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

9 IN RE: FRANCHISE NO POACHING
10 PROVISIONS

11 (CRUISESHIPCENTERS USA INC.
12 d/b/a EXPEDIA
13 CRUISESHIPCENTERS)

NO. 19-2-25514-5

CRUISESHIPCENTERS USA INC.
d/b/a EXPEDIA
CRUISESHIPCENTERS
ASSURANCE OF
DISCONTINUANCE

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

17 **I. PARTIES**

18 1.1. In August 2019, the Attorney General initiated an investigation into
19 Cruiseshipcenters USA Inc. d/b/a Expedia CruiseShipCenters (“ECSC”) relating to a particular
20 internal hiring practice.

21 1.2. ECSC is a Nevada corporation with its principal office or place of business in
22 Bellevue, Washington. ECSC operates as a franchisor to franchisees that operate retail travel
23 agency businesses that offer reservations for cruise ships, airlines, car rentals and hotels, as well
24 as other related travel services and products.

25 1.3. For the purposes of this AOD, ECSC includes its directors, officers, managers,
26 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. Currently there are eight (8) Expedia CruiseShipCenters retail locations in
3 Washington, all of which are owned and operated by franchisees. ECSC does not operate retail
4 locations.

5 2.2. ECSC has included language in its franchise agreements providing that a
6 franchisee would not solicit, recruit or engage any person who at that time is an ECSC employee
7 or the employee of any other franchisee or an independent contractor (*i.e.*, travel agent) who is
8 at that time currently engaged by another ECSC franchisee without the prior written consent of
9 that person's employer or contracting ECSC franchisee ("non-solicitation provision").
10 Specifically, the ECSC franchise agreement typically stated that a franchisee will not "recruit or
11 hire any person who is [ECSC's] employee or the employee of any other [ECSC franchisee] or
12 an Authorized Independent Contractor [*i.e.*, travel agent] engaged by another [franchisee],
13 without obtaining the prior written permission of that person's employer or the contracting
14 [ECSC franchisee]." The non-solicitation provision restricted franchisees from hiring employees
15 or engaging independent contractors then employed or engaged by ECSC or by a competing
16 ECSC franchisee.

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

20 2.4. ECSC expressly denies the conduct described above constitutes a contract,
21 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,
22 RCW 19.86.030, or any other law, and expressly denies it has engaged in conduct that constitutes
23 a contract, combination, or conspiracy in restraint of trade. ECSC asserts that the non-solicitation
24 provisions serve multiple legitimate purposes and, in any event, based on reasonable
25 investigation, it has not taken any steps to enforce such provisions in the state of Washington in
26 the past five years. Nonetheless, ECSC enters into this AOD to avoid protracted and expensive

1 litigation. Pursuant to RCW 19.86.100, neither this AOD nor its terms shall be construed as an
2 admission of law, fact, liability, misconduct, or wrongdoing on the part of ECSC.

3 III. ASSURANCE OF DISCONTINUANCE

4 3.1. Subject to paragraph 2.4 above, ECSC agrees:

5 3.1.1 It will no longer include non-solicitation provisions in any of its future
6 franchise agreements;

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

11 3.1.3 It will notify all affected franchisees of the entry of this agreement, and
12 will provide a copy upon request;

13 3.1.4 It will notify the Attorney General's Office if it learns of any effort by a
14 franchisee in Washington to enforce any existing non-solicitation provision.

15 3.2. Within 90 days of entry of this AOD, ECSC will have attempted to amend all of
16 its existing franchise agreements with entities in Washington that contain non-solicitation
17 provisions to remove those provision. ECSC is under no obligation to offer any franchisee any
18 monetary or non-monetary consideration to induce them to accept the proposed amendment of
19 the franchise, and it shall be under no obligation to take any action against a franchisee that may
20 refuse or decline to agree to any amendment of its franchise agreement. If any franchisee is
21 unwilling to consent to the change to its franchise agreement, prior to the 90 day deadline, ECSC
22 shall provide the name and address of the resisting franchisee and the name and address of the
23 franchisee's registered agent to the Office of the Attorney General.

24 3.3. To the extent any existing franchise agreements are renewed or renegotiated
25 during the ordinary course of business, ECSC will amend any such franchise agreements to
26 remove any non-solicitation provisions from those agreements.

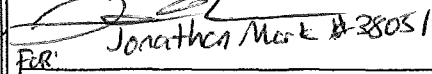
1 does not impose or require ECSC to undertake any obligation other than as stated or required
2 herein. Subject to paragraph 4.2, the State of Washington and the Antitrust Division of the
3 Attorney General's Office shall not file suit or take any further investigative or enforcement
4 action with respect to the acts set forth above that occurred before the date of entry of this AOD.

5 APPROVED ON this ____ day of _____, 2019.

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8 JUDGE/COURT COMMISSIONER
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14 Agreed to and approved for entry by:
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