

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONONDAGA

PEOPLE OF THE STATE OF NEW YORK, by and
through LETITIA JAMES, Attorney General of the State
of New York,

Plaintiff,

- against -

INTERMOUNTAIN MANAGEMENT, INC.,

Defendant.

Index No. 008588/2022

Hon. Robert E. Antonacci II

Assurance No. 26-016

ASSURANCE OF DISCONTINUANCE

Plaintiff Office of the Attorney General of the State of New York (the "OAG") and Defendant Intermountain Management, Inc., by and through their respective counsel, in consideration for and subject to the promises, terms, and conditions contained in this Assurance of Discontinuance (the "Assurance"), hereby agree as follows.

I. DEFINITIONS

A. "Intermountain" means Defendant Intermountain Management, Inc. and its directors, officers, owners, successors, and assigns.

B. "Acquirer" means Mr. Douglas Wheeler, or an entity owned and controlled solely by Mr. Wheeler and his immediate family.

C. "Divestiture Assets" means the real property with buildings and improvements known as the former Toggenburg ski property located at 1135 Toggenburg Road, Fabius, NY and

all other improvements thereon or therein (the “Premises”), as well as any other assets identified by Intermountain and the Acquirer in their Letter of Intent or Purchase and Sale Agreement.

D. “Divestiture Date” means the closing date of the transaction in which the Divestiture Assets are transferred and sold to the Acquirer.

E. The “Effective Date” of this Assurance is the Divestiture Date.

II. BACKGROUND

A. This case concerns Intermountain’s 2021 purchase and closure of a ski facility at Toggenburg Mountain in Fabius, New York (“Toggenburg”). At all relevant times and to the present, Intermountain also operated ski facilities at Song Mountain in Tully, New York (“Song”) and Labrador Mountain in Truxton, New York (“Labrador”).

B. The OAG filed its Complaint on October 21, 2022. Dkt. 1. The Complaint alleges violations of the Donnelly Act (New York G.B.L § 340 *et. seq.*) and New York Exec. L. § 63(12) premised on Intermountain’s acquisition of Toggenburg and a related noncompete agreement with Toggenburg’s prior owner.

C. In January 2024, following discovery, the OAG and Intermountain both moved for summary judgment. Dkt. 50, 130. On February 24, 2025, the Court issued a Decision granting the OAG’s motion for summary judgment and denying Intermountain’s motion for summary judgment. Dkt. 158.

D. In its Decision, the Court held Intermountain liable for two violations of the Donnelly Act and Exec. Law § 63(12): (i) an illegal market allocation agreement based on Intermountain’s agreement to purchase and close Toggenburg, and (ii) an illegal “Non-Competition” Agreement with Toggenburg’s former owners. *Id.* at 31, 33, 41. The Court held that

both agreements were per se violations of the Donnelly Act. *Id.* at 31, 33. The Court also held that the market allocation agreement was illegal under the “quick look” standard of review. *Id.* at 40.

E. As to the market allocation agreement, the Court held the undisputed evidence proved “that Intermountain expressly desired to eliminate a choice long available to area skiers so that those skiers would be driven to Song and Labrador, creating an opportunity for significantly increased profits without the costs associated with keeping Toggenburg open.” *Id.* at 32-33.

F. The Court further held that “OAG has alleged and established a cognizable product market (season ski passes) and geographic market (the area within a driving distance of 30 minutes from downtown Syracuse).” *Id.* at 36.

G. As to the noncompete agreement, the Court held that the “Non-Competition” provision in Intermountain’s “Non-Competition and Confidentiality Agreement” “did not create efficiencies in service of a productive joint venture such that it would qualify as a proper ancillary restraint, but rather furthered the competitive suppression for which Intermountain was explicitly paying.” *Id.* at 10, 33.

H. In July 2025, the Court held an evidentiary hearing on the appropriate remedies for Intermountain’s conduct. The parties introduced fact and expert testimony and submitted documentary evidence.

I. In August 2025, the parties submitted post-hearing briefing in support of their proposed remedies. Dkt. 219, 221. The Court has not issued its remedies decision as of the date of this Assurance.

J. Intermountain continues to deny liability and has indicated that it intends to appeal the Court’s summary judgment decision. Intermountain further denies that any of the remedies

sought by the OAG are appropriate under the circumstances and has suggested alternative remedies to the Court.

K. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. Therefore, the OAG is willing to accept this Assurance pursuant to New York Exec. L. § 63(15) in lieu of further proceedings in this litigation, including potential appeals.

III. DIVESTITURE

A. Following execution of this Assurance by the OAG and by Intermountain, Intermountain will use best efforts to negotiate a Purchase and Sale Agreement with Acquirer within 60 days. Intermountain will close on the sale and transfer of Divestiture Assets to Acquirer within 60 days of execution of a Purchase and Sale Agreement with Acquirer, subject to Acquirer finalizing a loan commitment and providing clear to close financing. The OAG shall agree to reasonable extensions of these time periods. On the Divestiture Date, Intermountain will sell and transfer the Divestiture Assets to Acquirer. Upon completion of the divestiture, Intermountain will promptly provide documents to the OAG demonstrating that it has fully divested the Divestiture Assets to Acquirer in accordance with the terms of this Assurance.

B. Intermountain will not take any steps to impede, interfere, or delay Acquirer in obtaining any necessary licenses, registrations, or permits to operate the Divestiture Assets.

IV. MONETARY CONSIDERATION

A. Intermountain will pay \$15,000 to the State of New York by check or wire transfer within 5 calendar days after the Divestiture Date. Intermountain will pay another \$15,000 to the State of New York by check or wire transfer by one year after the Divestiture Date.

V. CONDUCT RESTRICTIONS

A. For 4 years after the Effective Date, Intermountain may not reacquire any interest in (i) any real property included among the Divestiture Assets or (ii) any entity formed to acquire or own any real property included among the Divestiture Assets.

B. For 4 years after the Effective Date, Intermountain may not seek to enforce the “Non-Competition” provision at Section 3 its “Non-Competition and Confidentiality Agreement” with Toggenburg’s prior owners, submitted at Dkt. 4.

VI. DISMISSAL OF ACTION

A. Within 5 calendars days after Intermountain divests the Divestiture Assets to Acquirer and completes its obligations regarding Divestiture in Section III and Monetary Consideration in Section IV, the OAG will provide to Intermountain an executed stipulation of discontinuance, in the form attached as Exhibit A, to have this litigation dismissed with prejudice in accordance with the terms of this Assurance.

B. If, despite its best efforts, Intermountain fails to divest the Divestiture Assets to Acquirer in accordance with Section III and/or fails to satisfy its obligations regarding Monetary Consideration in Section IV, then the OAG will have no obligations under this Assurance.

VII. RETENTION OF JURISDICTION

A. The Court retains jurisdiction to enforce compliance with this Assurance.

VIII. EFFECTS OF ASSURANCE

A. All terms and conditions of the Assurance shall continue in full force and effect on any successor, assignee, or transferee of any membership or stock interest of Intermountain. Intermountain shall include in any such successor, assignment or transfer agreement a provision that binds the successor, assignee or transferee to the terms of the Assurance.

B. Any failure by the OAG to insist upon the strict performance by Intermountain of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the OAG, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by Intermountain.

IX. COMMUNICATIONS

A. All notices, reports, requests, payments, and other communications pursuant to this Assurance must reference Assurance No. 26-016, shall be in writing, and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, followed by postage prepaid mail, and shall be addressed as follows:

1) If to the OAG:

Elinor Hoffmann, Bureau Chief, Antitrust Bureau
Amy McFarlane, Deputy Bureau Chief, Antitrust Bureau
Michael Schwartz, Senior Enforcement Counsel, Antitrust Bureau

Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005
elinor.hoffmann@ag.ny.gov
amy.mcfarlane@ag.ny.gov
michael.schwartz@ag.ny.gov

2) If to Intermountain:

Intermountain Management, Inc.
c/o Peter Harris, President
P.O. Box 1001
Tully, NY 13159
Peter@SongMountain.com

with a copy to:

Lawrence G. Scarborough
Faegre Drinker Biddle & Reath LLP

1177 Avenue of the Americas, 43rd Floor
New York, NY 10036
lawrence.scarborough@faegredrinker.com

X. REPRESENTATIONS AND WARRANTIES

A. No representations, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Intermountain in agreeing to this Assurance.

B. Intermountain represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved. Intermountain further represents and warrants that Peter Harris, as the signatory to this Assurance, is a duly authorized officer acting on behalf of Intermountain.

XI. GENERAL PRINCIPLES

A. Nothing in this Assurance shall relieve Intermountain of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

B. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that Intermountain violates this Assurance after its Effective Date.

C. This Assurance may not be amended except by an instrument in writing signed by the OAG and Intermountain.

D. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

E. Intermountain acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

F. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

G. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

H. This Assurance may be executed in multiple counterparts by the OAG and Intermountain. All counterparts so executed shall constitute one agreement binding upon the OAG and Intermountain, notwithstanding that the OAG and Intermountain are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Assurance, all of which shall constitute one agreement to be valid as of the Effective Date of this Assurance. For purposes of this Assurance, copies of signatures shall be treated the same as originals. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Assurance and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

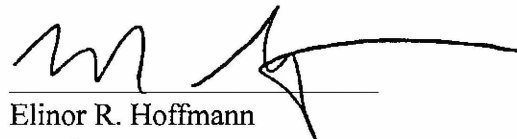
[SIGNATURES ON FOLLOWING PAGE]

Dated: April ~~15~~, 2026

May 8, 2026

LETITIA JAMES
Attorney General of the State of New York

By:



Elinor R. Hoffmann
Chief, Antitrust Bureau

Amy McFarlane
Deputy Chief, Antitrust Bureau

Michael D. Schwartz
Senior Enforcement Counsel, Antitrust Bureau

Benjamin Cole
Assistant Attorney General, Antitrust Bureau

Isabella Pitt
Assistant Attorney General, Antitrust Bureau

Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005

INTERMOUNTAIN MANAGEMENT, INC.

By:

Peter Harris
President

Dated: ~~April~~ __, 2026

MAY 8, 2026

LETITIA JAMES
Attorney General of the State of New York

By: _____

Elinor R. Hoffmann
Chief, Antitrust Bureau

Amy McFarlane
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Assistant Attorney General, Antitrust Bureau

Isabella Pitt
Assistant Attorney General, Antitrust Bureau

Office of the New York State Attorney General
28 Liberty Street
New York, NY 10005

INTERMOUNTAIN MANAGEMENT, INC.

By: _____

Peter Harris
President

EXHIBIT A

SUPREME COURT
STATE OF NEW YORK COUNTY OF ONONDAGA

THE PEOPLE OF THE STATE OF NEW YORK,
by and through LETITIA JAMES,
Attorney General of The State Of New York,

**STIPULATION OF
DISCONTINUANCE**

Plaintiff,

vs.

INTERMOUNTAIN MANAGEMENT, INC.,

Index No.: 008588/2022

Defendant.

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys of record for all the parties to the above-entitled action, that whereas no party hereto is an infant, incompetent person for whom a committee or conservator has been appointed, and no person not a party has an interest in the subject matter of the action, the above-entitled action be, and the same hereby is discontinued with prejudice, without costs to any party as against any other. This stipulation may be filed with the Clerk of the Court without further notice.

Dated: _____

LETITIA JAMES
Attorney General of the State of New York

By: _____

Michael Schwartz
Senior Enforcement Counsel, Antitrust Bureau
Office of the New York State Attorney General
Attorneys for Plaintiff

Dated: _____

By: _____

Lawrence G. Scarborough, Esq.
Faegre Drinker Biddle & Reath LLP
Attorneys for Defendant