

# DADY & GARDNER, P.A.

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October 13, 2023

### **VIA EMAIL**

Samantha Stubbs

Molly Maid

Office of the General Counsel

1010 N. University Parks Drive

Waco, TX 76707

[samantha.stubbs@nbly.com](mailto:samantha.stubbs@nbly.com)

**Re: Blue & Pink Owners Association Initiatives and Proposals**

Dear Ms. Stubbs:

As you know, Dady & Gardner, P.A. represents the Blue & Pink Owners Association (the “**Association**”). We are writing to: (1) offer assistance in finding a workable solution to convert territories from census tracts to zip codes; (2) present you with the Association’s requests of Molly Maid SPV LLC (“**Molly Maid**”), with respect to Molly Maid’s latest form of franchise agreement; and (3) address Molly Maid’s recent attempts to restrict franchisees from participating in the Association and propose a simple solution to this issue.

### **Converting Territories From Census Tracts to Zip Codes**

We understand that Molly Maid is trying to convert its recognition of its franchisees’ territories from “census tracts” to “zip codes.” The Association agrees that it makes logical sense to define territories with zip codes and wants to help Molly Maid here. However, this issue has caused some rifts among franchisees. For example, when two franchisees have census tracts within the same zip code, this creates a situation where one franchisee will lose a portion of its territory. Molly Maid’s current suggestion is for the franchisee whose census tract covers more of the zip code to assume the entire zip code, unless the franchisee whose census tract covers less of the zip code has an office in that zip code, in which case, the franchisee with the office in the zip code assumes the entire zip code. The franchisees’ fundamental problem with Molly Maid’s current suggestion is that one way or the other, a franchisee is losing territory without receiving anything in return.

The Association has brainstormed some solutions that center around fairly compensating the franchisee who loses territory (or households) in these circumstances, whether that be through a payment compensating for the loss, or an award of additional territory (or households) on the other side of the losing franchisees' territory. The Association would like to discuss these solutions, and any other solutions Molly Maid has, during an in-person or video meeting with Molly Maid's leadership, and ultimately reach a fair solution that the Association can endorse and "sell" for Molly Maid in order to resolve this issue efficiently.

### **Molly Maid's Current Form of Franchise/Renewal Agreement**

At the outset, as a franchisee association looking out for our members' best interests, which includes numerous franchisees who are due for renewal of their franchise agreements, we would like to remind Molly Maid of its obligation in its existing franchise agreements (specifically, the renewal provisions) that prevent Molly Maid from increasing its franchisees' royalties and modifying its franchisees' territories. Specifically, Section 11.C in Molly Maid's 2013 and 2014 version of franchise agreement, which is now currently being renewed, provides: "**in no event will the Territory or Royalty for the Renewal Term Franchise Agreement be changed from that contained in this Agreement.**"

We mention this because Molly Maid's latest franchise agreement contains franchisor reservations as to what may occur or happen to its franchisees' territories, and we believe this is incongruent with Section 11.C above.<sup>1</sup> If for any reason any franchisees have renewed with increased royalties or modified territories, we believe Molly Maid will need to disgorge all royalties collected since renewal that are more than what the franchisee would have paid under its previous form of franchise agreement, and issue an addendum providing that franchisees will maintain the precise territories set forth in the original franchise agreements (without Molly Maid's additional reservations in its renewal franchise agreement). If this is an issue, the Association would like to help facilitate a simple resolution.

Setting this issue aside and looking at the bigger picture when it comes to Molly Maid's latest form of franchise agreement, the Association needs to work with Molly Maid to create a "**Legacy Addendum**" for existing franchisees due for renewal.<sup>2</sup>

There are compelling reasons as to why it is in Molly Maid's best interest to work with the Association to create a Legacy Addendum for renewing franchisees. First, and most importantly from a practical standpoint, Molly Maid will suffer in the long term if it pushes its longstanding, successful franchisees out of the system, and that's where this is headed. Molly Maid is only as

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<sup>1</sup> For instance, in FDD Item 11, Molly Maid reserves the right to require the franchisee to develop an Improvement Action Plan if the franchisee fails to maintain the required Minimum Gross Sales for any 26 weeks during a rolling 12-month period, and if the franchisee continues to miss its Minimum Gross Sales requirements, or fails to comply with the terms of the Improvement Action Plan, Molly Maid may reduce the size of the franchisee's Territory.

<sup>2</sup> In fact, Neighborly (Molly Maid's parent company) has already recognized this and set a precedent in doing so with similarly-situated brands under the Neighborly umbrella.

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strong as its franchisees. Molly Maid's existing franchisees have strong operational and communication skills, and they have made large investments of money directly into their territories. Molly Maid will ultimately suffer if it nudges its existing franchisees out of the system with renewal franchise agreements that materially alter their businesses, because these types of franchisees are not easily replaceable.

Second, the Association can be an ally to Molly Maid, sell the Legacy Addendum, and perhaps help secure early renewals to get most of the franchisees on the same franchise agreement. The Association could endorse the Legacy Addendum and do its best to get "buy in" from its members. This will also allow Molly Maid to negotiate once, not repeatedly, on an individualized basis with franchisees across the country. Moreover, from a legal standpoint, if any such provisions were challenged in the future (on the basis of violating the implied covenant of good faith and fair dealing), Molly Maid would be in a far superior position if the Association already endorsed the changes.

Conversely, Molly Maid will struggle without a collaborative relationship with the Association that, regardless of outcome here, is not going away. It is far from preferred, but, if necessary, the collective group of franchisees that make up the Association can engage in truthful campaigns about Molly Maid's actions and can be obstinate on key issues in the future.

Indeed, because Molly Maid's new terms (in the 2023 form of franchise agreement included in Molly Maid's July 3, 2023 FDD) fundamentally alter the franchise offering and franchised businesses, Molly Maid has opened the door to numerous legal challenges. While I have advised the Association that litigation should not be their first, second, or even third strategy, these franchisees may be inclined to challenge Molly Maid because Molly Maid is taking the value of their businesses by so substantially cutting into their profits.

In sum, Molly Maid will benefit from a collaborative relationship here, and in the future, with the Association. The Association does not expect to get its way on every issue here or in the future, but it does need to be meaningfully heard and considered on key changes affecting franchisees' livelihoods. With that said, the Association asks that Molly Maid create a "Legacy Addendum" with the following terms:

1. Applicability of the Legacy Addendum. The Legacy Addendum must: (a) be offered to all existing franchisees as of today as their franchise agreements come due for renewal; (b) apply for all future renewals; and (c) be transferable at least once (so the same business value may be sold to the first buyer).
2. Royalties. Franchisees must retain their existing royalty structures (including minimum royalties, if applicable) as required by their existing franchise agreements, in the renewal agreement and in all future renewal agreements. *See* Section 11.C in Molly Maid's 2013 and 2014 version of franchise agreement. Furthermore, Molly Maid must not attempt to "back-door" royalty increases by parsing out royalties "per franchise agreement."
3. Transfer Fee. In Section 10.C, the transfer fee equal to 5% of the purchase price or \$7,500, whichever is greater, is not workable for any existing franchisees who are considering signing a renewal franchise agreement. This is an unconscionable term. While \$7,500 is

reasonable, franchisees should not be required to give away 5% of the purchase price of their business just to sell it. Like Neighborly has done for its other franchise systems, the Association requests that Molly Maid use a flat transfer fee for the transfer of one or more franchise agreements at any one time. In this case, \$7,500 is appropriate.

4. Right of First Refusal. Sections 10.C, 10.D, and 10.E (which is the right of first of refusal section) are not applicable to transfers where no change of control happens (i.e., less than 50% as opposed to 20% or more ownership changes) and for transfers to family members as part of estate planning and handing over the business to children or heirs. For these types of transfers, Molly Maid would not possess a right of first refusal, and franchisees would not be required to sign a new form of franchise agreement, nor pay a transfer fee.
5. Business Judgment. The Association sees no reason why the parties cannot agree to deal with each other in “good faith” and therefore requests the removal of Section 14(G)(3) and that it be replaced with a mutual duty of good faith.
6. Approved Suppliers. The Association members have noticed more of an effort by Molly Maid to push ProTradeNet suppliers, which the Association opposes, because certain local suppliers have proven to do better work at a lesser price (e.g., the Skylark Agency). Especially because Molly Maid purports to negotiate for the benefit of its franchisees, the Association believes that the use of ProTradeNet suppliers must be optional and not mandatory. This is one topic the Association would like to discuss during an in-person or video meeting with Molly Maid’s leadership.

In the meantime, for any Association members whose franchise agreements are coming due for renewal in the near future, we request Molly Maid grant approximately six-month extensions, or however long necessary, to their existing franchise agreements to create an agreeable Legacy Addendum.

And finally, the Association again requests that Molly Maid proactively share its proposed changes to the franchise agreement from year to year so that the Association may provide its feedback to Molly Maid directly, prior to Molly Maid making any changes.

### **Molly Maid’s Attempts to Restrict Free Association Amongst Its Franchisees**

You were clear in your April 21, 2023 letter to me that Molly Maid has no intention of interacting with the Association. Molly Maid, however, went further than that in attempting to restrict its franchisees’ rights to freely associate.

Molly Maid recently amended its Franchise Advisory Council (“FAC”) bylaws to expressly exclude “members of any independent franchisee association not recognized by Molly Maid” (i.e., the Association). As I stated in my June 23, 2023 email, my initial review of the limited documents in my possession indicates that any such amendments to the FAC Bylaws must be proposed by the FAC by majority vote during a regularly-scheduled FAC meeting, and thereafter adopted by a majority online vote of franchise owners. This obligation stems from the 2019 FAC Bylaws. No such action has occurred since 2019, meaning **any later versions of the**

**FAC Bylaws (including the 2023 Bylaws excluding members of the Blue & Pink Owners Association and, further, removal of the requirement that FAC Bylaw amendments must be approved by the majority of franchise owners) are null and void.**

To this day, neither you nor anyone from Molly Maid contacted me, but, instead, Molly Maid succeeded in causing a “chilling effect” on franchisees joining the Association, and, in one instance, forced a franchisee in California to resign its membership in the Association in order to join the FAC.

Not only are these practices unhelpful and bad business, but Molly Maid has no right to restrict this form of free speech. *See, e.g., Ricky Smith Pontiac, Inc. v. Subaru of New England, Inc.*, 14 Mass. Ct. App. 396 (1982) (court protecting group of car dealers’ rights to pool resources “to support (by financial assistance and the offer of relevant documentary evidence and oral testimony) litigation brought by members”; noting that this group was a “prototype” for the “free association” rights of similarly situated dealers); *McAlpine v. AAMCO Automatic Transmissions, Inc.*, 461 F. Supp. 1232 (E.D. Mich. 1978) (rejecting franchisor’s claims against a franchisee association who purportedly “conspired” to stop being franchisees in order to start their own, independent company because the court found that the banding together of franchisees was well within the right of free association found in the First Amendment of the United States Constitution). *See also Brammer v. KB Home Lone Star, L.P.*, 114 S.W.3d 101 (Tex. App.-Austin 2003) (court refusing to enforce non-disparagement provision by finding that freedom of speech was more important than freedom of contract).

In fact, Molly Maid’s retaliation against various franchisees for merely participating in an association violates numerous franchise relationship laws, including the California Franchise Relationship Act,<sup>3</sup> and, in states without franchise-specific relationship laws, violates consumer protection laws prohibiting unfair and deceptive practices.<sup>4</sup>

To remedy this situation, we ask that Molly Maid strike this new amendment to the FAC Bylaws, or amend its Bylaws again, to void the prohibition on dual membership in the FAC and the Association. This will end this budding dispute immediately.

**Conclusion**

We respectfully request that you respond to this letter by **Friday, October 27, 2023**, and I invite you to contact me by telephone at any time if that is easier.

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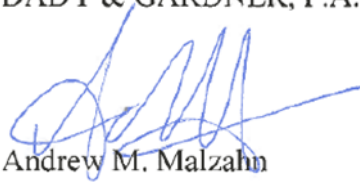
<sup>3</sup> No less than 11 state franchise statutes declare it unlawful for franchisors to prohibit the right of free association of franchisees: Arkansas (Ark. Code Ann. 4-72-206(2)); California (Cal. Corp. Code § 31220); Hawaii (HRS § 482E-6(2)(A)); Illinois (815 Ill. Comp. Stat. § 705/17); Iowa (Iowa Code § 523H.9); Michigan (Mich. Comp. L. § 445.1527(a)); Minnesota (Minn. R. 2860.4400(A)); Nebraska (Neb. Rev. Stat. § 87.406(2)); New Jersey (N.J. Stat. Ann. § 56:107(b)); Rhode Island (L.P.R.A. § 1928.116); and Washington (RCW § 19.100.180(2)(a)). Each state also prohibits the contractual waiver of such provisions.

<sup>4</sup> The Federal Trade Commission recently inquired about franchisor practices precisely like those recently of Molly Maid.

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Sincerely,

DADY & GARDNER, P.A.

A handwritten signature in blue ink, appearing to read "AMM", with a long horizontal stroke extending to the right.

Andrew M. Malzahn

AMM/pg  
cc: Clients