

1 **II. INVESTIGATION**

2 2.1. Abbey has fourteen (14) stores in Washington. Fourteen (14) of these stores are
3 owned and operated by franchisees and none are owned and operated by Abbey.

4 2.2. Abbey has included language in its franchise agreements that restricted a
5 franchisee's ability to solicit or hire workers from Abbey or another franchisee (no-recruiting
6 provision). Specifically, the standard Abbey franchise agreement stated that a franchisee agrees
7 that during the original term and any renewal term of the franchise agreement, a franchisee will
8 not, within their territory or anywhere outside their territory, either directly or indirectly,
9 individually or as a shareholder, director, officer, partner, lender, consultant, representative,
10 agent or employee of any firm, partnership, corporation or business entity "recruit, hire, assist
11 others in recruiting or hiring, discuss employment with, or refer to others concerning
12 employment, any person who is, or within the preceding twelve (12) months was, an employee
13 of ours, one of our subsidiaries or one of our affiliates or any of our members or attempt to induce
14 any such employee to terminate his/her employment." The no-recruiting provision restricted
15 franchisees from hiring both employees from a competing franchisee and from Abbey.

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

19 2.4. Abbey expressly denies the no-recruiting provision constitutes a contract,
20 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,
21 RCW 19.86.030, or any other law, and expressly denies it has engaged in conduct that constitutes
22 a contract, combination, or conspiracy in restraint of trade. Abbey believes that the no-recruiting
23 provisions were adopted to encourage franchisees to make the investments necessary to develop
24 well-trained, high quality, and stable workforces in their locations, which in turn strengthened
25 Abbey's brand and individual Abbey locations' ability to compete against other branded
26 companies, among other reasons. Nonetheless, Abbey enters into this AOD to avoid protracted

1 and expensive litigation. Pursuant to RCW 19.86.100, neither this AOD nor its terms shall be
2 construed as an admission of law, fact, liability, misconduct, or wrongdoing on the part of Abbey.

3 III. ASSURANCE OF DISCONTINUANCE

4 3.1. Subject to paragraph 2.4 above, Abbey agrees:

5 3.1.1 It will no longer include no-recruiting provisions in any of its future
6 franchise agreements;

7 3.1.2 It will no longer enforce no-recruiting provisions in any of its existing
8 franchise agreements, and will not seek to intervene or defend in any way the legality of any no-
9 recruiting provision, provided such action is brought in accordance with, and consistent with,
10 the provisions of this AOD;

11 3.1.3 Within 60 days after the entry of this AOD, it will make all of its
12 franchisees aware of this agreement with the State of Washington, and provide them a copy of
13 the AOD upon request;

14 3.1.4 It will notify the Attorney General's Office if it learns of any effort by a
15 franchisee in Washington to enforce any existing no-recruiting provision.

16 3.2. Within 120 days of entry of this AOD, Abbey will endeavor to amend all existing
17 franchise agreements with franchisees in the State of Washington to remove any no-recruiting
18 provisions in those franchisees' existing franchise agreements. In furtherance thereof, Abbey
19 will provide its written request to amend the franchise agreement, and its proposed form of
20 amendment for the franchisee's signature, to all existing franchisees in the State of Washington.
21 Abbey will respond promptly to any inquiries from such franchisees regarding Abbey's request
22 to amend the terms of the franchise agreement and will encourage its current franchisees in the
23 State of Washington to sign the proposed amendment. Abbey is under no obligation to offer any
24 franchisee any monetary or non-monetary consideration to induce them to accept the proposed
25 amendment of the franchise, and it shall be under no obligation to take any coercive action
26 against a franchisee that may refuse or decline to agree to any amendment of its franchise

1 agreement. If any franchise owner is unwilling to consent to the change to its franchise
2 agreement, prior to the 120-day deadline, Abbey shall provide the name and address of the
3 resisting franchisee and the name and address of the franchisee's registered agent to the Office
4 of the Attorney General. Once Abbey complies with this paragraph, it shall have no further
5 obligation to seek to amend any existing franchise agreement with franchisees in Washington to
6 remove any no-recruiting provisions.

7 3.3. As they come up for either renewal or renegotiation during the ordinary course
8 of business, Abbey will amend all of its existing franchise agreements on a nationwide basis to
9 remove any no-recruiting provision.

10 3.4. Within 30 days of the conclusion of the time periods referenced in this section
11 III, Abbey will submit a declaration to the Attorney General's Office signed under penalty of
12 perjury stating that Sections 3.1 and 3.2 of this AOD have been satisfied.

13 IV. ADDITIONAL PROVISIONS

14 4.1. This AOD is binding on, and applies to Abbey, including each of its respective
15 directors, officers, managers, agents acting within the scope of their agency, and employees, as
16 well as their respective successors and assigns, controlled subsidiaries, divisions, groups,
17 affiliates, partnerships, and joint ventures, or other entities through which Abbey may now or
18 hereafter act with respect to the conduct alleged in this AOD.

19 4.2. This is a voluntary agreement and it shall not be construed as an admission of
20 law, fact, liability, misconduct, or wrongdoing on the part of Abbey. By entering into this AOD,
21 Abbey neither agrees nor concedes that the claims, allegations and/or causes of action which
22 have or could have been asserted by the Attorney General have merit and Abbey and its current
23 and former franchisees expressly deny any such claims, allegations, and/or causes of action.
24 However, proof of failure to comply with this AOD shall be *prima facie* evidence of a violation
25 of RCW 19.86.030, thereby placing upon the violator the burden of defending against imposition
26

1 by the Court of injunctions, restitution, costs and reasonable attorney's fees, and appropriate
2 civil penalties under the Consumer Protection Act.

3 4.3. Abbey will not, nor will it authorize any of its officers, employees,
4 representatives, or agents to state or otherwise contend that the State of Washington or the
5 Attorney General has approved of, or has otherwise sanctioned, the language described in
6 Paragraph 2.2 above with respect to the no-recruiting provision in Abbey's franchise agreement.

7 4.4. This AOD resolves all issues raised by the State of Washington and the Antitrust
8 Division of the Attorney General's Office under the Consumer Protection Act and any other
9 related statutes pertaining to the acts set forth in paragraph 2.1 – 2.3 above that may have
10 occurred before the date of entry of this AOD and concludes the investigation thereof. Subject
11 to paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's
12 Office shall not file suit or take any further investigative or enforcement action with respect to
13 the acts set forth above that occurred before the date of entry of this AOD or against independent
14 Abbey franchisees in Washington who agree to the amendment described in paragraph 3.2 above
15 within 90 days of the entry of this AOD with respect to acts that occurred before the date of such
16 amendment.

17 APPROVED ON this _____ day of _____, 2019.

18
19
20 _____
JUDGE/COURT COMMISSIONER

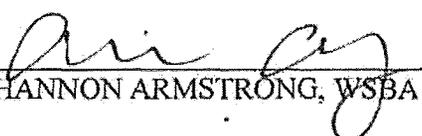
1 Presented by:

2 ROBERT W. FERGUSON
3 Attorney General

4 
5 JUSTIN WADE, WSBA #41168
6 Assistant Attorney General
7 Antitrust Division
8 Office of the Attorney General
9 800 Fifth Avenue, Suite 2000
10 Seattle, WA 98104
11 (206) 464-7030
12 Justin.Wade@atg.wa.gov

13 *Attorneys for State of Washington*

14 Agreed to and approved for entry by:
15 Abbey Carpet Co., Inc.

16 
17 SHANNON ARMSTRONG, WSBA #45947
18 Holland & Knight LLP
19 2300 U.S. Bancorp Tower
20 111 S.W. Fifth Avenue
21 Portland, OR 97204
22 (503) 517-2924
23 shannon.armstrong@hklaw.com
24 *Attorneys for Abbey Carpet Co., Inc.*

25 
26 Abbey Carpet Co., Inc.
TED DLUGOKIENSKI
Chief Financial Officer, Executive Vice
President of Operations and Secretary