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6 STATE OF WASHINGTON  
7 KING COUNTY SUPERIOR COURT

8 IN RE: FRANCHISE NO POACHING  
9 PROVISIONS

10 (JACKSON HEWITT INC.)  
11

NO.

18-2-57808-0 SEA  
12 JACKSON HEWITT INC.  
13 ASSURANCE OF  
14 DISCONTINUANCE

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

18 I. PARTIES

19 1.1 In August 2018, the Attorney General initiated an investigation into Jackson  
20 Hewitt Inc. ("Jackson Hewitt") relating to a particular internal hiring practice.

21 1.2 Jackson Hewitt is a Virginia corporation with its principal office or place of  
22 business in New Jersey. Jackson Hewitt is in the business of assisting individual taxpayers with  
23 the preparation and filing of federal, state and local income tax returns in the United States  
24 through a nationwide network of franchised and company-owned offices.

25 1.3 Jackson Hewitt includes its directors, officers, managers, agents acting within  
26 the scope of their agency, and employees as well as its successor and assigns, controlled  
subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures.

## II. INVESTIGATION

2.1 Jackson Hewitt has 106 stores in Washington, 26 of which are owned and operated by franchisees and 80 of which are owned and operated by Jackson Hewitt.

2.2 Jackson Hewitt has included language in its franchise agreements that restricted a franchisee's ability to solicit or hire workers from Jackson Hewitt locations owned and operated by the company itself ("no-poaching provision"). Specifically, Jackson Hewitt franchise agreements typically stated that a franchisee may not, without Jackson Hewitt's permission,

"solicit, recruit, or hire, for a job position entailing tax preparation, tax preparation management or supervisory duties, or tax preparation instruction duties, within the boundaries of any Territory, which you own or owned . . . any of our or our Affiliates' employees whose duties with us or our Affiliates include(d) management of or over company-owned or franchised stores, franchisee training, tax preparation software wiring or debugging, tax return processing software writing or debugging, electronic filing of tax returns, tax return processing, processing support, tax return preparation, or tax return preparation advice or support."

These provisions did not restrict (i) franchisees' ability to solicit or hire workers from other Jackson Hewitt franchisees, (ii) franchisees' ability to solicit or hire workers from company owned locations who are not highly skilled as described in the above-referenced provision, nor (iii) did they restrict Jackson Hewitt's ability to solicit or hire workers for company owned locations from its franchisees.

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 Jackson Hewitt 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 that it has engaged in conduct that constitutes a contract, combination, or conspiracy in restraint of trade. Jackson Hewitt asserts that the no-poaching provisions serve multiple legitimate purposes and, in any

1 event, based on reasonable investigation it has not taken any steps to enforce such provisions in  
2 the state of Washington or any state in at least the past five years. Nevertheless, Jackson  
3 Hewitt enters into this AOD to avoid protracted and expensive litigation. Pursuant to RCW  
4 19.86.100, neither this AOD nor its terms shall be construed as an admission of law, fact,  
5 liability, misconduct, or wrongdoing on the part of Jackson Hewitt.

### 6 III. ASSURANCE OF DISCONTINUANCE

7 3.1 Subject to paragraph 2.4 above, Jackson Hewitt agrees:

8 3.1.1. It will no longer include no-poaching provisions in any of its future  
9 franchise agreements;

10 3.1.2. It will not enforce no-poaching provisions in any of its existing franchise  
11 agreements, and will not seek to intervene or defend in any way the legality of any no-  
12 poaching provision in any litigation in which a franchisee may claim third-party beneficiary  
13 status rights to enforce an existing no-poaching 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 3.2 Within 60 days of entry of this AOD, Jackson Hewitt will notify all franchisees  
17 in the State of Washington that it irrevocably waives and will not seek to enforce the no-  
18 poaching provisions in its existing franchise agreements.

19 3.3 As they come up for either renewal or renegotiation during the ordinary course  
20 of business, Jackson Hewitt will amend all of its existing franchise agreements on a nationwide  
21 basis to remove any no-poaching provision.

22 3.4 Within 30 days of the conclusion of the time periods referenced in this section  
23 III, Jackson Hewitt will submit a declaration to the Attorney General's Office signed under  
24 penalty of perjury stating that all provisions of this agreement have been satisfied.

1 IV. ADDITIONAL PROVISIONS

2 4.1 This AOD is binding on, and applies to Jackson Hewitt, including each of its  
3 respective directors, officers, managers, agents acting within the scope of their agency, and  
4 employees, as well as their respective successors and assigns, controlled subsidiaries,  
5 divisions, groups, affiliates, partnerships, and joint ventures, or other entities through which  
6 Jackson Hewitt may now or hereafter act with respect to the conduct alleged in this AOD.

7 4.2 This is a voluntary agreement and it shall not be construed as an admission of  
8 law, fact, liability, misconduct, or wrongdoing on the part of Jackson Hewitt. By entering into  
9 this AOD, Jackson Hewitt neither agrees nor concedes that the claims, allegations and/or  
10 causes of action which have or could have been asserted by the Attorney General have merit  
11 and Jackson Hewitt expressly denies any such claims, allegations, and/or causes of action.  
12 However, proof of failure to comply with this AOD shall be *prima facie* evidence of a  
13 violation of RCW 19.86.030, thereby placing upon the violator the burden of defending against  
14 imposition by the Court of injunctions, restitution, costs and reasonable attorney's fees, and  
15 civil penalties of up to \$2,000.00 per violation.

16 4.3 Jackson Hewitt will not, nor will it authorize any of its officers, employees,  
17 representatives, or agents to state or otherwise contend that the State of Washington or the  
18 Attorney General has approved of, or has otherwise sanctioned, the conduct described in  
19 Paragraph 2.2 with respect to the no-poaching provision in Jackson Hewitt's franchise agreement.

20 4.4 This AOD resolves all issues raised by the State of Washington and the Antitrust  
21 Division of the Attorney General's Office under the Consumer Protection Act and any other  
22 related statutes pertaining to the acts set forth in paragraph 2.1 – 2.3 above that may have occurred  
23 before the date of entry of this AOD and concludes the investigation thereof. Subject to  
24 Paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's  
25 Office shall not file suit or take any further investigative or enforcement action with respect to the  
26 acts set forth above that occurred before the date of entry of this AOD.

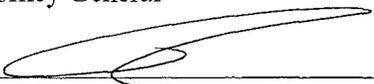
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APPROVED ON this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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JUDGE/COURT COMMISSIONER

1 Presented by:

2 ROBERT W. FERGUSON  
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10 Agreed to and approved for entry by:

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17 -and-

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19 Rick Goldberg  
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1 Presented by:

2 ROBERT W. FERGUSON  
3 Attorney General

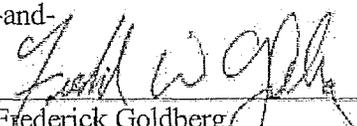
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