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

9 IN RE: FRANCHISE NO POACHING  
10 PROVISIONS

NO. 19-2-26219-2 SEA

11 HAND AND STONE FRANCHISE  
CORP.

HAND AND STONE FRANCHISE  
CORP. ASSURANCE OF  
DISCONTINUANCE

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

15 **I. PARTIES**

16 1.1. In August 2019, the Attorney General initiated an investigation into Hand and  
17 Stone Franchise Corp. (Hand and Stone) relating to the hiring practices of Hand and Stone  
18 franchisees.

19 1.2. Hand and Stone is a New Jersey corporation with its principal office or place of  
20 business in Trevese, Pennsylvania. Hand and Stone is in the business of granting franchises for  
21 independent business to operate massage, facial, and waxing services and the sale of related  
22 retail products under the name Hand and Stone Massage and Facial Spa.

23 1.3. For the purposes of this AOD, Hand and Stone includes its officers, managers,  
24 agents, and employees (all to the extent they are acting within the scope of their duties to Hand  
25 and Stone) as well as its successors and assigns and controlled subsidiaries.

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## II. INVESTIGATION

2.1. Hand and Stone has eleven (11) franchised locations in Washington. All of these stores are owned and operated by franchisees and none are owned and operated by Hand and Stone.

2.2. In the past, Hand and Stone has included language in its franchise agreements that restricted a franchisee's ability to solicit or hire workers from another franchisee or from Hand and Stone (No-Poaching Provision). Specifically, from the beginning of the relevant time period until April 2018, the standard Hand and Stone franchise agreement registered in Washington contained a provision, located at then-Section 7.3.(c), that stated that no franchisee shall "[s]olicit or otherwise attempt to induce or influence any employee or other business associate of Franchisor or any other HAND AND STONE franchise to compete against, or terminate or modify his, her or its employment or business relationship with, Franchisor or any other HAND AND STONE franchise." Hand and Stone franchisees employ massage therapists and aestheticians who require costly background checks and licensure, and proprietary Ethics and Sexual Misconduct training. Hand and Stone was concerned that franchisees not be able to "free ride" off the investments in employees of other franchisees by soliciting those employees. However, the No-Poaching Provision was never enforced by Hand and Stone in Washington. That provision was removed in April 2018. The standard Hand and Stone franchise agreement registered in Washington was amended on April 4, 2018, and Section 7.3.(c) was changed to state that no franchisee shall, "[s]olicit or otherwise attempt to induce or influence any employee or other business associate of Franchisor or any other HAND AND STONE franchise to breach his, her or its employment or business agreement with, Franchisor or any other HAND AND STONE franchise."

2.3. In mid-2018, prior to the initiation of the State of Washington's investigation in August 2019, Hand and Stone removed section 7.3.(c) from the franchise agreement. Hand and

1 Stone's form franchise agreement registered in Washington has not included a No-Poaching  
2 Provision since April 2, 2019.

3 2.4. The Attorney General asserts that the No-Poaching Provision in past franchise  
4 agreements that Hand and Stone entered with Washington franchisees constitutes a contract,  
5 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,  
6 RCW 19.86.030.

7 2.5. Hand and Stone expressly denies that the conduct described in paragraph 2.2  
8 above constitutes a contract, combination, or conspiracy in restraint of trade in violation of the  
9 Consumer Protection Act, RCW 19.86.030, or any other law, and expressly denies that it has  
10 engaged in conduct that constitutes a contract, combination, or conspiracy in restraint of trade.  
11 Hand and Stone nevertheless enters into this AOD to avoid protracted and expensive litigation.  
12 Pursuant to RCW 19.86.100, neither this AOD nor its terms shall be construed as an admission  
13 of law, fact, liability, misconduct, or wrongdoing on the part of Hand and Stone.

14 **III. ASSURANCE OF DISCONTINUANCE**

15 3.1. Subject to paragraph 2.5 above, Hand and Stone agrees:

16 3.1.1 It will continue not including No-Poaching Provisions in any of its future  
17 U.S. franchise agreements;

18 3.1.2 It will continue not enforcing No-Poaching Provisions in any of its  
19 existing franchise agreements, and will not seek to intervene or defend in any way the legality  
20 of any No-Poaching Provision in any litigation in which a franchisee may claim third-party  
21 beneficiary status rights to enforce an existing No-Poaching Provision;

22 3.1.3 It will make all of its franchisees aware of the entry of this agreement with  
23 the State, and provide them a copy of the AOD upon request;

24 3.1.4 It will notify the Attorney General's Office if it learns of any effort by a  
25 franchisee in Washington to enforce any existing No-Poaching Provisions.  
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1 not violated RCW 19.86.030, or any other law. However, proof of failure to comply with this  
2 AOD shall be *prima facie* evidence of a violation of RCW 19.86.030, thereby placing upon the  
3 violator the burden of defending against imposition by the Court of injunctions, restitution, costs  
4 and reasonable attorney's fees, and appropriate civil penalties under the Consumer Protection  
5 Act.

6 4.3. Hand and Stone will not, nor will it authorize any of its officers, employees,  
7 representatives, or agents to state or otherwise contend that the State of Washington or the  
8 Attorney General has approved of, or has otherwise sanctioned, the conduct described in Section  
9 2.2 with respect to the No-Poaching Provision in Hand and Stone's past franchise agreements.

10 4.4. This AOD resolves all issues raised by the State of Washington and the Antitrust  
11 Division of the Attorney General's Office under the Consumer Protection Act and any other  
12 related statutes pertaining to the acts set forth in Section 2.2 above that may have occurred before  
13 the date of entry of this AOD and concludes the investigation thereof. Subject to Section 4.2, the  
14 State of Washington and the Antitrust Division of the Attorney General's Office shall not file  
15 suit or take any further investigative or enforcement action with respect to the acts set forth above  
16 that occurred before the date of entry of this AOD.

17 APPROVED ON this \_\_\_\_ day of \_\_\_\_\_, 2019.

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JUDGE/COURT COMMISSIONER  
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1 Presented by:

2 ROBERT W. FERGUSON  
3 Attorney General

4   
5 JUSTIN WADE, WSBA #41168

6 Assistant Attorney General  
7 Antitrust Division  
8 Office of the Attorney General  
9 800 Fifth Avenue, Suite 2000  
10 Seattle, WA 98104  
11 (206) 464-7030  
12 Justin.Wade@atg.wa.gov

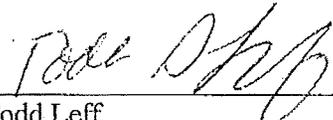
13 *Attorneys for State of Washington*

14 Agreed to and approved for entry by:  
15 HAND AND STONE FRANCHISE CORP.

16   
17 Joseph Vance, P.C., WSB No. 25531  
18 MILLER NASH GRAHAM & DUNN LLP  
19 500 Broadway Street, Suite 400  
20 Vancouver, WA 98660  
21 Tel. (360) 699-4771

22 and

23 Richard A. Duncan, MN No. 192983  
24 FAEGRE BAKER DANIELS LLP  
25 2200 Wells Fargo Center  
26 90 South Seventh Street  
Minneapolis, MN 55402-3901  
Tel. (612) 766-8612  
Fax (612) 766-1600  
Attorneys for Hand and Stone Franchise Corp.

  
Todd Leff  
Chief Executive Officer  
Hand and Stone Franchise Corp.