

RECEIVED
In King County Superior Court Clerk's Office

FEB 15 2019

Cashier Section
Superior Court Clerk

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO
POACHING PROVISIONS

NO. **19-2-04324-**

5 SEA

(THE MAIDS INTERNATIONAL, INC.)

THE MAIDS INTERNATIONAL, INC.
ASSURANCE OF DISCONTINUANCE

The State of Washington (State), by and through its attorneys, Robert W. Ferguson, Attorney General, and Eric S. Newman, Assistant Attorney General, files this Assurance of Discontinuance (AOD) pursuant RCW 19.86.100.

I. PARTIES

1.1 In January 2018, the Attorney General initiated the "In re Franchise No Poaching Provisions Investigation," which included investigation of the hiring practices of franchisors and franchisees, including The Maids International, Inc. (The Maids).

1.2 The Maids is a Nebraska corporation with its principal office or place of business in Omaha, NE. The Maids is in the business of providing household cleaning services under the "The Maids®" trademark.

1.3 The Maids 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. The Maids does not include independent franchise operators.

THE MAIDS INTERNATIONAL INC.
ASSURANCE OF DISCONTINUANCE

ATTORNEY GENERAL OF WASHINGTON
Antitrust Division
800 Fifth Avenue, Suit 2000
Seattle, WA 98104-3188
(206)464-7744

1 II. INVESTIGATION

2 2.1 The Maids currently has 21 independently owned and operated franchise
3 territories in Washington. No Washington territory is owned or operated by The Maids.

4 2.2 The Maids previously included language in its franchise agreements that
5 restricted a franchisee's ability to solicit or hire employees from The Maids or other
6 franchisees after termination of their franchise agreement. Specifically, The Maids franchise
7 agreement stated in paragraph 19.3(C) ("Paragraph 19.3(C)");

8 19.3 The Franchisee ... will not for a period of 18 months after the
9 termination or expiration of this Agreement ... without first obtaining the prior
written consent of [The Maids],

10 (C) employ, or seek to employ, any person who is employed
11 by [The Maids] or an affiliate of [The Maids] or by any other The
Maids® Franchisee, or induce or attempt to induce any such person
12 to leave such employment;

13 The Maids has never enforced this provision of its franchise agreement.

14 2.3 The Attorney General asserts that the foregoing contract language constitutes a
15 contract, combination, or conspiracy in restraint of trade in violation of the Consumer
16 Protection Act, RCW 19.86.030.

17 2.4 The Maids expressly denies that Paragraph 19.3(C) constitutes a contract,
18 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,
19 RCW 19.86.030, or any other law, and expressly denies it has engaged in any conduct that
20 constitutes a contract, combination, or conspiracy in restraint of trade. The Maids believes that
21 Paragraph 19.3(C) was adopted to encourage franchisees to make the investments necessary to
22 develop well-trained, high quality, and stable workforce in their locations, which in turn
23 strengthened The Maids' brand and individual The Maids locations' ability to compete against
24 other branded companies, among other reasons. The Maids enters into this AOD to formalize
25 its practice of not enforcing Paragraph 19.3(C), accelerate removal of the provision from its
26 Washington franchise agreements and avoid protracted and expensive litigation that could be

1 brought by the State if it does not enter into this AOD. Pursuant to RCW 19.86.100, neither
2 the existence of this AOD nor any of its terms shall be construed as an admission of law or
3 fact, or any liability, misconduct, or wrongdoing on the part of The Maids.

4 III. ASSURANCE OF DISCONTINUANCE

5 3.1 Subject the paragraphs above, The Maids agrees:

6 3.1.1. It will no longer include Paragraph 19.3(C), or other similar provisions
7 that purport to restrict a franchisee's ability to solicit or hire employees from The Maids or
8 other franchisees, in any of its future franchise agreements nationwide;

9 3.1.2. It will not enforce Paragraph 19.3(C) in any of its franchise agreements,
10 and will not seek to intervene or defend in any way the legality of Paragraph 19.3(C) in any
11 litigation in which a franchisee may claim third-party beneficiary status rights to enforce
12 Paragraph 19.3(C) in an existing The Maids franchise agreement;

13 3.1.3. Within 14 days after the entry of this AOD, it will make all of its
14 franchisees aware of this AOD and make a copy available if requested;

15 3.1.4. It will notify the Attorney General's Office if it learns of any effort by a
16 Washington The Maids franchisee to enforce Paragraph 19.3(C) in any existing franchise
17 agreements.

18 3.2 Within 90 days of entry of this AOD, The Maids will endeavor to amend all
19 existing franchise agreements with Washington The Maids franchisees to remove Paragraph
20 19.3(C) in its existing franchise agreements. However, for the avoidance of doubt, The Maids
21 is under no obligation to offer its franchisees any consideration, monetary or otherwise, in
22 order to induce them to sign the proposed amendment, nor will The Maids be required to take,
23 or threaten to take, any adverse action against any such franchisees if they refuse to do so. If
24 any Washington franchise owner declines to amend its franchise agreement within seven days
25 prior to the 90-day deadline, The Maids shall provide the name and address of any such
26 franchise owner to the Office of the Attorney General. A decision by a The Maids franchisee

1 not to amend its franchise agreement, or not to do so within 90 days of this AOD, shall not
2 mean that The Maids has not complied with its obligations under this AOD. This provision
3 shall be deemed satisfied with regard to each Washington The Maids franchisee by either the
4 amendment of such franchisee's franchise agreement(s) to remove Paragraph 19.3(C) or by
5 The Maids providing the name and address of such franchisee to the Office of the Attorney
6 General.

7 3.3 The Maids will not include Paragraph 19.3(C) in its franchise agreements for all
8 franchisees nationwide, including for (a) new franchisees signing franchise agreements for the
9 first time, (b) existing franchisees whose franchise agreements have expired and/or are otherwise
10 subject to renewal, rebuild or relocation, and (c) franchisees who are acquiring a The Maids
11 business or another franchisee's business (*i.e.*, assignment) assuming they sign a new franchise
12 agreement as part of the transaction.

13 3.4 Within 30 days of the conclusion of all time periods referenced in this section
14 III, The Maids will submit a declaration to the Attorney General's Office signed under penalty
15 of perjury stating that it has complied with all provisions of this AOD or, if circumstances
16 beyond The Maids' control prevent compliance with any paragraph within the specified time
17 frame, The Maids will describe its efforts to satisfy the paragraph's requirements and the
18 relevant extenuating circumstances.

19 **IV. ADDITIONAL PROVISIONS**

20 4.1 This AOD is binding on, and applies to The Maids, including each of its
21 respective directors, officers, managers, agents acting within the scope of their agency, and
22 employees, as well as their respective successors and assigns, controlled subsidiaries,
23 divisions, groups, affiliates, partnerships, and joint ventures, or other entities through which
24 The Maids may now or hereafter act with respect to the conduct alleged in this AOD.

1 4.2 This is a voluntary agreement and it shall not be construed as an admission of
2 any law, fact, liability, misconduct, or wrongdoing on the part of The Maids. By entering into this
3 AOD, The Maids does not agree or concede that the claims, allegations and/or causes of action
4 which were asserted by and/or could have been asserted by the Attorney General have any
5 merit and The Maids expressly denies the existence of any facts pertaining to The Maids that
6 could support any such claims, allegations, and/or causes of action. However, proof of failure
7 to comply with this AOD shall be *prima facie* evidence of a violation of RCW 19.86.030,
8 thereby placing upon the violator the burden of defending against imposition by the Court of
9 injunctions, restitution, costs and reasonable attorney's fees, and civil penalties of up to
10 \$2,000.00 per violation.

11 4.3 The Maids will not, nor will it authorize any of its officers, employees,
12 representatives, or agents to state or otherwise contend that the State of Washington or the
13 Attorney General has approved of, or has otherwise sanctioned, the language described in
14 paragraph 2.2 above with respect to Paragraph 9.3(C) in The Maids' franchise agreement.

15 4.4 Compliance with this AOD resolves all issues raised by the State of Washington
16 and the Antitrust Division of the Attorney General's Office under the Consumer Protection Act
17 and any other statutes relating to the acts set forth in paragraphs 2.2 – 2.4 above. Subject to
18 paragraph 4.3, the State of Washington and the Antitrust Division of the Attorney General's
19 Office shall not file suit or take any further investigative or enforcement action against The Maids
20 with respect to the acts set forth above that occurred before the date of entry of this AOD, or
21 against independent The Maids franchisees in Washington who agree to the amendment described
22 in paragraph 3.2 above within 90 days of the entry of this AOD with respect to acts that occurred
23 before the date of such amendment.

1 APPROVED ON this _____ day of _____, 2019.

2
3
4 JUDGE/COURT COMMISSIONER

5 Presented by:

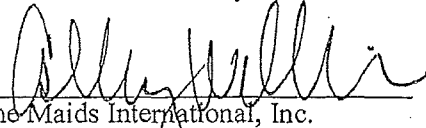
6 ROBERT W. FERGUSON
7 Attorney General

8
9 RAHUL RAO, WSBA No. 53375
10 Assistant Attorney General
11 Antitrust Division
12 Office of the Attorney General
13 800 Fifth Avenue, Suite 2000
14 Seattle, WA 98104
15 Tel. (206) 442-4499
16 rahulr@atg.wa.gov

17 *Attorney for State of Washington*


18 Agreed and approved for entry by:
19 THE MAIDS INTERNATIONAL, INC.

20
21 
22 DANIEL J. OATES, WSBA No. 39334
23 Miller Nash Graham & Dunn LLP
24 2801 Alaskan Way, Suite 300
25 Seattle, WA 98121
26 Tel. (206) 777-7537
Fax (206) 340-9599
Dan.Oates@millernash.com


The Maids International, Inc.

By: Ashley Williams
Its: General Counsel

and


1 MICHAEL R. GRAY, MN No. 175602
2 Gray Plant Mooty Mooty & Bennett PA
3 80 South Eighth Street, Suite 500
4 Minneapolis, MN 55402
5 Tel. (612) 632-3078
6 Fax (612) 632-4078
7 mike.gray@gpmlaw.com

8 GP:4839-3673-3831 v2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26