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7	STATE OF WASHINGTON KING COUNTY SUPERIOR COURT		
8	IN RE: FRANCHISE NO POACHING NO. 19-2-26249-4 SEA		
9	PROVISIONS PUMP IT UP HOLDINGS, LLC		
10	PUMP IT UP HOLDINGS, LLC ASSURANCE OF DISCONTINUANCE		
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13	The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney General,		
14	and Rahul Rao, Assistant Attorney General, files this Assurance of Discontinuance (AOD) under		
15	RCW 19.86.100.		
16	I. PARTIES		
17	1.1. In August 2019, the Attorney General initiated an investigation into Pump It Up		
18	Holdings, LLC ("Franchisor") relating to its hiring practices.		
19	1.2. Franchisor is an Arizona limited liability company with its principal office or		
20	place of business in Scottsdale, Arizona. Franchisor is in the business of owning, operating and		
21	franchising entertainment businesses.		
22	1.3. For the purposes of this AOD, Franchisor includes its directors, officers,		
23	managers, agents acting within the scope of their agency, and employees as well as its successor		
24	and assigns, controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures.		
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- 2.1. Franchisor has three (3) entertainment businesses in Washington. Three (3) of these businesses are owned and operated by franchisees and none are owned and operated by Franchisor.
- 2.2. For years, Franchisor has included language in its franchise agreements that restricted a franchisee's ability to solicit or hire workers from another of Franchisor's franchisees or from Franchisor (no-poaching provision). Specifically, the standard franchise agreement states that a franchisee "will not, either directly or indirectly, for [it]self, or through, on behalf of, or in conjunction with, any person, firm, partnership, corporation, limited liability company or other entity...knowingly employ or seek to employ any person then employed by [Franchisor] or employed by any Pump It Up franchisee as a manager or higher, or otherwise directly or indirectly induce such person to leave his or her employment without [Franchisor's] prior written consent..." A no-poaching provision restricted franchisees from hiring both employees from a competing franchisee and from Franchisor's corporate-owned entertainment businesses.
- 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. Franchisor 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. Franchisor 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 Franchisor.

- 3.1. Subject to paragraph 2.4 above, Franchisor agrees:

 3.1. It will no longer include no-poach provisions in any
- 3.1.1 It will no longer include no-poach provisions in any of its future franchise agreements;
- 3.1.2 It will not 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, Franchisor 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. Franchisor 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, Franchisor 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, Franchisor will amend all of its existing franchise agreements on a nationwide basis to remove any no-poach provision.

3.4. Within 60 days of the conclusion of the time periods referenced in this section III, Franchisor 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 Franchisor, 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 Franchisor. By entering into this AOD, Franchisor 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 Franchisor 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. Franchisor 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 Franchisor'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

1	paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's	
2	Office shall not file suit or take any further investigative or enforcement action with respect to	
3	the acts set forth above that occurred before the date of entry of this AOD.	***************************************
4	APPROVED ON this day of, 2019.	***************************************
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Presented by: 2 ROBERT W. FERGUSON Attorney General 3 4 RAHUL RAO, WSBA #53375 Assistant Attorney General 5 **Antitrust Division** 6 Office of the Attorney General 800 Fifth Avenue, Suite 2000 7 Seattle, WA 98104 (206) 442-4499 8 rahul.rao@atg.wa.gov 9 Attorneys for State of Washington 10 11 Agreed to and approved for entry by: 12 LDINGS, LLC 13 14 ROBERT MAHLER, WSBA #23913 Pump It Up Holdings, LLC's Authorized Representative Polsinelli PC 15 1000 Second Avenue, Suite 3500 Seattle, WA 98104 16 (206) 393-5400 17 bob.mahler@polsinelli.com 18 and 19 JAN GILBERT 20 Polsinelli PC 1401 I Street, N.W., Suite 800 21 Washington, D.C. 20005 (202) 777-8918 22 jgilbert@polsinelli.com 23 Attorneys for Pump It Up Holdings, LLC 24 25 26