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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

IN RE: FRANCHISE NO POACHING
PROVISIONS

(ANY TEST FRANCHISING, INC.)

NO. 19-2-25535-8

ANY TEST FRANCHISING, INC.
ASSURANCE OF
DISCONTINUANCE

The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney General, and Justin Wade, 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 Any Test Franchising Inc. d/b/a Any Lab Test Now (Any Test Franchising) relating to the hiring practices of Any Test Franchising’s franchisees.

1.2. Any Test Franchising is a Georgia corporation with its principal office or place of business in Georgia. Any Test Franchising is in the business of granting franchises for independent businesses to develop and operate a franchise facility identified by the ANY LAB TEST NOW® trademarks and that specialize in the collection of samples for analysis and administration of certain types of injections and immunizations for analysis.

1.3. For the purposes of this AOD, “Any Lab Test Now” means Any Test Franchising, its directors, officers, managers, agent, and employees (all of the foregoing, as acting within the

1 scope of their duties to Any Test Franchising) as well as its successor and assigns, and controlled
2 subsidiaries.

3 II. INVESTIGATION

4 2.1. Any Test Franchising has six franchised facility locations in Washington, which
5 are owned and operated by independent franchisees. Neither Any Test Franchising nor its
6 affiliates owns or operates any facility location in Washington.

7 2.2. During a portion of the period of the State of Washington's investigation, Any
8 Test Franchising has included language in its franchise agreements in Washington that restricted
9 a franchisee's ability to knowingly solicit or hire workers from another franchisee for a limited
10 time-period. (No-Poaching Provision). Specifically, from the beginning of the relevant time
11 period until June 28, 2019, the standard Any Test Franchising franchise agreement registered in
12 Washington contained a provision titled "Employee Recruitment" that stated that, "During the
13 term of this Agreement and for two years after termination, transfer, or expiration of this
14 Agreement for any reason, Franchisee shall not knowingly employ or seek to employ any person
15 then employed by Franchisor or by any other franchisee of Franchisor." The No-Poaching
16 Provision restricted franchisees from knowingly hiring employees of Any Test Franchising or
17 another franchisee.

18 2.3. Prior to the initiation of the State of Washington's investigation in 2019, in Any
19 Test Franchising's 2019 renewal of its franchise disclosure documents (FDD), Any Test
20 Franchising removed the No-Poaching Provision from its U.S. form franchise agreement. Any
21 Test Franchising's form franchise agreement registered in Washington has not included the No-
22 Poaching Provision since June 28, 2019.

23 2.4. The Attorney General asserts that the No-Poaching Provision in franchise
24 agreements that Any Test Franchising entered with Washington franchisees, prior to the issuance
25 of the 2019 renewal FDD, constitutes a contract, combination, or conspiracy in restraint of trade
26 in violation of the Consumer Protection Act, RCW 19.86.030.

1 of any effort by a franchisee in Washington to enforce any existing no-poaching provision.

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

12 3.3. Any Test Franchising had modified its form franchise agreement it uses on a
13 nationwide basis to remove any no-poaching provision. Any existing franchisee that renews a
14 franchise agreement will be party to a new or amended franchise agreement that will not include
15 a no-poaching provision.

16 3.4. Within 30 days of the conclusion of the time period referenced in Section 3.2,
17 Any Test Franchising will submit a declaration to the Attorney General's Office signed under
18 penalty of perjury stating that Section 3.1.3 and 3.2 of this agreement have been satisfied.

19 **IV. ADDITIONAL PROVISIONS**

20 4.1. This AOD is binding on, and applies to Any Test Franchising, including each of
21 its respective directors, officers, managers, agents, and employees (all of the foregoing, acting
22 within the scope of their duties to Any Test Franchising), as well as their respective successors
23 and assigns, controlled subsidiaries, or other entities through which Any Test Franchising may
24 now or hereafter act with respect to the conduct alleged in this AOD.

25 4.2. This is a voluntary agreement and it shall not be construed as an admission of
26 law, fact, liability, misconduct, or wrongdoing on the part of Any Lab Test Now, and it is not an

1 order, injunction, or decree. By entering into this AOD, Any Lab Test Now neither agrees nor
2 concedes that the claims, allegations and/or causes of action which have or could have been
3 asserted by the Attorney General have merit and Any Lab Test Now expressly denies any such
4 claims, allegations, and/or causes of action. However, proof of failure to comply with this AOD
5 shall be *prima facie* evidence of a violation of RCW 19.86.030, thereby placing upon the violator
6 the burden of defending against imposition by the Court of injunctions, restitution, costs and
7 reasonable attorney's fees, and appropriate civil penalties under the Consumer Protection Act.

8 4.3. Any Lab Test Now will not, nor will it authorize any of its officers, employees,
9 representatives, or agents to state or otherwise contend that the State of Washington or the
10 Attorney General has approved of, or has otherwise sanctioned, the conduct described in
11 Paragraph 2.2 with respect to the No-Poaching Provision in Any Test Franchising's form
12 franchise agreement.

13 4.4. This AOD resolves all issues raised by the State of Washington and the Antitrust
14 Division of the Attorney General's Office under the Consumer Protection Act and any other
15 related statutes pertaining to the acts set forth in paragraph 2.1 – 2.4 above that may have
16 occurred before the date of entry of this AOD and concludes the investigation thereof. Subject
17 to paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's
18 Office shall not file suit or take any further investigative or enforcement action with respect to
19 the acts set forth above that occurred before the date of entry of this AOD.

20 APPROVED ON this _____ day of _____, 2019.

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JUDGE/COURT COMMISSIONER

1 Presented by:

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14 Agreed to and approved for entry by:
15 Any Test Franchising, Inc.

16 [Signature]
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[Signature]
Any Test Franchising, Inc.

By: Clarissa Brackstuel

Its: Chief Executive Officer

17 AND

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