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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO POACHING
PROVISIONS

(AAMCO TRANSMISSIONS, LLC.)

NO.

19-2-12896-8 SEA

AAMCO TRANSMISSIONS, LLC
ASSURANCE OF
DISCONTINUANCE

The State of Washington, by and through its attorneys, Robert W. Ferguson, Attorney General, and Rahul Rao, Assistant Attorney General, files this Assurance of Discontinuance (“AOD”) pursuant RCW 19.86.100.

I. PARTIES

1.1 On or about August 29, 2018, the Attorney General initiated an investigation into AAMCO Transmissions, LLC (“AAMCO”, also f/k/a AAMCO Transmissions, Inc.) relating to its hiring practices.

1.2 AAMCO is a Pennsylvania limited liability company with its principal office or place of business in Horsham, Pennsylvania. AAMCO enters into franchise agreements with franchisees who operate independently-owned and managed automobile service centers under the AAMCO® brand name (“AAMCO Centers”, each an “AAMCO Center” or “Center”).

1.3 AAMCO includes its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its successor and assigns, controlled subsidiaries, divisions, groups, affiliates, partnerships, predecessors, successors, owners, and joint ventures.

AAMCO does not include independent franchisees.

1 II. INVESTIGATION

2 2.1 AAMCO has 12 branded Centers in Washington. All these AAMCO Centers are
3 owned and operated by independent franchisees.

4 2.2 For decades, AAMCO has included language in its franchise agreements that
5 restricts a franchisee's ability to solicit workers from another AAMCO franchisee ("no-
6 recruiting provision"). Specifically, AAMCO franchise agreements currently in effect in
7 Washington include the following language: "Franchisee agrees that, regarding the hiring of
8 employees for the Center, it will not initiate directly or indirectly any contact with any other
9 person known to Franchisee to be employed by another AAMCO franchisee for the purpose of
10 inducing such employee to work in Franchisee's Center; provided, however, nothing shall
11 prevent Franchisee from advertising generally for employees to fill vacant positions."

12 2.3 The Attorney General asserts that the no-recruiting provision constitutes a
13 contract, combination, or conspiracy in restraint of trade in violation of the Consumer Protection
14 Act, RCW 19.86.030.

15 2.4 AAMCO expressly denies the no-recruiting provision constitutes a contract,
16 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,
17 RCW 19.86.030, or any other law or regulation, and expressly denies it has engaged in conduct
18 that constitutes a contract, combination, or conspiracy in restraint of trade. Nonetheless,
19 AAMCO is entering this AOD to avoid protracted and expensive litigation. Pursuant to RCW
20 19.86.100, neither this AOD nor its terms shall be construed as an admission of law, fact,
21 liability, misconduct, or wrongdoing on the part of AAMCO. That is because, in AAMCO's
22 view, the no-recruiting provision does not prohibit an employee at an AAMCO Center from
23 proactively seeking and obtaining employment at a competitor or at another AAMCO Center;
24 nor does it prohibit the hiring of a current AAMCO franchisee's employee by another AAMCO
25 franchisee. Rather, in AAMCO's view, the no-recruiting provision strikes a reasonable and
26 appropriate balance between the rights and ability of workers to find and gain employment,

1 versus the need of each AAMCO franchisee to avoid interference in its business from other
2 AAMCO franchisees by directly soliciting its employees who it has spent time and money
3 training. AAMCO does not restrict any worker from seeking employment opportunities in
4 response to a general advertisement or otherwise arising from the worker's own initiative.

5 III. ASSURANCE OF DISCONTINUANCE

6 3.1 Subject to paragraph 2.4 above, AAMCO agrees:

7 3.1.1. It will no longer include the no-recruiting provision in any of its future
8 franchise agreements nationwide;

9 3.1.2. It will no longer enforce, nationwide, the no-recruiting provision in any
10 of its existing franchise agreements, and will not seek to intervene or defend in any way the
11 legality of any no-recruiting provision in any litigation in which a franchisee may claim third-
12 party beneficiary status rights to enforce an existing no-recruiting provision;

13 3.1.3. Within 30 days after the entry of this AOD, AAMCO will notify all its
14 franchisees in Washington of the entry of this AOD and provide them a copy hereof;

15 3.1.4. Within 90 days after the entry of this AOD, AAMCO will make its best
16 efforts to notify all franchisees nationwide about the entry of this AOD;

17 3.1.5. It will notify the Attorney General's Office if it learns of any effort by a
18 franchisee to enforce any existing no-recruiting provision.

19 3.2 Within 120 days after entry of this AOD ("Amendment Period"), AAMCO will
20 endeavor to amend all existing franchise agreements with franchisees in the State of Washington
21 to remove any no-recruiting provision in those franchisees' existing franchise agreements. In
22 furtherance thereof, AAMCO will provide its written request to amend the franchise agreement,
23 and its proposed form of amendment for the franchisee's signature, to all existing franchisees in
24 the State of Washington. AAMCO will respond promptly to any inquiries from such franchisees
25 regarding AAMCO's request to amend the terms of the franchise agreement and will encourage
26 its current franchisees in the state of Washington to sign the proposed amendment. However, for

1 the avoidance of doubt, AAMCO is under no obligation to offer its Washington-based
2 franchisees any consideration — monetary or otherwise — for purposes of inducing the
3 franchisees to sign the proposed amendment, or to take any adverse action against such
4 franchisees if they refuse to do so. If any Washington franchisee is unwilling to consent to the
5 change to its franchise agreement by the end of the Amendment Period, then AAMCO shall
6 provide the name and address of the resisting franchisee and the name and address of the
7 franchisee's registered agent to the Office of the Attorney General. Once AAMCO complies
8 with this paragraph, it shall have no further obligation to seek to amend any existing franchise
9 agreement with franchisees in the state of Washington to remove any no-recruiting provisions.

10 3.3 As they come up for either renewal or renegotiation during the ordinary course
11 of business, AAMCO will, on a nationwide basis, remove and exclude any no-recruiting
12 provision from all existing franchise agreements.

13 3.4 Within 30 days after the conclusion of the Amendment Period, AAMCO will
14 submit a declaration to the Attorney General's Office signed under penalty of perjury stating that
15 Sections 3.1 and 3.2 of this AOD have been satisfied.

16 IV. ADDITIONAL PROVISIONS

17 4.1 This AOD is binding on and applies to AAMCO, including each of its respective
18 directors, officers, managers, agents acting within the scope of their agency, and employees, as
19 well as their respective successors and assigns, controlled subsidiaries, divisions, groups,
20 affiliates, partnerships, and joint ventures, or other entities through which AAMCO may now or
21 hereafter act with respect to the conduct alleged in this AOD.

22 4.2 This is a voluntary agreement and it shall not be construed as an admission of
23 law, fact, liability, misconduct, or wrongdoing on the part of AAMCO, and may not be used for
24 any of those purposes. By entering this AOD, AAMCO neither agrees nor concedes that the
25 claims, allegations and/or causes of action that have or could have been asserted by the Attorney
26

1 General have merit, and AAMCO expressly denies any such claims, allegations, and/or causes
2 of action. Per RCW 19.86.100, this AOD is not and may not be considered an admission or
3 evidence of violation for any purpose. However, proof of failure to comply with this AOD
4 presented by the Attorney General shall be *prima facie* evidence of a violation of RCW
5 19.86.030, thereby placing upon the violator the burden of defending against imposition by the
6 Court of injunctions, restitution, costs and reasonable attorney's fees, and appropriate civil
7 penalties under the Consumer Protection Act.
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9 4.3 Under no circumstances shall AAMCO, or any of AAMCO's officers, employees,
10 representatives, or agents, state or otherwise contend that this AOD, the State of Washington, or the
11 Office of the Attorney General has approved of, or has otherwise sanctioned, beginning on or after
12 the AOD's execution date, the conduct described in paragraph 2.2 above with respect to the no-
13 recruiting provision in AAMCO's franchise agreement.

14 4.4 This AOD resolves all issues raised by the State of Washington and the Antitrust
15 Division of the Attorney General's Office under the Consumer Protection Act and any other related
16 statutes pertaining to the acts set forth in paragraph 2.1 – 2.3 above that may have occurred before
17 the date of entry of this AOD and concludes the investigation thereof. Subject to paragraph 4.2, the
18 State of Washington and the Antitrust Division of the Attorney General's Office shall not file suit
19 or take any further investigative or enforcement action with respect to the acts set forth above that
20 occurred before the end of the Amendment Period, against AAMCO or any of its franchisees in
21 Washington who agree to amend their franchise agreements as described above in this AOD, with
22 respect to acts that occurred before the date of any such amendment. The Attorney General reserves
23 the right to take further investigative or enforcement action against any current franchisee in the
24 state of Washington that does not sign the proposed amendment to a franchise agreement as
25 described in Section 3.2 above.
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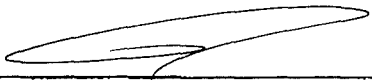
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APPROVED ON this _____ day of _____, 2019.

JUDGE/COURT COMMISSIONER

Presented by:

ROBERT W. FERGUSON
Attorney General

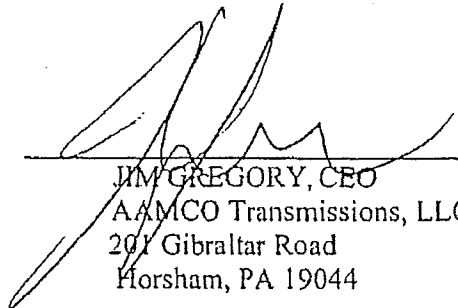


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