

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO POACHING
PROVISIONS

NO. **18-2-56308-9 SEA**

MERRY MAIDS, LP
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 franchisee and franchisor hiring practices, including Merry Maids, LP ("Merry Maids").

1.2 Merry Maids, LP is a Delaware limited partnership with its principal office or place of business in Memphis, TN. Merry Maids is a franchisor and its corporate and its independently owned and operated franchisee locations offer house and window cleaning services for residential customers.

1.3 Merry Maids includes its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its successor and assigns and predecessor franchisor entities. Merry Maids does not include independently owned and operated franchisees of Merry Maids.

1 II. INVESTIGATION

2 2.1 Merry Maids has 28 licensed franchise territories in Washington. All of these
3 franchised territories are independently owned and operated by franchisees.

4 2.2 Merry Maids has included language in its franchise agreements that stated: "The
5 covenants of Franchisee not to compete during the term of this Agreement are as follows:
6 Franchisee agrees that during the term of this Agreement, Franchisee will not, for Franchisee's
7 own account, or as a partner, employee, agent, advisor, consultant, or in any other capacity of
8 or for or on account of any person, firm partnership, association or corporation or as an officer,
9 director or stockholder of any of the foregoing (except a passive stockholder holding less than
10 one percent (1%) of the stock of a publicly held corporation), or otherwise, directly or
11 indirectly: ... Hire or attempt to hire or entice away any employee, representative, or
12 franchisee of Franchisor or induce any employee, representative or Franchisee to terminate his
13 respective contractual relationship with Franchisor." The Attorney General asserts that this
14 language constitutes a "no-poaching provision."

15 2.3 The Attorney General asserts that the inclusion of a no-poaching provision in
16 franchise agreements constitutes a contract, combination, or conspiracy in restraint of trade in
17 violation of the Consumer Protection Act, RCW 19.86.030.

18 2.4 Merry Maids expressly denies the inclusion of its restrictive covenant language
19 in franchise agreements constitutes a contract, combination, or conspiracy in restraint of trade
20 in violation of the Consumer Protection Act, RCW 19.86.030, or any other law. Merry Maids
21 also expressly denies having engaged in conduct that constitutes a contract, combination, or
22 conspiracy in restraint of trade because it has not enforced the "no-poaching provision" in the
23 state of Washington or outside the state of Washington and has in fact allowed its employees to
24 take jobs with franchisees. Merry Maids enters into this AOD to avoid protracted and
25 expensive litigation that the State indicated it could initiate if Merry Maids does not enter into
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1 this AOD. Pursuant to RCW 19.86.100, neither this AOD nor its terms shall be construed as
2 an admission of law, fact, liability, misconduct, or wrongdoing on the part of Merry Maids.

3 III. ASSURANCE OF DISCONTINUANCE

4 3.1 Subject to paragraph 2.4 above, Merry Maids agrees:

5 3.1.1. It will no longer include no-poach provisions in any of its future
6 franchise agreements in the United States signed after the date hereof.

7 3.1.2. It will not enforce no-poaching provisions in any of its existing franchise
8 agreements, located in the United States;

9 3.1.3. It will make all of its franchisees in the United States aware of the entry
10 of this AOD and provide them a copy upon request;

11 3.2 Within 90 days of entry of this AOD, Merry Maids will have offered to amend
12 all existing franchise agreements with territories in the state of Washington to remove any no-
13 poaching provisions in its existing franchise agreements. For the avoidance of doubt, Merry
14 Maids is under no obligation to offer its franchisees any consideration, monetary or otherwise,
15 in order to induce them to sign the proposed amendment, nor will Merry Maids be required to
16 take, or threaten to take, any adverse action against such franchisees if they refuse to do so. If
17 any franchise owner is unwilling to consent to the change to its franchise agreement, Merry
18 Maids shall provide the name and address of the resisting franchisee to the Office of the
19 Attorney General. A decision by a franchisee not to amend its franchise agreement, or not to
20 do so within 90 days of this AOD, shall not mean that Merry Maids has not complied with its
21 obligations under this AOD and this provision shall be deemed satisfied if Merry Maids
22 provides the name and address of any franchisee that does not amend their franchise agreement
23 within 90 days of entry of this AOD to the Office of the Attorney General.

24 3.3 As they come up for either renewal or renegotiation during the ordinary course
25 of business, Merry Maids affirms that, to the extent it renews a franchise in the United States, it
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1 will renew those franchises on forms of franchise agreements that do not contain a no-poaching
2 provision.

3 3.4 Within 30 days of the conclusion of the time periods referenced in this section
4 III, Merry Maids will submit a declaration to the Attorney General's Office signed under
5 penalty of perjury stating that all provisions of this agreement have been satisfied.

6 IV. ADDITIONAL PROVISIONS

7 4.1 This AOD is binding on, and applies to Merry Maids, including each of its
8 respective directors, officers, managers, agents acting within the scope of their agency, and
9 employees, as well as their respective successors and assigns, or other entities through which
10 Merry Maids may now or hereafter act with respect to the conduct alleged in this AOD.

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

20 4.3 Merry Maids will not, nor will it authorize any of its officers, employees,
21 representatives, or agents to state or otherwise contend that the State of Washington or the
22 Attorney General has approved of, or has otherwise sanctioned, the conduct described in
23 Paragraph 2.2 with respect to the No-Poach Provision in Merry Maid's franchise agreement.

24 4.4 Merry Maids' compliance with this AOD resolves all issues raised by the State of
25 Washington and the Antitrust Division of the Attorney General's Office under the Consumer
26 Protection Act and any other statutes relating to the acts set forth in paragraph 2.1 – 2.3 above that

1 | may have occurred before the date of entry of this AOD and concludes the investigation thereof.
2 | Subject to paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney
3 | General's Office shall not file suit or take any further investigative or enforcement action with
4 | respect to the acts set forth above that occurred before the date of entry of this AOD and the
5 | conclusion of the 90 day period identified in Paragraph 3.3 above, against Merry Maids or any of
6 | its current franchisees in the State of Washington that sign the amendment described in Section
7 | III, any of its former franchisees in the State of Washington, or any of its current or former
8 | franchisees located outside the State of Washington.

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APPROVED ON this ____ day of November, 2018.

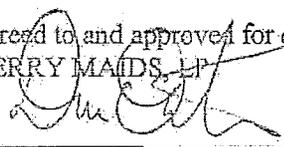
JUDGE/COURT COMMISSIONER

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