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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.  
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## II. INVESTIGATION

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

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

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

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

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

1           3.4     Within 30 days of the conclusion of the time periods referenced in this section  
2     III, Tan Republic will submit a declaration to the Attorney General's Office signed under  
3     penalty of perjury stating that all provisions of this agreement have been satisfied.

4                               **IV.     ADDITIONAL PROVISIONS**

5           4.1     This AOD is binding on, and applies to Tan Republic, including each of its  
6     respective directors, officers, managers, agents acting within the scope of their agency, and  
7     employees, as well as their respective successors and assigns, controlled subsidiaries, divisions,  
8     groups, affiliates, partnerships, and joint ventures, or other entities through which Tan Republic  
9     may now or hereafter act with respect to the conduct alleged in this AOD.

10          4.2     This is a voluntary agreement and it shall not be construed as an admission of  
11     law, fact, liability, misconduct, or wrongdoing on the part of Tan Republic. By entering into  
12     this AOD, Tan Republic neither agrees nor concedes that the claims, allegations and/or causes  
13     of action which have or could have been asserted by the Attorney General have merit and Tan  
14     Republic expressly denies any such claims, allegations, and/or causes of action. However, proof  
15     of failure to comply with this AOD shall be *prima facie* evidence of a violation of RCW  
16     19.86.030, thereby placing upon the violator the burden of defending against imposition by the  
17     Court of injunctions, restitution, costs and reasonable attorney's fees, and appropriate civil  
18     penalties under the Consumer Protection Act.

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

23          4.4     This AOD resolves all issues raised by the State of Washington and the Antitrust  
24     Division of the Attorney General's Office under the Consumer Protection Act and any other related  
25     statutes pertaining to the acts set forth in paragraph 2.1 – 2.3 above that may have occurred before  
26     the date of entry of this AOD and concludes the investigation thereof. Subject to paragraph 4.2,

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

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5 APPROVED ON this \_\_\_\_\_ day of September, 2019.

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9 JUDGE/COURT COMMISSIONER  
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1 Presented by:

2 ROBERT W. FERGUSON  
3 Attorney General

4 Justin Wade  
JUSTIN WADE, WSBA No. 41168  
5 Assistant Attorney General  
6 Antitrust Division  
7 Office of the Attorney General  
8 800 Fifth Avenue, Suite 2000  
9 Seattle, WA 98104  
10 (206) 464-7030  
11 Justin.Wade@atg.wa.gov

12 *Attorneys for State of Washington*

13 Agreed to and approved for entry by:

14 By: Ryan D. Smith  
15 RYAN D. SMITH, WSBA No. 51902  
16 Peak Law Group, LLC  
17 PO Box 1112  
18 Sherwood, Oregon 97140  
19 (503) 332-4556  
20 ryan@peakfranchiselaw.com

21 *Attorneys for Tan Republic Franchise Company LLC*

22 Tan Republic Franchise Company LLC

23 By: Lance Donnelly  
24 Lance Donnelly, President,  
25 Tan Republic Franchise Company LLC  
26 1124 Wallace Road NW, Suite 115  
Salem, Oregon 97304  
(503) 409-2623  
lance@tanrepublic.com