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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

**IN RE: FRANCHISE NO POACHING
PROVISIONS

(INXPRESS, LLC)**

**NO. 19-2-26239-7 SEA

INXPRESS, LLC ASSURANCE OF
DISCONTINUANCE**

The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney General, and Rahul Rao, 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 InXpress, LLC relating to its hiring practices.

1.2. InXpress, LLC is a Utah limited liability company with its principal office or place of business in South Jordan, Utah. InXpress, LLC is in the business of franchising businesses that provide shipping, consulting, customer service, logistics, and other business services using third party international, airfreight, express truck, and other transportation services through one or more domestic and international carrier companies.

1.3. For the purposes of this AOD, InXpress, LLC includes 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. InXpress, LLC has four (4) outlets in Washington. All four (4) of these outlets
3 are owned and operated by franchisees and none are owned and operated by InXpress, LLC.

4 2.2. For years, InXpress, LLC has included language in its franchise agreements that
5 restricted a franchisee's ability to solicit or hire workers from another InXpress store (no-
6 poaching provision). Specifically, the standard InXpress, LLC franchise agreement stated,
7 "Except as otherwise approved of in writing by Franchisor, neither Franchisee, nor any holder
8 of a legal or beneficial interest in Franchisee, nor any officer, director, executive, sales
9 representative, manager or member of the professional staff of Franchisee, shall, for a period of
10 two years after the expiration or termination of this Agreement, regardless of the cause of
11 termination, either directly or indirectly, for themselves or through, on behalf of or in conjunction
12 with, any person, persons, partnership, corporation, limited liability company or other business
13 entity: solicit or otherwise attempt to induce or influence any customers, client, Carrier,
14 employee or other business associate of Franchisor to terminate or modify his, her or its business
15 relationship with Franchisor or to compete against Franchisor." A no-poaching provision
16 restricted franchisees from hiring both employees from a competing franchisee and from
17 InXpress, LLC's corporate-owned stores.

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

21 2.4. InXpress, LLC expressly denies the conduct described above constitutes a
22 contract, combination, or conspiracy in restraint of trade in violation of the Consumer Protection
23 Act, RCW 19.86.030, or any other law, and expressly denies it has engaged in conduct that
24 constitutes a contract, combination, or conspiracy in restraint of trade. InXpress, LLC enters into
25 this AOD to avoid protracted and expensive litigation. Pursuant to RCW 19.86.100, neither this
26

1 AOD nor its terms shall be construed as an admission of law, fact, liability, misconduct, or
2 wrongdoing on the part of InXpress, LLC

3 **III. ASSURANCE OF DISCONTINUANCE**

4 3.1. Subject to paragraph 2.4 above, InXpress, LLC agrees:

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

7 3.1.2 It will not enforce no-poaching provisions in any of its existing franchise
8 agreements, and will not seek to intervene or defend in any way the legality of any no-poach
9 provision in any litigation in which a franchisee may claim third-party beneficiary status rights
10 to enforce an existing no-poach provision;

11 3.1.3 It will notify all of its franchisees of the entry of this agreement with the
12 State, and provide them a copy of the AOD upon request;

13 3.1.4 It will notify the Attorney General's Office if it learns of any effort by a
14 franchisee in Washington to enforce any existing no-poach provision.

15 3.2. Within 60 days of entry of this AOD, InXpress, LLC will exercise all reasonable
16 commercial efforts to amend all existing franchise agreements with entities in Washington to
17 remove any no-poaching provisions in its existing franchise agreements. InXpress, LLC is under
18 no obligation to offer any franchisee any monetary or non-monetary consideration to induce
19 them to accept the proposed amendment of the franchise, and it shall be under no obligation to
20 take any coercive action against a franchisee that may refuse or decline to agree to any
21 amendment of its franchise agreement. If any franchise owner is unwilling to consent to the
22 change to its franchise agreement, prior to the 60-day deadline, InXpress, LLC shall provide the
23 name and address of the resisting franchisee and the name and address of the franchisee's
24 registered agent to the Office of the Attorney General.

25 3.3. As they come up for either renewal or renegotiation during the ordinary course
26 of business, InXpress, LLC will amend all of its existing franchise agreements on a nationwide

1 basis to remove any no-poach provision.

2 3.4. Within 30 days of the conclusion of the time periods referenced in this section
3 III, InXpress, LLC will submit a declaration to the Attorney General's Office signed under
4 penalty of perjury stating that all provisions of this agreement have been satisfied.

5 **IV. ADDITIONAL PROVISIONS**

6 4.1. This AOD is binding on, and applies to InXpress, LLC, including each of its
7 respective directors, officers, managers, agents acting within the scope of their agency, and
8 employees, as well as their respective successors and assigns, controlled subsidiaries, divisions,
9 groups, affiliates, partnerships, and joint ventures, or other entities through which InXpress, LLC
10 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 wrongdoing on the part of InXpress, LLC. By entering into
13 this AOD, InXpress, LLC neither agrees nor concedes that the claims, allegations and/or causes
14 of action which have or could have been asserted by the Attorney General have merit and
15 InXpress, LLC expressly denies any such claims, allegations, and/or causes of action. However,
16 proof of failure to comply with this AOD shall be *prima facie* evidence of a violation of RCW
17 19.86.030, thereby placing upon the violator the burden of defending against imposition by the
18 Court of injunctions, restitution, costs and reasonable attorney's fees, and appropriate civil
19 penalties under the Consumer Protection Act.

20 4.3. InXpress, LLC 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 InXpress, LLC's franchise agreement.

24 4.4. This AOD resolves all issues raised by the State of Washington and the Antitrust
25 Division of the Attorney General's Office under the Consumer Protection Act and any other
26 related statutes pertaining to the acts set forth in paragraph 2.1 – 2.3 above that may have

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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8 JUDGE/COURT COMMISSIONER
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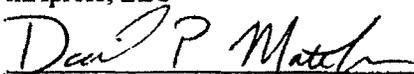
1 Presented by:

2 ROBERT W. FERGUSON
3 Attorney General

4 
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13 *Attorneys for State of Washington*

14 Agreed to and approved for entry by:
15 InXpress, LLC

16 
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23 *Attorney for InXpress, LLC*

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InXpress, LLC Rep

By: Dustin Hansen

Its: CEO