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**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

IN RE: FRANCHISE NO POACHING
PROVISIONS

NO.

VALVOLINE INSTANT OIL
CHANGE FRANCHISING, INC.
ASSURANCE OF
DISCONTINUANCE

The State of Washington (State), by and through its attorneys, Robert W. Ferguson, Attorney General, and Eric S. Newman, Assistant Attorney General, files this Assurance of Discontinuance (AOD) pursuant RCW 19.86.100.

I. PARTIES

1.1 In August 2018, the Attorney General initiated an investigation into Valvoline Instant Oil Change Franchising, Inc. ("VIOCF") relating to the non-solicitation provisions in its franchise agreements.

1.2 VIOCF is a Delaware corporation with its principal office or place of business in Lexington, Kentucky. Valvoline LLC ("VLLC"; together with VIOCF, "Valvoline") is a Delaware limited liability company with its principal place of business in Lexington, Kentucky and is the direct parent company of VIOCF. Within the Valvoline Instant Oil Change business, VLLC owns and operates quick lube facilities that offer motor vehicle oil change, lubrication, certain preventive maintenance and specified related services to consumers.

1 1.3 Valvoline includes its directors, officers, managers, agents acting within the
2 scope of their agency, and employees as well as its successor and assigns, and controlled
3 subsidiaries.

4 II. INVESTIGATION

5 2.1 VIOCF licenses the right to own and operates nine (9) quick lube facilities
6 under the Valvoline Instant Oil Change name to various franchisees in Washington. VLLC
7 owns and operates twenty-four (24) quick lube facilities under the Valvoline Instant Oil
8 Change name in Washington.

9 2.2 VIOCF has included language in its license agreements that restricted a
10 licensee's ability to solicit or hire workers from Valvoline ("no-poaching provision").
11 Specifically, the standard Valvoline Instant Oil Change license agreement stated that a licensee
12 may not "[e]mploy or seek to employ any person who is at that time employed by Licensor, or
13 any of Licensor's affiliates, or otherwise directly or indirectly induce such person to leave his
14 or her employment, without the prior written consent of Licensor."

15 2.3 The Attorney General asserts that the foregoing conduct constitutes a contract,
16 combination or conspiracy in restraint of trade in violation of the Consumer Protection Act,
17 RCW 19.86.030.

18 2.4 VIOCF expressly denies the conduct described above constitutes a contract,
19 combination, or conspiracy in restraint of trade in violation of the Consumer Protection Act,
20 RCW 19.86.030, or any other law, and expressly denies having engaged in conduct that
21 constitutes a contract, combination, or conspiracy in restraint of trade. VIOCF enters into this
22 AOD to avoid protracted and expensive litigation. Pursuant to RCW 19.86.100, neither this
23 AOD nor its terms shall be construed as an admission of law, fact, liability, misconduct or
24 wrongdoing on the part of VIOCF.

25 III. ASSURANCE OF DISCONTINUANCE

26 3.1 Subject to paragraph 2.4 above, VIOCF agrees:

1 3.1.1. VIOCF will no longer include no-poach provisions in any of its future
2 license agreements;

3 3.1.2. VIOCF will no longer enforce, and will cause VLLC to no longer
4 enforce, no-poaching provisions in any of VIOCF's existing license agreements located in the
5 United States;

6 3.1.3. VIOCF will notify all of its licensees in the United States of the entry of
7 this AOD and provide them a copy;

8 3.1.4. VIOCF will notify the Attorney General's Office if it learns of any effort
9 by a licensee to enforce any existing no-poach provision if VIOCF is unable to persuade such
10 licensee to desist from enforcing or attempting to enforce such provision.

11 3.2 Within 21 days of entry of this AOD, VIOCF will send a letter to all of its
12 current licensees with stores located in the State of Washington, stating that the Attorney
13 General has requested that the existing no-poach provision be removed from existing license
14 agreements. Such letter will be substantially in the form attached hereto as Exhibit A. The
15 letter will also include the proposed amendment that VIOCF is requesting that each of its
16 licensees in the State of Washington agree to, which amendment will remove the no-poach
17 provision. The proposed amendment that will be included with each letter will be substantially
18 in the form attached hereto as Exhibit B.

19 3.3 In addition to sending the letter to its current licensees in the State of
20 Washington pursuant to paragraph 3.2 above, VIOCF will respond promptly to any inquiries
21 from such licensees regarding the request to amend the terms of the license agreement and will
22 encourage its current licensees in the State of Washington to sign the proposed amendment.
23 However, for the avoidance of doubt, VIOCF is under no obligation to offer its licensees any
24 consideration—monetary or otherwise—in order to induce them to sign the proposed
25 amendment or take any adverse action against such licensees if they refuse to do so. Within
26 120 days of entry of this AOD, VIOCF will provide copies of all executed amendments it has

1 obtained with its current licensees in the State of Washington to the Attorney General's Office.
2 A decision by a licensee not to amend its license agreement, or not to do so within 120 days of
3 this AOD, shall not mean that VIOCF has not complied with its obligations under this AOD.

4 3.4 If VIOCF learns that a current licensee in the State of Washington intends in
5 good faith to sign the proposed amendment but is unable to do so within the time period
6 specified in paragraph 3.3, VIOCF will notify the Attorney General's Office to seek a mutually
7 agreeable extension. During any such extension, the Attorney General's Office will not take
8 further investigative or enforcement action against a licensee.

9 3.5 As they come up for either renewal or renegotiation during the ordinary course
10 of business, VIOCF will amend all of its existing license agreements on a nationwide basis to
11 remove any no-poach provision.

12 3.6 Within 30 days of the conclusion of the time periods referenced in this section
13 III, VIOCF will submit a declaration to the Attorney General's Office signed under penalty of
14 perjury stating that all provisions of this AOD have been satisfied.

15 IV. ADDITIONAL PROVISIONS

16 4.1 This AOD is binding on, and applies to VIOCF, including each of their
17 respective directors, officers, managers, agents acting within the scope of their agency, and
18 employees, as well as their respective successors and assigns, controlled subsidiaries, or other
19 entities through which VIOCF may now or hereafter act with respect to the conduct alleged in
20 this AOD.
21

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 VIOCF. By entering into this
24 AOD, VIOCF does not agree or concede that the claims, allegations and/or causes of action
25 which have or could have been asserted by the Attorney General have merit and VIOCF
26 expressly denies any such claims, allegations, and/or causes of action. However, proof of

1 failure to comply with this AOD shall be *prima facie* evidence of a violation of RCW
2 19.86.030, thereby placing upon the violator the burden of defending against imposition by the
3 Court of injunctions, restitution, costs and reasonable attorney's fees, and civil penalties of up
4 to \$2,000.00 per violation.
5

6 4.3 VIOCF will not, nor will it authorize any of its officers, employees,
7 representatives, or agents to state or otherwise contend that the State of Washington or the
8 Attorney General has approved of, or has otherwise sanctioned, the conduct described in
9 paragraph 2.2 with respect to the no-poach provision in VIOCF's license agreement. VIOCF will
10 cause VLLC, its officers, employees, representatives and agents not to, and not to provide any
11 authorization to, state or otherwise contend that the State of Washington or the Attorney General
12 has approved of, or has otherwise sanctioned, the conduct described in paragraph 2.2 with respect
13 to the no-poach provision in VIOCF's license 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
16 related statutes pertaining to the acts set forth in paragraphs 2.1 – 2.3 above that may have
17 occurred before the date of entry of this AOD and concludes the investigation thereof. Subject to
18 paragraph 4.2, the State of Washington and the Antitrust Division of the Attorney General's
19 Office shall not file suit or take any further investigative or enforcement action with respect to the
20 acts set forth above that occurred before the date of entry of this AOD.

21
22 APPROVED ON this _____ day of _____, 2018.

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JUDGE/COURT COMMISSIONER
26

1 Presented by:

2 ROBERT W. FERGUSON
3 Attorney General

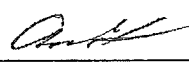


4 _____
5 ERIC S. NEWMAN, WSBA #31521
6 Assistant Attorney General
7 Chief Litigation Counsel
8 Antitrust Division
9 Attorneys for State of Washington
10 Office of the Attorney General
11 800 Fifth Avenue, Suite 2000
12 Seattle, WA 98104

13 Agreed to and approved for entry by:
14 Valvoline Instant Oil Change Franchising, Inc.



15 _____
16 Damon Elder, WSBA #46754
17 CALFO EAKES & OSTROVSKY PLLC
18 1301 Second Avenue, Suite 2800
19 Seattle, WA 98101-3808



20 _____
21 Anthony Cieri
22 Assistant General Counsel

23 Valvoline Instant Oil Change
24 Franchising, Inc.

25 —and—

26 Judith L. Marsh
27 VORYS, SATER, SEYMOUR AND PEASE LLP
28 52 East Gay Street
29 Columbus, Ohio 43215

30 *Attorneys for Valvoline Instant Oil Change Franchising, Inc.*

1 **EXHIBIT A**

2 Form Letter to Valvoline Instant Oil Change Franchising, Inc. Licensees in the State of
3 Washington

4
5 Dear [Licensee Name]

6 In August 2018, Valvoline Instant Oil Change Franchising Inc. ("VIOCF") received a
7 Civil Investigative Demand from the Attorney General's Office of the State of Washington
8 seeking information regarding whether there are any provisions in our license agreements that
9 restrict the hiring or solicitation of employees (sometimes referred to as "no poaching"
10 clauses). We understand that this is part of a broader investigation into the use of such clauses
11 in franchised industries. We have cooperated fully with the investigation.

12 Without admitting that VIOCF or its licensees violated any law or regulation, or acted
13 improperly in any respect, we have reached an agreement with the Attorney General's Office.
14 This agreement provides that VIOCF will, among other things, no longer include in any U.S.
15 license agreement (including renewals) any provisions that restrict the hiring or solicitation of
16 employees. The agreement also provides that VIOCF or its related entities will not enforce any
17 such provisions in any of our existing license agreements in the U.S.

18 We believe the system's interests are best served by resolving the investigation quickly
19 and cooperatively on these terms.

20 Our agreement with the Attorney General's Office also includes a requirement that we
21 request, from licensees with locations in the State of Washington that they agree to amend their
22 existing license agreements to remove the provisions, if any, that restrict the hiring or
23 solicitation of employees. Enclosed for your signature is an amendment to your license
24 agreement(s) with VIOCF to satisfy that requirement. Please sign and return the amendment to
25 me as soon as possible. If you decide not to sign the enclosed amendment, the Attorney
26 General's Office has indicated that it will reserve the right to investigate you and/or pursue
enforcement actions against you relating to the contractual provisions described above.

Should you have any questions regarding this matter, please contact Anthony Cieri,
Assistant General Counsel at ajcieri@valvoline.com.

If you receive any media inquiries regarding this matter, please refer them to Anthony.

Anthony Cieri
Assistant General Counsel
Valvoline Instant Oil Change Franchising, Inc.
100 Valvoline Way
Lexington, KY 40509

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EXHIBIT B

**AMENDMENT
TO
VALVOLINE INSTANT OIL CHANGE LICENSE AGREEMENT**

The Valvoline Instant Oil Change License Agreement(s) between Valvoline Instant Oil Change Franchising, Inc. ("Licensor") and the undersigned licensee ("Licensee") listed below (as amended, the "License Agreement(s)") shall be amended in accordance with the following terms.

1. Background. Licensor and Licensee are parties to each License Agreement and Licensee operates one or more franchised outlets in the State of Washington under the License Agreement(s). We have determined that it is in the best interests of the franchise system to not enforce Section 18.2.2 described below and in Appendix A attached hereto and any similar predecessor provisions thereto. The purpose of this Amendment to your License Agreement(s) is to document this change. All initial capitalized terms used but not defined in this Amendment shall have the meanings set forth in the License Agreement(s).

2. Modification of Terms. As of the Effective Date (defined below) of this Amendment, you and we agree that Section 18.2.2 and any similar predecessor provisions thereto are hereby deleted from each License Agreement, as shown in Appendix A attached hereto, and is of no further force or effect.

3. Miscellaneous. Except as specifically modified by this Amendment, the provisions of the License Agreement(s) shall remain in full force and effect. This document is an amendment to, and forms a part of, each License Agreement. If there is an inconsistency between this Amendment and any License Agreement, the terms of this Amendment shall control. This Amendment constitutes the entire agreement between the parties hereto, and there are no other oral or written representations, understandings or agreements between them, relating to the subject matter of this Amendment. This Amendment inures to the benefit of the parties hereto and their respective successors and assigns and will be binding upon the parties hereto and each of their respective successors and assigns. This Amendment may be executed in multiple counterparts, but all such counterparts together shall be considered one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement effective as of _____, 2018 (the "Effective Date").

**VALVOLINE INSTANT OIL CHANGE
FRANCHISING, INC.**

[LICENSEE'S NAME]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

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Appendix A

Provisions being deleted:

License Agreement 18.2.2

18.2.2. Employ or seek to employ any person who is at that time employed by Licensor, or any of Licensor's affiliates, or otherwise directly or indirectly induce such person to leave his or her employment, without the prior written consent of Licensor.

Any similar predecessor provisions to Section 18.2.2