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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

IN RE: FRANCHISE NO POACHING
PROVISIONS

(AIRE SERV LLC)

NO. 19-2-26203-6

AIRE SERV LLC ASSURANCE OF
DISCONTINUANCE

The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney General, and Justin Wade, 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 Aire Serv LLC (“Aire Serv”) relating to the hiring practices of Aire Serv’s franchisees.

1.2. Aire Serv is a Texas limited liability company with its principal office or place of business in Waco, Texas. Aire Serv is in the business of licensing independent franchisees to operate a business identified by the AIRE SERV® trademarks that installs, maintains, and repairs residential and commercial heating, ventilating, air conditioning and indoor air quality equipment, performs related services and sells related products within a defined territory.

1.3. For the purposes of this AOD, “The Aire Serv Parties” means Aire Serv, its directors, officers, managers, agents, and employees (all of the foregoing, as acting within the scope of their duties to Aire Serv) as well as its successor and assigns, and controlled subsidiaries.

II. INVESTIGATION

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2 2.1. Aire Serv has granted one franchisee the right and license to operate an AIRE
3 SERV® franchised business in two territories in Washington, which that franchisee
4 independently owns and operates. Aire Serv does not own or operate any locations in
5 Washington.

6 2.2. During a portion of the period of the State of Washington's investigation, Aire
7 Serv included language in its franchise agreements in Washington that restricted a franchisee's
8 ability to solicit or hire workers from another franchisee for a limited time-period. ("No-
9 Poaching Provision"). Specifically, from April 1, 2016, until April 1, 2018, the standard Aire
10 Serv franchise agreement registered in Washington contained a provision stating that, "you agree
11 that during the term of this Agreement and for one year thereafter, you will not, without our prior
12 written consent, directly or indirectly, for yourself or on behalf of any other person . . . employ
13 or seek to employ any person who is at that time employed by us, our affiliate or another AIRE
14 SERV franchisee or otherwise directly or indirectly induce or seek to induce the person to leave
15 his or her employment." In addition, from the beginning of the relevant time period until April
16 1, 2016, the standard Aire Serv franchise agreement in Washington contained a provision stating
17 that the franchisee shall not, directly or indirectly, during the term of the franchise agreement
18 and for a period of two (2) years immediately following the later of expiration, termination, or
19 non-renewal of the franchise agreement "employ, seek to employ or otherwise induce any person
20 to leave his employment who is then employed by any other franchisee or by Franchisor, unless,
21 in the case of any employee of Franchisor, Franchisee has obtained Franchisor's prior written
22 consent and paid the then current Franchisor Employee Training Fee set forth in Exhibit 'IB'
23 hereto, which Franchisee acknowledges and agrees is reasonable and necessary to compensate
24 Franchisor for a portion of the costs of training such employee." Aire Serv entered its two
25 currently effective franchise agreements in Washington in 2012 with this latter provision. In
26

1 summary, the No-Poaching Provisions restricted franchisees from hiring employees of Aire
2 Serv, an affiliate of Aire Serv, or another franchisee.

3 2.3. Prior to the initiation of the State of Washington's investigation in 2019, in Aire
4 Serv's April 2018 renewal of its franchise disclosure documents ("FDD"), Aire Serv removed
5 the No-Poaching Provision from its U.S. form franchise agreement. Aire Serv's form franchise
6 agreement registered in Washington has not included the No-Poaching Provision since
7 April 1, 2018.

8 2.4. The Attorney General asserts that the No-Poaching Provision in franchise
9 agreements that Aire Serv entered with Washington franchisees, prior to the issuance of the April
10 2018 renewal FDD, constitutes a contract, combination, or conspiracy in restraint of trade in
11 violation of the Consumer Protection Act, RCW 19.86.030.

12 2.5. The Aire Serv Parties expressly deny that the conduct described above constitutes
13 a contract, combination, or conspiracy in restraint of trade in violation of the Consumer
14 Protection Act, RCW 19.86.030, or any other law, and expressly denies it has engaged in conduct
15 that constitutes a contract, combination, or conspiracy in restraint of trade. Aire Serv viewed the
16 No-Poaching Provision in Aire Serv's form franchise agreement as a way to reduce potential
17 conflicts among its franchisees that could disrupt the franchise system and the franchisor-
18 franchisee relationship that Aire Serv has with each of its franchisees. However, the No-
19 Poaching Provision has not been the subject of any dispute in any legal proceeding in
20 Washington. Aire Serv has never attempted to enforce a No-Poaching Provision with any of its
21 franchisees and is not aware of any of its franchisees in Washington enforcing or attempting to
22 enforce any No-Poaching Provision in their franchise agreements. Aire Serv nevertheless enters
23 into this AOD to avoid protracted and expensive litigation. Pursuant to RCW 19.86.100, neither
24 this AOD nor its terms shall be construed as an admission of law, fact, liability, misconduct, or
25 wrongdoing on the part of The Aire Serv Parties.
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1 | occurred before the date of entry of this AOD and concludes the investigation thereof. Subject
2 | to paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's
3 | Office shall not file suit or take any further investigative or enforcement action with respect to
4 | the acts set forth above that occurred before the date of entry of this AOD.

5 | APPROVED ON this _____ day of _____, 2019.

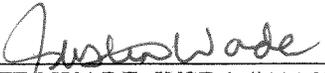
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JUDGE/COURT COMMISSIONER

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Presented by:

ROBERT W. FERGUSON
Attorney General



JUSTIN WADE, WSBA #41168
Assistant Attorney General
Antitrust Division
Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7030
justin.wade@atg.wa.gov

Attorneys for State of Washington

Agreed to and approved for entry by:
Aire Serv LLC

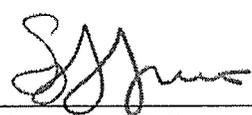


JOSEPH VANCE, WSBA #25531
Miller Nash Graham & Dunn LLP
500 Broadway Street, Suite 400
Vancouver, WA 98660
(360) 699-4771
joseph.vance@millernash.com

and

NICK ROTCHADL
Faegre Baker Daniels LLP
2200 Wells Fargo Center
90 S. 7th Street
Minneapolis, MN 55402
(612) 766-6864
nick.rotchadl@faegreBD.com

Attorneys for Aire Serv LLC



Aire Serv LLC

By: Stephen Truett

Its: President