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Superior Court Clerk

**SUPERIOR COURT OF WASHINGTON
KING COUNTY SUPERIOR COURT**

IN RE: FRANCHISE NO
POACHING PROVISIONS

NO.

19-2-04312-1 SEA

EXPRESS SERVICES, INC. d/b/a
EXPRESS EMPLOYMENT
PROFESSIONALS
ASSURANCE OF DISCONTINUANCE

The State of Washington (State), by and through its attorneys, Robert W. Ferguson, Attorney General (the "Attorney General"), and Rahul Rao, 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 an investigation into Express Services, Inc., d/b/a Express Employment Professionals ("Express") relating to certain provisions in its form franchise agreements.

1.2 Express is a Colorado corporation with its principal office or place of business in Oklahoma City, Oklahoma. Express is in the business of professionally marketing and providing human resource solutions to franchise branch locations that provide permanent and temporary employment services.

1.3 For purposes of this AOD, Express includes its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its successor and

1 assigns, controlled subsidiaries, affiliates and predecessor franchisor entities. Express does not
2 include its franchisees.

3 II. INVESTIGATION

4 2.1 There are 22 Express franchise branch locations in the State of Washington as
5 of the date hereof. All of these branch locations are independently owned and operated by
6 franchisees.

7 2.2 In the State of Washington, since at least 2013, the standard franchise
8 agreements entered into between Express and its franchisees have restricted a franchisee's
9 ability to hire or solicit employees from Express or other Express franchisees (the "No-
10 Solicitation Provision"). Specifically, the standard Express franchise agreement stated that a
11 franchisee "will not employ or seek to employ any person who is at the time employed by
12 [Express] or any of [Express's] subsidiaries or affiliates or by any franchisee of [Express], or
13 otherwise induce, directly or indirectly, the person to leave his/her employment." The No-
14 Solicitation Provision further provided that it "shall not be violated if the person has left the
15 employ of any of the parties for a period in excess of six (6) months."

16 2.3 The Attorney General asserts that the foregoing conduct of Express constitutes a
17 contract, combination, or conspiracy in restraint of trade in violation of the Consumer
18 Protection Act, RCW 19.86.030.

19 2.4 Express expressly denies that the foregoing conduct described above constitutes
20 a contract, combination, or conspiracy in restraint of trade in violation of the Consumer
21 Protection Act, RCW 19.86.030, or any other law, and expressly denies it has engaged in
22 conduct that constitutes a contract, combination, or conspiracy in restraint of trade. Express
23 enters into this AOD to avoid protracted and expensive litigation. Pursuant to RCW 19.86.100,
24 neither this AOD nor its terms shall be construed as an admission of law, fact, liability,
25 misconduct, or wrongdoing on the part of Express.

1 **III. ASSURANCE OF DISCONTINUANCE**

2 3.1 Subject to paragraph 2.4 above, Express agrees:

3 3.1.1. It will no longer include the No-Solicitation Provision in any of its
4 future franchise agreements signed after the date hereof for branch locations in the United
5 States of America;

6 3.1.2. It will not enforce the No-Solicitation Provision in any of its existing
7 franchise agreements with branch locations in the United States of America, and will not seek
8 to intervene or defend in any way the legality of any no-poach provision in any litigation in
9 which a franchisee may claim third-party beneficiary status rights to enforce an existing no-
10 poach provision;

11 3.1.3. It will notify all of its current franchisees of branch locations in the
12 United States of America of its commitment to no longer enforce the No-Solicitation
13 Provision, as described in Section 3.1.2, above, inform them of the entry of this AOD, and will
14 make a copy of this AOD available to them upon request;

15 3.1.4. If, after the 60-day period set forth in Paragraph 3.2 below, Express
16 becomes aware of a franchisee with a branch location in the State of Washington attempting to
17 enforce the No-Solicitation Provision, and Express is unable to persuade such franchisee to
18 desist from enforcing or attempting to enforce such provision, Express will notify the Attorney
19 General.

20 3.2 Within 60 days of entry of this AOD, Express will send a letter to all its current
21 franchise locations in the State of Washington (the "Washington Franchisees") stating that the
22 Attorney General has requested that the existing No-Solicitation Provision be removed from
23 existing franchise agreements. The letter that Express will send to the Washington Franchisees
24 will be substantially in the form of the letter attached as Exhibit A. That letter will enclose the
25 proposed amendment that Express is requesting that its Washington Franchisees agree to,
26 which amendment shall remove the No-Solicitation Provision. The proposed amendment that

1 will be included with the letter will be substantially in the form of the amendment attached
2 hereto as Exhibit B.

3 3.3 In addition to sending the letter to the Washington Franchisees pursuant to
4 Paragraph 3.2, above, Express will respond promptly to any inquiries from such franchisees
5 regarding the request to amend the terms to the franchise agreement and will encourage the
6 Washington Franchisees to sign the proposed amendment. However, for the avoidance of
7 doubt, Express is under no obligation to offer its franchisees any consideration, monetary or
8 otherwise, to induce them to sign the proposed amendment, or take any adverse action against
9 such franchisees if they refused to do so. Within 120 days of the entry of this AOD, Express
10 will provide copies of all executed amendments it has obtained with its Washington
11 Franchisees to the Attorney General's Office. A decision by a Washington Franchisee not to
12 amend its franchise agreement, or not to do so within 120 days of this AOD, shall not mean
13 that Express has not complied with its obligations under this AOD.

14 3.4 If Express learns that a Washington Franchisee intends in good faith to sign the
15 proposed amendment but is unable to do so within the time period specified in Paragraph 3.3,
16 above, Express will notify the Attorney General's Office to seek a mutually agreeable
17 extension. During any such extension, the Attorney General's Office will not take further
18 investigative or enforcement action against the Washington Franchisee.

19 3.5 As they come up for renewal, extension, or renegotiation during the ordinary
20 course of business, Express will remove the No-Solicitation Provision from its existing
21 franchise agreements for locations in the United States of America, unless expressly prohibited
22 by law.

23 3.6 Within 30 days of the conclusion of the time periods referenced in Paragraphs
24 3.3 and 3.4, Express will submit a declaration to the Attorney General's Office signed under
25 penalty of perjury stating that all provisions of this AOD have been satisfied.
26

IV. ADDITIONAL PROVISIONS

1
2 4.1 This AOD is binding on, and applies to Express, including each of its respective
3 directors, officers, managers, and agents acting within the scope of their agency, and
4 employees, as well as their respective successors and assigns, controlled subsidiaries,
5 predecessor franchisor entities, or other entities through which Express may now or hereafter
6 act with respect to the conduct alleged in this AOD.

7 4.2 This is a voluntary agreement and it shall not be construed as an admission of
8 law, fact, liability, misconduct, or wrongdoing on the part of Express. By entering into this
9 AOD, Express neither agrees nor concedes that the claims, allegations and/or causes of action
10 which have or could have been asserted by the Attorney General have merit, and Express
11 expressly denies any such claims, allegations, and/or causes of action. However, proof of
12 failure to comply with this AOD shall be *prima facie* evidence of a violation of RCW
13 19.86.030, thereby placing upon the violator the burden of defending against imposition by the
14 Court of injunctions, restitution, costs and reasonable attorney's fees, and civil penalties of up
15 to \$2,000.00 per violation.

16 4.3 Express will not, nor will it authorize any of its officers, employees,
17 representatives, or agents to state or otherwise contend that the State of Washington or the
18 Attorney General has approved of, or has otherwise sanctioned, the conduct described in
19 Paragraph 2.2 with respect to the No-Solicitation Provision in Express's franchise agreements.

20 4.4 This AOD resolves all issues raised by the State of Washington and the Antitrust
21 Division of the Attorney General's Office under the Consumer Protection Act and any other
22 related statutes pertaining to the acts of Express and its current and former franchisees, as set out
23 in Paragraphs 2.1 – 2.3 above that may have occurred before the date of entry of this AOD, or that
24 occur between the date of the entry of this AOD and the conclusion of the 120-day period
25 identified in Paragraph 3.3 above, and concludes the investigation thereof. Subject to paragraph
26 4.2, the State of Washington and the Antitrust Division of the Attorney General's Office shall not

1 file suit or take any further investigative or enforcement action with respect to the acts set forth
2 above that occurred before the date of entry of this AOD, or that occurs between the date of the
3 entry of this AOD and the conclusion of the 120-day period identified in Paragraph 3.3, above,
4 against Express or any of its Washington Franchisees that sign the proposed amendment described
5 in Paragraph 3.2, or any of its former franchisees in the State of Washington, or any of its current
6 or former franchisees located outside the State of Washington. The Attorney General reserves the
7 right to take further investigative or enforcement action against any Washington Franchisee
8 identified pursuant to Paragraph 3.1.4 or any Washington Franchisee that does not sign the
9 proposed amendment described in Paragraph 3.2.

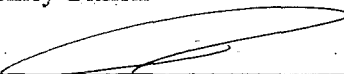
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APPROVED ON this _____ day of _____, 2019.

JUDGE/COURT COMMISSIONER


1 Presented by:

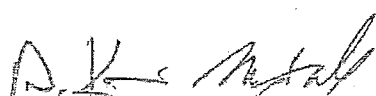
2 ROBERT W. FERGUSON
3 Attorney General

4 
RAHUL RAO, WSBA #53375
5 Assistant Attorney General
6 Antitrust Division
7 Attorney's for State of Washington
8 Office of the Attorney General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104

9 Agreed to and approved for entry by:

10 EXPRESS SERVICES, INC., d/b/a
11 EXPRESS EMPLOYMENT PROFESSIONALS

12 
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Express Services, Inc.
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19 36034427.1

21 36294049.1

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AOD - EXHIBIT A

Form Letter to Express Washington Franchisees

Dear [Franchisee]

In September 2018, Express Service, Inc. ("Express") received a Civil Investigative Demand from the Attorney General's Office of the State of Washington seeking information regarding whether there are any provisions in our franchise agreements that restrict the hiring or solicitation of employees (sometimes referred to as "no poaching" clauses). We understand that this is part of a broader investigation into the use of such clauses in franchised industries. We have cooperated fully with the investigation.

Without admitting that Express or its franchisees violated any law or regulation, or acted improperly in any respect, we have reached an agreement with the Attorney General's Office. This agreement provides that Express will, among other things, no longer include in any U.S. franchise agreement or renewal any provisions that restrict the hiring or solicitation of employees. The agreement also provides that Express will not enforce any such provisions in any of our existing franchise agreements for branches located in the U.S.

We believe the franchise 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.

Our agreement with the Attorney General's Office also includes a requirement that we request from franchisees located 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 Express to satisfy the requirement. To the extent that you agree to this amendment to your franchise agreement, 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 me as soon as possible. If you decide not to sign the enclosed amendment, 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 [e-mail of appropriate person]

If you receive any media inquiries regarding this matter, please refer them to [e-mail of appropriate person]

[Signature block for appropriate person]

AOD - EXHIBIT B

**AMENDMENT
EXPRESS SERVICE, INC. LICENSE AGREEMENT**

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

1. Background. We and you are parties to each Franchise Agreement and you operate one or more franchisees in the State of Washington under the Franchise Agreement(s). We have determined that it is in the best interests of the franchise system to not enforce the sub-sections described in Appendix A attached hereto. The purpose of this Amendment to your Franchise Agreement(s) is to document this change. All initial capitalized terms used but not defined in this Amendment shall have the meaning set forth in the Franchise Agreement(s).

2. Modification of Terms. As of Effective Date (defined below) of this Amendment, You and We agree that the sub-sections described in Appendix A attached hereto are hereby deleted or modified from each Franchise Agreement and are of no further force or effect.

3. Miscellaneous. Except as specifically modified by this Amendment, the provisions of the Franchise Agreement(s) shall remain in full force and effect. This document is an amendment to, and forms a part of, each Franchise Agreement. If there is an inconsistency between this Amendment and any Franchise Agreement, the terms of this Amendment shall control. This Amendment constitute 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 Agreement effective as of _____, 2019 (the "Effective Date").

EXPRESS SERVICE, INC.

[FRANCHISEE'S NAME]

By: _____

By: _____

Names: _____

Names: _____

Title: _____

Title: _____

APPENDIX A

Provisions being deleted/amended:

License Agreements for [_____]

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