penalties under the Consumer Protection Act.

4.3. KFT will not, nor will it authorize any of its officers, employees, representatives, or agents to state or otherwise contend that the State of Washington or the Attorney General has

1 approved of, or has otherwise sanctioned, the conduct described in Paragraph 2.2 with respect to
2 the No-Poach Provision in KFT's franchise agreement.


3 4.4. This AOD resolves all issues raised by the State of Washington and the Antitrust
4 Division of the Attorney General's Office under the Consumer Protection Act and any other
5 related statutes pertaining to the acts set forth in paragraph 2.1 – 2.3 above that may have
6 occurred before the date of entry of this AOD and concludes the investigation thereof. Subject
7 to 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 with respect to
9 the acts set forth above that occurred before the date of entry of this AOD.

10 APPROVED ON this ____ day of _____, 2019.

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13 JUDGE/COURT COMMISSIONER
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