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

Guardian Service Industries, 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 Guardian Service Industries, Inc., hereinafter sometimes referred to as "Guardian" or "Respondent," has 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. Guardian is a building services contractor that operates in New York City and New Jersey.

2. Guardian sometimes includes No-Hire Agreements in its customer service agreements with residential building owners. The No-Hire Agreements limit the ability of those building owners—and competing building service contractors—to hire Guardian's employees. 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. Guardian's No-Hire Agreements also limit the ability of building owners to seek or accept bids from Guardian's competitors due to the prospect of losing long-serving employees, thus restricting the ability and incentive of Guardian's competitors to make investments and meet customer demand for increased quantity, quality, and variety of services, and ultimately harming consumers.

RESPONDENT

4. Guardian is a corporation organized, existing, and doing business under, and by virtue of, the laws of New York State, with its executive offices and principal place of business at 55 Water Street, New York, NY 10041.

JURISDICTION

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

6. Guardian has engaged in and continues 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. Guardian is a building services contractor. Pursuant to contracts between Guardian and various building owners or building management companies, Guardian's 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. Guardian and its 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.

GUARDIAN'S NO-HIRE AGREEMENTS

10. This action challenges Guardian's 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. Guardian sometimes includes No-Hire Agreements in its customer service agreements. The No-Hire Agreements typically require that a customer and any person or entity

retained to replace Guardian agree to refrain from directly or indirectly soliciting or employing Guardian's employees.

12. Guardian's 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. Guardian's 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 Guardian's 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 Guardian's 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. Guardian's 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. Guardian's 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 ___ day of _____, 2024, issues its complaint against Guardian.

By the Commission, Commissioners Holyoak and Ferguson dissenting.

April J. Tabor
Secretary