

## **Analysis of Agreement Containing Consent Order to Aid Public Comment**

***In the Matter of Adamas Amenity Services LLC, Adamas Building Services LLC, Adamas Concierge LLC, Adamas Parking Services LLC, and Adamas Security LLC, File No. 241-0081***

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### **I. Introduction**

The Federal Trade Commission (“Commission”) has accepted for public comment, subject to final approval, an Agreement Containing Consent Order (“Consent Agreement”) with Adamas Amenity Services LLC, Adamas Building Services LLC, Adamas Concierge LLC, Adamas Parking Services LLC, and Adamas Security LLC (collectively, “Respondents”). The proposed Decision and Order (“Order”), included in the Consent Agreement and subject to final Commission approval, is designed to remedy the anticompetitive effects that have resulted from Respondents’ use of restrictive covenants in some of their contracts with building owners and managers that limit the ability of those building owners and managers to solicit or hire Respondents’ employees (“No-Hire Agreements”). The term No-Hire Agreement refers to a term in an agreement between two or more companies that restricts, imposes conditions on, or otherwise limits a company’s ability to solicit, recruit, or hire another company’s employees, during employment or afterwards, directly or indirectly, including by imposing a fee or damages in connection with such conduct, or that otherwise inhibits competition between companies for each other’s employees’ services.

The Consent Agreement settles charges that Respondents have engaged in unfair methods of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45 (“Section 5 of the FTC Act”), by entering into No-Hire Agreements with customers. Respondents’ No-Hire Agreements constitute unreasonable restraints of trade that are unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1, and are thus unfair methods of competition in violation of Section 5 of the FTC Act. Independent of the Sherman Act, Respondents’ use of the No-Hire Agreements constitutes an unfair method of competition with a tendency or likelihood to harm competition, consumers, and employees in the building services industry, in violation of Section 5 of the FTC Act.

The proposed Order has been placed on the public record for 30 days in order to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement, and the comments received, and will decide whether it should withdraw from the Consent Agreement and take appropriate action or make the proposed Order final.

### **II. The Respondents**

Respondents are building services contractors headquartered in Rutherford, New Jersey that provide building maintenance, janitorial, concierge, valet, and security services. Respondent Adamas Amenity Services LLC provides services relating to residential building amenities such as pool and fitness facilities. Respondent Adamas Building Services LLC provides janitorial and

maintenance services. Respondent Adamas Concierge LLC handles front desk, doorman, and lobby attendant services. Respondent Adamas Parking LLC provides parking garage and valet services. Respondent Adamas Security LLC handles unarmed security services. A substantial majority of Respondents' work relates to residential buildings.

### **III. The Complaint**

The complaint alleges that Respondents sell building services to building owners and property management companies, primarily consisting of the labor of janitors, security guards, maintenance workers, and concierge desk workers who are directly employed by Respondents. These employees perform their work predominantly in New Jersey and New York City.

The complaint also alleges that Respondents and their building owner and property manager customers are direct competitors in labor markets for building services workers. These include the markets for workers to perform concierge, security, janitorial, maintenance, and related services.

As alleged in the complaint, Respondents use standard-form agreements with their customers that include No-Hire Agreements. The No-Hire Agreements restrict the ability of Respondents' customers to (1) directly hire workers employed by Respondents and (2) indirectly hire workers employed by Respondents through a competing building services contractor after the competitor wins the customers' business away from Respondents. These restrictions apply during the term of Respondents' contracts and for six months thereafter. The restrictions against hiring apply not just to Respondents' employees staffed to provide services for a particular customer, but to all of Respondents' building services employees.

The complaint alleges that Respondents' No-Hire Agreements are anticompetitive because they eliminate direct, horizontal, and significant forms of competition to attract labor in the U.S. building services industry. These agreements deny employees access to job opportunities, restrict their mobility, and deprive them of competitively significant information that they could have used to negotiate for better terms of employment. The complaint further alleges that any legitimate objectives of Respondents' conduct could have been achieved through significantly less restrictive means. Among other terms, the scope and duration of the No-Hire Agreements are not reasonably necessary to achieve any claimed pro-competitive purpose of Respondents' building services contracts. For these reasons, the complaint alleges that the No-Hire Agreements constitute unreasonable restraints of trade that violate Section 1 of the Sherman Act, 15 U.S.C. § 1, and are thus unfair methods of competition in violation of Section 5 of the FTC Act.

Independent of the Sherman Act, the complaint alleges that Respondents' conduct constitutes an unfair method of competition with a tendency or likelihood to harm competition, consumers, and employees in the building services industry, in violation of Section 5 of the FTC Act. According to the complaint, the No-Hire Agreements limit the ability of building owners and competing building service contractors to hire Respondents' employees. This harms Respondents' employees because it limits their ability to negotiate for higher wages, better benefits, and improved working conditions. Employees may suffer further hardship if the

building they work at changes management, because the No-Hire Agreements force them to leave their jobs in some circumstances. The complaint further alleges that the No-Hire Agreements harm building owners and managers because they may be foreclosed from seeking or accepting bids from Respondents' competitors due to the prospect of losing long-serving workers with extensive, building-specific experience.

#### **IV. Proposed Order**

The proposed Order seeks to remedy Respondents' unfair methods of competition. Section II of the proposed Order prohibits Respondents from entering or attempting to enter, maintaining or attempting to maintain, enforcing or attempting to enforce, or threatening to enforce a No-Hire Agreement, or communicating to a customer or any other person that any Adamas employee is subject to a No-Hire Agreement.

Paragraph III.A of the proposed Order requires Respondents to provide written notice to customers that are subject to No-Hire Agreements that (i) the restriction is null and void, and (ii) any customer or a subsequent building services contractor for a customer is no longer subject to the restrictions or penalties related to the No-Hire Agreements in Respondents' contracts.

Paragraph III.B of the proposed Order requires Respondents to provide written notices to employees who are subject to a No-Hire Agreement. Paragraph III.C requires that Respondents post clear and conspicuous notice that employees are not subject to No-Hire Agreements and may seek or accept a job with the building directly, or any company that wins the building's business.

Paragraphs IV.A and IV.B of the proposed Order requires that Respondents immediately cease enforcing No-Hire Agreements and, within 30 days after the Order is issued, provide key employees of Respondents with a copy of the Order and Complaint. Paragraphs IV.C-E set forth Respondents' ongoing compliance obligations.

Other paragraphs contain standard provisions regarding compliance reports, requirements for Respondents to provide notice to the FTC of material changes to their business, and access for the FTC to documents and personnel. The term of the proposed Order is ten years.

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The purpose of this analysis is to facilitate public comment on the Consent Agreement and proposed Order to aid the Commission in determining whether it should make the proposed Order final. This analysis is not an official interpretation of the proposed Order and does not modify its terms in any way.