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7	STATE OF WASHINGTON KING COUNTY SUPERIOR COURT	
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9	IN RE: FRANCHISE NO POACHING PROVISIONS	NO. 19-2-24817-3
10		TAN REPUBLIC FRANCHISE
11	(TAN REPUBLIC FRANCHISE COMPANY LLC)	COMPANY LLC ASSURANCE OF DISCONTINUANCE
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13	The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney	
14	General, and Justin Wade, Assistant Attorney General, files this Assurance of Discontinuance	
15	(AOD) under RCW 19.86.100.	
16	I. PARTIES	
17	1.1 In August 2019, the Attorney G	eneral initiated an investigation into Tan
18	Republic Franchise Company LLC (Tan Republic) relating to its hiring practices.	
19	1.2 Tan Republic is an Oregon limited liability company with its principal office or	
20	place of business in Oregon. Tan Republic is in the business of franchising stores that offer	
21	upscale tanning, skin care, beauty treatments, and related spa services and merchandise.	
22	1.3 For the purposes of this AOD, Ta	an Republic 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
25	ventures.	
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1	II. INVESTIGATION	
2	2.1 Tan Republic has five stores in Washington. Five of these stores are owned and	
3	operated by franchisees and none are owned and operated by Tan Republic.	
4	2.2 For years, Tan Republic has included language in its franchise agreements that	
5	restricted a franchisee's ability to solicit or hire workers from another Tan Republic stores ("no-	
6	poaching provision"). Specifically, the standard Tan Republic franchise agreement stated that:	
7	"You [the franchisee] will assure that you and your owners, directors, officers,	
8	partners, shareholders, members, employees, consultants, and agents, during the term of this Agreement and for a period of two years after expiration or termination of this Agreement do not:	
9	A. divert or directly or indirectly attempt to divert any of	
10	our business or any of our customers to any competing establishment;	
11	B. employ or seek to employ any person we employ or any	
12	other person who is at that time operating or employed by or at any of our franchises or otherwise directly or	
13	indirectly induce these persons to leave their employment; nor	
14	C. do or perform, directly or indirectly, any other act	
15	injurious or prejudicial to our goodwill associated with the Marks and System.	
16 17	If, for any reason, any provision set forth in Sections 17.2 or 17.3 is determined	
17 18	otherwise, it is agreed that the provision will nevertheless be binding to the full	
10 19	scope or limit allowed by law or by a court of law. The duration, geographic coverage and scope allowable by law or court of law will apply to this	
20	Agreement. A no-poaching provision restricted franchisees from hiring both employees from a competing	
20	franchisee and from Tan Republic corporate-owned stores.	
22	2.3 The Attorney General asserts that the foregoing conduct constitutes a contract,	
23	combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,	
24	RCW 19.86.030.	
25	2.4 Tan Republic expressly denies the conduct described above constitutes a	
26	contract, combination, or conspiracy in restraint of trade in violation of the Consumer Protection	

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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. Tan Republic 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 Tan Republic.

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III. ASSURANCE OF DISCONTINUANCE

3.1 Subject to paragraph 2.4 above, Tan Republic agrees:

8 3.1.1. It will no longer include no-poach provisions in any of its future
9 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;

14 3.1.3. It will notify all of its franchisees of the entry of this AOD and provide15 them a copy;

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, Tan Republic will have amended all
existing franchise agreements with entities in Washington to remove any no-poaching
provisions in its existing franchise agreements. If any franchise owner is unwilling to consent
to the change to its franchise agreement, prior to the 60-day deadline, Tan Republic 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, Tan Republic 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, Tan Republic 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.

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IV. ADDITIONAL PROVISIONS

4.1 This AOD is binding on, and applies to Tan Republic, 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 Tan Republic
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 10 law, fact, liability, misconduct, or wrongdoing on the part of Tan Republic. By entering into 11 this AOD, Tan Republic neither agrees nor concedes that the claims, allegations and/or causes 12 of action which have or could have been asserted by the Attorney General have merit and Tan 13 Republic expressly denies any such claims, allegations, and/or causes of action. However, proof 14 of failure to comply with this AOD shall be prima facie evidence of a violation of RCW 15 19.86.030, thereby placing upon the violator the burden of defending against imposition by the 16 Court of injunctions, restitution, costs and reasonable attorney's fees, and appropriate civil 17 penalties under the Consumer Protection Act. 18

4.3 Tan Republic 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 Tan Republic'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,

1	the State of Washington and the Antitrust Division of the Attorney General's Office shall not file	
2	suit or take any further investigative or enforcement action with respect to the acts set forth above	
3	that occurred before the date of entry of this AOD.	
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5	APPROVED ON this day of September, 2019.	
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8	JUDGE/COURT COMMISSIONER	
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1	Presented by:
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12	Agreed to and approved for entry by:
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