

1 Thomas C. Horne  
Attorney General  
2 (Firm State Bar No. 14000)  
Rebecca C. Salisbury  
3 Assistant Attorney General  
State Bar No. 022006  
4 Office of the Attorney General  
1275 W. Washington Street  
5 Phoenix, AZ 85007-2926  
Telephone: (602) 542-  
6 consumer@azag.gov

7 Attorneys for Plaintiff

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

9 **IN AND FOR THE COUNTY OF MARICOPA**

10 STATE OF ARIZONA, *ex rel.* THOMAS C.  
HORNE, Attorney General,

11 Plaintiff,

12 vs.

13 ECONO-LUBE N'TUNE, INC., a Delaware  
14 corporation,

15 Defendant.  
16  
17

Case No.: CV2011-018783

**CONSENT JUDGMENT**

Assigned to the Hon.

18 Plaintiff, State of Arizona, ex rel. Thomas C. Horne, Attorney General, having filed a  
19 complaint alleging violations of the Arizona Consumer Fraud Act, A.R.S. § 44-1521 *et seq.*,  
20 and Defendant Econo-Lube N'Tune, Inc., having waived service of the Summons and  
21 Complaint; having been fully advised of its right to a trial in this matter and, after receiving  
22 advice of counsel, having waived the same; having admitted that this Court has jurisdiction  
23 over the subject matter and the parties for purposes of entry of this Consent Judgment; and  
24 having acknowledged that this Court retains jurisdiction for the purpose of enforcing this  
25 Consent Judgment; the Court enters the following Consent Judgment:

26 //

1 Defendant ECONO-LUBE N'TUNE, INC. has agreed to a voluntary compromise of  
2 disputed claims and the State of Arizona and Defendant ECONO-LUBE N'TUNE, INC. have  
3 agreed on a basis for the settlement of these matters in dispute.

4 This Consent Judgment does not constitute an admission by Defendant ECONO-LUBE  
5 N'TUNE, INC. or evidence of any liability for any violation of the Arizona Consumer Fraud  
6 Act or of any other state or federal statute, rule, regulation or other applicable law. This  
7 Consent Judgment is made without trial or adjudication of any issues of fact or law or finding  
8 of liability of any kind.

9 **I. PARTIES**

10 1. Plaintiff is the State of Arizona, ex rel. Thomas C. Horne ("the State"), who is  
11 authorized to bring this action under the Arizona Consumer Fraud Act, A.R.S. § 44-1521 *et*  
12 *seq.*

13 2. Defendant ECONO-LUBE N'TUNE, INC. is a Delaware corporation engaged in  
14 the business of automotive repair, and the owner at times relevant to this Consent Judgment of  
15 the ECONO-LUBE N'TUNE & BRAKES, doing business as Meineke Car Care Center #4179  
16 and Econo-Lube N'Tune #4179, located at 6829 N. 7<sup>th</sup> Street, Phoenix, Arizona.

17 **II. STATE'S ALLEGATIONS**

18 3. At all times relevant to this Consent Judgment, the managers and employees of  
19 the ECONO-LUBE N'TUNE & BRAKES doing business as Meineke Car Care Center #4179  
20 and Econo-Lube N'Tune #4179, located at 6829 N. 7<sup>th</sup> Street, Phoenix, Arizona were the  
21 authorized agents of Defendant ECONO-LUBE N'TUNE, INC.

22 4. On July 13, 2011, the store manager of the ECONO-LUBE N'TUNE &  
23 BRAKES doing business as Meineke Car Care Center #4179 and Econo-Lube N'Tune #4179,  
24 located at 6829 N. 7<sup>th</sup> Street, Phoenix, Arizona, informed the State's undercover operator that a  
25 coil within his compressor was bad and the air compressor needed to be replaced in the  
26 operator's undercover vehicle.

1           5. Defendant's store manager's statement was deceptive because the store manager  
2 knew that a coil within the compressor was not bad, the air compressor did not need to be  
3 replaced and the air conditioning system could be fixed by replacing a nonfunctioning fuse.

4           6. On July 19, 2011, a technician of the ECONO-LUBE N'TUNE & BRAKES  
5 doing business as Meineke Car Care Center #4179 and Econo-Lube N'Tune #4179, located at  
6 6829 N. 7<sup>th</sup> Street, Phoenix, Arizona, informed the State's undercover operator that his  
7 compressor was bad and the high line with an expansion valve needed to be replaced in the  
8 operator's undercover vehicle. Defendant's technician informed the State's undercover  
9 operator that they had checked the system again using a machine, had started up the vehicle  
10 and there was power going to the compressor.

11           7. Defendant's technician's statement was deceptive because the technician did not  
12 know if the compressor was bad, the high line with an expansion valve did not need to be  
13 replaced, he had not checked the system again using a machine, had not started up the vehicle  
14 and had not checked that power was going to the compressor.

15           8. Defendant's technician performed a further deceptive act by failing to inform the  
16 State's undercover operator that they had discovered and replaced a nonfunctioning fuse, that  
17 they had replaced the compressor unnecessarily, and by accepting full payment for an  
18 unnecessary vehicle repair.

19           9. The acts and practices set forth in the foregoing Findings of Fact constitute  
20 deceptive acts and practices in violation of the Arizona Consumer Fraud Act.

21           10. While engaging in the acts set forth in the Findings of Facts herein, Defendant  
22 ECONO-LUBE N'TUNE, INC. knew or should have known that its conduct was of the nature  
23 prohibited by A.R.S. § 44-1522.

24 **IV. DEFENDANT ECONO LUBE N' TUNE DISPUTES THE ALLEGATIONS**

25           11. Defendant ECONO-LUBE N'TUNE, INC. disputes the abovementioned  
26 allegations.

1        12. This Consent Judgment and Defendant's agreement thereto shall not be considered  
2 an admission of a violation of any law or rule for any purpose.

3 **IV. INJUNCTION**

4        13. Defendant ECONO-LUBE N'TUNE, INC. shall comply with the Arizona  
5 Consumer Fraud Act, A.R.S. § 44-1521, *et. seq.*, as it is currently written, or as it is amended in  
6 the future.

7        14. The injunctive relief ordered herein applies to Defendant ECONO-LUBE  
8 N'TUNE, INC., its employees, agents, successors, members, officers and directors, assigns and  
9 their successors, or any other person or business acting in concert with them, at their direction or  
10 on their behalf.

11        15. Defendant ECONO LUBE N'TUNE, INC. will not further employ SCOTT  
12 MICHAEL BRAGG or EDUARDO A. GASTELUM at a Meineke or Econo Lube N'Tune  
13 location.

14        16. Defendant ECONO LUBE N'TUNE, INC. and its officers, agents, servants,  
15 employees and attorneys and all persons in active concert or participation with them, directly  
16 or indirectly, are enjoined from:

17            a. Willfully departing from or disregarding accepted trade standards for  
18 goods and workmanlike repair;

19            b. Representing that a part, replacement, or repair service is needed when it  
20 is not; and

21            c. Engaging in the repair or servicing of motor vehicles unless Defendants  
22 maintain a program that is reasonably calculated to prevent misrepresentations and  
23 unfair or deceptive practices in connection with the repair or servicing of a vehicle by  
24 Defendants, their agents or employees. As part of such program, Defendants, at a  
25 minimum, shall:

26            i. instruct their Agents not to engage in, and prohibit their Agents  
from engaging in, the deceptive practices described in this Complaint; and

1                   ii. provide all senior management employees, officers, directors,  
2                   Regional Managers, Center Managers and those who write or prepare repair  
3                   orders within Arizona with a copy of the injunctive relief obtained in this  
4                   case.

5   **V. PAYMENT**

6           17. Defendant ECONO LUBE N'TUNE, INC. shall pay to the Arizona Attorney  
7   General the amount of \$30,000.00 in civil penalties due at the time of entry of this Judgment,  
8   with interest thereon at ten percent (10%) per annum until paid, to be deposited into the  
9   Consumer Fraud Revolving Fund pursuant to A.R.S. § 44-1531.01 and used for the purposes  
10   set forth therein.

11          18. Defendants ECONO LUBE N'TUNE, INC. shall pay to the Arizona Attorney  
12   General the amount of \$10,494.63 in attorneys' fees and costs due at the time of entry of this  
13   Judgment, with interest thereon at ten percent (10%) per annum until paid, to be deposited into  
14   the Consumer Fraud Revolving Fund pursuant to A.R.S. § 44-1531.01 and used for the  
15   purposes set forth therein.

16   **VI. GENERAL TERMS**

17          19. The effective date of this Consent Judgment is the date it is signed by the Court.

18          20. The Parties have agreed to a voluntary compromise of disputed claims, and the  
19   Parties have agreed on a basis for the settlement of these matters in dispute.

20          21. The State acknowledges by its execution hereof that this Consent Judgment  
21   constitutes a complete settlement of its allegations against Defendant ECONO-LUBE  
22   N'TUNE, INC. and it agrees that it shall not institute any additional civil action against  
23   Defendant ECONO-LUBE N'TUNE, INC. that is based upon the conduct described in the  
24   State's Complaint. Notwithstanding the foregoing, the State may institute an action or  
25   proceeding to enforce the terms and provisions of this Consent Judgment or to take action  
26   based on future conduct by the Defendant ECONO-LUBE N'TUNE, INC.



1       22. Defendant ECONO-LUBE N'TUNE, INC. shall not represent or imply that the  
2 Attorney General, the State, or any agency thereof, has approved any of their actions or has  
3 approved any of their present or future actions or practices, and Defendant ECONO-LUBE  
4 N'TUNE, INC. is enjoined from representing anything to the contrary.

5       23. Econo-Lube shall not participate directly or indirectly in any activity to form a  
6 separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance  
7 or for any other purpose which would otherwise circumvent any part of this Assurance or the  
8 spirit or purposes of this Assurance.

9       24. This Consent Judgment may be modified or vacated by order of this Court.  
10 After providing at least thirty (30) days written notice and after making a good faith effort to  
11 obtain concurrence of the other party for the requested order to modify or vacate, which  
12 concurrence shall not be unreasonably withheld, the party seeking an order to modify or vacate  
13 may petition the Court therefore. The Court will modify or vacate this Consent Judgment  
14 upon a showing of good cause.

15       25. Before initiating any proceeding to enforce this Consent Judgment, the Attorney  
16 General shall provide at least thirty (30) days written notice to Defendant of its intent to  
17 initiate such proceedings, and shall give Defendant a reasonable opportunity to cure any  
18 alleged violation. Whenever possible, the parties shall seek to resolve an alleged violation of  
19 this consent Judgment by discussion. The Attorney General shall give good faith  
20 consideration as to whether Defendant has taken corrective action designed to cause the  
21 claimed violation to be cured and to prevent future occurrences.

22       26. This Court retains jurisdiction of this matter for the purpose of entertaining an  
23 application by the State for the enforcement of this Consent Judgment.

24       27. This Consent Judgment is the result of a compromise and settlement agreement  
25 between the Defendant ECONO-LUBE N'TUNE, INC. and Plaintiff. Only the parties to this  
26 Consent Judgment may seek enforcement of this Consent Judgment. Nothing herein is  
intended to create a private right of action by other parties.

1        28.    This Consent Judgment shall not limit the rights of any private party to pursue  
2 any remedies allowed by law.

3        29.    Nothing herein prohibits the State from taking actions necessary to protect public  
4 health and safety as provided by applicable law.

5        30.    Any notices required to be sent to the State or to Defendant ECONO-LUBE  
6 N'TUNE, INC., by this Assurance shall be sent by United States, certified mail, return receipt  
7 requested, or other nationally recognized courier service that provides for tracking services and  
8 identification of the person signing for the document. The documents shall be sent to the  
9 following addresses:

10                    **For the Arizona Attorney General:**  
11                    Office of the Attorney General  
12                    Consumer Protection and Advocacy Section  
13                    1275 West Washington Street  
14                    Phoenix, Arizona 85007  
15                    Phone: (602) 542-3702

16                    **For Econo-Lube:**  
17                    c/o Snell & Wilmer  
18                    Attention: Dan Goldfine  
19                    One Arizona Center  
20                    Phoenix, AZ 85004  
21                    Phone: (602) 382-6282

22        31.    If any portion of this Consent Judgment is held invalid by operation of law, the  
23 remaining terms thereof shall not be affected and shall remain in full force and effect.

24        32.    Pursuant to Rule 54(b) of the Arizona Rules of Civil procedure, the Court has  
25 determined that there is no just reason for delay and hereby directs that this Judgment against  
26 Defendants be entered forthwith.

DATED this \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Judge of the Superior Court

1  
2  
3 **CONSENT TO JUDGMENT**  
4


5 1. Defendant states that no promise of any kind or nature whatsoever was made to it to  
6 induce it to enter into this Consent Judgment and that it has entered into the Consent Judgment  
7 voluntarily and not as the result of fraud, undue influence, duress, or any other known cause to  
8 set aside this Consent Judgment.

9 2. Defendant has fully read and understood this Consent Judgment, understands the legal  
10 consequences involved in signing it, assert that this is the entire agreement of the parties, and  
11 that there are no other representations or agreements not stated in writing herein and no force,  
12 threats, or coercion of any kind have been used to obtain its approval.

13 3. Defendant acknowledges that the State of Arizona's acceptance of this Consent  
14 Judgment is solely for the purpose of settling this litigation and, except as expressly provided  
15 therein, does not preclude the Attorney General, or any other agency or officer of this State, or  
16 subdivision thereof, from instituting other civil or criminal proceedings as may be appropriate  
17 now or in the future.

18 4. The corporate Defendant represents and warrants that the person signing below on its  
19 behalf is duly appointed and authorized to do so.

20 ECONO-LUBE N'TUNE INC.  
21

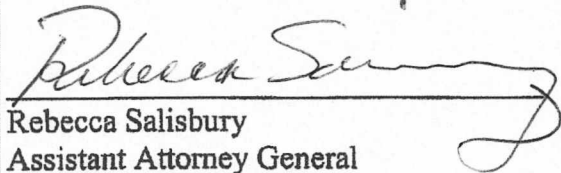
22   
23 By: TED P. Pearce  
24 v. P. + General Counsel  
25  
26

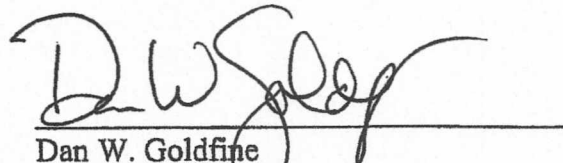
Dated: OCT. 13, 2011



1  
2 APPROVED AS TO FORM AND CONTENT  
3

4 THOMAS C. HORNE, Attorney General

5  
6   
7 Rebecca Salisbury  
8 Assistant Attorney General  
9 State of Arizona

10  
11   
12 Dan W. Goldfine  
13 Snell & Wilmer LLP  
14 Attorney for Econo-Lube N'Tune, Inc.  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

#2287115v1