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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

**IN RE: FRANCHISE NO POACHING
PROVISIONS**

(DRAMA KIDS INTERNATIONAL, INC.)

NO. 19-2-26238-9 SEA

**DRAMA KIDS INTERNATIONAL,
INC. 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) under RCW 19.86.100.

I. PARTIES

1.1. In August 2019, the Attorney General initiated an investigation into Drama Kids International, Inc. relating to its hiring practices.

1.2. Drama Kids International, Inc. is a Maryland corporation with its principal office or place of business in Fort Myers, Florida. Drama Kids International, Inc. is in the business of franchising businesses that provide drama-based programs for children and teenagers ages 4 to 17 through a progressive curriculum that enables students to develop leadership, teamwork, and social interaction skills, public speaking skills, acting skills, confidence, self-esteem, and a positive approach to life.

1.3. For the purposes of this AOD, Drama Kids International, Inc. includes its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its successor and assigns, controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures.

II. INVESTIGATION

1
2 2.1. Drama Kids International, Inc. has three (3) stores in Washington. Three (3) of
3 these stores are owned and operated by franchisees and none are owned and operated by Drama
4 Kids International, Inc.

5 2.2. For years, Drama Kids International, Inc. has included language in its franchise
6 agreements that restricted a franchisee's ability to solicit or hire workers from another Drama
7 Kids store (no-poaching provision). Specifically, the standard Drama Kids International, Inc.
8 franchise agreement stated, "You agree that during the term of the Franchise, and for an
9 uninterrupted period of 3 years after repurchase, expiration or termination of the Franchise,
10 regardless of the cause of repurchase, expiration or termination, you will not, without our prior
11 written consent, directly or indirectly, for yourself, or through, on behalf of or in conjunction
12 with any person or entity, employ, engage as an independent contractor, or seek to employ or
13 engage as an independent contractor, any person who, within the prior 6 months, has been an
14 employee or independent contractor of us or any of our franchisees, or induce or seek to induce
15 any person who is an employee or independent contractor of us or any of our franchisees, to
16 leave his or her employment or engagement." A no-poaching provision restricted franchisees
17 from hiring both employees from a competing franchisee and from Drama Kids International,
18 Inc.'s corporate-owned stores.

19 2.3. The Attorney General asserts that the foregoing conduct constitutes a contract,
20 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,
21 RCW 19.86.030.

22 2.4. Drama Kids International, Inc. expressly denies the conduct described above
23 constitutes a contract, combination, or conspiracy in restraint of trade in violation of the
24 Consumer Protection Act, RCW 19.86.030, or any other law, and expressly denies it has engaged
25 in conduct that constitutes a contract, combination, or conspiracy in restraint of trade. Drama
26 Kids International, Inc. enters into this AOD to avoid protracted and expensive litigation.

1 Pursuant to RCW 19.86.100, neither this AOD nor its terms shall be construed as an admission
2 of law, fact, liability, misconduct, or wrongdoing on the part of Drama Kids International, Inc.

3 **III. ASSURANCE OF DISCONTINUANCE**

4 3.1. Subject to paragraph 2.4 above, Drama Kids International, Inc. agrees:

5 3.1.1 It will no longer include no-poach provisions in any of its future franchise
6 agreements;

7 3.1.2 It will not enforce no-poaching provisions in any of its existing franchise
8 agreements, and will not seek to intervene or defend in any way the legality of any no-poach
9 provision in any litigation in which a franchisee may claim third-party beneficiary status rights
10 to enforce an existing no-poach provision;

11 3.1.3 It will notify all of its franchisees of the entry of this agreement with the
12 State, and provide them a copy of the AOD upon request;

13 3.1.4 It will notify the Attorney General's Office if it learns of any effort by a
14 franchisee in Washington to enforce any existing no-poach provision.

15 3.2. Within 60 days of entry of this AOD, Drama Kids International, Inc. will exercise
16 all reasonable commercial efforts to amend all existing franchise agreements with entities in
17 Washington to remove any no-poaching provisions in its existing franchise agreements. Drama
18 Kids International, Inc. is under no obligation to offer any franchisee any monetary or non-
19 monetary consideration to induce them to accept the proposed amendment of the franchise, and
20 it shall be under no obligation to take any coercive action against a franchisee that may refuse or
21 decline to agree to any amendment of its franchise agreement. If any franchise owner is unwilling
22 to consent to the change to its franchise agreement, prior to the 60-day deadline, Drama Kids
23 International, Inc. shall provide the name and address of the resisting franchisee and the name
24 and address of the franchisee's registered agent to the Office of the Attorney General.

1 3.3. As they come up for either renewal or renegotiation during the ordinary course
2 of business, Drama Kids International, Inc. will amend all of its existing franchise agreements
3 on a nationwide basis to remove any no-poach provision.

4 3.4. Within 30 days of the conclusion of the time periods referenced in this section
5 III, Drama Kids International, Inc. will submit a declaration to the Attorney General's Office
6 signed under penalty of perjury stating that all provisions of this agreement have been satisfied.

7 **IV. ADDITIONAL PROVISIONS**

8 4.1. This AOD is binding on, and applies to Drama Kids International, Inc., including
9 each of its respective directors, officers, managers, agents acting within the scope of their agency,
10 and employees, as well as their respective successors and assigns, controlled subsidiaries,
11 divisions, groups, affiliates, partnerships, and joint ventures, or other entities through which
12 Drama Kids International, Inc. may now or hereafter act with respect to the conduct alleged in
13 this AOD.

14 4.2. This is a voluntary agreement and it shall not be construed as an admission of
15 law, fact, liability, misconduct, or wrongdoing on the part of Drama Kids International, Inc. By
16 entering into this AOD, Drama Kids International, Inc. neither agrees nor concedes that the
17 claims, allegations and/or causes of action which have or could have been asserted by the
18 Attorney General have merit and Drama Kids International, Inc. expressly denies any such
19 claims, allegations, and/or causes of action. However, proof of failure to comply with this AOD
20 shall be *prima facie* evidence of a violation of RCW 19.86.030, thereby placing upon the violator
21 the burden of defending against imposition by the Court of injunctions, restitution, costs and
22 reasonable attorney's fees, and appropriate civil penalties under the Consumer Protection Act.

23 4.3. Drama Kids International, Inc. will not, nor will it authorize any of its officers,
24 employees, representatives, or agents to state or otherwise contend that the State of Washington
25 or the Attorney General has approved of, or has otherwise sanctioned, the conduct described in
26

1 Paragraph 2.2 with respect to the No-Poach Provision in Drama Kids International, Inc.'s
2 franchise agreement.

3 4.4. This AOD resolves all issues raised by the State of Washington and the Antitrust
4 Division of the Attorney General's Office under the Consumer Protection Act and any other
5 related statutes pertaining to the acts set forth in paragraph 2.1 – 2.3 above that may have
6 occurred before the date of entry of this AOD and concludes the investigation thereof. Subject
7 to paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's
8 Office shall not file suit or take any further investigative or enforcement action with respect to
9 the acts set forth above that occurred before the date of entry of this AOD.

10 APPROVED ON this ____ day of _____, 2019.

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JUDGE/COURT COMMISSIONER


1 Presented by:

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13 Agreed to and approved for entry by:
14 Drama Kids International, Inc.

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Drama Kids International, Inc.

By: Charles Kerr

Its: President