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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO POACHING
PROVISIONS

19-2-04320-2 SEA

(FASTSIGNS INTERNATIONAL, INC.)

FASTSIGNS 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 January 2018, the Attorney General initiated an investigation into FASTSIGNS International, Inc. relating to its hiring practices.

1.2 FASTSIGNS International, Inc. is a Texas corporation with its principal office or place of business in Carrollton, Texas. FASTSIGNS International, Inc. enters into franchise agreements with franchisees who operate independently owned and managed sign and visual communications centers under the FASTSIGNS brand name.

1.3 FASTSIGNS 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, predecessors, successors, owners, and joint ventures. FASTSIGNS International, Inc. does not include independent franchisees.

1 II. INVESTIGATION

2 2.1 FASTSIGNS International, Inc. has 18 franchised locations in Washington, all
3 of which are owned and operated by independent franchisees.

4 2.2 Until approximately April 2018, FASTSIGNS International, Inc. has included
5 language in its franchise agreements that restricted a franchisee's ability to solicit or hire
6 workers from another FASTSIGNS International, Inc. franchisee ("no-recruiting provisions").
7 Specifically, certain FASTSIGNS International, Inc. franchise agreements in effect in
8 Washington State that a franchisee may not "recruit or hire any person who is (or has been
9 during the past six (6) months) an employee of [FASTSIGNS International, Inc., Fastsigns
10 National Advertising Council, Inc.,] or any affiliate of FASTSIGNS, without obtaining its
11 written permission." Certain other FASTSIGNS International, Inc. franchise agreements in
12 effect in Washington State include as exhibits Confidentiality/Non-Compete Agreements that
13 state: (i) during the term of the franchise agreement the signatory may not "[e]mploy or seek to
14 employ any person who is at the time employed by a Franchisee, FASTSIGNS or any
15 franchisee or developer of FASTSIGNS, or otherwise directly or indirectly induce such
16 persons to leave their employment"; and (ii) for a period of two years following termination
17 the signatory may not "[e]mploy or seek to employ any person who is at the time employed by
18 FASTSIGNS International, Inc., any franchisee or developer of FASTSIGNS International,
19 Inc., or otherwise directly or indirectly induce such persons to leave their employment." As of
20 May 1, 2018, FASTSIGNS International, Inc. removed the no-recruiting provisions from its
21 new franchise agreements. While FASTSIGNS International, Inc. has not enforced any
22 no-recruiting provisions in its franchise agreements since at least January 1, 2009, on August 1,
23 2018, FASTSIGNS International, Inc. announced to its franchisees in writing and via
24 conference call that it would never enforce the no-recruiting provisions in its existing franchise
25 agreements.
26

1 2.3 The Attorney General asserts that the no-recruiting provisions constitute a
2 contract, combination, or conspiracy in restraint of trade in violation of the Consumer
3 Protection Act, RCW 19.86.030.

4 2.4 FASTSIGNS International, Inc. expressly denies the no-recruiting provisions
5 constitute a contract, combination, or conspiracy in restraint of trade in violation of the
6 Consumer Protection Act, RCW 19.86.030, or any other law or regulation, and expressly
7 denies it has engaged in conduct that constitutes a contract, combination, or conspiracy in
8 restraint of trade. FASTSIGNS International, Inc. enters into this AOD to avoid protracted and
9 expensive litigation. Pursuant to RCW 19.86.100, neither this AOD nor its terms shall be
10 construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part of
11 FASTSIGNS International, Inc. That is because, in FASTSIGNS International, Inc.'s view, the
12 no-recruiting provisions were included in its franchise agreements for the purpose of protecting
13 franchisees who invest substantially in training its employees. FASTSIGNS International, Inc.
14 never intended to reduce wages or harm workers and in fact it never did.

15 **III. ASSURANCE OF DISCONTINUANCE**

16 3.1 Subject to paragraph 2.4 above, FASTSIGNS International, Inc. agrees:

17 3.1.1. It will continue to not include the no-recruiting provisions in any of its
18 future franchise agreements nationwide as it has since April 2018;

19 3.1.2. It will continue to not enforce, nationwide, the no-recruiting provisions
20 in any of its existing franchise agreements, and will not seek to intervene or defend in any way
21 the legality of any no-recruiting provisions in any litigation in which a franchisee may claim
22 third-party beneficiary status rights to enforce an existing no-recruiting provision;

23 3.1.3. Within 30 days of the entry of this AOD, FASTSIGNS International,
24 Inc. will notify all of its franchisees in Washington of the entry of this AOD and provide them
25 a copy;

26

1 3.1.4. Within 30 days of the entry of this AOD, FASTSIGNS International,
2 Inc. will make its best efforts to inform all franchisees nationwide who have the no-recruiting
3 provisions in their franchise agreements of the agreements set forth in paragraphs 3.1.1, 3.1.2
4 and 3.3 of this AOD and provide them a copy of the AOD upon request,;

5 3.1.5. It will notify the Attorney General's Office if it learns of any effort by a
6 franchisee to enforce any existing no-recruiting provision.

7 3.2 Within 120 days of entry of this AOD ("Amendment Period"), FASTSIGNS
8 International, Inc. will endeavor to amend all existing franchise agreements with franchisees in
9 the state of Washington to remove any no-recruiting provision in their existing franchise
10 agreements. Within 21 days of the entry of this AOD, FASTSIGNS International, Inc. will
11 send a letter in substantially the same form as the letter attached hereto as Exhibit A to all of its
12 franchisees in the state of Washington. That letter will enclose a proposed amendment in
13 substantially the same form as the amendment attached hereto as Exhibit B. FASTSIGNS
14 International, Inc. will respond promptly to any inquiries from such franchisees regarding the
15 request to amend the terms of the franchise agreement and will encourage its current
16 franchisees in the state of Washington to sign the proposed amendment. However, for the
17 avoidance of doubt, FASTSIGNS International, Inc. is under no obligation to offer its
18 franchisees any consideration—monetary or otherwise—in order to induce them to sign the
19 proposed amendment, or take any adverse action against such franchisees if they refuse to do
20 so. If any franchisee is unwilling to consent to the amendment to its franchise agreement by the
21 end of the Amendment Period, FASTSIGNS International, Inc. shall provide the name and
22 address of the resisting franchisee and the name and address of the franchisee's registered
23 agent to the Office of the Attorney General. Once FASTSIGNS International, Inc. complies
24 with this paragraph, it shall have no further obligation to seek to amend any existing franchise
25 agreement with franchisees in the state of Washington to remove any no-recruiting provisions.
26

1 3.3 As has been FASTSIGNS International, Inc.'s practice since April 2018, as
2 franchise agreements come up for either renewal or renegotiation during the ordinary course of
3 business, FASTSIGNS International, Inc. will, on a nationwide basis, not include any
4 no-recruiting provisions.

5 3.4 Within 30 days of the conclusion of the end of the Amendment Period,
6 FASTSIGNS International, Inc. will submit a declaration to the Attorney General's Office
7 signed under penalty of perjury stating that Sections 3.1-3.2 of this AOD have been satisfied.

8 **IV. ADDITIONAL PROVISIONS**

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

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

1 4.3 FASTSIGNS International, Inc. will not, nor will it authorize any of its officers,
2 employees, representatives, or agents to state or otherwise contend that the State of Washington or
3 the Attorney General has approved of, or has otherwise sanctioned, the conduct described in
4 paragraph 2.2 with respect to the no-recruiting provisions in FASTSIGNS International, Inc.'s
5 franchise agreement.

6 4.4 This AOD resolves all issues raised by the State of Washington and the Antitrust
7 Division of the Attorney General's Office under the Consumer Protection Act and any other
8 related statutes pertaining to the acts set forth in paragraphs 2.1 – 2.3 above that may have
9 occurred before the date of entry of this AOD and concludes the investigation thereof. Subject to
10 paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's
11 Office shall not file suit or take any further investigative or enforcement action with respect to the
12 acts set forth above that occurred before the end of the Amendment Period, against FASTSIGNS
13 International, Inc. or any of its franchisees in Washington who agree to the amendment described
14 in paragraph 3.2 above with respect to acts that occurred before the date of such amendment. The
15 Attorney General reserves the right to take further investigative or enforcement action against any
16 current franchisee in the state of Washington that does not sign the proposed amendment
17 described in Section III.

18
19 APPROVED ON this _____ day of _____, 2019.

20
21 _____
22 JUDGE/COURT COMMISSIONER
23
24
25
26

1 Presented by:

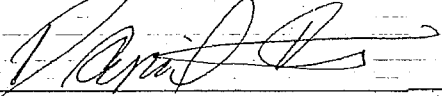
2 ROBERT W. FERGUSON
3 Attorney General

4 

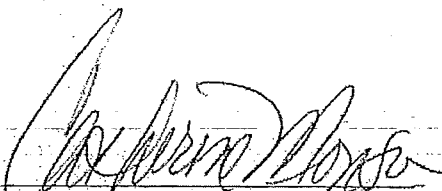
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13 *Attorney for State of Washington*

14 Agreed to and approved for entry by:
15 FASTSIGNS INTERNATIONAL, INC.

16 

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Attorneys for FASTSIGNS International, Inc.

EXHIBIT A

Form Letter to FASTSIGNS Franchisees in the State of Washington

Dear [Franchisee Name]

In November 2018, FASTSIGNS International, Inc. received a Civil Investigative Demand (CID) from the Attorney General's Office of the State of Washington seeking information regarding whether there are any provisions in its franchise agreements that restrict the hiring or solicitation of employees from FASTSIGNS International, Inc. or from another FASTSIGNS franchisee (sometimes referred to as "no poaching" or "no solicitation" clauses). FASTSIGNS International, Inc. understands that this is part of a broader investigation into the use of such clauses in the franchised industry. FASTSIGNS International, Inc. has cooperated fully with the investigation.

As you know, prior to receiving the CID, in May 2018, FASTSIGNS International, Inc. removed all provisions that restrict the hiring or solicitation of employees from its new franchise agreements, and in August 2018, FASTSIGNS International, Inc. announced that even though it has not enforced such a provision since at least January 1, 2009, it would never enforce any such provisions in the future in its existing franchise agreements.

Without admitting that FASTSIGNS International, Inc. or its franchisees violated any law or regulation, or acted improperly in any respect, FASTSIGNS International, Inc. reached an agreement with the Attorney General's Office. This agreement provides that FASTSIGNS International, Inc. will, among other things, continue to no longer include in any U.S. franchise agreement, or renewal signed after the date of our agreement with the Attorney General's Office, any provisions that restrict the hiring or solicitation of employees from FASTSIGNS International, Inc. or another FASTSIGNS franchisee. The agreement also provides that FASTSIGNS International, Inc. will continue to not enforce any such provisions in any of its existing franchise agreements or area development agreements in the U.S. A copy of this agreement is enclosed.

FASTSIGNS International, Inc. believes the 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.

FASTSIGNS International, Inc.'s agreement with the Attorney General's Office also includes a requirement that it request, from franchisees with locations in the State of Washington that they agree 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(s) with FASTSIGNS International, Inc. to satisfy that requirement. To the extent that you agree to this amendment, 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 the attention of Stephanie Brooks as soon as possible but certainly by no later than [REDACTED], 2019. If you decide not to sign the enclosed amendment(s) by that date, 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 catherine.monson@fastsigns.com.

FASTSIGNS INTERNATIONAL,
INC.

EXHIBIT B

**AMENDMENT
TO FASTSIGNS INTERNATIONAL, INC.
FRANCHISE AGREEMENT**

The FASTSIGNS International, Inc. Franchise Agreement(s) between FASTSIGNS International, Inc. ("We") and the undersigned franchisee ("You") listed in Exhibit A hereto (as amended, the "Agreement(s)") shall be amended in accordance with the following terms.

1. Background. We and you are parties to each Agreement and you operate one or more franchised FASTSIGNS Centers in the State of Washington under the Agreement(s). We have determined that it is in the best interests of the franchise system to not enforce Section . The purpose of this Amendment to your Agreement(s) is to document this change. All initial capitalized terms used but not defined in this Amendment shall have the meanings set forth in the Agreement(s).

2. Modification of Terms. As of the Effective Date (defined below) of this Amendment, you and we agree that Section is hereby deleted from each Agreement.

3. Miscellaneous. Except as specifically modified by this Amendment, the provisions of the Agreement(s) shall remain in full force and effect. This document is an amendment to, and forms a part of, each Agreement. If there is an inconsistency between this Amendment and any Agreement, the terms of this Amendment shall control. This Amendment constitutes the entire agreement between the parties hereto, and there are no other oral or written representations, understandings or agreements between them, relating to the subject matter of this Amendment. This Amendment inures to the benefit of the parties hereto and their respective successors and assigns and will be binding upon the parties hereto and each of their respective successors and assigns. This Amendment may be executed in multiple counterparts, but all such counterparts together shall be considered one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Amendment effective as of _____, 2019 (the "Effective Date").

**FASTSIGNS
INTERNATIONAL, INC.**

[FRANCHISEE'S NAME]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____