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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.* THOMAS C.  
11 HORNE, Attorney General,

12 Plaintiff,

13 vs.

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

16 Defendant.

Case No.: CV2011-018783

**COMPLAINT**

18  
19 Plaintiff, State of Arizona, *ex rel.* Thomas C. Horne, Attorney General, alleges as  
20 follows:

21 **I. JURISDICTION AND VENUE**

22 1. This action is brought pursuant to the Arizona Consumer Fraud Act,  
23 A.R.S. § 44-1521 *et seq.*, to obtain injunctive relief, civil penalties, attorneys' fees and  
24 costs, investigative expenses and other relief to prevent the unlawful acts and practices alleged  
25 in this Complaint and to remedy the consequences of such practices.  
26

1           2.     Venue is proper in Maricopa County, Arizona.

2           3.     The Superior Court has jurisdiction to enter appropriate orders both prior to and  
3 following a determination of liability pursuant to A.R.S. § 44-1528.

4 **II. PARTIES**

5           4.     Plaintiff is the State of Arizona, *ex rel.* Thomas C. Horne (“the State”), who is  
6 authorized to bring this action under the Arizona Consumer Fraud Act, A.R.S. § 44-1521 *et*  
7 *seq.*

8           5.     Defendant, ECONO-LUBE N’TUNE, INC., is a Delaware corporation engaged  
9 in the business of automotive repair, and the former owner of the ECONO-LUBE N’TUNE  
10 business, dba Meineke Car Care Center #4179 and Econo-Lube N’Tune #4179, located at  
11 6829 N. 7th Street, Phoenix, Arizona.

12          6.     When reference is made to “ECONO-LUBE N’TUNE, INC.” it refers to the  
13 above named Defendant and to the actions of its owners, officers, managers, employees,  
14 agents and independent contractors.

15 **III. GENERAL ALLEGATIONS**

16          7.     At all times relevant to this Complaint, Defendant ECONO LUBE N’TUNE  
17 INC., a Delaware corporation, provided motor vehicle repairs and related goods and services  
18 within the United States.

19          8.     SCOTT MICHAEL BRAGG, was the store manager of Defendant ECONO-  
20 LUBE N’TUNE, INC.’s automotive repair business doing business as Econo-Lube N’Tune  
21 #4179 and Meineke Car Care Center #4179, located at 6829 N. 7th Street, Phoenix, Arizona.

22          9.     SCOTT MICHAEL BRAGG, a twice-convicted felon, had been transferred to  
23 the Phoenix location by Defendant ECONO LUBE N’TUNE, INC. from a Meineke store  
24 located in Meridian, Idaho after a press story by Boise Idaho television station KBOI 2’s  
25 “Truth Squad” exposed complaints about excessive charges and unfair business practices.

26 <http://www.kboi2.com/news/local/114468789.html>

1           10.    EDUARDO A. GASTELUM was a technician employed at Defendant ECONO-  
2 LUBE N'TUNE, INC.'s automotive repair business doing business as Meineke Car Care  
3 Center #4179 and Econo-Lube N'Tune #4179, at 6829 N. 7th Street, Phoenix, Arizona.

4           11.    Consumer complaints about Defendant ECONO LUBE N'TUNE INC.'s  
5 automotive repair business known as the Meineke Car Care Center #4179 and Econo-Lube  
6 N'Tune #4179, located at 6829 N. 7th Street, Phoenix, Arizona and its manager, SCOTT  
7 MICHAEL BRAGG, caused the State to commence an undercover investigation.

8           12.    On July 12, 2011, an automotive expert retained by the State inspected an  
9 undercover vehicle owned by the State and verified that the vehicle's air conditioning system  
10 was fully functioning. The State's automotive expert then placed a nonfunctioning fuse in a  
11 location that would affect the air conditioning system's operation.

12           13.    On July 13, 2011, an undercover operator with the Arizona Attorney General's  
13 Office, using a fictitious name, took the State's undercover vehicle to Defendant ECONO  
14 LUBE N'TUNE, INC.'s automotive repair business known as Meineke Car Care Center #4179  
15 and Econo-Lube N'Tune #4179, located at 6829 N. 7th Street, Phoenix, Arizona.

16           14.    The operator met with Defendant ECONO LUBE N'TUNE, INC.'s store  
17 manager, SCOTT MICHAEL BRAGG, and informed him that the air conditioner was blowing  
18 hot air. SCOTT MICHAEL BRAGG offered a free check of the vehicle's air conditioning  
19 system.

20           15.    The State's undercover vehicle was equipped with a video recording device that  
21 recorded SCOTT MICHAEL BRAGG examining the vehicle, detecting the defective fuse,  
22 testing the air conditioning system with a new fuse, and then reinstalling the defective fuse in  
23 the undercover vehicle.

24           16.    At approximately 11:59 a.m. SCOTT MICHAEL BRAGG informed the  
25 undercover operator that a coil within the compressor was bad and the air compressor needed  
26 to be replaced. SCOTT MICHAEL BRAGG stated that when the internal coil or magnets go

1 bad then you need a new compressor.

2 17. SCOTT MICHAEL BRAGG's statement was deceptive because SCOTT  
3 MICHAEL BRAGG knew that a coil within the compressor was not bad, the air compressor  
4 did not need to be replaced and the air conditioning system could be fixed by replacing the  
5 nonfunctioning fuse.

6 18. SCOTT MICHAEL BRAGG gave the undercover operator an estimate of \$850-  
7 \$950 to replace the compressor, the dryer, and the expansion valve. SCOTT MICHAEL  
8 BRAGG said he could replace only the compressor for around \$650.00. SCOTT MICHAEL  
9 BRAGG said he could do it today for \$400.00.

10 19. SCOTT MICHAEL BRAGG gave the undercover operator a written estimate in  
11 the amount of \$650.00 to "replace defective ac compressor."

12 20. After receiving the estimate on July 13, 2011, the undercover operator returned  
13 the vehicle to the State's automotive expert who examined the undercover vehicle and  
14 determined that the nonfunctioning fuse remained in the undercover vehicle. The undercover  
15 vehicle remained in secure storage at the State's automotive expert's facility until July 19,  
16 2011.

17 21. On July 19, 2011, the undercover operator returned to Defendant ECONO LUBE  
18 N'TUNE, INC.'s automotive repair business known as as Meineke Car Care Center #4179 and  
19 Econo-Lube N'Tune #4179, located at 6829 N. 7th Street, Phoenix, Arizona.

20 22. On July 19, 2011, EDUARDO A. GASTELUM, was a technician employed at  
21 ECONO LUBE N'TUNE, INC.'s automotive repair business known as Meineke Car Care  
22 Center #4179 and Econo-Lube N'Tune #4179, located at 6829 N. 7<sup>th</sup> Street, Phoenix, Arizona.

23 23. The undercover operator met with EDUARDO A. GASTELUM who identified  
24 himself as the shop manager. The undercover operator informed EDUARDO A. GASTELUM  
25 that he had a written estimate and SCOTT MICHAEL BRAGG was going to work with him  
26 on an air conditioning compressor. EDUARDO A. GASTELUM said he would take a look at

1 the operator's vehicle.

2 24. The State's undercover vehicle was equipped with a video recording device that  
3 recorded EDUARDO A. GASTELUM examining the undercover vehicle with a flashlight on  
4 the ground and while on a lift. The undercover vehicle was not connected to a machine or  
5 started up.

6 25. EDUARDO A. GASTELUM escorted the undercover operator into the shop  
7 area where the undercover vehicle was located and stated that the compressor was bad and the  
8 high line with an expansion valve needed to be replaced also. EDUARDO A. GASTELUM  
9 stated that they had checked the system again using a machine and that he had started up the  
10 vehicle and there was power going to the compressor.

11 26. EDUARDO A. GASTELUM's statement was deceptive because EDUARDO  
12 A. GASTELUM did not know if the compressor was bad, had not checked the system again  
13 using a machine, had not started up the vehicle and had not checked that power was going to  
14 the compressor.

15 27. The State's undercover operator agreed with EDUARDO A. GASTELUM to  
16 have the compressor replaced for a price of \$650.00 "out the door, no tax."

17 28. The State's undercover vehicle was equipped with a video recording device that  
18 recorded EDUARDO A. GASTELUM and a second technician replacing the air conditioning  
19 compressor. After the replacement the second technician detected the nonfunctioning fuse.  
20 Defendant ECONO LUBE N'TUNE, INC.'s second technician then replaced the  
21 nonfunctioning fuse.

22 29. On July 19, 2011, the State's undercover operator returned to Defendant  
23 ECONO LUBE N'TUNE INC.'s automotive repair business known as Meineke Car Care  
24 Center #4179 and Econo-Lube N'Tune #4179, located at 6829 N. 7th Street, Phoenix,  
25 Arizona. The operator retrieved the undercover vehicle and paid the bill in the amount of  
26 \$726.26. The new fuse was not listed or charged for on the invoice.

1           30. Defendant ECONO LUBE N'TUNE, INC. and its agents performed a deceptive  
2 act by failing to inform the State's undercover operator that they had discovered and replaced a  
3 defective fuse, that they had replaced the compressor unnecessarily, and by accepting full  
4 payment for an unnecessary repair.

5           31. On July 19, 2011, the State's undercover operator returned the vehicle to the  
6 State's automotive expert who confirmed that the air conditioning compressor, related  
7 accessories and the nonfunctioning fuse had been replaced.

8 **IV. VIOLATIONS OF THE CONSUMER FRAUD ACT**

9           32. The State realleges and incorporates by reference the allegations of Paragraphs  
10 11 to 31 of this Complaint.

11           33. As alleged above, in the conduct of their business, the provision of automobile  
12 repair services and related goods, Defendant used deception, deceptive acts or practices, fraud,  
13 false pretense, false promise, misrepresentation or concealment, and suppression or omission  
14 of material facts with intent that others rely upon such concealment, suppression or omission,  
15 in connection with the sale and advertisement or merchandise, in violation of the Arizona  
16 Consumer Fraud Act, §§ 44-1522 thru 1574.

17 **V. RELIEF REQUESTED**

18           WHEREFORE, the State respectfully requests that the Court:

19           1. Prohibit Defendant from violating the Consumer Fraud Act, A.R.S. § 44-1521 *et*  
20 *seq.*

21           2. Issue a permanent injunction, enjoining and restraining Defendant ECONO-  
22 LUBE N'TUNE, INC. and its officers, agents, servants, employees and attorneys and all  
23 persons in active concert or participation with them, directly or indirectly, from engaging in  
24 the course of conduct alleged in violation of A.R.S. § 44-1522(A), including, without  
25 limitation:

1           A. Willfully departing from or disregarding accepted trade standards for  
2 goods and workmanlike repair;

3           B. Representing that a part, replacement, or repair service is needed when it  
4 is not;

5           C. Engaging in the repair or servicing of motor vehicles unless Defendant  
6 maintains a program that is reasonably calculated to prevent misrepresentations and  
7 unfair or deceptive practices in connection with the repair or servicing of a vehicle by  
8 Defendant, their agents or employees. As part of such program, Defendant, at a  
9 minimum, shall:

10                   (1) instruct its Agents not to engage in, and prohibit their Agents  
11 from engaging in, the deceptive practices described in this Complaint; and

12                   (2) provide all senior management employees, officers, directors,  
13 Regional Managers, Center Managers and those who write or prepare repair  
14 orders within Arizona with a copy of the injunctive relief obtained in this case;

15           3. Order Defendant to make restitution to the State.

16           4. Order Defendant to pay the State of Arizona \$10,000 per each willful violation  
17 of the Consumer Fraud Act pursuant to A.R.S. § 44-1531.

18           5. Order Defendant to pay the costs of investigation and reasonable attorneys' fees  
19 pursuant to A.R.S. § 44-1534

20           6. Order such other and further relief as the Court may deem just and proper.

21           RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of October, 2011.

22                                   THOMAS C. HORNE  
23                                   Attorney General

24                                     
25                                   Rebecca C. Salisbury  
26                                   Assistant Attorney General  
                                      Attorneys for Plaintiff