

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO POACHING
PROVISIONS
(CK FRANCHISING, INC.)

NO. **18-2-56311-9 SEA**

CK FRANCHISING, INC.
ASSURANCE OF
DISCONTINUANCE

The State of Washington (State), by and through its attorneys, Robert W. Ferguson, 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 CK FRANCHISING, INC. ("CKFI") relating to certain provisions in its franchise agreement.

1.2 CKFI is an Ohio corporation with its principal office or place of business in Irvine, California. CKFI is a franchisor, and its corporate and franchise operated Comfort Keepers locations are in the business of providing in-home care for seniors and other adults who need assistance in daily living, including companionship care, personal care, and personal technology services and equipment.

1.3 For the purposes of this AOD, CKFI shall include 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.

1 II. INVESTIGATION

2 2.1 There are nine Comfort Keepers locations in the state of Washington. All of
3 these Comfort Keepers locations are independently owned and operated by franchisees.

4 2.2 For several years, the franchise agreements entered into between CKFI and its
5 franchisees in the United States have provided that franchisees subject to such agreements
6 could not solicit for employment the employees of CKFI and/or of other Comfort Keepers
7 franchisees (the "No-Solicitation Provision"), and specifically, that the franchisee agree:

8 (a) Except as otherwise approved in writing by CKFI, You will not
9 (during the Term), and each of the Related Parties will not (during
10 the portion of the Term that each satisfies the definition of a Related
11 Party), either directly or indirectly, for Yourself and/or any of the
12 Related Parties, or through, on behalf of, or in conjunction with any
13 Person:

14 (ii) . . . seek to employ, any Covered Individual;

15 The franchise agreement also provided that franchisees subject to such agreements could not
16 hire the employees of CKFI and/or other Comfort Keepers franchisees (the "No-Hire
17 Provision"), and specifically, that the franchisee agree:

18 (a) Except as otherwise approved in writing by CKFI, You will not
19 (during the Term), and each of the Related Parties will not (during
20 the portion of the Term that each satisfies the definition of a Related
21 Party), either directly or indirectly, for Yourself and/or any of the
22 Related Parties, or through, on behalf of, or in conjunction with any
23 Person:

24 (ii) Employ... any Covered Individual;

25 2.3 The Attorney General asserts that the foregoing conduct of CKFI and its
26 franchisees constitutes a contract, combination, or conspiracy in restraint of trade in violation
of the Consumer Protection Act, RCW 19.86.030.

27 2.4 CKFI expressly denies the conduct described above constitutes a contract,
28 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,
29 RCW 19.86.030, or any other law, and expressly denies it has engaged in conduct that

1 constitutes a contract, combination, or conspiracy in restraint of trade. CKFI enters into this
2 AOD to avoid protracted and expensive litigation. Pursuant to RCW 19.86.100, neither this
3 AOD nor its terms shall be construed as an admission of law, fact, liability, misconduct, or
4 wrongdoing on the part of CKFI.

5 III. ASSURANCE OF DISCONTINUANCE

6 3.1 Subject to paragraph 2.4 above, CKFI agrees:

7 3.1.1. It will contractually omit the No-Hire Provision or the No-Solicit
8 Provision, or any other restriction that purports to restrict a franchisee's ability to solicit or hire
9 workers from another franchisee or from CKFI, in any franchise agreement in the United
10 States signed after the entry of the AOD and will issue a franchise disclosure document
11 ("FDD") omitting the No-Solicitation and No-Hire provisions within 60 days of the issuance of
12 this AOD.

13 3.1.2. It will continue not enforcing the No-Solicitation Provision and the
14 No-Hire Provision in any of its existing franchise agreements, and will not seek to intervene or
15 defend in any way the legality of any No-Solicitation Provision or No-Hire Provision in any
16 litigation in which a franchisee may claim third-party beneficiary status rights to enforce an
17 existing No-Solicitation or No-Hire Provision;

18 3.1.3. It will notify all of its current franchisees in the United States of the
19 entry of this AOD and make a copy available to them;

20 3.1.4. If, after the 21-day period set forth in Paragraph 3.2 below, CKFI
21 becomes aware of a franchisee with an office located in the State of Washington attempting to
22 enforce the No-Solicitation Provision or No-Hire Provision, and CKFI is unable to persuade
23 such franchisee to desist from enforcing or attempting to enforce such provision, CKFI will
24 notify the Attorney General.

25 3.2 Within 21 days of entry of this AOD, CKFI will send a letter to all of its current
26 franchisees with offices located in the State of Washington, stating that the Attorney General

1 has requested that the existing No-Solicitation Provision and No-Hire Provision be removed
2 from existing franchise agreements. That letter will enclose an amendment that CKFI is
3 requesting that each of its franchisees in the State of Washington agree to, which amendment
4 will remove the No-Solicitation Provision and the No-Hire Provision.

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

16 3.4 If CKFI learns that a current franchisee in the State of Washington intends in
17 good faith to sign the proposed amendment but is unable to do so within the time period
18 specified in Paragraph 3.3, CKFI will notify the Attorney General’s Office to seek a mutually
19 agreeable extension. During any such extension, the Attorney General’s Office will not take
20 further investigative or enforcement action against a franchisee.

21 3.5 As they come up for renewal during the ordinary course of business, CKFI will
22 remove the No-Solicitation and No-Hire Provisions from all its existing franchise agreements
23 in the United States, unless expressly prohibited by law.

24 3.6 Within 60 days of the conclusion of the time periods referenced in Paragraph
25 3.3, CKFI will submit a declaration to the Attorney General’s Office signed under penalty of
26 perjury stating that all provisions of this agreement have been satisfied.

1 IV. ADDITIONAL PROVISIONS

2 4.1 This AOD is binding on, and applies to CKFI, including each of its respective
3 directors, officers, managers, agents acting within the scope of their agency, and employees, as
4 well as their respective successors and assigns, controlled subsidiaries, divisions, groups,
5 affiliates, partnerships, and joint ventures, or other entities through which CKFI may now or
6 hereafter 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 CKFI. CKFI neither agrees nor
9 concedes that the claims, allegations and/or causes of action which have or could have been
10 asserted by the Attorney General have merit and CKFI expressly denies any such claims,
11 allegations, and/or causes of action. However, proof of failure to comply with this AOD shall
12 be *prima facie* evidence of a violation of RCW 19.86.030, thereby placing upon the violator
13 the burden of defending against imposition by the Court of injunctions, restitution, costs and
14 reasonable attorney's fees, and civil penalties of up to \$2,000.00 per violation.

15 4.3 CKFI will not, nor will it authorize any of its officers, employees, representatives,
16 or agents to state or otherwise contend that the State of Washington or the Attorney General has
17 approved of, or has otherwise sanctioned, the conduct described in Paragraph 2.2 with respect to
18 the No-Solicitation Provision and No-Hire Provision in CKFI's franchise agreement.

19 4.4 This AOD resolves all issues raised by the State of Washington and the Antitrust
20 Division of the Attorney General's Office under the Consumer Protection Act and any other
21 related statutes pertaining to the acts of CKFI and its current and former franchisees as set forth in
22 paragraph 2.1 – 2.3 above that may have occurred before the date of entry of this AOD, or that
23 occur between the date of entry of this AOD and the conclusion of the 120 day period identified in
24 Paragraph 3.3 above, and concludes the investigation thereof. Subject to paragraph 4.2, the State
25 of Washington and the Antitrust Division of the Attorney General's Office shall not file suit or
26 take any further investigative or enforcement action with respect to the acts set forth above that

1 occurred before the date of entry of this AOD, or that occurs between the date of entry of this
2 AOD and the conclusion of the 120 day period in Paragraph 3.3 above, against CKFI or any of its
3 current franchisees in the State of Washington that sign the proposed amendment described in
4 Section III, any of its former franchisees in the State of Washington, or any of its current or
5 former franchisees located outside the State of Washington.


7 APPROVED ON this _____ day of _____, 2018.

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11 JUDGE/COURT COMMISSIONER


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Presented by:

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Agreed to and approved for entry by:
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