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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

IN RE: FRANCHISE NO POACHING
PROVISIONS

(FIVE STAR PAINTING, LLC)

NO. 19-2-26213-3 SEA

FIVE STAR PAINTING, 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 Five Star Painting, LLC (“Five Star”) relating to the hiring practices of Five Star’s franchisees.

1.2. Five Star is a Delaware limited liability company with its principal office or place of business in Waco, Texas. Five Star is in the business of licensing independent franchisees to operate a business identified by the FIVE STAR PAINTING® trademarks or PROTECT PAINTERS® trademarks that engages in residential and commercial painting services in a defined territory.

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

II. INVESTIGATION

1
2 2.1. Five Star has five franchisees with the right and license to operate FIVE STAR
3 PAINTING® franchised businesses in Washington in a combined seven territories, which those
4 franchisees independently own and operate. Five Star does not have any franchisees operating a
5 PROTECT PAINTERS® franchised business in Washington. Five Star does not own or operate
6 any locations in Washington.

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

1 employee.” In summary, the No-Poaching Provisions restricted franchisees from hiring
2 employees of Five Star, an affiliate of Five Star, or another franchisee.

3 2.3. Prior to the initiation of the State of Washington’s investigation in 2019, in Five
4 Star’s April 2018 renewal of its franchise disclosure documents (“FDD”), Five Star removed the
5 No-Poaching Provision from its U.S. form franchise agreement. Five Star’s form franchise
6 agreement registered in Washington has not included the No-Poaching Provision since
7 April 9, 2018.

8 2.4. The Attorney General asserts that the No-Poaching Provision in franchise
9 agreements that Five Star 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 Five Star 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 deny they have engaged in
15 conduct that constitutes a contract, combination, or conspiracy in restraint of trade. Five Star
16 viewed the No-Poaching Provision in Five Star’s form franchise agreement as a way to reduce
17 potential conflicts among its franchisees that could disrupt the franchise system and the
18 franchisor-franchisee relationship that Five Star has with each of its franchisees. However, the
19 No-Poaching Provision has not been the subject of any dispute in any legal proceeding in
20 Washington. Five Star 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. Five Star 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 Five Star Parties.
26

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.

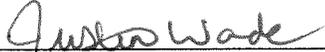
5 | APPROVED ON this _____ day of _____, 2019.

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JUDGE/COURT COMMISSIONER

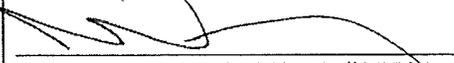
1 Presented by:

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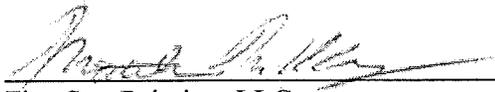
14 Agreed to and approved for entry by:
15 Five Star Painting, LLC

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