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STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

IN RE: FRANCHISE NO POACHING
PROVISIONS

(MEINEKE FRANCHISOR SPV LLC)

NO. 19-2-12909-3 SEA
MEINEKE FRANCHISOR SPV LLC
ASSURANCE OF
DISCONTINUANCE

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

I. PARTIES

- 1.1 In January 2019, the Attorney General initiated an investigation into Meineke Franchisor SPV LLC ("Meineke") relating to certain provisions in its franchise agreement.
- 1.2 Meineke is a North Carolina corporation with its principal offices or place of business in Charlotte, North Carolina. Meineke is a franchisor, and its franchisee operated locations are in the business of providing automotive maintenance and repair.
- 1.3 For purposes of this AOD, Meineke shall include its directors, officers, managers, agents acting within the scope of their agency, and employees as well as its successors and assigns, controlled subsidiaries, and predecessor franchisor entities.

1 **II. INVESTIGATION**

2 2.1 There are 21 Meineke franchise locations located in the state of Washington as
3 of the date hereof. All of these Meineke locations are independently owned and operated by
4 franchisees.

5 2.2 The franchise agreements entered into between Meineke and its franchisees
6 provide that franchisees subject to such agreements, "may not recruit or hire any person who is
7 then (or was within the immediately preceding 30 days) employed by any Meineke Center
8 operated by us, our Affiliates or another Meineke Dealer, without obtaining the employer's
9 consent, which consent may be withheld for any or no reason." The franchise agreements also
10 provide that Meineke agrees "not to recruit or hire any person who is then (or was within the
11 immediately preceding 30 days) employed by [its franchisees] without obtaining [their]
12 consent, which consent may be withheld for any or no reason." (The "No-Hire/No-Solicitation
13 Provision").

14 2.3 The Attorney General asserts that the foregoing conduct of Meineke and its
15 franchisees constitutes a contract, combination, or conspiracy in restraint of trade in violation
16 of the Consumer Protection Act, RCW 19.86.030.

17 2.4 Meineke and its current and former franchisees expressly deny that the conduct
18 described above constitutes a contract, combination, or conspiracy in restraint of trade in
19 violation of the Consumer Protection Act, RCW 19.86.030, or any other law or regulation, and
20 expressly deny they have engaged in conduct that constitutes a contract, combination, or
21 conspiracy in restraint of trade, or violates any other law or regulation. Meineke 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 Meineke or any of its current or former franchisees.

25 **III. ASSURANCE OF DISCONTINUANCE**

26 3.1 Subject to paragraph 2.4 above, Meineke agrees:

1 3.1.1. It will no longer include the No-Hire/No-Solicitation Provision in any of
2 its franchise agreements in the United States signed after the date hereof.

3 3.1.2. It will not enforce the No-Hire/No-Solicitation Provision in any of its
4 existing franchise agreements in the United States, and will not seek to intervene in any action
5 brought by the Attorney General's Office against a current franchisee in Washington to defend
6 an existing No-Hire/No-Solicitation Provision, provided such action is brought in accordance
7 with, and consistent with, the provisions of this AOD.

8 3.1.3. It will notify all of its current franchisees in the United States of the
9 entry of this AOD and make a copy available to them.

10 3.1.4. If, after the 21 day period set forth in paragraph 3.2 below, Meineke
11 becomes aware of a franchisee with a center located in the state of Washington attempting to
12 enforce the No-Hire/No-Solicitation Provision, and Meineke is unable to persuade such
13 franchisee to desist from enforcing or attempting to enforce such provision, Meineke will
14 notify the Attorney General.

15 3.2 Within 21 days of entry of this AOD, Meineke will send a letter to all of its
16 current franchisees with a center located in the state of Washington, stating that the Attorney
17 General has requested that the existing No-Hire/No-Solicitation Provision be removed from
18 existing franchise agreements. The letter that Meineke will send to its current franchisees in the
19 state of Washington, to the extent the franchisee has a No-Hire/No-Solicitation Provision in its
20 franchise agreement, will be substantially in the form of the letter attached hereto as Exhibit A.
21 That letter will enclose the proposed amendment that Meineke is requesting that each of its
22 franchisees in the state of Washington agree to, which amendment will remove the No-
23 Hire/No-Solicitation Provision. The proposed amendment that will be included with each letter
24 will be substantially in the form of the amendment attached hereto as Exhibit B.

25 3.3 In addition to sending the letter to its current franchisees in the state of
26 Washington pursuant to paragraph 3.2 above, Meineke will respond promptly to any inquiries

1 | from such franchisees regarding the request to amend the terms of the franchise agreement and
2 | will encourage its current franchisees in the state of Washington to sign the proposed
3 | amendment. However, for the avoidance of doubt, Meineke is under no obligation to offer its
4 | franchisees any consideration—monetary or otherwise—in order to induce them to sign the
5 | proposed amendment, or take any adverse action against such franchisees if they refuse to do
6 | so. Within 120 days of entry of this AOD, Meineke will provide copies of all executed
7 | amendments it has obtained with its current franchisees in the state of Washington to the
8 | Attorney General's Office. A decision by a franchisee not to amend its franchise agreement, or
9 | not to do so within 120 days of this AOD, shall not mean that Meineke has not complied with
10 | its obligations under this AOD.

11 | 3.4 If Meineke learns that a current franchisee in the state of Washington intends in
12 | good faith to sign the proposed amendment but is unable to do so within the time period
13 | specified in paragraph 3.3, Meineke will notify the Attorney General's Office to seek a
14 | mutually agreeable extension. During any such extension, the Attorney General's Office will
15 | not take further investigative or enforcement action against a franchisee.

16 | 3.5 As they come up for renewal during the ordinary course of business, Meineke
17 | will remove the No-Hire/No-Solicitation Provision from all of its existing franchise
18 | agreements in the United States with its franchisees on a nationwide basis, unless expressly
19 | prohibited by law. In addition, Meineke will not include the No-Hire/No-Solicitation Provision
20 | in any franchise agreement it signs in the United States after the date of this AOD.

21 | 3.6 Within 30 days of the conclusion of the time periods referenced in paragraph
22 | 3.3, Meineke will submit a declaration to the Attorney General's Office signed under penalty
23 | of perjury stating whether all provisions of this agreement have been satisfied.

24 | IV. ADDITIONAL PROVISIONS

25 | 4.1 This AOD is binding on, and applies to Meineke, including each of its
26 | respective directors, officers, managers, agents acting within the scope of their agency, and

1 employees, as well as their respective successors and assigns, controlled subsidiaries,
2 predecessor franchisor entities, or other entities through which Meineke may now or hereafter
3 act with respect to the conduct alleged in this AOD.

4 4.2 This is a voluntary agreement and it shall not be construed as an admission of
5 law, fact, liability, misconduct, or wrongdoing on the part of Meineke or any of its current or
6 former franchisees. Meineke and its current and former franchisees neither agree nor concede
7 that the claims, allegations and/or causes of action which have or could have been asserted by
8 the Attorney General have merit and Meineke and its current and former franchisees expressly
9 deny any such claims, allegations, and/or causes of action. However, proof of failure to comply
10 with this AOD shall be *prima facie* evidence of a violation of RCW 19.86.030, thereby placing
11 upon the violator the burden of defending against imposition by the Court of injunctions,
12 restitution, costs and reasonable attorney's fees, and appropriate civil penalties under the
13 Consumer Protection Act.

14 4.3 Meineke will not, nor will it authorize any of its officers, employees,
15 representatives, or agents to, state or otherwise contend that the state of Washington or the
16 Attorney General has approved of, or has otherwise sanctioned, the conduct described in
17 paragraph 2.2 with respect to the No-Hire/No-Solicitation Provision in Meineke's franchise
18 agreement.

19 4.4 This AOD resolves all issues raised by the state of Washington and the Antitrust
20 Division of the Attorney General's Office under the Consumer Protection Act and any other
21 related statutes pertaining to the acts of Meineke and its current and former franchisees as set
22 forth in paragraphs 2.1 – 2.3 above that may have occurred before the date of entry of this AOD,
23 or that occur between the date of the entry of this AOD and the conclusion of the 120 day period
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1 identified in paragraph 3.3 above, and concludes the investigation thereof. Subject to paragraph
2 4.2, the state of Washington and the Antitrust Division of the Attorney General's Office shall not
3 file suit or take any further investigative or enforcement action with respect to the acts set forth
4 above that occurred before the date of entry of this AOD, or that occurs between the date of the
5 entry of this AOD and the conclusion of the 120 day period identified in paragraph 3.3 above,
6 against Meineke or any of its current franchisees in the state of Washington that sign the proposed
7 amendment described in Section III, any of its former franchisees in the state of Washington, or
8 any of its current or former franchisees located outside the state of Washington. The Attorney
9 General reserves the right to take further investigative or enforcement action against any current
10 franchisee in the state of Washington identified pursuant to paragraph 3.1.4 or any current
11 franchisee in the state of Washington that does not sign the proposed amendment described in
12 Section III.
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16 APPROVED ON this _____ day of _____, 2019.
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20 JUDGE/COURT COMMISSIONER
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1 Presented by:

2 ROBERT W. FERGUSON
3 Attorney General

4 

5 RAHUL RAO, WSBA #53375
6 Assistant Attorney General
7 Antitrust Division
8 Attorneys for State of Washington
9 Office of the Attorney General
10 800 Fifth Avenue, Suite 2000
11 Seattle, WA 98104

12 *Attorney for State of Washington*

13 Agreed to and approved for entry by:
14 MEINEKE FRANCHISOR SPV LLC

15  

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22 NOAH POLLACK
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24 Meineke Franchisor SPV LLC

25 —and—

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31 —and—

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36 *Attorneys for Meineke Franchisor SPV LLC*

Exhibit A

Dear [Franchisee Name]

In January 2019, Meineke Car Care Centers, Inc. ("Meineke") received a Civil Investigative Demand from the Attorney General's Office of the State of Washington seeking information regarding whether there are any provisions in its franchise agreements that restrict the hiring or solicitation of employees (sometimes referred to as "no poaching" clauses). We understand that this is part of a broader investigation into the use of such clauses in several industries. We have cooperated fully with the investigation.

Without admitting that Meineke or its franchisees violated any law or regulation, or acted improperly in any respect, we have reached an agreement with the Attorney General's Office. This agreement provides that Meineke will, among other things, no longer include in any U.S. franchise agreement or renewal signed after the date of our agreement with the Attorney General's Office any provisions that restrict the hiring or solicitation of employees. The agreement also provides that Meineke will not enforce any such provisions in any of its existing franchise agreements or area development agreements in the United States.

We believe the Meineke franchise system's interests are best served by resolving the investigation quickly and cooperatively on these terms, and by avoiding the uncertainty and cost of protracted litigation.

Meineke's agreement with the Attorney General's Office also includes a requirement that it request, from franchisees with locations in the State of Washington containing "no poaching" clauses, that they agree to amend their existing franchise agreements to remove the "no poaching" clauses. Enclosed for your signature is an amendment to your franchise agreement(s) with Meineke to satisfy that requirement. To the extent that you agree to [this/these] amendment(s), the Attorney General has committed to not pursue any suit, or take any investigative or enforcement action against you, for conduct relating to the relevant provisions of your franchise agreement(s), up to and including the date you sign the amendment(s). Please sign and return the amendment(s) to me as soon as possible. If you decide not to sign the enclosed amendment(s), the Attorney 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 me at Noah.Pollack@drivenbrands.com. If you receive any media inquiries regarding this matter, please refer them to me.

Best Regards,

Noah Pollack
General Counsel
Meineke Car Care Centers, Inc.

Exhibit B

**AMENDMENT
TO MEINEKE FRANCHISOR SPV LLC
FRANCHISE AND TRADEMARK AGREEMENT**

The Meineke Franchisor SPV LLC ("Meineke") Franchise and Trademark Agreement(s) between Meineke ("We") and the undersigned franchisee ("You") listed in Exhibit A hereto (as amended, the "Franchise Agreement") shall be amended in accordance with the following terms.

1. Background. Meineke and you are parties to each Franchise Agreement and you operate one or more franchise outlets in the State of Washington under the Franchise Agreement(s). We have determined that it is in the best interests of the franchise system to not enforce the sentences of Section 7.9 that provide: ["You may not recruit or hire any person who is then (or was within the immediately preceding 30 days) employed by any Meineke Center operated by us, our Affiliates or another Meineke Dealer, without obtaining the employer's consent, which consent may be withheld for any or no reason. We agree not to recruit or hire any person who is then (or was within the immediately preceding 30 days) employed by you at your Center without obtaining your consent, which consent may be withheld for any or no reason."] The purpose of this Amendment to your Development Agreement is to document this change. All initial capitalized terms used but not defined in this Amendment shall have the meanings set forth in the Development Agreement.

2. Modification of Terms. As of the Effective Date (defined below) of this Amendment, you and we agree that the following sentences of Section 7.9 are hereby deleted from the Franchise Agreement and are of no further force or effect: ["You may not recruit or hire any person who is then (or was within the immediately preceding 30 days) employed by any Meineke Center operated by us, our Affiliates or another Meineke Dealer, without obtaining the employer's consent, which consent may be withheld for any or no reason. We agree not to recruit or hire any person who is then (or was within the immediately preceding 30 days) employed by you at your Center without obtaining your consent, which consent may be withheld for any or no reason."]

3. Miscellaneous. Except as specifically modified by this Amendment, the provisions of the Franchise Agreement shall remain in full force and effect. This document is an amendment to, and forms a part of, the Franchise Agreement. If there is an inconsistency between this Amendment and the Franchise 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 _____, 2019 (the "Effective Date").

MEINEKE FRANCHISOR SPV LLC

By: _____
Name: _____
Title: _____

[FRANCHISEE'S NAME]

By: _____
Name: _____
Title: _____