UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Lina M. Khan, Chair**
Rebecca Kelly Slaughter
Alvaro Martín Bedoya
Melissa Holyoak
Andrew Ferguson

In the Matter of

Planned Building Services, Inc.,

a corporation,

Planned Lifestyle Services, Inc.,

a corporation,

Planned Security Services, Inc.,

a corporation, and

Planned Technologies Services, Inc.,

a corporation.

Docket No. C-[XXXX]

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41, et seq., and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that Planned Building Services, Inc., Planned Security Services, Inc., Planned Lifestyle Services, Inc., and Planned Technologies Services, Inc., hereinafter individually or collectively referred to as "Planned" or "Respondents," have violated the provisions of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges in that respect as follows:

NATURE OF THE CASE

1. Respondents are building services contractors that operate in New York City and Northern New Jersey.

2. Respondents routinely include No-Hire Agreements in their customer service agreements with residential and commercial building owners. The No-Hire Agreements limit the ability of those building owners—and competing building service contractors—to hire Respondents' employees without the building owners paying a penalty. As a result, those employees suffer hardship if the building they work at changes management, because the No-Hire Agreements force them to leave their jobs in some circumstances. The No-Hire Agreements also limit workers' ability to negotiate for higher wages and better benefits and working conditions from building owners.

3. Respondents' No-Hire Agreements also limit the ability of building owners to seek or accept bids from Respondents' competitors due to the prospect of losing long-serving employees, thus restricting the ability and incentive of Respondents' competitors to make investments and meet customer demand for increased quantity, quality, and variety of services, and ultimately harming consumers.

RESPONDENTS

4. Respondents are corporations organized, existing, and doing business under, and by virtue of, the laws of the State of New Jersey, with their executive offices and principal place of business at 150 Smith Road Parsippany, New Jersey 07054.

JURISDICTION

5. At all times relevant herein, Respondents have been, and are now, corporations, as "corporation" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

6. Respondents have engaged in and continue to engage in commerce and activities affecting commerce in the United States, as the term "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

BUILDING SERVICES INDUSTRY

7. Respondents are building services contractors. Pursuant to contracts between Respondents and various building owners or building management companies, Respondents' employees work at residential and commercial buildings in the United States, primarily in New York City and New Jersey.

8. Building owners and property management companies directly or indirectly employ almost 900,000 mostly low-wage workers in the United States in buildings of all kinds.

9. Respondents and their customers are direct competitors in certain labor markets for building services workers, including in the markets for workers to perform concierge, security, custodial, maintenance, and related services.

RESPONDENTS' NO-HIRE AGREEMENTS

10. This action challenges Respondents' use of No-Hire Agreements. The term No-Hire Agreement, as used in this complaint, 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 for some period of time after the employment ends, directly or indirectly, including by imposing a fee or damages on the other company in connection with such conduct, or that otherwise inhibits competition between companies for each other's employees' services.

11. For over a decade, Respondents have used standard form agreements with their customers that include No-Hire Agreements, styled as "Restrictive Covenants." The No-Hire Agreements typically require that a customer "and any person or entity retained by the [customer] to replace [Respondents] agree to refrain from directly or indirectly soliciting or employing [Respondents'] employees to work for them in a similar job classification for six (6) months after either the termination of [the agreement] or such employee voluntarily or involuntarily leaves [Respondents'] employment . . ." The No-Hire Agreements further impose a fee of "three (3) months' average earnings per employee as compensatory damages for the loss of each such employee." Fees of this type are sometimes referred to as "conversion fees."

12. 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.

13. Respondents' use of No-Hire Agreements is a method of competition that is unfair and has the tendency or likely effect of harming competition, consumers, or workers, including by: (i) impeding the entry and expansion of Respondents' competitors in the building services industry, (ii) reducing employee mobility, and (iii) causing lower wages and salaries, reduced benefits, less favorable working conditions, and, among other things, personal hardship to employees.

14. Any legitimate objectives of Respondents' conduct as alleged herein could have been achieved through significantly less restrictive means.

VIOLATIONS CHARGED

15. The allegations in all the paragraphs above are re-alleged and incorporated by reference as though fully set forth herein.

16. 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, as amended, 15 U.S.C. § 45.

17. 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 Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

18. Such conduct, or the effects thereof, will continue or recur in the absence of appropriate relief.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this [X] day of [X], 2024, issues its complaint against Respondents.

By the Commission, [Commissioner [X] dissenting].

April Tabor
Secretary