

1 MARK BRNOVICH
 ATTORNEY GENERAL
 2 Firm State Bar No. 14000
 ALYSE C. MEISLIK
 3 ASSISTANT ATTORNEY GENERAL
 State Bar No. 024052
 4 Office of the Attorney General
 1275 West Washington Street
 5 Phoenix, Arizona 85007
 Telephone: (602) 542-3702
 6 Facsimile: (602) 542-4377
 consumer@azag.gov
 7 Attorneys for Plaintiff
 State of Arizona
 8

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

9
 10
 11 STATE OF ARIZONA, *ex rel.* MARK
 BRNOVICH, Attorney General,

Case No: CV2015-004021

12 Plaintiff,

CONSENT JUDGMENT

13 vs.

(Assigned to the Hon. Joshua Rogers)

14 FRONT LINE AUTO AUCTION, LLC, d/b/a
 UNCLE JOE'S AUTO SALES, a/k/a UNCLE
 15 JOE'S AUTO CONSIGNMENT SHOP, an
 Arizona limited liability company; GINA
 16 COLOMBO and JOSEPH CARECCIA, a/k/a
 JOSEPH COLOMBO, husband and wife,
 17

18 Defendants.

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 20 Plaintiff State of Arizona *ex rel.* Mark Brnovich, the Attorney General (the "State"),
 21 filed a complaint alleging violations of the Arizona Consumer Fraud Act, Ariz. Rev. Stat.
 22 ("A.R.S.") §§ 44-1521 to 44-1534, against defendants Front Line Auto Auction, LLC, d/b/a
 23 Uncle Joe's Auto Sales, a/k/a Uncle Joe's Auto Consignment Shop, Gina Colombo, and Joseph
 24 Colombo, f/k/a Joseph Careccia (collectively "Defendants"). After being fully advised of their
 25 right to a trial in this matter, Defendants have waived their right to trial and have admitted that
 26 this Court has jurisdiction over the subject matter and the parties for the purposes of entry and

1 enforcement of this Consent Judgment. Defendants stipulate that the Court may enter the
2 following Findings of Fact, Conclusions of Law, and Judgment.

3 **I. FINDINGS OF FACT**

4 **A. Parties**

5 1. Plaintiff is the State of Arizona, ex rel. Mark Brnovich, Attorney General, who is
6 authorized to bring this action under the Arizona Consumer Fraud Act, A.R.S. §§ 44-1521 to
7 44-1534.

8 2. Defendant Front Line Auto Auction, LLC, d/b/a Uncle Joe's Auto Sales, a/k/a
9 Uncle Joe's Auto Consignment Shop, ("Uncle Joe's") is an Arizona limited liability company
10 that incorporated in Arizona in December 2012, and began operating in February 2014, as an
11 Arizona-licensed used motor vehicle dealer at 2520 East Bell Road in Phoenix. In February
12 2015, Defendant Uncle Joe's stipulated to surrender its motor vehicle dealer license with the
13 Arizona Department of Transportation. Defendant Uncle Joe's also has been licensed by the
14 Arizona Department of Financial Institutions as a motor vehicle dealer and a sales finance
15 company since February 2014.

16 3. Defendant Gina Colombo, an Arizona resident, was the sole owner, member, and
17 statutory agent of Defendant Uncle Joe's. At all times material to the Complaint filed on
18 March 26, 2015, Defendant Gina Colombo, with actual and/or constructive knowledge,
19 approved, endorsed, directed, ratified, controlled, or otherwise participated in the acts and
20 practices of Uncle Joe's. As such, Defendant Gina Colombo is responsible for the illegal acts,
21 practices, omissions, and misrepresentations of Defendant Uncle Joe's, including those
22 conducted by employees with or without her knowledge.

23 4. Defendant Joseph Colombo, an Arizona resident, was the manager at Defendant
24 Uncle Joe's and directed, managed, and controlled the affairs of Defendant Uncle's Joe's. As
25 such, Defendant Joseph Colombo is responsible for the acts, practices, omissions, and
26 misrepresentations of Defendant Uncle Joe's.

1 23. For example, Defendants charged most consumers for “Title,” in amounts ranging
2 from fifty dollars (\$50) to as high as four hundred ninety-five dollars (\$495), despite the fact
3 that the cost of obtaining title for all motor vehicles was always four dollars (\$4).

4 24. Defendants also charged most consumers for “Registration,” in amounts ranging
5 from fifty dollars (\$50) to as high as five hundred fifty dollars (\$550). Defendants cannot
6 substantiate that they actually paid fees to public officials for “Registration” in the amounts
7 they charged consumers.

8 25. Defendants charged many consumers for “Filing,” in amounts ranging from
9 eleven dollars (\$11) to as high as six hundred ninety-five dollars (\$695). Defendants cannot
10 substantiate that they actually paid fees to public officials for “Filing” in the amounts they
11 charged consumers.

12 26. Defendants charged some consumers for “Tag,” in amounts ranging from thirteen
13 dollars and fifty cents (\$13.50) to as high as five hundred dollars (\$500); “Weight,” in amounts
14 ranging from fifty dollars (\$50) to as high as five hundred dollars (\$500), and/or “Postage,” in
15 amounts ranging from fifty dollars (\$50) to as high as five hundred dollars (\$500). Defendants
16 cannot substantiate that they paid these fees to public officials for “Tag,” “Weight,” and
17 “Postage” in the amounts they charged consumers, if Defendants paid these fees at all.

18 27. Defendants also charged some consumers fees for “Other,” in amounts ranging
19 from thirteen dollars and fifty cents (\$13.50) to as high as nine hundred ninety-five dollars
20 (\$995), without disclosing the nature of the fee and to whom the fee was paid.

21 28. In addition, Defendants charged several consumers who paid cash for motor
22 vehicles a “lender processing fee,” in amounts ranging from sixty-three dollars and fifty cents
23 (\$63.50) to as high as seven hundred ninety-five dollars (\$795), despite the fact that no lender
24 was involved in the sale.

25 29. Defendants routinely charged unreasonable fees for their services in violation of
26 A.R.S. §§ 44-281(2) and 44-287.

1 Credit Terms

2 30. Defendants charged consumers who purchased motor vehicles on credit a “lender
3 processing fee” and included that fee in the amount financed instead of including it as part of
4 the finance charge when calculating the interest rate (“annual percentage rate” or “APR”)
5 charged to the consumer.

6 31. By so doing, Defendants disclosed the APR as lower than the true APR, and
7 incorrectly disclosed the amount financed and the finance charge.

8 32. By failing to properly deliver material disclosures, such as the “finance charge,”
9 “amount financed,” and “annual percentage rate,” in accordance with the Truth in Lending Act,
10 15 U.S.C. §§ 1605, 1606, and 1638(a) (2)-(4), and Regulation Z, 12 C.F.R. §§ 1026.18(b), (d),
11 (e), and 1026.4, Defendants misrepresented credit terms to consumers.

12 Contract Terms

13 33. In several instances, Defendants orally misrepresented and/or failed to adequately
14 explain to consumers terms set forth in sale and finance contracts.

15 34. Consumers complained that they relied on Defendants’ oral representations;
16 however, Defendants’ representations often conflicted with the terms set forth in Defendants’
17 sale and finance contracts.

18 35. In some instances, when consumers obtained from Defendants copies of the sale
19 and finance contracts, the contracts included pages the consumers had never seen and
20 signatures that appeared to be forgeries.

21 Implied Warranty of Merchantability

22 36. Defendants failed to honor the statutorily mandated implied warranty of
23 merchantability for used motor vehicles, as required by A.R.S. § 44-1267.

24 37. Defendants misrepresented the statutory protections available to consumers by
25 attempting to exclude, modify, and/or disclaim the implied warranty of merchantability in
26 violation of A.R.S. § 44-1267(B).

1 38. The Federal Trade Commission's ("FTC") Used Car Rule, 16 C.F.R. § 455.2,
2 requires dealers who sell used motor vehicles to prepare and display a "Buyers Guide" on all
3 used motor vehicles.

4 39. In addition, the FTC's Used Car Rule, 16 C.F.R. § 455.2, and A.R.S. § 44-
5 1267(B) prohibit dealers from selling vehicles "as is" in Arizona and require Arizona used
6 motor vehicle dealers to use specific language in their Buyers Guide that differs from the
7 standard form provided in 16 C.F.R. § 455.2.

8 40. Specifically, Arizona used motor vehicle dealers are required to alter the Buyers
9 Guide in the following manner: Dealers must delete the heading "AS IS—NO WARRANTY"
10 and the paragraph immediately accompanying that phrase, stating, "YOU WILL PAY ALL
11 COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless
12 of any oral statements about the vehicle." 16 C.F.R. § 455.2; A.R.S. § 44-1267(B). The
13 dealers are then required to replace the aforementioned heading with "IMPLIED
14 WARRANTIES ONLY," and to accompany that heading with the following language:

15 This means that the dealer does not make any specific promises to fix things that
16 need repair when you buy the vehicle or after the time of sale. But, State law
17 "implied warranties" may give you some rights to have the dealer take care of
 serious problems that were not apparent when you bought the vehicle.

18 16 .F.R. § 455.2; A.R.S. § 44-1267(B).

19 41. On Defendants' Buyers Guide, Defendants routinely included the incorrect
20 heading, "AS IS – NO WARRANTY," and the incorrect paragraph immediately accompanying
21 that phrase in violation of the FTC's Used Car Rule, 16 C.F.R. § 455.2, and A.R.S. § 44-
22 1267(B).

23 42. On Defendants' Buyers Guide, Defendants also tried to disclaim the implied
24 warranties by notifying some consumers that their sales were "AS IS – NO WARRANTY,"
25 instead of "IMPLIED WARRANTIES ONLY," in violation of the FTC's Used Car Rule, 16
26 C.F.R. § 455.2, and A.R.S. § 44-1267(B). By failing to disclose to consumers the prohibitions

1 and requirements set forth in the FTC's Used Car Rule, 16 C.F.R. § 455.2, and A.R.S. § 44-
2 1267, Defendants misrepresented and/or concealed, suppressed, and/or omitted material facts to
3 consumers with the intent that consumers rely on Defendants' representations.

4 Consignment for Other Licensed Motor Vehicle Dealers

5 43. Defendants' unlawfully sold motor vehicles that had been consigned to them by
6 other licensed motor vehicle dealers in violation of A.R.S. § 28-4410.

7 **II. CONCLUSIONS OF LAW**

8 1. The acts of Defendants, including, without limitation, those set forth in the
9 Findings of Fact above, constitute deceptive and unfair acts and practices, fraud, false
10 pretenses, false promises, misrepresentations or the concealment, omission, and suppression of
11 material facts in violation of A.R.S. §§ 44-1521 to 44-1534.

12 2. Defendants were, at all times, acting willfully as defined by A.R.S. § 44-1522(B)
13 while engaging in the acts and practices alleged herein.

14 **III. ORDER**

15 1. The Effective Date of this Consent Judgment is the date it is entered by the Court.

16 2. Defendants, their officers, directors, agents, servants, employees, attorneys,
17 successors and assigns, attorneys and any entity established by Defendants, whether a
18 partnership, corporation or limited liability company, if any, and all persons in active concert or
19 participation with Defendants, directly or indirectly, are permanently enjoined, restrained, and
20 prohibited from:

21 a. Engaging in any and all deceptive acts or practices, fraud, false pretense, false
22 promises, misrepresentations, and/or concealment, suppression or omission of
23 material fact in violation of the Arizona Consumer Fraud Act, A.R.S. §§ 44-1521
24 to 44-1534, as it is currently written, and as it may be amended in the future;

25 b. Engaging in any activity, directly or on behalf of any third party, that involves the
26 sale or financing of motor vehicles, while in the State of Arizona or on behalf of

- 1 any Arizona consumer, unless employed by and selling on behalf of a business
2 entity that sells both new and used motor vehicles;
- 3 c. Engaging in the business of owning; operating; holding an ownership interest,
4 share or stock in; serving as a manager, supervisor, officer, director, or trustee of
5 any business entity engaged, in whole or in part, in the sale or financing of motor
6 vehicles, while in the State of Arizona or on behalf of any Arizona consumer;
- 7 d. Using misleading and/or deceptive advertisements;
- 8 e. Misrepresenting the condition and/or availability of motor vehicles;
- 9 f. Selling or attempting to sell any motor vehicle that has not been fully inspected
10 for major defects;
- 11 g. Selling or attempting to sell any motor vehicle that is not substantially free of any
12 and all defects that would significantly limit the use of the motor vehicle for the
13 ordinary purpose of transportation on any public roadway. For the purposes of
14 this provision, this requirement is met if the vehicle functions in a safe condition
15 as provided in A.R.S §§ 28-921 to 28-966;
- 16 h. Failing to honor statutorily mandated warranties regarding used motor vehicles as
17 required by A.R.S. § 44-1267;
- 18 i. Failing to honor all warranties for motor vehicle repairs provided to consumers;
- 19 j. Failing to complete or timely complete repairs as represented to consumers;
- 20 k. Using deception to solicit and obtain payments in the form of deposits and/or
21 down-payments from consumers.
- 22 l. Representing to consumers that all payments are “non-refundable,” even when
23 consumers do not receive a functioning motor vehicle in return for their
24 payments;
- 25 m. Charging restocking fees without previously disclosing to consumers the
26 existence of the fees and the amount of the fees as required by A.R.S. § 44-1377.

- 1 n. Misrepresenting the amounts of fees paid to public officials for the costs of
2 “Registration,” “Title,” “Filing,” “Tag,” “Postage,” “Weight,” and “Other,” and
3 charging and collecting fees in excess of the amounts paid;
- 4 o. Charging consumers who paid cash for motor vehicles a “lender processing fee”
5 when no lender is involved in the sale;
- 6 p. Charging unreasonable fees for their services in violation of A.R.S. §§ 44-281(2)
7 and 44-287;
- 8 q. Orally misrepresenting and/or failing to adequately disclose to consumers terms
9 set forth in written sale and finance contracts;
- 10 r. Failing or refusing to provide consumers with a signed copy of Defendants’ sale
11 and finance contracts once consumers enter into motor vehicle purchases;
- 12 s. Selling motor vehicles “as is,” in violation of A.R.S. § 44-1267(B);
- 13 t. Failing to prepare a “Buyers Guide” for all used motor vehicles that complies
14 with the FTC’s Used Car Rule, 16 C.F.R. § 455.2, and A.R.S. § 44-1267(B); and
- 15 u. Consigning motor vehicles for other licensed motor vehicle dealers.

16 3. Defendants shall, jointly and severally, pay to the Attorney General’s Office
17 consumer restitution, pursuant to A.R.S. § 44-1528(A)(2), in the amount of Seventy Thousand
18 Dollars (\$70,000) (“Restitution Award”), which shall be paid according to the terms set forth in
19 paragraph 6 of this Order.

20 All restitution payments ordered herein shall be deposited by the Attorney General’s
21 Office into the consumer restitution subaccount of the interest-bearing consumer restitution and
22 remediation revolving fund, pursuant to A.R.S. § 44-1531.02(B), and distributed to eligible
23 consumers by the Attorney General’s Office. For purposes of this Consent Judgment, “eligible
24 consumers” includes consumers who filed complaints that are currently in the possession of the
25 Attorney General’s Office as well as consumers who file complaints with the Attorney
26 General’s Office within ninety (90) days after the Effective Date of this Consent Judgment. In

1 the event the amount ordered as restitution herein is not sufficient to fully restore eligible
2 consumers the amounts they paid Defendants, the amount shall be distributed to them on a pro
3 rata basis. The amount of restitution due to each eligible consumer will be determined at the
4 sole discretion of the Attorney General. In the event that any portion of the restitution ordered
5 herein cannot be distributed to eligible consumers, or exceeds the amount of restitution, such
6 portion shall be deposited by the Attorney General's Office into the Consumer Protection –
7 Consumer Fraud Revolving Fund in accordance with A.R.S. § 44-1531.01 and used for the
8 purposes specified therein.

9 4. Defendants are jointly and severally liable to pay to the Attorney General's Office
10 the amount of Five Thousand Dollars (\$5,000) in attorneys' fees and costs ("Fees and Costs
11 Award"), pursuant to A.R.S. § 44-1534, which shall be paid according to the terms set forth in
12 paragraph 6 of this Order. The Fees and Costs Award payment shall be deposited into the
13 Consumer Protection – Consumer Fraud Revolving Fund, pursuant to A.R.S. § 44-1531.01, and
14 used for the purposes set forth therein.

15 5. Defendants are jointly and severally liable to pay to the Attorney General's Office
16 the amount of Three Hundred Sixty Thousand Dollars (\$360,000) in civil penalties ("Civil
17 Penalty Award"), pursuant to A.R.S. § 44-1531, to be deposited into the Consumer Protection –
18 Consumer Fraud Revolving Fund, pursuant to A.R.S. § 44-1531.01, and used for the purposes
19 set forth therein.

20 Three Hundred Thirty-Five Thousand Dollars (\$335,000) of the Civil Penalty Award
21 shall be deemed satisfied when Defendants pay the sum of Twenty-Five Thousand Dollars
22 (\$25,000) in full pursuant to paragraph 6 of this Order and Defendants do all of the following:
23 (a) Defendants provide to the State complete and truthful financial statements regarding their
24 current finances, the form for said financial statement has been provided to Defendants by the
25 State, (b) Defendants make full and complete payment of the Restitution Award and Fees and
26 Costs Award to the State pursuant to paragraphs 3 and 4 of this Order, and (c) Defendants

1 comply with each of the injunctive terms contained in paragraph 2 of this Order.

2 If, upon motion by the State, this Court finds that Defendants are in contempt of this
3 Order by submitting any financial statements that failed to disclose any material asset, or
4 materially misrepresented the value of any asset, or made any other material misrepresentation
5 in or omission from the financial statement, or violated any of the injunctive terms contained in
6 this Consent Judgment, the Court shall enter judgment against Defendants, in favor of the State,
7 for the Civil Penalty Award in the amount of Three Hundred Thirty-Five Thousand Dollars
8 (\$335,000), which will become immediately due and payable, with interest thereon at ten
9 percent (10%) per annum from the Effective Date of the Court's order until paid.

10 6. The Restitution Award, Fees and Costs Award, and Civil Penalty Award shall be
11 paid by Defendants as follows:

- 12 a. Defendants shall make sixty (60) minimum monthly payments of Five Hundred
13 Dollars (\$500) per month, due on or before the first day of each month, beginning
14 after the Effective Date of this Consent Judgment. Upon expiration of said sixty
15 (60) month period, the remaining balance of the Restitution Award, Fees and
16 Costs Award, and Civil Penalty Award is immediately due and owing.
- 17 b. Each payment, payable to the Office of the Attorney General, State of Arizona,
18 is to be delivered or mailed and post marked, postage prepaid, to the Attorney
19 General's Office, Consumer Protection and Advocacy Section, 1275 West
20 Washington, Phoenix, Arizona 85007 on or before the 15th of each month. If all
21 payments are made in a timely fashion, the judgment shall bear no interest or
22 collection costs. If Defendants fail to make a payment within fifteen (15)
23 calendar days of the date it is due, Defendants will be deemed in default of their
24 payment obligation. In the event of a default of any payment obligation imposed
25 by this Consent Judgment, and in addition to any other relief or remedy elected
26 or pursued by the State, all payments set forth in paragraphs 3 through 6 of the

1 Order above, including the full amount of the Civil Penalty Award, plus interest
2 at a rate of ten percent (10%) per annum from the date of the entry of the
3 Consent Judgment and costs of collection, less any amount previously paid, shall
4 be accelerated and be immediately due and owing.

5 7. The State shall allocate payments received from Defendants pursuant to this
6 Consent Judgment first to the Restitution Award, second to the Fees and Costs Award, and
7 finally to the Civil Penalty Award.

8 8. Defendants shall not represent or imply that the Attorney General, the State of
9 Arizona, or any agency thereof has approved any of its actions in Arizona or has approved any
10 of its past, present or future business practices in Arizona, and Defendants are enjoined from
11 directly or indirectly representing anything to the contrary.

12 9. Defendants shall not participate directly or indirectly in any activity to form a
13 separate entity or corporation for the purpose of engaging in acts in Arizona that are prohibited
14 in this Consent Judgment or for any other purpose which would otherwise circumvent any part
15 of this Consent Judgment or the spirit or purposes of this Consent Judgment.

16 10. Defendants shall promptly, within 30 calendar days after receipt of written notice,
17 respond to any lawful, reasonable written request for information by the Attorney General's
18 Office regarding their financial condition, compliance with this Consent Judgment, or any other
19 business activity.

20 11. Defendants agree that the facts set forth in the Findings of Fact of this Consent
21 Judgment shall be taken as true without further proof in any bankruptcy case or subsequent
22 civil litigation pursued by the State to enforce its rights to any payment or money judgment
23 owed pursuant to this Order, including but not limited to a nondischargeability complaint in any
24 bankruptcy case.

25 12. Defendants further stipulate and agree that the Findings of Fact and Conclusions
26 of Law set forth in this Consent Judgment establish all elements necessary to sustain an action

1 by the State pursuant to Section 523(a) (2) (A) and (a) (7) of the Bankruptcy Code, 11 U.S.C. §
2 523(a) (2) (A) and (a) (7), and that this Order shall have res judicata and collateral estoppel
3 effect for such purposes.

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

6 14. This Court retains jurisdiction of this matter for the purpose of entertaining an
7 application by the State for the enforcement of this Consent Judgment. The State may institute
8 an action or proceeding to enforce the terms and provisions of this Consent Judgment or to take
9 action based on future conduct by the Defendants.

10 15. This Consent Judgment resolves all outstanding claims alleged in the State's
11 Consumer Fraud Complaint. As no further matters remain pending, this is a final judgment
12 entered pursuant to Ariz. R. Civ. P. 54(c).

13
14 DATED: _____, 2015.

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16 _____
17 Joshua Rogers
18 Judge of the Superior Court
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6. The Defendants represent and warrant that the people signing below on behalf of Front Line Auto Auction, LLC, d/b/a Uncle Joe's Auto Sales, a/k/a Uncle Joe's Auto Consignment Shop are duly appointed and authorized to sign on their behalf.

EXECUTED: OCTOBER 26, 2015. EXECUTED: OCTOBER 20, 2015.

Gina Colombo
Gina Colombo

Joseph Colombo
Joseph Colombo

EXECUTED: OCTOBER 26, 2015

Front Line Auto Auction, LLC, d/b/a Uncle Joe's Auto Sales, a/k/a Uncle Joe's Auto Consignment Shop

Gina Colombo

Gina Colombo
APPROVED AS TO FORM AND CONTENT: ~~1-26~~ November 3, 2015.

Mark Brnovich
Attorney General

Alyse C. Meislik
Alyse C. Meislik
Assistant Attorney General

APPROVED AS TO FORM AND CONTENT: Oct 30, 2015, 2015.

David G. Derickson
David G. Derickson, PC
Attorneys for Defendants

eSignature Page 1 of 1

Filing ID: 7004741 Case Number: CV2015-004021
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Granted as Submitted



/S/ Joshua Rogers Date: 11/16/2015
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2015-004021

SIGNATURE DATE: 11/16/2015

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ALYSE CHERYL MEISLIK