

To Whom It May Concern:

I am requesting that the ACCC look into the conduct of endota No. 1 Pty Ltd (endota) and its associated companies in regards to it's treatment of franchisees and whether or not the conduct of this organisation is in breach of the Franchising Code of Conduct, especially in regard to 'unconscionable conduct' and 'acting in good faith' as well as a misuse of its powerful position to gain control of an asset.

In writing this request, I would like it understood that I am very worried that endota will react and seek retribution from myself, this concern is based on their behaviour to date.

My request for an ACCC investigation stems from the events leading up to, and post, Termination of my franchise agreement with endota on October 26, 2016.

For clarity, I am director of Southern Spa Pty Ltd, which had entered into a Franchise Ageement with endota to run a spa from premises in a Coles-owned shopping centre at 41 Bristol Rd, Torquay, as well as another site at the Wyndham Resort at 100 The Esplanade, Torquay.

Endota terminated this Franchise Agreement on October 26, 2016, locking me out of both premises and taking possession of all fixtures, stock, equipment, etc.

It is my belief that the decision to Terminate the Franchise Agreement was pre-meditated with endota unduly using its powerful position to regain control of a spa that it needs to re-sell on to a new franchisee because of the Franchisor's precarious financial position.

My concerns include:

**Being held to a standard higher than that expected of other franchisees, or company-owned spas.**

**1. Endota deliberately, and with intent to undermine the financial viability of my business, undermined the sale of the Wyndham Spa lease.**

In the months prior to Termination, without my knowledge or permission, endota national franchise manager [REDACTED] contacted a person who had emailed endota head office to say he would be interested in purchasing the Wyndham site if it ever come on to the market.

In contacting the potential purchaser of my Wyndham spa lease, [REDACTED] wrote an email: "suggesting now may be a good time to approach me to sell".

I had no knowledge of [REDACTED] doing this until the potential buyer contacted me (via email) and said he would like to talk "irrespective of its current trading position".

I am extremely concerned that [REDACTED] intimated to the potential buyer that the spa (and/or my business) wasn't doing well financially, and that this put me at a commercial disadvantage.

And despite me being the owner of the lease on this site, [REDACTED] did not provide me with information of the content of the conversation between [REDACTED] and the potential buyer – as the owner of this business, I believe that [REDACTED] acted outside of the Franchise agreement and to the detriment of myself.

I did take control of this situation and was in the process of negotiating a sale of the lease to the potential buyer, the sale was to take place in mid-November (I have an email trail to confirm this and they potential buyer would be able to provide a Statutory Declaration to confirm this. At the time of Termination, I anticipated the sale of the lease to be \$30,000. I had told endota that the funds from this sale would be directed into repayment of a Superannuation Debt I had incurred with the ATO.

On the day of Termination (about two weeks before the sale I had negotiated), and after I was unlawfully locked out of the Wyndham Resort premises of which I held the lease, [REDACTED] contacted the potential buyer to tell him that from that point on, I was out of the picture and that he needed to deal directly with him now - and that the endota would run the spa until April, and then they would consider a sale.

The potential buyer's response was that he was not interested in an April sale as he recognised that Endota just wanted to take advantage of summer trade and then sell it in the quieter months.

The day after the Termination Notice, endota closed the Wyndham site. As the spa was no longer operational and I then not in a position to continue the lease, the buyer was no longer interested in a purchase and has gone directly the owner of the premises.

The sale was due to proceed in mid-Nov (I have an email trail to show this) - this opportunity no longer exists - in fact the buyer has now taken over the lease and has opened a spa in the premises.

What is also very concerning, is that when I sought clarification of the exact nature of the Breach Notice (in the days leading to Termination), endota claimed no knowledge of the sale of the Wyndham lease as per below (please refer to Attachment \*\*):

“We are not aware of any formal lease being in place at the Wyndham Resort. Given that the landlord has ownership of the fixtures and fittings at this location it is not clear why consideration would be paid by any interested party, unless there is a suggestion 'key money' is being discussed. Furthermore, we have no knowledge of an impending 'sale' which naturally would require endota's consent, at the least in relation to endota assets situate at the premises.”

This was despite [REDACTED] initiating the sale and a long list of emails including:

Email No. 16 -whereby [REDACTED] says that [REDACTED] has approved the extension to move items from the Wyndham spa to the main spa following the sale.

Email No. 12 on October 20, 2016, where [REDACTED] (who CCd in [REDACTED]) says:

"Wyndham spa - the person is still looking at purchasing the spa, currently he is in negotiations with the landlord, Fran has not had an update this week. Last appointment in the spa is November 12, 2016."

Apart from endota's involvement in this process undermining my commercial interest, I am also very concerned about the timing of the Termination and their refusal to come to an agreement regarding a financial plan when they were so obviously aware of the funds that were about to be injected into my business.

**2. Endota deliberately timed the Breach and Termination Notices to coincide with the slow season, to take advantage of the vulnerability of my business during these times.**

Endota are very aware of the seasonality of this spa. Between Melbourne Cup Day and Easter I would earn 70 per cent of my income for the year. They have timed this to maximise their income and put most pressure on me when they know I don't have the income to cover their demands. I feel that I have been set up to fail.

Perhaps that hardest aspect of this is that the Termination Notice was served literally on the eve of our most profitable season (which starts the Thursday of the Melbourne Cup long weekend and continues until Easter). If I had've been allowed to trade for just one week more I would've been able comply with all of their physical demands (even though no other spa is required to). endota head office knew this, they had access to my booking system and emails (and shut me out of them prior to the Termination date without notice and without me being able retrieve records required by the ATO). The ACCC is very interested in this timing and whether or not this shows that endota were acting in good faith and not unconscionably (in regard how does the loss of a \$400,000 business and my family home compare to the level debt owed and the fact that I could demonstrate that I could pay down debts with continued trade). endota are now running the Torquay spa as a 'company spa' during the most profitable season.

**3. Endota was working outside the scope of the Franchise Agreement in directing me on how to run the business, providing poor advice that was detrimental to the viability of my business.**

Incorrect staff wages

Directing me to push products, services and promotions that were not profitable

Telling me that the answer to becoming more profitable was the “sell more product” despite endota having not evidence of this, and selling product online to compete with my business.

T

**4. Endota used bullying tactics to undermine my finances and emotional wellbeing, with the aim of rendering me unable to continue as a franchisee.**

Phone calls from multiple people for same thing

Multiple emails from multiple people demanding the same information

Telling me to work in my business “for free” was the only way it could become profitable.

**5. Endota held my Franchise to a higher standard to other franchisees in the endota network, as well as company-owned spas, with the aim harming my financial position and induce financial vulnerability.**

- The Breach letter was also not specific in regard to their concerns. Instead, I have relied on reports done by the Business Development Manager as a guide. This reports also include needing to have ‘company approved’ furniture including couches and chairs - in fact I ordered a chair (\$300+) in the week prior to the Termination Notice as I was continuing to try and conform. I now know of a company-owned spa that doesn’t have approved couches, cushions, shelving or lighting (I have provided you with the images), as well as stained carpet, missing equipment on light switches, numerous marks on walls and decommissioned plumbing visible to clients - I am very frustrated with this.
- I have 20+ examples of how my franchise was breached on items that other franchisees were not held to account for. I was forced by endota head office to spend all available cash flow on rectifying these breaches (expenses that no one else had to encounter) – and this was during our off-season – a fact that endota knew due to access to my business information.

**6. Breaches of commercial privacy including reading of my business emails and private Facebook accounts.**

The week prior to the Termination Notice, I received a Google notification that someone had attempted to log-in to my Google account. The same week I was also verbally confronted by an Endota head office employee who claimed that my staff had not been paid and demanding an explanation. My staff were paid - the only issue I had was with a brand new staff member who had sent me an email asking why her pay hadn’t gone in on the Wednesday (we didn’t pay staff on Wednesdays and she didn’t know that). It’s my belief that head office had read this email without my knowledge and jumped to a conclusion, resulting in the verbal confrontation. I had at no time given them permission to read my email. Interestingly, on Oct. 26, 2016, Endota posted an update to their social media/communication policy stating that they now have a right to access information (see attached).

Three weeks prior to the Termination Notice, I also had an unlawful login of my Facebook account.

Two weeks ago I received a phone call from [REDACTED] saying: "your team has not been paid" that my team got paid on Wednesdays and they had not been paid. I told him this was incorrect and asked what he was talking about. He then said a staff member had told my BDM that she had not been paid. When I challenged him on this, he then gave me several (and different) explanations. My 'team' had been paid. I am concerned that [REDACTED] may have based this allegation on information in an email – sent to my personal Endota email – by a brand new staff member who thought she was meant to be paid on a Wednesday. My staff were paid that week. [REDACTED] then sent to me an email saying that Endota was evaluating the "termination of your franchise agreement". This email threat (based on inaccurate and, in my belief, illegally obtained information) caused me massive emotional distress and resulted in a visit to my doctor.

**7. Shutting down my business email account prior to Termination (without notice), leaving me unable to access vital business records relating to suppliers, taxation, staff, insurance, etc. This was done to place me in a position of vulnerability.**

Of concern is privacy and reading of my Endota emails and my private Facebook. Within two hours of receiving the Termination Notice my email accounts were deactivated by Endota - despite the deadline being 8pm the next day. I was also shut out of the booking system, so had no way of knowing what income/staffing I was responsible for. This has also left me unable to retrieve business records, including those required by the ATO.

**8. Endota groomed my manager to take over my business, prior to Termination - with intent to go ahead with the Termination regardless of my ability to comply.**

Two weeks prior to Termination, Endota held its annual conference in Fiji and the week before that contacted me and offered my manager a space at the conference for free. As owner, I gave her permission to go based on the belief that it was important to make sure she was up-to-date on Endota business practices - I now believe they sent her to prepare her for taking over my spa.

**9. Endota set minimum stock requirements that only applied to my Franchise, and no other, with the aim of making me financially vulnerable.**

The requirements for minimum stock has been difficult to fulfil - as their requirements have changed (they doubled the range and this was not included in the Budget that they signed off on in June) - therefore the minimum spend amount became prohibitive. Endota initially agreed to allow stock to be delivered on consignment. Endota later reneged on this agreement. Also, Endota told me that they had a minimum standard policy that required that I stock three of each Endota products and three each of the Dermalogica top sellers - this meant that I needed to spent \$13,000+ to become compliant. Interestingly, Endota on Nov. 2 sent out a bulletin to all franchisees about this requirement for the first time.

**10. Endota's advice on making my franchise financially viable, was for me to work for 'free'.**

**11. Endota compromised my income by refusing to honour Gift Voucher Rebate and Product Rebate unless I was 'compliant' to a standard not upheld within company-owned spas or other franchises.**

**12. Endota did not offer me the opportunity to undertake 'mediation' as per the Franchising Code of Conduct.**

**13. Endota ignored a Notice of Dispute issued following Termination.**

**14. Endota engaged in a campaign of bullying that included: setting unreasonable timeframes; multiple people contacting me multiple times about the same thing; and, implying that I don't know my business due to my desire to seek outside advice.**

- Receive constant phone calls and messages from different people within Head Office, often saying the same thing or delivering the same message. Also, after receiving instructions I then receive emails (often from multiple people within Endota head office) "reminding" me of up-coming responsibilities with multiple staff members CC'd in. These are also sometimes received after hours or on a weekend.
- Being asked to "call urgently", or in the "next few hours" or "by the end of the day". Often these requests are not actionable that same day, as I have commitments within and outside the spa that day and have no opportunity to respond to these requests, or the request requires seeking further advice from my accountant/solicitor/business advisor. It causes me distress to hear there is an urgent matter, only to find out later that the matter wasn't in fact urgent – they just wanted me to respond within a timeframe set by them.
- Refusal to put requests in writing. To assist with my wellbeing, I had been asking for matters to be put in an email, rather than needing to respond to immediate requests for information verbally. This was met with reluctance and constant questioning, which added to my stress and distress. An example of their reluctance was, I asked [REDACTED] to send a question via email, which he had asked verbally because it was an issue that needed to be addressed by my accountant. His response was: "why can't you answer the question now, don't you know the answer?"
- Unrealistic timeframes – there seemed to be no appreciation for my need to seek independent advice regarding the health and future of my business. I have been presented with timeframes that don't allow for my accountants, business advisor or solicitor to assess matters and provide a considered response.
- Questions regarding my personal financial situation. I have been asked by Endota finance and systems manager [REDACTED] (via email) how much my husband is going to sell our house for, how much he owes on the house and for an assurance that my husband will contribute financially to the business on the sale of the house. In their words: "it's up to you how you work this out with him".

I was informed that the future viability of my franchise is linked to the sale of the family home. This has caused issues within my family unit. Information about my and my husband's personal financial situation was provided to Endota under duress and the threat of Endota not supporting my franchise in the future.

**15. Endota's reluctance to work with advisor's outside of the network, and appreciate that as a business owner I am entitled to seek outside advice.**

Earlier this year we engaged private consultants to help us find the best ways to take advantage of now being part of a busy shopping precinct and regain maximum profitability. As a result, we have presented many financial plans to endota.

The decision to engage external consultants was made because endota gave us little help in restructuring our business with their main focus on being 'selling more product' and doing less treatments, as well as me working for no pay to reduce wages. These suggestions have been made with little regard to the fact that: our spa is located in a tourist destination area where people come for treatments and to redeem gift vouchers whilst on holidays and the decision by head office not to provide product on consignment, despite earlier agreements to do so and providing other spas (also with debts to endota) with product on consignment.

Even though our spa has been financially challenged, during the time that Coles was undergoing the redevelopment of the centre we have met all rents, all business loan repayments, paid instalments to endota for the fitout of the Wyndham site; paid instalments to the endota marketing fund and paid instalments to endota No. 1 - including extra funds where positive cash flow allowed. There is no debt to any other endota franchisee. We do have an ATO debt, which is being negotiated.

**16. Forcing me to make significant purchases of unbudgeted**

**17. Endota entered into an agreement, without consultation with franchisees, to sell endota gift vouchers in supermarkets, post offices, etc, undermining the financial position of my, and all franchisee's businesses.**

Gift vouchers being sold by Endota head office in the supermarket located just 70 metres from my spa. Our spa must honor gift vouchers sold by other spas and those sold by head office. The original seller of the gift voucher receives 30% of each \$1 value of the voucher, which means honouring the vouchers results in us losing 30% off the dollar value of each treatment. As a spa in a destination location, this places a lot of pressure on this business as we are asked to honour a lot of gift vouchers. This year (just before Mother's Day, which is a significant time of trade for gift vouchers for our spa), Endota head office began selling gift vouchers in supermarkets including Coles – Endota head office receives 30% of the value of these vouchers with the spas where they are redeemed receiving the rest. I am very concerned that the sale of these head office vouchers so close to my premises constitutes a breach of trade in my region. As any business owner (and I assume head office) would realise that this reduces any chance of earning a margin on treatments and reduces our profitability.

**18. Endota limited my opportunity to market to my customers and community via social media, compromising my ability to draw new customers.**

Restrictions on marketing. Endota head office has ordered franchisees to remove their business Instagram and Facebook Pages and will only operate one central page covering nearly 100 franchises. As 70 per cent of our business is with local clients, we had used our Facebook Page as a low-cost marketing tool to boost our profile in our community. It is also a low-cost way of disseminating information to our local community, such as new opening hours, when we are closed for public holidays, congratulating others in our community who we sponsor, etc. This restriction by Endota is hampering our endeavours to retain a profile in our community at a time when other business owners (and our competitors) are embracing the use of social media and see it as an essential ingredient in their marketing mix.

**19. Inconsistent advice relating to**

The sand was always shifting. For example, while I was getting emails questioning the financial stability of the business I got a card in the mail from [REDACTED] congratulating me for the rise in turnover/profit the previous year and an email from endota's financial team congratulating me on paying off the fitout for Wyndham. I also got a report from my current BDM showing that my spa was performing above average in many areas. Another example is that up until a month before the Termination Notice, I was told not to worry about what I owed endota – to concentrate on fixing the physical things and the finances would be sorted later (I have this in writing). I also have another email from head office saying that they were confident that I could show that my assets more than covered my liabilities. My BDM also verbally assured me not to worry about termination because “the company doesn't want another company-owned spa”.

Then a month before the Termination Notice, endota made a demand of \$70,000 within the month. We offered to sell our [REDACTED] family home (and engaged a real estate agent, who provided us with a valuation and contract) and put forward a payment plan - this was accepted. Later it was rejected despite emails from the senior management team that said they could see that our equity would more than cover our debts, and that's if they were all called in at once, which was never a consideration. My bank payments were up-to-date and terms with the ATO were being negotiated.

What changed, I don't know.

**20. Endota held me accountable to a much higher financial standard than other franchisees.**

endota have taken my business over a \$70,000 debt to them - despite knowing that I was to receive \$40,000 for the sale of the Wyndham site in a matter of weeks, numerous undertakings that we would sell our [REDACTED] home and coming into our best cash flow season. An example of cash flow is that in the week following termination – my booking system estimated gross income of \$20,000+.



Being a seasonal spa – I estimated I make 70% of gross sales from Melbourne Cup weekend to Easter. It doesn't make sense.

Endota's actions mean we will lose our family home (as well as the \$500,000 equity in it) because we have now no way of paying our modest business loan when we could've easily traded through.

Our total debts (business loan, endota and ATO) are much less than many of my franchisee colleagues - the ACCC is very interested in this and why this level of debt is unacceptable to the company in my circumstance, but not others.

**21. Beach of Confidentiality.**

My former Business Development Manager [REDACTED] spoke about my financial position and Termination to a former endota employee during a social dinner. The former employee contacted me to relay the conversation, which included that "Fran is gone", "we won't hear from her again", "her financial issues ran the spa into the ground", and that "the spa was in a deplorable position". [REDACTED] also discussed what she believed I "owed" endota financially and also said that I "gone" because "I can't do anything about it" because I don't have the financial capacity to fight it in court.

The conversation is in Breach of the 4.12 of the Franchise Agreement.

**22. Endota has changed its business model that has left**

**23. Endota engaged in unconscionable conduct and an abuse of power in endota's takeover of the lease of the Torquay Central, and their failure to pay rent.**

**24. Endota's misuse of power in refusing to hand-over equipment leased by Southern Spa, which resulted in significant financial and emotional distress.**

**25. The bully tactics and misuse of power, led by the endota senior management team and orchestrated by their solicitor [REDACTED].**

**26. endota is misleading current and prospective franchisees by selling a 'lifestyle' that is not achievable under the current endota Franchise model.**

**27. endota denied me the same support offered to other spas, including access to a Business Development Manager during times of financial distress.**

**28. endota's failure**

**too scared to go on holidays.**

**Told to find workers prepared to "work for cash" to resolve the need to paint.**

■ rang a fellow endota Franchisee and asked her to have me taken on our closed Facebook owners site.