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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 LEVEL 10 MARKETING, INC., a Louisiana
14 corporation and DAVID BOTTNER,

15 Defendants.

Case No. CV2012-017878

CONSENT JUDGMENT

(Assigned to the Hon. Randall Warner)

16 The State of Arizona, having filed a complaint alleging violations of the Arizona
17 Consumer Fraud Act, A.R.S. § 44-1521, *et seq.*; Defendants Level 10 Marketing, Inc., and
18 David Bottner (hereinafter "Defendants") having waived service of the Complaint and
19 Summons; having been fully advised of the right to a trial in this matter and, after receiving
20 advice of counsel, having waived the same; admit that this Court has jurisdiction over the
21 subject matter and the parties for purposes of entry of this Consent Judgment and acknowledge
22 that this Court retains jurisdiction for the purpose of enforcing this Consent Judgment.

23 **I. PARTIES**

- 24 1. Plaintiff is the State of Arizona, *ex rel.* Thomas C. Horne, Attorney General.
25 2. Defendant Level 10 Marketing, Inc., ("Level 10 Marketing") is a for-profit
26 corporation organized under the laws of the state of Louisiana.

1 3. Defendant David M. Bottner, has been at all times relevant to this action, President
2 of Level 10 Marketing, and has individually controlled, directed, participated in, and formulated
3 the policies relating to the acts, practices, and activities of said corporation that are the subject of
4 this action.

5 4. "Defendants" shall mean David M. Bottner, individually, and Level 10 Marketing
6 under its own name or any other business name, its principals, officers, directors, agents,
7 servants, representatives, salespersons, employees, successors and assigns, and all persons
8 acting on behalf, and at the direction of Level 10 Marketing, directly or indirectly, through any
9 corporate or other device, contract, partnership or association, jointly or severally, including all
10 persons and entities that receive actual notice of this Consent Judgment.

11 **II. STATE'S ALLEGATIONS**

12 5. The State alleges that Defendants engaged in deceptive and unfair practices in the
13 advertisement and sale of motor vehicles to consumers located in the State of Arizona through
14 advertising designed by Defendants and sold by Defendants to motor vehicle dealerships which
15 broadcast or disseminated the advertising within the State of Arizona to promote the retail sale
16 of motor vehicles, as set forth in the State's Complaint.

17 6. Defendants deny the State's allegations, but are willing to agree to the entry of this
18 Consent Judgment.

19 **III. INJUNCTION**

20 **IT IS ORDERED, ADJUDGED AND DECREED** that:

21 A. Defendants, and their successors, assigns, transferees, officers, agents, servants,
22 employees, representatives and all other persons or entities in active concert or participation
23 with Defendants are hereby permanently enjoined and restrained from engaging in any conduct
24 in connection with the sale, lease or advertisement of merchandise within the meaning of A.R.S.
25 § 44-1522(A) that creates and provides promotional advertising services, consultations or
26 materials for automobile dealers of new or used motor vehicles in the State of Arizona.

1 B. Pursuant to A.R.S. § 44-1532, the Court may impose a civil penalty of not more than
2 \$25,000 for each intentional violation of this Order in addition to any other remedy allowed by
3 law.

4 C. The State is hereby awarded Civil Penalties against Defendant Level 10 Marketing in
5 the amount of Twenty Thousand Dollars and 00/100 Cents (\$20,000.00). Said Civil Penalties
6 are to or for a governmental unit and are not for pecuniary loss. Said Civil Penalties shall be
7 suspended contingent on Defendant Level 10 Marketing's full compliance with the terms of the
8 Consent Judgment. If this Court later determines that Defendant Level 10 Marketing violated
9 this Consent Judgment for conduct that occurred after the entry thereof, Defendant shall pay the
10 Civil Penalty in full via a cashier's check within three (3) business days of entry of the Court's
11 order. In the event of such a determination, Defendant Level 10 Marketing's obligation to pay
12 the suspended amount shall be in addition to any other monetary or other sanctions which may
13 be imposed for such violation.

14 D. The State is hereby awarded Civil Penalties against Defendant David M. Bottner in
15 the amount of Twenty Thousand Dollars and 00/100 Cents (\$20,000.00). The Civil Penalties
16 shall be suspended contingent on Defendant Bottner's full compliance with the terms of the
17 Consent Judgment. If this Court later determines that Defendant Bottner violated this Consent
18 Judgment for conduct that occurred after the entry thereof, Defendant Bottner shall pay the Civil
19 Penalty in full via a cashier's check within three (3) business days of entry of the Court's order.
20 In the event of such a determination, Defendant Bottner's obligation to pay the suspended
21 penalty shall be in addition to any other monetary or other sanctions which may be imposed for
22 such violation.

23 E. Defendants shall be jointly and severally liable for all amounts that are due and owed
24 under this Consent Judgment.

25 F. This Consent Judgment shall not be construed as, or be evidence of, admissions by
26 Defendants, nor shall it be construed as a finding by this Court of any violation of A.R.S. § 44-
1521 *et seq.* or any other law.

1 G. The Court reserves jurisdiction over this action in order to take any further action
2 deemed necessary to enforce this judgment and to award the State judgment for any costs,
3 including attorneys' fees, it incurs in the event of noncompliance by Defendants.

4 H. The mailing of a copy of this signed and filed Consent Judgment to Defendants, or to
5 their attorneys, shall constitute notice and acceptance by Defendants of all the terms of this
6 Consent Judgment; Defendants have waived the necessity of having a copy of the Complaint or
7 this Consent Judgment served upon them.

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

14 J. The Court reserves jurisdiction over this action in order to take any further action
15 deemed necessary to enforce this judgment and to award the State judgment for any costs,
16 including attorneys fees, it incurs in the event of noncompliance by Defendants.

17 K. This Judgment is entered into voluntarily by Defendants with full knowledge and
18 understanding of the nature of the proceedings and the obligations and duties imposed upon it by
19 this Judgment consents to its entry without further notice.

20 L. This Judgment shall bind Defendants and shall be binding on any and all future
21 purchasers, merged parties, inheritors, or other successors in interest.

22 M. The acceptance of this Judgment by the State shall not be deemed approval by the
23 State of any of Defendants' advertising or business practices. Further, neither Defendants nor
24 anyone acting on their behalf shall state or imply or cause to be stated or implied that the State
25 of Arizona, the Attorney General, or any other governmental unit of the State of Arizona has
26 approved, sanctioned or authorized any practice, act, advertisement or conduct of the
Defendants.

1 N. Defendants will not participate, directly or indirectly, in any activity or form a
2 separate entity or corporation for the purpose of engaging in acts or practices in whole or in part
3 in the State of Arizona which are prohibited in this Judgment or for any other purpose which
4 would otherwise circumvent any part of this Judgment or the spirit or purposes of this Judgment.

5 O. Nothing in this Judgment shall be construed to affect any private right of action that a
6 consumer, person, entity, or by any local, state, federal or other governmental entity, may hold
7 against the Defendants.

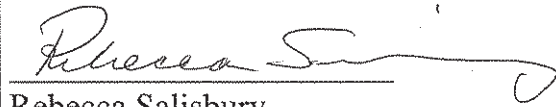
8 DATED this _____ day of _____, 201__.

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10 By _____
11 Judge of the Superior Court
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CONSENT TO JUDGMENT

APPROVED AS TO FORM AND CONTENT

THOMAS C. HORNE, Attorney General

A handwritten signature in cursive script, appearing to read "Rebecca Salisbury", written over a horizontal line.

Rebecca Salisbury
Assistant Attorney General
State of Arizona

eSignature Page 1 of 1

Filing ID: 5026446 Case Number: CV2012-017878
Original Filing ID: 5025135

Granted as Submitted



/S/ Randall Warner Date: 12/7/2012
Judicial Officer of Superior Court

Endorsement Page

Case Number: CV2012-017878

Signature Date: 12/7/2012

E-Filing ID #: 5026446

Filed Date: 12/10/2012 8:00:00 AM

Rebecca C Salisbury

David Bottner
No Address on Record

Level 10 Marketing Inc
No Address on Record