

CERTIFIED COPY

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14 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
15
16 IN AND FOR THE COUNTY OF MARICOPA

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

Case No.: CV2011-012492

19 Plaintiff,

20 vs.

CONSENT JUDGMENT

21 GARO ENTERPRISES, INC. an Arizona
22 Corporation, D/B/A TRANS-PLANT PLUS
23 and TRANS-PLANT TRANSMISSIONS;
24 GARY LUTHER and SUZANNE LUTHER,
25 husband and wife; and ROBERT BRADY and
26 MICHELLE BRADY, husband and wife,

(Assigned to the Honorable John Buttrick)

Defendants.

27 The State of Arizona, having filed a complaint alleging violations of the Arizona
28 Consumer Fraud Act, A.R.S. § 44-1521, *et seq.*; Defendants Garo Enterprises, Inc., Gary
29 Luther, Suzanne Luther, Robert Brady and Michelle Brady (collectively "Defendants") having
30 waived service of the Complaint and Summons; having been fully advised of the right to a trial
31 in this matter and, after receiving advice of counsel, having waived the same; admit that this
32 Court has jurisdiction over the subject matter and the parties for purposes of entry of this

1 Consent Judgment and acknowledge that this Court retains jurisdiction for the purpose of
2 enforcing this Consent Judgment.

3 The Defendants have agreed to a voluntary compromise of disputed claims and the State
4 of Arizona and Defendants have agreed on a basis for the settlement of these matters in dispute.
5 This Consent Judgment does not constitute an admission by Defendants or evidence of any
6 liability for any violation of the Arizona Consumer Fraud Act or of any other state or federal
7 statute, rule, regulation or other applicable law. This Consent Judgment is made without trial or
8 adjudication of any issues of fact or law or finding of liability of any kind.

9 I. PARTIES

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

13 2. Defendant Garo Enterprises, Inc. is an Arizona corporation located at 1750 E.
14 Elliot Rd. in Tempe, Arizona, that does business as a transmission rebuilding and installation
15 facility under the name of Trans-plant Plus, Trans-plant Transmissions and Trans-plant
16 Transmission Factory.

17 3. Defendant Gary Luther, a resident of Maricopa County, is the President of Garo
18 Enterprises, Inc.

19 4. Defendants Gary Luther and Suzanne Luther, husband and wife, are residents of
20 Maricopa County, State of Arizona, and at all times relevant to this action acted for the benefit
21 of their marital community. Suzanne Luther is named herein solely because of her interest in
22 the marital community of Gary Luther and Suzanne Luther.

23 5. Defendant Robert Brady, a resident of Maricopa County, is the Secretary and sole
24 Director of Garo Enterprises, Inc.

25 6. Defendants Robert Brady and Michelle Brady, husband and wife, are residents of
26 Maricopa County, State of Arizona, and at all times relevant to this action acted for the benefit

1 of their marital community. Michelle Brady is named herein solely because of her interest in
2 the marital community of Robert and Michelle Brady.

3 4 **II. ORDER**

5 7. "Effective Date" of this Consent Judgment means the date it is signed by the
6 Court.

7 8. This Consent Judgment applies to Garo Enterprises, Inc. or any successor
8 companies or businesses, including all trade names, and to the current or future officers,
9 directors, managerial or supervisory employees of Garo Enterprises, Inc., and to any other
10 employees or agents having responsibilities with respect to the subject matter of this Order, but
11 not in an individual capacity (except for the individuals named as Defendants in this Judgment).
12 This Consent Judgment applies to Gary Luther and Robert Brady as individuals and members
13 of their respective marital communities, as officers and directors of Garo Enterprises, Inc., and
14 to the extent they own or operate any other motor vehicle repair facility in the State of Arizona
15 now or in the future.

16 9. For purposes of this Consent Judgment, both the corporate and individual
17 Defendants will be referred to collectively as "Defendants," unless otherwise indicated.

18 10. Defendants are jointly and severally liable for all obligations imposed by this
19 Consent Judgment, including provisions relating to consumer restitution and payments to the
20 State of Arizona.

21 11. Defendants shall comply with the Arizona Consumer Fraud Act,
22 A.R.S. § 44-1521, *et seq.*, as it is currently written, or as amended in the future.

23 12. The following injunctive orders apply to Defendant Garo Enterprises, Inc., and
24 to individual Defendants Gary Luther, and Robert Brady to the extent they own, serve as
25
26

1 officers or directors or hold a position that makes, implements or enforces policies in any
2 automotive or transmission related business.¹

3 13. The following injunctive terms do not apply to commercial transactions, which
4 are defined as sales to a commercial entity purchasing two or more transmissions within the
5 same month.

6 14. The injunctive terms are as follows:

7 (a) Defendants will not seek or receive a core deposit.²

8 (b) Defendants will not quote prices that are conditioned on the receipt or
9 condition of a consumer's core.

10 (c) If Defendants seek to obtain a consumer's core, Defendants will offer
11 consumers a specific price before removal or receipt of the core. Defendants will
12 assume the risk that the core is not rebuildable.

13 (d) Defendants will not sell transmissions outside of the State of Arizona unless
14 Defendants agree to pay all shipping costs involved with the transaction, including
15 exchanges and returns.

16 (e) Defendants will not misrepresent to consumers that they have a certain
17 transmission in stock. If Defendants represent that a transmission is in stock and it is not
18 delivered to the consumer within two weeks of the placement of the order (regardless of
19 the form of the consumer's payment), the consumer will be entitled to cancel their order
20 and receive a full refund.

21 (f) Defendants will respond to all Better Business Bureau and Attorney General
22 complaints within two weeks of receipt.

23 ¹ The injunctive terms are not intended to prohibit the individual Defendants from serving as
24 employees, as long as they do not make, implement or enforce policies that conflict with these
25 injunctive terms.

26 ² Core is defined for the purposes of this Consent Judgment as a consumer's current or original
transmission and any part thereof.

1 (g) Defendants shall register each trade name or "DBA" they do business under
2 with the Arizona Secretary of State within 60 days of the effective date of this Consent
3 Judgment (i.e. "Transplant Plus") or the date they begin using the trade name or "DBA."
4 If Defendants' trade name or "DBA" is unavailable, Defendants will furnish proof to the
5 Office of the Attorney General that its attempted registration was rejected by the Arizona
6 Secretary of State within one week of receipt of the rejection.

7 (h) Defendants shall provide a full refund for defective transmissions returned to
8 them at the purchaser's expense within 60 days of the consumer's receipt of the
9 transmission. Defendants shall accept a professional technician's evaluation of a
10 transmission as defective when provided by the purchaser.

11 (i) Defendants shall not claim or represent in any written warranty or agreement
12 with a customer that they have the right to repossess a consumer's vehicle if, after
13 delivery of the vehicle to the consumer, a consumer does not make or attempts to reverse
14 payment.

15 (j) Defendants shall not make any oral or written statements that conflict with
16 these injunctive terms.

17 III. PAYMENTS

18 15. Defendants shall make restitution to damaged consumers in the amount of
19 \$28,355.68 and pay costs and attorney's fees in the amount of \$7,644.32, for a total payment
20 amount of \$36,000.00, according to the following schedule:

21 Schedule:

22 (a) An initial payment, in the amount of \$1,000.00 shall be due within 5 days
23 of the Effective Date.

24 (b) A second payment, in the amount of \$1,000 shall be due 30 days after the
25 first payment and every 30 days thereafter, until the total sum of \$36,000.00 is reached.
26

16. Defendants' payment to the Arizona Attorney General for attorneys' fees and costs of investigation shall be deposited into the consumer protection-consumer fraud revolving fund established in A.R.S. § 44-1531.01 and used for the purposes specified therein.

17. Restitution amounts shall be made payable to the Attorney General's Office and shall be distributed by the Attorney General's Office to those consumers who filed complaints about Defendants' business practices prior to the Effective Date of this Consent Judgment. The amount of restitution due each eligible consumer will be determined at the sole discretion of the Attorney General.

18. The Attorney General may place restitution funds within an interest bearing account. If, within 30 days of receiving the last payment, the Attorney General is unable to locate a consumer or consumers to provide restitution, any restitution amount that has not been distributed, and any interest that has accrued, shall be deposited into the consumer protection-consumer fraud revolving fund as provided in A.R.S. § 44-1531.01.

19. Should Defendants default on any payment, and further fail to cure the deficiency within five business days after having received written notice from the State of any amount past due, the full amount of \$36,000.00, less any amount previously paid, will cease to be payable as restitution or costs and attorneys' fees and become immediately due and owing as a civil penalty owed to the State. Interest on any unpaid balance shall accrue at the 10% statutory rate.

20. Defendants shall bear Plaintiff's reasonable costs, including reasonable attorneys' fees, in any successful action to enforce any provisions of this Consent Judgment.

IV. GENERAL TERMS

21. Defendants shall not represent or imply that the Attorney General, the State of Arizona, or any agency thereof has approved any of their actions in Arizona or has approved any of their past, present or future business practices in Arizona.

22. Nothing in this Consent Judgment restricts any person or entity from pursuing a private action or asserting any available right or remedy against Defendants.

1 23. This Court retains jurisdiction of this matter for the purposes of entertaining an
2 application by Plaintiff, State of Arizona, for the enforcement of this judgment.

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

9 25. This Consent Judgment is entered as a result of a compromise and settlement
10 agreement between the parties. Only the parties to this action may seek enforcement of this
11 Consent Judgment. Nothing herein is intended to create a private right of action by other
12 persons.

13 26. The State acknowledges by its execution hereof that this Consent Judgment
14 constitutes a complete settlement of its allegations against Defendants and it agrees it shall not
15 institute any additional civil action against any Defendants based on their alleged violations of
16 the Arizona Consumer Fraud Act, as described in the State's Complaint.

17 27. Notwithstanding the foregoing, the State may institute an action or proceeding to
18 enforce the terms and provisions of this Consent Judgment or to take action based on future
19 conduct by Defendants.

20 DATED this 8th day of July, 2011.

21
22
23 By 

Judge of the Superior Court

24 The foregoing instrument is a full, true
25 and correct copy of the original document.

JOHN A BUTTRICK

26 Attest JUL 12 2011, 2011

MICHAEL K. JEANES, Clerk of the
Superior Court of the State of Arizona, in
and for the County of Maricopa.

By C. CASTRO Deputy

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CONSENT TO JUDGMENT

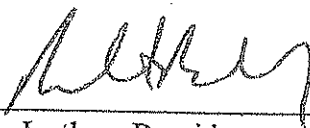
1. Defendants state that no promise of any kind or nature whatsoever was made to them to induce them to enter into this Consent Judgment and that they have entered into the Consent Judgment voluntarily and not as the result of fraud, undue influence, duress, or any other known cause to set aside this Consent Judgment.

2. Defendants have fully read and understood this Consent Judgment, understand the legal consequences involved in signing it, assert that this is the entire agreement of the parties, and that there are no other representations or agreements not stated in writing herein and no force, threats, or coercion of any kind have been used to obtain their signatures.

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

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

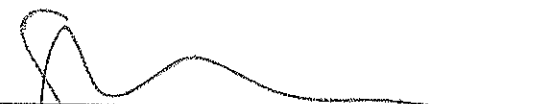
GARO ENTERPRISES, INC.



Gary Luther, President
Robert Barry, Director/Secretary

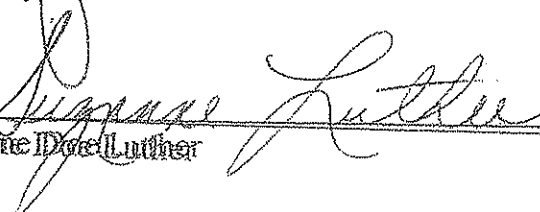
Dated: 6/30/11

INDIVIDUAL DEFENDANTS



Gary Luther

Dated: 6/29/11



Jane Doe Luther

Dated: 6/29/11

1
2 Michelle Brady
3 Michelle Brady

Dated: 4/25/11

4
5 Robert Brady
6 Robert Brady

Dated: 4/25/11

7
8
9 APPROVED AS TO FORM AND CONTENT

10
11
12 THOMAS C. HORNE, Attorney General

VENABLE CAMPILLO LOGAN &
MEANEY, P.C.,

13
14 Rebecca Salisbury
15 Rebecca Salisbury
16 Assistant Attorney General
State of Arizona

John Mascari
Attorney for Garo Enterprises, Inc.

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