

STATE OF WASHINGTON KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO POACHING PROVISIONS

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(LA QUINTA FRANCHISING, LLC)

NO. 18-2-56303-8 SEA

LA QUINTA FRANCHISING, 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") pursuant to RCW 19.86.100.

I. PARTIES

- 1.1 On August 6, 2018, the Attorney General's Office initiated an investigation into La Quinta Franchising, LLC ("La Quinta") relating to certain provisions in its franchise agreements by way of service of a Civil Investigative Demand ("CID").
- 1.2 La Quinta is a Nevada limited liability company with its principal offices or place of business in Parsippany, New Jersey. La Quinta is indirectly-owned by Wyndham Hotels & Resorts, Inc. La Quinta is a franchisor with franchise locations in Washington operating in the business of hotel accommodations.
- 1.3 For purposes of this AOD, La Quinta includes its directors, officers, managers, agents acting within the scope of their agency and employees acting within the scope of their authority, as well as its successors and assigns.

2.1 There are approximately 16 La Quinta hotels located in the state of Washington as of the date hereof, all of which are independently owned by franchisees. Thirteen of these hotels are independently owned and operated by franchisees. Three hotels are currently operated by an affiliate of La Quinta pursuant to franchise and management agreements with the owner.

2.2 Certain of the franchise agreements La Quinta previously entered into provided that franchisees subject to such agreements could not directly or indirectly solicit for employment any person who was, at that time, employed by La Quinta or by any other La Quinta franchisee (the "No-Solicitation Provision"). Specifically, La Quinta had included, within Section 7.07 (Section 6.07 for older versions) of its franchise agreements, the following sentence:

You may not recruit or hire any person who is an employee of ours, our Affiliates or of any La Quinta Lodging Facility or Affiliated Lodging Facility operated by us, our Affiliates or another franchisee of ours without obtaining the employer's consent, which consent may be withheld for any reason or not reason.

- 2.3 The Attorney General asserts that the foregoing conduct of La Quinta and its franchisees constitutes a contract, combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act, RCW 19.86.030.
- 2.4 La Quinta expressly denies that the conduct described above constituted a contract, combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act, RCW 19.86.030, or any other law, rule, or regulation, and expressly denies it engaged in conduct that constitutes a contract, combination, or conspiracy in restraint of trade, or violates any other law, rule, or regulation. La Quinta further asserts that, prior to the issuance of the CID, it had eliminated the No-Solicitation Provision from its form U.S. franchise agreements. La Quinta 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 La Quinta or any of its current or former franchisees.

III. ASSURANCE OF DISCONTINUANCE

- 3.1 Subject to Paragraph 2.4 above, La Quinta agrees:
- 3.1.1. It will not insert or reinsert the No-Solicitation Provision in any of its franchise agreements in the United States signed after the date hereof;
- 3.1.2. It does not and will not enforce the No-Solicitation Provision in any of its existing franchise agreements in the United States, and will not seek to intervene in any action brought by the Attorney General's Office against a current franchisee in Washington, provided such action is brought in accordance with, and consistent with, the provisions of this AOD;
- 3.1.3. It will notify all of its current franchisees in the United States of the entry of this AOD and make a copy available to them;
- 3.1.4. If, after the 21 day period set forth in Paragraph 3.2 below, La Quinta becomes aware of a franchisee with a hotel located in the state of Washington attempting to enforce the No-Solicitation Provision, and La Quinta is unable to persuade such franchisee to desist from enforcing or attempting to enforce such provision, La Quinta will notify the Attorney General.
- 3.2 Within 21 days of entry of this AOD, La Quinta will send a letter to all of its current franchisees with hotels located in the state of Washington whose franchise agreement includes such a provision, stating that the Attorney General has requested that those franchise agreements be amended to remove the No-Solicitation Provision. The letter that La Quinta will send to its current franchisees with hotels located in the state of Washington whose franchise agreement includes such a provision will be substantially in the form of the letter attached hereto as Exhibit A. That letter will enclose the proposed amendment that La Quinta

is requesting that each of its franchisees with hotels located in the state of Washington agree to, which amendment will remove such No-Solicitation Provision. The proposed amendment that will be included with each letter will be substantially in the form of the amendment attached hereto as Exhibit B.

- 3.3 In addition to sending the letter to its current franchisees with hotels located in the state of Washington whose franchise agreement includes such a provision pursuant to Paragraph 3.2 above, La Quinta will respond promptly to any inquiries from such franchisees regarding the request to amend the terms of the franchise agreement. However, for the avoidance of doubt, La Quinta is under no obligation to offer its franchisees any consideration—monetary or otherwise—in order to induce them to sign the proposed amendment, or take any adverse action against such franchisees if they refuse to do so. Within 120 days of entry of this AOD, La Quinta will provide copies of all executed amendments it has obtained with its current franchisees with hotels located in the state of Washington whose franchise agreement includes such a provision to the Attorney General's Office. A decision by a franchisee not to amend its franchise agreement, or not to do so within 120 days of this AOD, shall not constitute a breach by La Quinta of its obligations under this AOD or a failure by La Quinta to comply with this AOD.
- 3.4 If La Quinta learns that a current franchisee with hotels located in the state of Washington whose franchise agreement includes such a provision intends in good faith to sign the proposed amendment but is unable to do so within the time period specified in Paragraph 3.3, La Quinta will notify the Attorney General's Office to seek a mutually agreeable extension. During any such extension, the Attorney General's Office will not take further investigative or enforcement action against a franchisee.

- 3.5 In addition, La Quinta will remove the No-Solicitation Provision from all of its existing franchise agreements for hotels located in the United States on a nationwide basis as they come up for renewal, unless expressly prohibited by law.
- 3.6 Within 30 days of the conclusion of the time period referenced in Paragraph 3.3, La Quinta will submit a declaration to the Attorney General's Office signed under penalty of perjury stating whether all provisions of this agreement required to be completed within such time period have been satisfied.

IV. ADDITIONAL PROVISIONS

- 4.1 This AOD is binding on and applies to La Quinta.
- 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 La Quinta or any of its current or former franchisees. La Quinta 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 La Quinta and its current and former franchisees expressly deny any such claims, allegations, and/or causes of action. However, proof of La Quinta's failure to comply with this AOD shall be *prima facie* evidence of a violation of RCW 19.86.030, thereby placing upon La Quinta the burden of defending against imposition by the Court of injunctions, restitution, costs and reasonable attorney's fees, and civil penalties of up to \$2,000.00 per violation.
- 4.3 La Quinta 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 Office of the Attorney General has approved of, or has otherwise sanctioned, the conduct described in Paragraph 2.2 with respect to the No-Solicitation Provision previously found in certain of La Quinta's franchise agreements.
- 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

1	related statutes pertaining to the acts of La Quinta and its current and former franchisees as set		
2	forth in Paragraphs $2.1 - 2.4$ above that may have occurred before the date of entry of this AOD,		
3	or that occur between the date of the entry of this AOD and the conclusion of the 120-day period		
4	identified in Paragraph 3.3 above, and concludes the investigation thereof. Subject to Paragraph		
5	4.1, the State of Washington and the Antitrust Division of the Attorney General's Office shall not		
6	file suit, take any enforcement action or further investigative action, or seek to intervene in any		
7	other enforcement action, investigative action, or private civil action, with respect to the acts set		
8	forth above that occurred before the date of entry of this AOD, or that occurs between the date of		
9	the entry of this AOD and the conclusion of the 120-day period identified in Paragraph 3.3 above,		
10	against La Quinta or any of its current franchisees in the State of Washington whose franchise		
11	agreements include(d) a Non-Solicitation Provision and who sign the proposed amendment		
12	included as Exhibit B, as well as any of La Quinta's former franchisees in the state of Washington		
13	and any of La Quinta's current or former franchisees located outside the state of Washington.		
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15	APPROVED ON this day of, 2018.		
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17	JUDGE/COURT COMISSIONER		
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1	Presented by:	
2	ROBERT W. FERGUSON	
	Attorney General	
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4	DAY NAME OF THE PARTY OF THE PA	
5	RAHUL RAO, WSBA No. 53375 Assistant Attorney General	
	Antitrust Division	
6	Office of the Attorney General	
7	800 Fifth Avenue, Suite 2000	
g	Seattle, WA 98104	
	Agreed to and approved for entry by:	•
9	LA QUINTA FRANCHISING LLC	LA QUINTA FRANCHISING LLC
10		CoFed
11	ANTHONY TODARO, WSBA #30391	PAUL F. CASH, General Counsel
12	DLA Piper LLP (US) Counsel for La Quinta Franchising LLC	THOM: Origin, Contract Common
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EXHIBIT A

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Form Letter to La Quinta Franchisees in the State of Washington

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Dear [Franchisee Name]

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In August 2018, La Quinta Franchising LLC ("La Quinta") received a Civil Investigative Demand from the Attorney General's Office of the State of Washington seeking information regarding whether there are any provisions in our franchise agreements that restrict the hiring or solicitation of employees (sometimes referred to as "non-solicitation" clauses). We understand that this is part of a broader investigation into the use of such clauses in the hotel

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industry and other franchised industries. We have cooperated fully with the investigation.

Without admitting that La Quinta or its franchisees violated any law or regulation, or acted improperly in any respect, we have reached an agreement with the Attorney General's Office. Even though La Quinta had previously discontinued inclusion of the clauses at issue for new franchise agreements prior to receipt of the Civil Investigative Demand, La Quinta has agreed that it will, among other things, not include in any U.S. franchise agreement or renewal any provisions that restrict the hiring or solicitation of employees. The agreement also confirms that La Quinta cannot and will not enforce any such provisions in any of the existing franchise agreements for hotels located in the U.S.

We believe the La Quinta System's interests are best served by resolving the investigation quickly and cooperatively on these terms, and avoiding the uncertainty and cost of protracted litigation.

Our agreement with the Attorney General's Office also includes a requirement that we request franchisees with hotels located in the State of Washington to amend their existing franchise agreements to remove the provisions, if any, that restrict the hiring or solicitation of employees. Enclosed for your signature is an amendment to your franchise agreement to satisfy that requirement. If you agree to this amendment to your franchise agreement, the Attorney General has committed to not pursue any suit, or take any investigative or enforcement action against you, for conduct relating to the relevant provisions of your franchise agreement, up to and including the date you sign the amendment. Please sign and return the amendment to me as soon as possible. If you decide not to sign the enclosed amendment, the Attorney General's Office has indicated that it will reserve the right to investigate you and/or pursue enforcement actions against you relating to the contractual provisions described above.

Should you have any questions regarding this matter, please contact me at [e-mail of appropriate person]

[Signature block for appropriate person]

EXHIBIT B

3	AMENDMENT LA QUINTA FRANCHISE AGREEMENT			
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5	This "Amendment" is made and entered into as of this day of, 2018 ("Amendment Date") by and between La Quinta Franchising LLC, a Nevada limited liability company ("we", "our" or "us") and the undersigned franchisee ("you" or "your"). This Amendment supplements the Franchise			
6	Agreement between you and us dated (the "Agreement"), relating to a license to operate a La Quinta® guest lodging facility designated as Unit # (the "Facility"). To the extent there is any			
7	conflict between the Agreement and this Amendment, this Amendment shall control.			
8	In consideration of the mutual agreements herein contained, and promises herein expressed, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the			
9	parties, it is agreed as follows:			
10	comprised of the final sentence of Section [7.07/6.07] in its entirety ("Non-Solicitation Provision			
12	have determined that it is in the best interests of the La Quinta System to not enforce any Non-Solicitation Provisions of the Agreement. While we contend that the Non-Solicitation Provisions are no longer in force and effect, to avoid any ambiguity and in accordance with our agreement with the Attorney General			
13	of the State of Washington, as of the Amendment Date, you and we agree that the Non-Solicitation Provisions are hereby deleted from the Agreement and are of no force or effect.			
14	2. Except as expressly stated in this Amendment, no further additions, modifications			
15	deletions to the Agreement are intended by the parties or made by this Amendment.			
16	3. To facilitate execution of this Amendment by geographically separated parties, this Amendment, and all other agreements and documents to be executed in connection herewith may be			
17	executed in as many counterparts as may be required; and it shall not be necessary that the signatures on behalf of each party appear on each counterpart; but it shall be sufficient that the signature on behalf of each party appear on one or more of the counterparts. All counterparts shall collectively constitute a single agreement. It shall not be necessary in making proof of this Amendment to produce or account for			
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19	more than a number of counterparts containing the respective signatures on behalf of all the parties hereto.			
20	All facsimile executions shall be treated as originals for all purposes.			
21	IN WITNESS WHEREOF, the parties hereto have executed and delivered this Amendment as of the date indicated above.			
22	La Quinta Franchising LLC [FRANCHISEE'S NAME]			
23				
24	By:			
25	Title: Title:			
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