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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

IN RE: FRANCHISE NO POACHING
PROVISIONS

PUMP IT UP HOLDINGS, LLC

NO. 19-2-26249-4 SEA

PUMP IT UP HOLDINGS, LLC
ASSURANCE OF
DISCONTINUANCE

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

I. PARTIES

1.1. In August 2019, the Attorney General initiated an investigation into Pump It Up Holdings, LLC (“Franchisor”) relating to its hiring practices.

1.2. Franchisor is an Arizona limited liability company with its principal office or place of business in Scottsdale, Arizona. Franchisor is in the business of owning, operating and franchising entertainment businesses.

1.3. For the purposes of this AOD, Franchisor 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.

1 **II. INVESTIGATION**

2 2.1. Franchisor has three (3) entertainment businesses in Washington. Three (3) of
3 these businesses are owned and operated by franchisees and none are owned
4 and operated by Franchisor.

5 2.2. For years, Franchisor has included language in its franchise agreements that
6 restricted a franchisee's ability to solicit or hire workers from another of Franchisor's franchisees
7 or from Franchisor (no-poaching provision). Specifically, the standard franchise agreement
8 states that a franchisee "will not, either directly or indirectly, for [it]self, or through, on behalf
9 of, or in conjunction with, any person, firm, partnership, corporation, limited liability company
10 or other entity...knowingly employ or seek to employ any person then employed by [Franchisor]
11 or employed by any Pump It Up franchisee as a manager or higher, or otherwise directly or
12 indirectly induce such person to leave his or her employment without [Franchisor's] prior written
13 consent.." A no-poaching provision restricted franchisees from hiring both employees from a
14 competing franchisee and from Franchisor's corporate-owned entertainment businesses.

15 2.3. The Attorney General asserts that the foregoing conduct constitutes a contract,
16 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,
17 RCW 19.86.030.

18 2.4. Franchisor expressly denies the conduct described above constitutes a contract,
19 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,
20 RCW 19.86.030, or any other law, and expressly denies it has engaged in conduct that constitutes
21 a contract, combination, or conspiracy in restraint of trade. Franchisor enters into this AOD to
22 avoid protracted and expensive litigation. Pursuant to RCW 19.86.100, neither this AOD nor its
23 terms shall be construed as an admission of law, fact, liability, misconduct, or wrongdoing on
24 the part of Franchisor.

1 **III. ASSURANCE OF DISCONTINUANCE**

2 3.1. Subject to paragraph 2.4 above, Franchisor agrees:

3 3.1.1 It will no longer include no-poach provisions in any of its future
4 franchise agreements;

5 3.1.2 It will not enforce no-poaching provisions in any of its existing franchise
6 agreements, and will not seek to intervene or defend in any way the legality of any no-poach
7 provision in any litigation in which a franchisee may claim third-party beneficiary status rights
8 to enforce an existing no-poach provision;

9 3.1.3 It will notify all of its franchisees of the entry of this agreement with the
10 State, and provide them a copy of the AOD upon request;

11 3.1.4 It will notify the Attorney General's Office if it learns of any effort by a
12 franchisee in Washington to enforce any existing no-poach provision.

13 3.2. Within 60 days of entry of this AOD, Franchisor will exercise all reasonable
14 commercial efforts to amend all existing franchise agreements with entities in Washington to
15 remove any no-poaching provisions in its existing franchise agreements. Franchisor is under no
16 obligation to offer any franchisee any monetary or non-monetary consideration to induce them
17 to accept the proposed amendment of the franchise, and it shall be under no obligation to take
18 any coercive action against a franchisee that may refuse or decline to agree to any amendment
19 of its franchise agreement. If any franchise owner is unwilling to consent to the change to its
20 franchise agreement, prior to the 60-day deadline, Franchisor shall provide the name and address
21 of the resisting franchisee and the name and address of the franchisee's registered agent to the
22 Office of the Attorney General.

23 3.3. As they come up for either renewal or renegotiation during the ordinary course
24 of business, Franchisor will amend all of its existing franchise agreements on a nationwide basis
25 to remove any no-poach provision.
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paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's Office shall not file suit or take any further investigative or enforcement action with respect to the acts set forth above that occurred before the date of entry of this AOD.

APPROVED ON this ____ day of _____, 2019.

JUDGE/COURT COMMISSIONER

1 Presented by:

2 ROBERT W. FERGUSON
3 Attorney General

4 _____
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14 Agreed to and approved for entry by:
15 PUMP IT UP HOLDINGS, LLC

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Pump It Up Holdings, LLC's Authorized
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By: Andrew Christensen

Its: General Counsel, Secretary