

Timothy Montileone, et al.

-vs-

AAMCO Transmissions, Inc., et al.

Complaint

EXHIBIT 5

### Mutual Termination of Franchise Relationship

This Agreement, dated March 21, 2011 is between AAMCO Transmissions, Inc. ("ATI") on the one hand, and Rick Firmand and Scott Trent (collectively "Franchisees") on the other hand.

WHEREAS, on or about January 21, 2009, Franchisees entered into a franchise agreement (the "Franchise Agreement") with ATI whereby Franchisees was granted the right to operate an AAMCO Transmissions center at 8500 Manchester Road, Brentwood, MO 63144 (the "Center");

WHEREAS, Franchisees are also licensed to operate an AAMCO Transmissions center at 8744 Watson Road, Crestwood, MO 63119 (the "Crestwood Center")

WHEREAS, Franchisees and ATI have agreed to mutually terminate their franchise relationship at the Center per the terms outlined below;

NOW THEREFORE, for valuable consideration the sufficiency of which is acknowledged by the parties, ATI and Franchisees agree as follows:

1. ATI and Franchisees agree that the Franchise Agreement for the Center will terminate by mutual agreement effective on the commencement date of the lease between ATI (through its affiliate American Driveline Centers, Inc.) and landlord for the Center (the "Lease"), which such Lease is contemplated by Section 7 herein; hereinafter, such date will be known as the "Takeover Date."
2. Franchisees hereby assign to ATI the title to all equipment, inventory, supplies, and fixtures in, and associated with, the Center (the "Assets"). Franchisees further agree from the date of this Agreement forward, to leave the Assets in the Center in a manner consistent with standard AAMCO operations. Franchisees represent that, to the best of their knowledge, there are no debts, encumbrances, or liens against the Assets nor judgments against Franchisees that may negatively impact the Assets.
3. ATI hereby agrees, subject to Franchisees continued compliance with the terms of this Agreement, to forbear collecting any debt attributable to the Center that is owed by Franchisees to ATI, which includes debts owed to the local advertising pool (this provision does NOT include debts associated with the Crestwood Center); provided however, that if i) the Lease is not fully executed by the landlord of the Center on or before April 8, 2011, ii) Franchisees breach this Agreement, or iii) at any time it is discovered that there is a debt, lien, encumbrance, or legitimate claim against any of the Assets, the Center, or the business of the Center, then ATI may terminate this Agreement, the forbearance contemplated by this Section 3 may be revoked at ATI's sole discretion, and ATI may seek to recover from Franchisees an amount equal to its loss associated with such discovered debt, lien, encumbrance, or legitimate claim, which such recovery amounts may be billed, in whole or in part, to the Crestwood Center.
4. Franchisees agree to take such action and execute such documents, as may be necessary to transfer from Franchisees to ATI all rights and interests of Franchisees in any telephone number(s) associated with the business operated at the Center.

5. Franchisees agrees to, no later than 8:00 a.m. EST on the Takeover Date, cease operating any transmission and/or automotive repair business at the Center and voluntarily vacate the Center by this same time.
6. Upon request from the landlord of the Center or ATI, Franchisees agree to immediately confirm with the landlord of the Center that 1) Franchisees will be vacating the Center per this Agreement, 2) the landlord's full cooperation in the mutual termination of Franchisees' current lease and the landlord's entering into of a new lease for the Center with ATI is in no way business or contractual interference, and 3) the landlord of the Premises is authorized to enter into a lease with ATI or its affiliate at any time after the signing of this Agreement. ATI may deliver a signed copy of this Agreement to the landlord of the Premises. Franchisees further agrees to execute any mutual lease-termination documents that the landlord of the Premises may reasonably require, and/or at ATI's request, sign any document intended to assign Franchisees' current lease to ATI.
7. Franchisees and ATI agree that the act of the landlord of the Center (1) accepting ATI's offer to lease the Premises to ATI or its designee with the right to operate a transmission and general automotive repair center prior to April 8, 2011 is a condition precedent to the obligations under this Agreement and that if ATI and the landlord of the Center are unable to agree on lease terms, that this Agreement will be unenforceable, null, and void, unless the April 8, 2011 deadline is extended by ATI. ATI agrees to pay one month of rent due by Franchisees to the landlord of the Center, even if the month in which rent is owing by Franchisees is prior to the Takeover Date.
8. Franchisees and ATI agree that ATI will pay for the first \$5,000 in warranty expenses related to work performed at the Center prior to the Takeover Date; however, any warranty expenses related to work performed at the Center prior to the Takeover Date that exceeds this \$5,000 limit will be billed at AAMCO intershop rates to Franchisees through the Crestwood Center.
9. Franchisees agree, in further cooperation and upon the request of AAMCO, to sign any document or take any action reasonably necessary to effectuate the provisions and reasonably inferred intent of this Agreement both prior to and after the Takeover Date.
10. Franchisees agree that from the date of this Agreement forward they will:
  - a. refrain from moving, removing, exchanging, or damaging any of the Assets, except that supplies used in the actual repair of a AAMCO customer's automobile may be removed in the ordinary course of business; Franchisees warrant that no equipment in the Center has been removed or exchanged in the thirty days prior to signing this agreement;
  - b. keep the details of this Agreement wholly confidential in all respects (except for the confirmations required to be given to the landlord of the Premises in Section 6 above); and
  - c. refrain from making any comment, or taking any action, that can reasonably be construed as derogatory, defamatory, or otherwise damaging to AAMCO or the AAMCO brand.
11. Franchisees must sign the AAMCO Termination document attached hereto as Appendix A and the Release document attached hereto as Appendix B, both of which are incorporated herein by reference.
12. Franchisees hereby agree that the judgment obtained by Cottman Transmission Systems, LLC,

ATI's affiliate, against Franchisees in the Court of Common Pleas of Montgomery County, PA dated November 3, 2009 in the amount of \$48,797.42 (the "Judgment") is to be charged to the Crestwood Center and that Franchisees must, starting on April 18, 2011 and due each Monday thereafter until paid in full, pay the weekly amount of \$250.00 to ATI towards the amount due under the Judgment (the "Judgment Payments").

13. Franchisees must sign the Electronic Funds Transfer form attached hereto as Appendix C, which such form is incorporated herein by reference, to be applicable for the payment of financial obligations related to the Crestwood Center, which such financial obligations include, but are not limited to, the Judgment Payments.
14. Franchisees agrees that any reference in this Agreement, or any of its appendices, to "Franchisees" also includes any incorporated/legal entity owned or substantially owned by Franchisees, individually or collectively, that is in any way related to the operation of the Center.
15. ATI agrees, from the Takeover Date forward, to fulfill Franchisees remaining contractual obligations for Yellow Pages with DAC Huchins Group for the Center. Franchisees agree to satisfy any monetary obligations to DAC Huchins Group and all other creditors associated with the operation of the Center arising prior to the Takeover Date.
16. ATI and Franchisees agree that customer repairs that are in process in or around the Takeover date will be handled as follows:
  - a. Franchisees must make every effort to complete all repairs started prior to the Takeover Date by delivering the vehicle and collecting payment for same. If such work is not completed by the Takeover Date, then ATI will complete such work and collect payment from the customer; provided however, for each such unfinished repair, Franchisees must submit to ATI a good faith reconciliation statement specifying monies reasonably expended and deposits collected on the repair with any net balance owing to, or payable by, Franchisees being credited or billed, as the case may be, to the Crestwood Center. Provided further however, that ATI has the right to make reasonable adjustments to any such reconciliation statement if it feels that any stated expense is unreasonable.
17. This Agreement and any related document or instrument is governed by the laws of the Commonwealth of Pennsylvania. With respect to any legal proceedings arising out of or connected in any way to this Agreement, ATI and Franchisees consent to the jurisdiction and venue of any court of general jurisdiction of Philadelphia, Pennsylvania; Montgomery County, Pennsylvania; or the United States District Court for the Eastern District of Pennsylvania, and any legal proceedings arising out of this Agreement must be brought only in such courts and not in any other courts. The parties further agree that the mailing by certified or registered mail, return receipt requested or by an overnight carrier service that provides a receipt to the respective party's last known address will constitute lawful and valid process.
18. If any provision of this Agreement, or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall be interpreted so as reasonably to effect the intent of the parties hereto. The parties hereto shall use all reasonable efforts to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that shall achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

19. This Agreement, which includes the attached Appendices, constitutes the full and entire understanding and agreement among the parties with regard to the subject matter hereof and fully supersedes any prior discussions, negotiations, and representations of any kind. Any terms of this Agreement may be amended and the observance of any term may be waived only upon the written consent of all parties.

IN WITNESS WHEREOF, intending to be legally bound, the undersigned execute this SETTLEMENT AGREEMENT on the day and date set forth above.

AAMCO TRANSMISSIONS, INC.

BY: \_\_\_\_\_  
Marc Graham, President

\_\_\_\_\_  
Rick Firmand

\_\_\_\_\_  
Scott Trent

Appendix A

**TERMINATION OF FRANCHISE AGREEMENT**

WHEREAS, a franchise agreement was entered into between Rick Firmand and Scott Trent (collectively "Franchisees") and AAMCO Transmissions, Inc. ("Franchisor"), on or about January 21, 2009 for the operation of AAMCO Transmissions center located at 8500 Manchester Road, Brentwood, MO 63144 (the "Franchise Agreement"); and

WHEREAS, it is the desire of the Franchisor and Franchisees that the Franchise Agreement be ended and terminated as of the date of signature of this Termination by Franchisor.

NOW, THEREFORE, for and in consideration of the mutual agreements contained herein, and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Franchisees hereby release all rights they/he/it may have under the Franchise Agreement and is hereby released by Franchisor from all obligations they/he/it may have under the Franchise Agreement and the Franchise Agreement is terminated as of the date of signature of this Termination by Franchisor.

IN WITNESS WHEREOF, intending to be legally bound hereby, the parties hereto have set their hands and seals on the respective dates below.

AAMCO TRANSMISSIONS, INC.

BY: \_\_\_\_\_  
Marc Graham, President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Rick Firmand

\_\_\_\_\_  
Date

\_\_\_\_\_  
Scott Trent

\_\_\_\_\_  
Date

Appendix B

RELEASE

KNOW ALL MEN BY THESE PRESENTS, THAT:

WHEREAS, a franchise agreement was entered into between Rick Firmand and Scott Trent (collectively "Franchisees") and AAMCO Transmissions, Inc. ("Franchisor"), on or about January 21, 2009 for the operation of AAMCO Transmissions center located at 8500 Manchester Road, Brentwood, MO 63144 (the "Franchise Agreement");

WHEREAS, Franchisor and Franchisees have mutually agreed to terminate the Franchise Agreement;

WHEREAS, Franchisees are also licensed to operate an AAMCO Transmissions center at 8744 Watson Road, Crestwood, MO 63119 (the "Crestwood Center")

WHEREAS, any reference herein to Franchisor or Franchisees, also refers to such individual's or entities' heirs, executors, legal representatives, successors, parent, subsidiaries, affiliates, shareholders, predecessors, successors, officers, directors, agents, attorneys, employees, and/or assigns; and

This Release does not in anyway, regardless of the all encompassing verbiage used, release Franchisees from their past or future obligations, or Franchisees' claims against Franchisor for failure to perform any past or future obligations, with regard to i) the Agreement to which this Release (Appendix B) is attached (the "Agreement") or ii) the AAMCO franchise agreement for the Crestwood Center dated March 21, 2007, both such agreements being between Franchisor and Franchisees; this Release is only applicable to the relationship between Franchisor and Franchisees as it relates to the Brentwood, MO AAMCO center located at 8500 Manchester Road and the Franchise Agreement, and to the extent there is a conflict between this Release and the Agreement, the Agreement controls.

For and in mutual consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, Franchisee, except as stated in the preceding paragraph, hereby irrevocably and unconditionally remises, releases, and forever discharges Franchisor of and from all, and all manner of, actions, causes of actions, suits, debts, claims and demands, accounts, bonds, covenants, contracts, agreements, and judgments, whatsoever in law or in equity, which Franchisee now has, ever had, or may hereafter have, own, hold, claim to have to own or to hold against Franchisor, including but not limited to, those based upon, related to or connected with: (a) the Franchise Agreement; (b) any actions taken by Franchisor under the Franchise Agreement or any agreement that ever existence between the parties (excepted for as stated in the preceding paragraph); (c) the relationship between Franchisor and Franchisee ; (d) anything forbidden or declared unlawful by the antitrust laws of the United States, including but not limited to, violations or claimed violations of the Clayton or Sherman Acts, or any other statute of the federal government or of the several states, whether such claims pertain to the intentional or unintentional acts of Franchisee or claims of Franchisee's negligence; or (e) anything forbidden or prohibited by state antitrust laws, state deceptive trade practices acts or state consumer protection acts; Without limiting the generality of the foregoing in any respect, Franchisee hereby irrevocably and unconditionally remises, releases, and forever discharges Franchisor from any and all claims and causes of action, known, unknown, or unanticipated at the time this Release was executed, which arose from or are based upon or related to the aforesaid or some part or aspect thereof or which arose or may arise in any way against each other, which

Franchisee ever had, now has, or hereafter may have for or by reason of any cause, matter or thing whatsoever.

Franchisee acknowledges that there is a risk that, subsequent to the execution of this Release, additional claims or causes of action may be discovered or arise, which were unknown or unanticipated at the time this Release was executed, including without limitation unknown or unanticipated claims or causes of action, which arose from or are based upon or related to the aforesaid or some part or aspect thereof, and which if known to Franchisee on the date of execution of this Release would have materially affected Franchisee's decision to execute this Release, but which unknown risk or claim Franchisee hereby assumes and expressly agrees that this Release applies thereto (except as stated two paragraphs above).

The undersigned has read this Release and understand this is to be a full and complete release of all rights or claims of any nature Franchisee has against Franchisor (as defined earlier in this Release).

IN WITNESS WHEREOF, We have hereunto set our hands and seals on the respective dates below.

\_\_\_\_\_  
Rick Firmand

\_\_\_\_\_  
Date

\_\_\_\_\_  
Scott Trent

\_\_\_\_\_  
Date