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7	STATE OF WASHINGTON KING COUNTY SUPERIOR COURT			
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9	IN RE: FRANCHISE NO POACHING NO. 19-2-24755-0 PROVISIONS			
10	GOLD'S GYM FRANCHISING LLC (GOLD'S GYM FRANCHISING LLC) ASSURANCE OF			
11	DISCONTINUANCE			
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13	The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney			
14	General, and Rahul Rao, Assistant Attorney General, files this Assurance of Discontinuance (AOD)			
15	under RCW 19.86.100.			
16	1.1 PARTIES			
17	1.2 In August 2019, the Attorney General initiated an investigation into GOLD'S			
18	GYM FRANCHISING LLC (GGF) relating to its hiring practices.			
19	1.3 GGF is a Delaware limited liability company with its principal office or place of	f		
20	business at 4001 Maple Avenue, Suite 200, Dallas, Texas 75219. GGF is in the business of			
21	offering franchises for health clubs primarily identified by the Gold's Gym trademark (each a			
22	Gold's Gym business).			
23	1.4 For the purposes of this AOD, GGF includes its directors, officers, managers,			
24	agents acting within the scope of their agency, and employees as well as its successor and assigns,			
25	controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures.			
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- 2.1. Currently, there are five (5) Gold's Gym businesses operating in Washington and two (2) that are in development. All seven (7) are owned and operated by third-party, unaffiliated franchisees.
- 2.2. For years, GGF has included language in its franchise agreements that restricted a franchisee's ability to solicit or hire workers from GGF, its affiliates or another GGF franchisee, in each case, without the prior consent of the worker's employer (no-poaching provision). Specifically, the standard GGF franchise agreement stated that a franchisee would not "employ or seek to employ any person who is, or within 6 months of such employment or solicitation was, an employee of [GGF], [GGF's] affiliates or [GGF's] or their franchisees or licensees, or otherwise directly or indirectly induce that person to leave the employment, without obtaining that person's and the employer's prior written permission." A no-poaching provision restricted franchisees from hiring both employees from a competing franchisee and from GGF's corporate-owned stores.
- 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. GGF 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 it has engaged in conduct that constitutes a contract, combination, or conspiracy in restraint of trade. GGF enters into this AOD to avoid protracted and expensive litigation. Pursuant to RCW 19.86.100, neither this AOD nor its terms shall be construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part of GGF.

III. ASSURANCE OF DISCONTINUANCE

- 3.1. Subject to paragraph 2.4 above, GGF agrees:
- 3.1.1 It will no longer include no-poach provisions in any of its future franchise agreements;
- 3.1.2 It will no longer enforce no-poaching provisions in any of its existing franchise agreements, and will not seek to intervene or defend in any way the legality of any no-poach provision in any litigation in which a franchisee may claim third-party beneficiary status rights to enforce an existing no-poach provision;
- 3.1.3 It will notify all of its franchisees of the entry of this agreement with the State, and provide them a copy of the AOD upon request;
- 3.1.4 It will notify the Attorney General's Office if it learns of any effort by a franchisee in Washington to enforce any existing no-poach provision.
- 3.2. Within 60 days of entry of this AOD, GGF will exercise all reasonable commercial efforts to amend all existing franchise agreements with entities in Washington to remove any no-poaching provisions in its existing franchise agreements. GGF is under no obligation to offer any franchisee any monetary or non-monetary consideration to induce them to accept the proposed amendment of the franchise, and it shall be under no obligation to take any coercive action against a franchisee that may refuse or decline to agree to any amendment of its franchise agreement. If any franchise owner is unwilling to consent to the change to its franchise agreement, prior to the 60-day deadline, GGF shall provide the name and address of the resisting franchisee and the name and address of the franchisee's registered agent to the Office of the Attorney General.
- 3.3. As they come up for either renewal or renegotiation during the ordinary course of business, GGF will amend all of its existing franchise agreements on a nationwide basis to remove any no-poach provision.

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

IV. ADDITIONAL PROVISIONS

- 4.1. This AOD is binding on, and applies to GGF, including each of its respective directors, officers, managers, agents acting within the scope of their agency, and employees, as well as their respective successors and assigns, controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, or other entities through which [FRANCHISOR] may now or hereafter act with respect to the conduct alleged in this AOD.
- 4.2. This is a voluntary agreement and it shall not be construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part of GGF. By entering into this AOD, GGF neither agrees nor concedes that the claims, allegations and/or causes of action which have or could have been asserted by the Attorney General have merit and GGF expressly denies any such claims, allegations, and/or causes of action. However, proof of failure to comply with this AOD shall be *prima facie* evidence of a violation of RCW 19.86.030, thereby placing upon the violator the burden of defending against imposition by the Court of injunctions, restitution, costs and reasonable attorney's fees, and appropriate civil penalties under the Consumer Protection Act.
- 4.3. GGF will not, nor will it authorize any of its officers, employees, representatives, or agents to state or otherwise contend that the State of Washington or the Attorney General has approved of, or has otherwise sanctioned, the conduct described in Paragraph 2.2 with respect to the No-Poach Provision in GGF's franchise agreement.
- 4.4. This AOD resolves all issues raised by the State of Washington and the Antitrust Division of the Attorney General's Office under the Consumer Protection Act and any other related statutes pertaining to the acts set forth in paragraph 2.1 2.3 above that may have occurred before the date of entry of this AOD and concludes the investigation thereof. Subject to paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's Office shall not

1	file suit or take any further inves	tigative or enfo	rcement action with respect to the acts set forth
2	above that occurred before the da	te of entry of th	is AOD.
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4	APPROVED ON this	day of	, 2019.
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1	Presented by:				
2	ROBERT W. FERGUSON				
3	Attorney General				
4					
5	RAHUL RAO, WSBA #53375 Assistant Attorney General				
6	Antitrust Division				
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7	Seattle, WA 98104				
8	(206) 442-4499 rahul.rao@atg.wa.gov				
9					
10	Attorneys for State of Washington				
11					
12	Agreed to and approved for entry by:				
13	GOLD'S GYMATANCHISING LLC				
14	al Walter WSBA 14709/				
15	JOHN R, POTTER, WSBA No. 6834 (Gold's Gym Franchising LLC Representative Heurlin, Potter, Jahn, Leatham, Holtman & CRAIG SHERWOOD				
16	Stoker, P.S. Chief Development Officer				
17	211 E. McLoughlin Boulevard, Suite 100 Vancouver, WA 98663				
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20	Attorneys for Gold's Gym Franchising LLC				
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