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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 STATE OF ARIZONA, *ex rel.* TERRY
GODDARD, Attorney General,

11 Plaintiff,

12 vs.

13 AVONDALE AUTOMOTIVE, INC., an
14 Arizona corporation,

15 Defendant.

Case No.: CV 2010-012277

CONSENT JUDGMENT

(Assigned to the Honorable Dean Fink)

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.*; Defendant, Avondale Automotive, Inc., having
18 waived formal service of summons and said Complaint; having been fully advised of the right to
19 a trial in this matter and, after receiving advice of counsel, having waived the same; admits that
20 this Court has jurisdiction over the subject matter and the parties for purposes of entry of this
21 Consent Judgment and acknowledges that this Court retains jurisdiction for the purpose of
22 enforcing this Consent Judgment.

23 1. The Defendant has agreed to a voluntary compromise of disputed claims and the
24 State of Arizona and Defendant have agreed on a basis for the settlement of these matters in
25 dispute.
26

1 2. This Consent Judgment does not constitute an admission by Defendant or
2 evidence of any liability for any violation of the Act or of any other state or federal statute, rule,
3 regulation or other applicable law. This Consent Judgment is made without trial or adjudication
4 of any issues of fact or law or finding of liability of any kind.

5 I. **PARTIES**

6 1. Plaintiff is the State of Arizona, *ex rel.* Terry Goddard, the Attorney General of
7 Arizona, who is authorized to bring this action under the Consumer Fraud Act, A.R.S. § 44-
8 1521, *et seq.*, (“the Act”).

9 2. Defendant is Avondale Automotive, Inc., (“Avondale Automotive”), an Arizona
10 corporation doing business as a motor vehicle dealer in Avondale, Arizona.

11 II. **ORDER**

12 A. **Definitions**

13 For purposes of this Consent Judgment, the following definitions shall apply:

14 1. “Advertisement” (including the terms “advertise” and “advertising”) means any
15 oral, written, graphic, or pictorial statement made that concerns the offering of motor vehicles
16 for sale or lease. “Advertisement” includes, but is not limited to, any oral or written statement
17 or representation made for the purpose of inducing, soliciting, or encouraging consumers in the
18 State of Arizona to purchase goods or services, whether made in a newspaper, magazine, or
19 other publication; on radio or television; via the Internet or other computer networks, including
20 statements or representation appearing on Defendant’s web sites or on the web sites of other
21 companies such as AutoTrader.com; in any notice, handbill, sign, billboard, banner, poster,
22 display, circular, pamphlet, letter, or other printed material; contained in any window sticker or
23 price tag. With respect to the price of a motor vehicle, the price posted on the vehicle is
24 considered an “advertisement” (in addition to vehicle prices posted on the Internet or otherwise
25 published in the media). “Advertisement” does not, however, include statements made solely
26 for the purposes of obtaining financing or vehicle titles.

1 2. “Clear and conspicuous” (including the terms “clearly” and “conspicuously”)
2 means that the statement, representation, or term is stated in words numbers and symbols that
3 are reasonably understandable by the person(s) to whom it is directed. If a statement,
4 representation or term in an advertisement (including any statement, representation or term set
5 forth in a footnote) purports to clarify, modify or explain any other statement, representation or
6 term in the same or another advertisement, then the statement is “clear and conspicuous” if (1) it
7 does not contradict such other statement, representation or term; (2) it is situated in the
8 advertisement in a manner which makes its relation to the statement, representation or term it
9 clarifies, modifies or explains reasonably apparent and (3) is printed in large enough type so that
10 it is readily noticeable (10-point type or larger satisfies this requirement per se).

11 3. “Effective Date” of this Consent Judgment means the date it is signed by the
12 Court.

13 4. “Sale” includes the sale or lease of a motor vehicle.

14 **B. Application**

15 1. This Consent Judgment applies to Avondale Automotive, any successor entity or
16 entities, whether by acquisition, merger or otherwise, to the extent they are operating a motor
17 vehicle dealership in Arizona, and (during such time as such individuals are affiliated with
18 Avondale Automotive) to Avondale Automotive’s current or future officers, directors,
19 managerial or supervisory employees, and to any other employees or agents having
20 responsibilities with respect to the subject matter of this Order, but not in any individual
21 capacity.

22 **C. Injunction**

23 1. Avondale Automotive shall comply with the Arizona Consumer Fraud Act, A.R.S.
24 § 44-1521, *et seq.*, as it is currently written, or as it is amended in the future.

25 2. Avondale Automotive shall not engage in any false or deceptive advertising.
26 Avondale Automotive shall clearly and conspicuously disclose all material facts, terms and

1 conditions relating to offers conveyed in advertisements.

2 3. Avondale Automotive shall not sell any vehicles that have been specifically
3 identified (*e.g.*, by stock number or vehicle identification number) in an advertisement for sale
4 for a price higher than the lowest advertised price in effect at the time of the sale, without
5 expressly limiting any such advertised offers to specific consumers or groups of consumers (*e.g.*,
6 former customers) and, in that event, Avondale Automotive is not bound to honor the terms of
7 the advertised offers to other persons. Avondale Automotive shall clearly and conspicuously
8 disclose, orally or in writing, when negative equity (if any) in the customer's trade-in vehicle
9 has been added to the amount financed of the vehicle being purchased in compliance with
10 applicable state and federal laws.

11 4. Avondale Automotive shall not misrepresent the availability for purchase of any
12 vehicle or category of vehicles that were subject to an advertised offer.

13 5. Avondale Automotive shall not offer for sale through any advertisement any
14 vehicle(s) specifically identified (*e.g.*, by stock number or vehicle identification number) in the
15 advertisement which are not in Avondale Automotive's inventory at the time the advertisement
16 is initially published, broadcast or otherwise disseminated, or which Avondale Automotive
17 cannot otherwise obtain for sale during the period the advertised price or other terms are
18 effective. If Avondale Automotive has sold an advertised vehicle after the advertisement is first
19 published but before the expiration of the advertised offer or terms, Avondale Automotive shall
20 inform any customers inquiring about the advertised vehicle (*e.g.*, by telephone) that it has been
21 sold. To the extent practicable in light of the medium in which the advertisement was published,
22 Avondale Automotive shall update its advertisements within a reasonable time when advertised
23 vehicles are sold or otherwise become unavailable for sale.

24 6. Avondale Automotive shall include in the price of any advertised vehicle all dealer
25 added options that have been installed on the vehicle or that Avondale Automotive intends to
26 require a consumer to purchase as part of the purchase of the advertised vehicle.

1 7. In any discussion or negotiation of price with a consumer, Avondale Automotive
2 shall include in the price of the vehicle all dealer added options that have been installed on the
3 vehicle or that Avondale Automotive intends to require the consumer to purchase as part of the
4 purchase of the advertised vehicle. In any such discussion or negotiation, Avondale Automotive
5 shall not state or imply that a customer is required to purchase any dealer added options that
6 have not been included as part of an advertised price.

7 8. If a dealer added product that Avondale Automotive offers as an additional
8 optional purchase is pre-printed on any order form or sales contract, Avondale Automotive shall
9 include in upper case bold letters the word "OPTIONAL" next to it in at least the same font size
10 as the description of the product.

11 9. Avondale Automotive shall not advertise, expressly or by implication, that a price,
12 financing arrangement, trade-in price or other component of a sale transaction is more
13 advantageous than is normally available to consumers, unless Avondale Automotive can
14 substantiate that this is true.

15 10. Avondale Automotive shall not advertise that it is offering an exceptionally high
16 trade-in price, such as a guaranteed trade-in or 110 or 120 percent of Kelley Blue Book, unless
17 (1) all terms and conditions of the offer are clearly and conspicuously disclosed, (2) all terms
18 and conditions that enter into the calculation of the amount of trade-in are objectively
19 quantifiable by reference to standards readily accessible to consumers, and (3) Avondale
20 Automotive can substantiate that the price of any vehicle purchased with the trade-in is not
21 directly or indirectly adjusted to any extent to offset the increased trade-in price.

22 11. In all advertisements that contain an offer regarding motor vehicle price, financing
23 or options, Avondale Automotive shall specifically identify the vehicles (*i.e.*, by stock number)
24 if the offer is applicable to fewer than five (5) vehicles. If the offer is applicable to five or more
25 vehicles, but not all vehicles available for sale, the advertisement shall clearly and
26 conspicuously disclose the category(ies) of vehicles to which the offer applies. If the offer does

1 not apply to all of the vehicles available for sale by Avondale Automotive within any particular
2 category(ies), then the advertisement shall clearly and conspicuously disclose the minimum
3 number of available vehicles in each category to which the offer does apply. For the purpose of
4 this requirement, it shall be sufficient if the advertisement states that there are or will be (at the
5 time the advertisement is published or broadcast) "at least" a certain number of vehicles
6 available in each category to which the offer applies, or other similar words or phrases.

7 12. Avondale Automotive shall not advertise that a certain number of vehicles are
8 available for sale unless true as of the time the advertisement is finally prepared and approved
9 for dissemination.

10 13. If Avondale Automotive features the existence of a manufacturer's rebate (which
11 is defined as a discount and price reduction on all vehicles of a certain classification from the
12 vehicle's manufacturer) in an advertisement it shall identify the rebate as such, and Avondale
13 Automotive shall not misrepresent an available manufacturer's rebate as a coupon, voucher,
14 check or other cash incentive offered specifically by Avondale Automotive.

15 14. Avondale Automotive shall not include in an advertisement a check, voucher,
16 coupon, or similar incentive, whether the incentive represents a discount from a purchase price,
17 an increase in trade-in value, or advantageous financing arrangements, unless the incentive is for
18 a specific amount or for a specific range of amounts and Avondale Automotive can substantiate
19 that the price of any vehicle purchased with the incentive is not directly or indirectly adjusted to
20 any extent to offset the amount of the incentive.

21 15. Avondale Automotive shall not advertise or offer for sale any used vehicle using
22 the MSRP as a comparative price, reference price or advertise an amount or percentage discount
23 for a used vehicle based on MSRP.

24 16. Avondale Automotive shall not represent in an advertisement that consumers have
25 won or are eligible to win or receive a prize consisting of the right to obtain or purchase goods
26 or services for a special price unless Avondale Automotive can substantiate that the represented

1 price reduction is a bona fide reduction from the price that such goods or services are normally
2 sold to the public.

3 17. Avondale Automotive shall not state or imply in any advertisement that the
4 persons to whom the advertisement is directed have been specially selected for a discount, credit
5 program, special deal or offer, unique access to inventory or any other type of special discount
6 or benefit not available to others unless (a) they have been specially selected on the basis of
7 specific criteria other than zip code or geographic location (b) the criteria by which they have
8 been selected is disclosed in the advertisement (c) the deal is not available to the general public
9 and (d) the specific terms and conditions of the offer are fully, clearly and conspicuously
10 disclosed and provided to consumers in accordance with the disclosed terms.

11 18. Avondale Automotive shall not advertise expressly or by implication that vehicles
12 are part of a specially obtained inventory for an advertised sale, will be more heavily discounted,
13 or are of higher quality or value because they are lease end turn-ins, corporate vehicles, previous
14 daily rentals, prior bank assets, repossessed, bank owned, bought at auction or fleet cars, unless
15 true and unless Avondale Automotive can substantiate these claims.

16 19. Avondale Automotive shall not use terms in advertising that imply that the sale is
17 an event of urgent status, contains specially obtained inventory for the sale, or otherwise state
18 that Avondale Automotive has a unique incentive or ability to sell more cars or provide better
19 prices or terms than usual, unless Avondale Automotive can substantiate these claims and any
20 such advertisement discloses the specific incentives, such as price reduction or special financing
21 terms, and the specific vehicles or categories of vehicles to which the claimed special status and
22 the incentives apply.

23 20. Avondale shall not use words such as "emergency," "public notice," "liquidation,"
24 or other terms that imply that Avondale is offering vehicles for sale to the public other than in
25 the normal course of its business as a motor vehicle dealer.

26 21. Avondale Automotive shall not advertise that all vehicles must be sold regardless

1 of profit or use language of similar import, unless Avondale can substantiate its representation.

2 22. Avondale Automotive shall not state in an advertisement "we will pay off your
3 trade no matter what you owe" or use words of similar import, unless the advertisement also
4 discloses in close proximity and in at least the same size type that any negative equity in the
5 trade-in vehicle will be added to the amount financed of the vehicle being purchased. If the
6 statement is made in the audio portion of a radio or television advertisement the disclosure shall
7 also be in the audio portion of the advertisement and shall be made immediately after the
8 statement it clarifies in a manner that is equally easy to understand.

9 23. In any transaction involving a trade-in vehicle with negative equity, Avondale
10 Automotive shall clearly and conspicuously disclose to the customer, either orally or in writing,
11 how the negative equity has been factored into the transaction.

12 24. In the sale of all new vehicles that have been subject to a previous sale, Avondale
13 Automotive shall comply with the requirements of A.R.S. § 28-4422 and applicable Department
14 of Transportation rules.

15 25. Within thirty (30) days of the Effective Date of this Order, Avondale Automotive
16 shall prepare a summary of the injunctive terms of this Order for all persons employed by or
17 contracting with Avondale Automotive and/or any other person or entity who will be
18 responsible for complying with the Order, including but not limited to third party marketing
19 companies and advertising web sites.

20 26. Within forty-five (45) days of the Effective Date, Avondale Automotive shall
21 provide a copy of the summary to the Attorney General.

22 27. Within seventy-five (75) days of the Effective Date, Avondale Automotive shall
23 have provided an initial training to all managers and sales staff concerning the requirements of
24 this Consent Judgment and how Avondale Automotive will comply with it.

25 28. Within ninety (90) days of the Effective Date, Avondale Automotive shall adopt
26 the policies and procedures necessary to implement this Order and shall provide documentation

1 of such compliance to the Attorney General. Within ninety (90) days of the Effective Date,
2 Avondale Automotive will also provide documentation of its initial training to the Attorney
3 General.

4 29. For a period of five (5) years from the Effective Date of this Consent Judgment,
5 Defendants shall provide regular (at least annual) training to all relevant staff, including newly
6 hired and re-hired employees.

7 30. Failure to comply with this Consent Judgment shall subject Avondale Automotive
8 managers and employees who are personally responsible for the failure to comply to discipline,
9 up to and including termination.

10 31. Avondale Automotive shall retain for one (1) year from the Effective Date of this
11 Consent Judgment copies of newspaper, radio, television, and internet advertisements and copies
12 of all flyers or other advertisements mailed directly to Arizona consumers. Avondale
13 Automotive shall provide copies of any such documents to the Attorney General within
14 fifteen (15) days of a written request.

15 32. Avondale Automotive shall not represent or imply that the Attorney General, the
16 State of Arizona, or any agency thereof has approved any of their actions in Arizona or has
17 approved any of their past, present or future business practices in Arizona.

18 **D. Payment**

19 1. Without admitting any liability and solely to resolve this matter without the fees,
20 expenses, and risks of litigation, Avondale Automotive shall pay to the Arizona Attorney
21 General the amount of one hundred fifty thousand dollars, (\$150,000.00), which shall be
22 deposited in the fund created by A.R.S. § 44-1531.01 and used for the purposes specified therein.

23 2. The amount of costs and fees in paragraph D(1) payable by Avondale Automotive
24 shall, however, be considered satisfied in full if Avondale Automotive makes payments to the
25 State of Arizona, totaling one hundred thousand dollars, (\$100,000.00) according to the
26 following schedule, while further complying with the terms of this Consent Judgment.

1 Schedule:

2 (a) An initial payment, in the amount of five thousand dollars (\$5,000.00) shall
3 be due on or before May 1, 2010.

4 (b) Additional payments of five thousand dollars (\$5,000.00) shall be due on or before
5 the first day of each month with the last payment due on or before December 1, 2011, when the
6 total sum of one hundred thousand dollars (\$100,000.000) will be reached.

7 3. Should Avondale Automotive default on any payment, and further fail to cure the
8 deficiency within five business days after having received written notice from the State of any
9 amount past due, the full amount of one hundred fifty thousand dollars (\$150,000.00), less any
10 amount previously paid, will become immediately due and owing. In the event of an uncured
11 default, interest on any unpaid balance shall accrue at the statutory rate. No interest shall accrue
12 if payments are made timely.

13 **E. General Terms**

14 1. The State acknowledges by its execution hereof that this Consent Judgment
15 constitutes a complete settlement of its allegations against Avondale Automotive under the
16 Arizona Consumer Fraud Act. The State further agrees that it shall not institute any additional
17 civil action against Avondale Automotive based upon Avondale Automotive's advertisements
18 and/or business practices related to the terms or conditions of the sale or lease of any motor
19 vehicles by Avondale Automotive, including any equipment, options, features or products
20 purchased by the customer, or related to the transfer of any customer trade-ins to Avondale
21 Automotive, or related to any advertised services, that the State has asserted or could have
22 asserted prior to the Effective Date of this Consent Judgment in its own right or, in accordance
23 with A.R.S. § 44-1528(A)(2), on behalf of any consumer.

24 2. Notwithstanding the foregoing, the State may institute an action or proceeding to
25 enforce the terms and provisions of this Consent Judgment or to take action based on future
26 conduct by Avondale Automotive. The Attorney General, however, affirms there are no current

1 investigations against Avondale Automotive for violations of the Act.

2 3. Nothing in this Consent Judgment restricts any person or entity from pursuing a
3 private action or asserting any available right or remedy against Avondale Automotive.

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

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

12 6. Before initiating any proceeding to enforce this Consent Judgment the Attorney
13 General shall provide at least thirty (30) days written notice to Avondale Automotive of its
14 intent to initiate such proceedings, and shall give Avondale Automotive a reasonable
15 opportunity to cure any alleged violation. Whenever possible, the parties shall seek to resolve
16 an alleged violation of this Consent Judgment by discussion. In addition, in determining whether
17 to enforce this Consent Judgment or to seek an order for monetary, civil contempt, or any other
18 relief or sanction, the Attorney General shall give good faith consideration to (1) the facts and
19 circumstances which caused the alleged violation to occur and (2) the extent to which Avondale
20 Automotive has taken corrective action designed to cause the claimed violation to be cured and
21 to prevent future occurrences.

22 7. If the Court finds that Avondale Automotive has violated the terms of this Consent
23 Judgment, in addition to any other penalties and remedies provided by law, the full amount of
24 the one hundred fifty thousand dollars (\$150,000.00) less any amount previously paid, shall
25 become immediately due and owing. Interest on any unpaid balance shall accrue at the statutory
26 rate.

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CONSENT TO JUDGMENT

1. Avondale Automotive, Inc., states that, except as expressly provided therein, no promise of any kind or nature whatsoever was made to it to induce it to enter into this Consent Judgment and that it has 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.

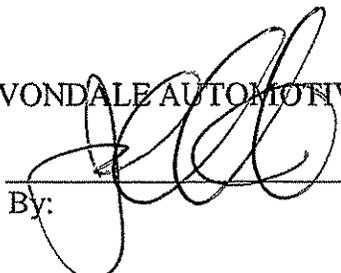
2. Avondale Automotive, Inc., has fully read and understood this Consent Judgment, understands the legal consequences involved in signing it, asserts that this is the entire agreement of the parties, and that there are no other representations or agreements not stated in writing herein.

3. Avondale Automotive, Inc., acknowledges 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. Avondale Automotive, Inc., represents and warrants that the person signing below on its behalf is duly appointed and authorized to do so.

DATED this 27th day of April, 2010.

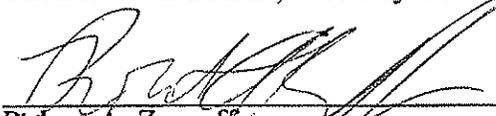
AVONDALE AUTOMOTIVE, INC.

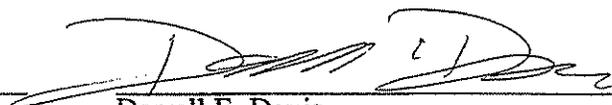
By: 

APPROVED AS TO FORM AND CONTENT

TERRY GODDARD, Attorney General

DARRELL E. DAVIS


Robert A. Zumoff
Assistant Attorney General
Attorneys for the State of Arizona


Darrell E. Davis
Attorney for Avondale Automotive