

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an Agreement Containing Consent Order (“consent agreement”) with Prudential Security, Inc. (“Prudential Security”); Prudential Command Inc. (“Prudential Command”); Greg Wier, the co-owner, President, and Director of these companies; and Matthew Keywell, the co-owner, Secretary, and Treasurer of these companies (collectively “Respondents”). Prudential Security, Inc. and Prudential Command Inc. (collectively “Prudential”) are Michigan corporations that provided security guard services to clients in several states, including Michigan, Tennessee, Ohio, South Carolina, and Pennsylvania.¹

The consent agreement settles charges that Respondents violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, by imposing post-employment covenants not to compete (“Non-Compete Restrictions”) on their employees. A Non-Compete Restriction is a term that, after a worker has ceased working for an employer, restricts the worker’s freedom to accept employment with competing businesses, form a competing business, or otherwise compete with the employer. As explained below, the proposed complaint alleges that Respondents’ conduct constitutes an unfair method of competition because it is restrictive, coercive, and exploitative and negatively affects competitive conditions. The complaint further alleges that Respondents’ imposition of Non-Compete Restrictions took advantage of the unequal bargaining power between Respondents and their employees, particularly low-wage security guard employees, and thus reduced workers’ job mobility, limited competition for workers’ services, and ultimately deprived workers of higher wages and more favorable working conditions.

As further described below, the consent agreement contains a proposed order remedying the Section 5 violation alleged in the complaint. Under the terms of the proposed order, Respondents—including any companies that Greg Wier and Matthew Keywell control or come to control in the future—must cease and desist from entering, maintaining, enforcing, or attempting to enforce any Non-Compete Restriction, or communicating to any employee or other employer that the employee is subject to a Non-Compete Restriction.

The proposed order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of

¹ Respondents sold and transferred the bulk of Prudential’s security guard assets, including security guard employees, to another company in August 2022. As described below, the transferred employees are not subject to Non-Compete Restrictions with the buyer, and the buyer is not charged in the complaint.

the public record. After 30 days, the Commission will again review the consent agreement and the comments received and will decide whether it should make the proposed order final or take other appropriate action.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the complaint, the consent agreement, or the proposed order, and the analysis does not modify their terms in any way.

security guard companies.

For example, in 2018, a competing security guard company extended job offers to a number of security guards who worked for Prudential Security, promising significantly higher wages and more favorable working conditions. The security guards left Prudential Security and joined the competing company. Upon learning this, Prudential Security sued several of the security guards to prevent them from continuing employment with the competitor. After months of litigation, a Michigan state court dismissed the suit, finding that there was “nothing in the employment, training or knowledge of the individual defendants which would warrant enforcement of a non-compete under the circumstances.”“

federal courts have historically interpreted Section 5 to prohibit conduct that contradicts the policies or the spirit of the antitrust laws, even if that conduct would not violate the Sherman or Clayton Acts.⁵

The Commission’s recent Section 5 Policy Statement describes the most significant general principles concerning whether conduct is an unfair method of competition.⁶ A person violates Section 5 by (1) engaging in a method of competition (2) that is unfair—i.e., conduct that “goes beyond competition on the merits.”⁷ A method of competition is “conduct undertaken by an actor in the marketplace” that implicates competition, whether directly or indirectly.⁸ Conduct is unfair if (a) it is “coercive, exploitative, collusive, abusive, deceptive, predatory,” “involve[s] the use of economic power of a similar nature,” or is “otherwise restrictive and exclusionary,” and (b) “tend[s] to negatively affect competitive conditions” for “consumers, workers, or other market participants”—for example by impairing the opportunities of market participants, interfering with the normal mechanisms of competition, limiting choice, reducing output, reducing innovation, or reducing competition between rivals.⁹ The two parts of this test for unfairness “are weighed according to a sliding scale”: where there is strong evidence for one part of the test, the other part is less necessary to satisfy the other part.

by a countervailing justification of any kind.”¹³ Unlike “a net efficiencies test or a numerical cost-benefit analysis,” this analysis examines whether “purported benefits of the practice” redound to the benefit of other market participants rather than the respondent.¹⁴ Established limits on defenses and justifications under the Sherman Act “apply in the Section 5 context as well,” including that the justifications must be cognizable, non-pretextual, and narrowly tailored.¹⁵

As described below, the factual allegations in the complaint would support concluding that Respondents’ use of Non-Compete Restrictions is an unfair method of competition under Section 5.

First, Respondents’ use of Non-Compete Restrictions is a method of competition. Respondents knowingly imposed and enforced Non-Compete Restrictions on and against their employees. By design, this conduct restricted the employment options available to affected workers and therefore implicated competition for labor. Respondents’ imposition and enforcement of Non-Compete Restrictions impeded the free movement of security guard employees who sought to work elsewhere.

other compensation in exchange for being subject to the Non-Compete Restrictions.

Respondents' enforcement of the Non-Compete Restrictions, as alleged in the complaint, was likewise exploitative and coercive. As described above, Respondents enforced Non-Compete Restrictions against security guards to discourage, delay, and prevent them from accepting offers of other employment. Respondents' threats and lawsuits aimed to force workers into forgoing job opportunities that offered higher pay and better working conditions as compared to Respondents' jobs. The coercive effect of these threats relied, critically, on the affected workers' relatively vulnerable economic positions. Workers subject to Respondents' enforcement actions were particularly susceptible to economic instability once they had left their prior positions: Respondents' Non-Compete Restrictions foreclosed the very job opportunities that likely would have provided the workers with the best alternatives to continued employment with Respondents—jobs in the same industry in the same job opportunity.

candidates, respectively, Non-Compete Restrictions like those used by Respondents impede and undermine competition in labor markets.²⁰ In the aggregate, Non-Compete Restrictions reduce competition for workers by limiting the choices of workers and rival employers. Research suggests that Non-Compete Restrictions measurably reduce worker mobility,²¹ lower workers' earnings,²² and increase racial and gender wage gaps.²³ At the individual level, a Non-Compete Restriction forces a worker who wishes to leave a job into a difficult choice: stay in the current position despite being able to receive a better job elsewhere, take a position with a competitor at the risk of being found out and sued, or leave the industry entirely. In this way, Non-Compete Restrictions tend to leave workers with fewer and lower-quality competing job options,²⁴ thereby reducing workers' bargaining leverage with their current employers and resulting in lower wages, slower wage growth, and less favorable working conditions.²⁵

Here, as described above, Respondents' imposition and enforcement of Non-Compete Restrictions deprived Respondents' former employees of the benefits of competition, leaving them with lower wages, less favorable working conditions, and increased economic uncertainty. Respondents' use of Non-Compete Restrictions also deprived competing businesses of the benefits of competition by impairing their ability to employ workers, including workers they had already located and convinced to join.

Finally, as the complaints allege, any legitimate objectives of Respondents' use of Non-Compete Restrictions could be achieved through significantly less restrictive means, including, for example, by entering confidentiality agreements that prohibit employees and former

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The proposed order seeks to remedy the unfair method of competition alleged by the Commission in its complaint and to prohibit Respondents from entering, maintaining, enforcing, or attempting to enforce any Non-Compete Restriction, or communicating to any employee or other employer that the employee is subject to a Non-Compete Restriction. These injunctive provisions, contained in Section II of the proposed order,²⁷ are intended to ensure that Respondents' current, former, and future employees will be free to seek employment, start their own businesses, or otherwise compete with Respondents upon leaving Respondents' companies. These provisions would apply to any business that Respondents Greg Wier and Matthew Keywell own or control in the future and would also include any future business of Prudential.

Paragraph III.A of the proposed order requires Respondents to promptly send a letter describing the Commission's actions to each employee who is or was party to a Non-Compete Restriction at any point during the last two years.²⁸ The letters state that Respondents will not enforce any Non-Compete Restriction against the recipients and clarify that Respondents cannot prevent the recipients from "seeking or accepting a job with any company or person," "running your own business," or "otherwise competing with companies that provide security guard services."²⁹

The restrictions in the proposed order apply to Respondents Greg Wier and Matthew Keywell, the co-owners and only officers of Prudential. Mr. Wier and Mr. Keywell continue to control other businesses that employ workers and may, in the future, come to control other business ventures. For these reasons, the proposed order's definition of "Respondents" extends to any companies or businesses that Mr. Wier or Mr. Keywell control.³⁰

Paragraph III.B requires Respondents, for the next 10 years, to provide a clear and conspicuous notice to any new employees upon hire informing them that they may "seek or accept a job with any company or person — even if they compete with [Respondents]," "run your own business — even if it competes with [Respondents]," or "compete with [Respondents] at any time following your employment."³¹ Paragraph IV.A requires Respondents to void and nullify all of their existing Non-Compete Restrictions without penalizing the affected employees.³² In addition, Paragraph IV.B requires the Respondents to provide a copy of the complaint and order to any director, officer, or employee of a Respondent who is currently responsible for hiring and recruiting, and Paragraph IV.C requires Respondents to send the order and the complaint to any Person who becomes a director, officer, or employee with such

²⁷ Decision and Order § II.

²⁸ *Id.* ¶ III.A.

²⁹ *Id.* App'x A.

³⁰ Decision and Order ¶¶ I.C–E.

³¹ *Id.* ¶ III.B.

³² *Id.* ¶ IV.A.

responsibility.

Other paragraphs contain standard provisions regarding compliance reports, notice of changes in the Respondents, and access to documents and personnel.