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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
12 CORP.

HAND AND STONE FRANCHISE
CORP. 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
(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 Trevoze, 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 3.2. Within 60 days of entry of this AOD, Hand and Stone will exercise all reasonable
2 commercial efforts to amend all existing franchise agreements with franchisees in Washington
3 to remove any No-Poaching Provisions in their existing franchise agreements. Hand and Stone
4 is under no obligation to offer any franchisee any monetary or non-monetary consideration to
5 induce them to accept the proposed amendment of the franchise agreement, and it shall be under
6 no obligation to take any coercive action against a franchisee that may refuse or decline to agree
7 to any amendment of its franchise agreement. If any franchise owner is unwilling to consent to
8 the change to its franchise agreement, prior to the 60-day deadline, Hand and Stone shall provide
9 the name and address of the resisting franchisee and the name and address of the franchisee's
10 registered agent to the Office of the Attorney General.

11 3.3. As they come up for either renewal or renegotiation during the ordinary course
12 of business, Hand and Stone will amend all of its existing franchise agreements on a nationwide
13 basis to remove any No-Poaching Provision as part of the renewal process.

14 3.4. Within 30 days of the conclusion of the time periods referenced in Section 3.2,
15 Hand and Stone will submit a declaration to the Attorney General's Office signed under penalty
16 of perjury stating that Sections 3.1.3 and 3.2 of this agreement have been satisfied.

17 **IV. ADDITIONAL PROVISIONS**

18 4.1. This AOD is binding on, and applies to Hand and Stone, including its officers,
19 managers, agents, and employees (all to the extent they are acting within the scope of their duties
20 to Hand and Stone) as well as its successors and assigns and controlled subsidiaries.

21 4.2. This is a voluntary agreement, and it shall not be construed as an admission of
22 law, fact, liability, misconduct, or wrongdoing on the part of Hand and Stone, and is not an order,
23 injunction, or decree. By entering into this AOD, Hand and Stone neither agrees nor concedes
24 that the claims, allegations and/or causes of action which have or could have been asserted by
25 the Attorney General have merit and Hand and Stone expressly denies any such claims,
26 allegations, and/or causes of action, and expressly preserves all arguments that its conduct has

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:

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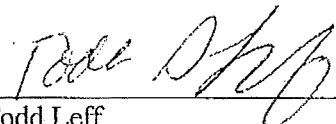
13 Agreed to and approved for entry by:
14 HAND AND STONE FRANCHISE CORP.

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