

Granted as Submitted

See eSignature page

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13 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
14 **IN AND FOR THE COUNTY OF MARICOPA**

15 STATE OF ARIZONA, *ex rel.* THOMAS C.
16 HORNE, Attorney General,

17 Plaintiff,

18 vs.

19 PRIETO'S AUTO SALES, INC., an Arizona
20 Corporation; GUSTAVO PRIETO and RITA
21 PRIETO, husband and wife

22 Defendants

Case No.: CV2014-007493

STIPULATED CONSENT JUDGMENT

Assigned to the Hon. Colleen French

23 Plaintiff, State of Arizona, *ex rel.* Thomas C. Horne, Attorney General, filed a
24 complaint alleging violations of the Arizona Consumer Fraud Act, A.R.S. § 44-1521 *et seq.*,
25 and Defendants Prieto's Auto Sales, Inc, Gustavo Prieto, and Rita Prieto waived service of the
26 Summons and Complaint. After being fully advised of their right to a trial in this matter,
Defendants have waived their right to trial and have admitted that this Court has jurisdiction
over the subject matter and the parties for the purposes of entry and enforcement of this
Consent Judgment. The State and Defendants have agreed on a basis for the settlement of

1 these matters in dispute. Defendants stipulate that the Court may enter the following Findings
2 of Fact, Conclusions of Law, and Judgment.

3 **PARTIES**

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

7 2. Defendant Prieto’s Auto Sales, Inc (“Prieto’s Auto”), an Arizona corporation
8 doing business in Phoenix, Arizona at 3450 West Broadway Road, has engaged in the business
9 of selling used automobiles since 1998.

10 3. Defendant Gustavo Prieto is the Director and Manager of Defendant Prieto’s
11 Auto. At all times material to the Complaint filed on May 20, 2014, Defendant Gustavo Prieto
12 formulated, directed, ratified, controlled, had the authority to control, or participated in the acts
13 and practices of Prieto’s Auto. As such, Defendant Gustavo Prieto is responsible for the acts,
14 practices, omissions, and misrepresentations of Defendant Prieto’s Auto.

15 4. Defendant Rita Prieto is the President and Director of Defendant Prieto’s Auto.
16 At all times material to the Complaint filed on May 20, 2014, Defendant Rita Prieto
17 formulated, directed, ratified, controlled, had the authority to control, or participated in the acts
18 and practices of Prieto’s Auto. As such, Defendant Rita Prieto is responsible for the acts,
19 practices, omissions, and misrepresentations of Defendant Prieto’s Auto. Additionally,
20 Defendant Rita Prieto is and was, at all relevant times, the wife of Defendant Gustavo Prieto,
21 who acted on behalf of their marital community with respect to the allegations contained in the
22 Complaint. Defendant Rita Prieto is also named for any interest she had or has in the marital
23 estate owned with Defendant Gustavo Prieto.

24 5. Reference to Prieto’s Auto refers to the above named corporate Defendants and
25 to the actions of its owners, officers, managers, employees, agents and independent
26 contractors.

1 **FINDINGS OF FACT**

2 1. Defendants have engaged in the sale of automobiles to consumers in Phoenix,
3 Arizona since 1998. Prieto's Auto clientele usually consists of minorities who have no credit
4 history or adverse credit. Prieto's Auto is one of the few places they can purchase a vehicle.

5 2. At all times relevant to the Complaint, Defendant Prieto's Auto was under the
6 sole direction and control of Defendants Gustavo Prieto and Rita Prieto. As such, Defendants
7 Gustavo Prieto and Rita Prieto were responsible for the acts, practices, omissions and
8 misrepresentations of Prieto's Auto and its agents.

9 3. In May of 2006, Defendants Prieto's Auto Sales, Gustavo Prieto, and Rita Prieto
10 signed an Assurance of Discontinuance in which they made assurances to remedy consumer
11 fraud violations. Defendants violated the Assurance of Discontinuance many times during the
12 period it was in effect. Defendants continued to commit consumer fraud violations thereafter.

13 4. Defendants engaged in the following deceptive and unfair acts and practices
14 and/or made the following false promises, misrepresentations and/or concealment, suppression
15 or omission of a material fact in violation of the Arizona Consumer Fraud Act.

16 5. Defendants failed to thoroughly inspect vehicles and repair defects before
17 placing them for sale. Defendants represent that their vehicles are free from major defects, but
18 they routinely entered into agreements with consumers for the sale of automobiles that were
19 not fit for use on public roadways. The vehicles were often riddled with several major and
20 minor defects, to the point of placing their occupants in danger. Often, vehicles purchased
21 from Prieto's Auto could not make it back to the customer's home on the day of the sale
22 without breaking down.

23 6. Defendants convince consumers to complete vehicle purchases by promising to
24 repair any defects that consumers find, free of charge, after the sale is completed. Defendants
25 failed to repair vehicles in a timely manner, failed to conduct the repairs correctly, and
26 required payment for repairs that, they represented, were to be free of charge.

1 7. Defendants provided consumers with a 15-day/500 mile warranty on each
2 vehicle sold, as required by A.R.S. § 44-1267. Defendants failed to honor the statutorily
3 mandated warranty. After Defendants failure to honor the warranty, Defendants refused to
4 honor consumers' option to void the transaction, as provided by A.R.S § 44-1267 (B).
5 Defendants routinely refused to return consumers' down-payments after they exercised their
6 option to void the transaction.

7 8. Defendants denied consumers the opportunity to test drive vehicles in an effort to
8 prevent them from discovering defects in the vehicles.

9 9. Defendants refused to allow some consumers to see the odometer before
10 purchasing their vehicle. The consumers signed odometer disclosures without seeing the
11 odometer. The actual odometer reading was often significantly higher than the disclosure
12 statement, rendering the warranty useless as soon as the sale was completed.

13 10. Defendants sold consumers trade-in vehicles before the consumer completed the
14 purchase of their next vehicle from Prieto's Auto.

15 11. Defendants sold vehicles for which they did not hold a valid title, in violation of
16 A.R.S § 44-1267.

17 12. Defendants sold vehicles with salvage titles without disclosing the defect in the
18 title in violation of A.R.S § 28-2091.

19 13. Defendants sold vehicles that had been involved in major collisions without
20 disclosing the damage to consumers.

21 14. Defendants failed to deliver titles to consumers that had paid in full.

22 15. Defendants represented that certain vehicles were in high demand to induce
23 consumers to make deposits on the vehicles. Defendants accepted deposits to hold the
24 vehicles for consumers, but refused to refund the deposits when the consumers did not
25 purchase the vehicle.

26

1 practices, fraud, false pretenses, false promises, misrepresentations or the concealment,
2 omission, and suppression of material facts in violation of A.R.S § 44-1522, *et seq.*

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

5 **ORDER**

6 1. Defendants and their officers, agents, servants, employees, and attorneys, and
7 upon those persons in active concert or participation with them, directly or indirectly, in
8 connection with the advertisement or sale of any merchandise are permanently enjoined from:

9 A. Engaging in any and all deceptive and unfair acts or practices, fraud, false
10 pretense, false promises, misrepresentations, and/or concealment, suppression or
11 omission of material fact in violation of the Arizona Consumer Fraud Act, A.R.S. § 44-
12 1522, *et seq.*, as it is currently written, or as it is amended in the future;

13 B. Selling or attempting to sell any vehicle that has not been fully inspected
14 for major defects.

15 C. Selling or attempting to sell any vehicle that is not substantially free of
16 any and all defects that would significantly limit the use of the motor vehicle for the
17 ordinary purpose of transportation on any public roadway. For the purposes of this
18 provision, this requirement is met if the vehicle functions in a safe condition as
19 provided in A.R.S §§ 28-921 to 28-966;

20 D. Failing to honor statutorily mandated warranty regarding used vehicles as
21 required by A.R.S. § 44-1267;

22 E. Selling vehicles with salvage title without disclosing the salvage nature of
23 the title in violation of A.R.S. § 28-2091;

24 F. Making deceptive statements about the availability of vehicles to
25 encourage consumers to place a deposit on a vehicle;

26

1 G. Failing to return a refundable deposit to consumers in a timely manner in
2 the event that the sale is not completed;

3 H. Failing to adequately disclose all significant contractual terms to
4 consumers, including, but not limited to, provisions regarding second or third down-
5 payments (also called "pick payments"), payment amount, due date, annual percentage
6 rate, finance charges, document fees, motor vehicle registration fees, gap insurance,
7 warranty cost, and tax;

8 I. Failing to retain title and possession of motor vehicles traded by
9 consumers as a part of transactions that are conditioned on final approval of financing
10 until the financing is finally approved, pursuant to A.R.S 44-1371;

11 J. Knowingly issuing refund checks to consumers on bank accounts that
12 contain insufficient funds to pay the check;

13 K. Selling vehicles for which they do not carry a title, in violation of A.R.S.
14 § 44-1267;

15 L. Prohibiting consumers from test driving vehicles placed for sale;

16 M. Presenting any fabricated or deceptive documents to a consumer,
17 including, but not limited to, fabricated or forged bills of sale, false odometer
18 statements, fabricated or forged purchase contracts, invoices, fabricated certificates of
19 title, or any other sales related documents;

20 N. Making false assurances to consumers regarding loan qualification;

21 O. Making changes to documents signed by a consumer without first
22 obtaining the consumer's informed written consent;

23 P. Engaging in any conduct in violation of the Arizona Motor Vehicle
24 Warranties Act, A.R.S. §§ 44-1261, *et seq*;

25 Q. Engaging in any conduct in violation of the statutory requirements
26 contained in the Truth in Lending Act, 15 U.S.C. §§1601, *et seq.*, the Arizona

1 Requirements for Consumer Lender Loans, A.R.S. §§ 6-631, *et seq.*, and the Arizona
2 Motor Vehicle Time Sales Disclosure Act, A.R.S. §§ 44-281, *et seq.*

3 R. Failing to send consumers an authenticated notification of disposition
4 before disposing of a repossessed vehicle pursuant to A.R.S. § 47-9611.

5 S. Failing to sell repossessed vehicles in a commercially reasonable manner
6 pursuant to A.R.S. § 47-9627.

7 T. Failing to send consumers an explanation of surplus or deficiency upon
8 the sale of a repossessed vehicle pursuant to A.R.S. § 47-9616; and

9 U. Failing to pay consumers any surplus upon the sale of a repossessed
10 vehicle pursuant to A.R.S. § 47-9608.

11 2. Defendants shall, jointly and severally, pay to the Arizona Attorney General the
12 amount of Eighty Thousand Dollars (\$80,000) in civil penalties pursuant to A.R.S. § 44-1531,
13 to be deposited into the Consumer Protection – Consumer Fraud Revolving Fund pursuant to
14 A.R.S. § 44-1531.01, used for the purposes set forth therein, and paid pursuant to the terms in
15 paragraph 5.

16 3. Defendants shall, jointly and severally, pay to the Arizona Attorney General the
17 amount of Ten Thousand Six Hundred Forty Five Dollars (\$10,645) in attorneys' fees, expert
18 costs, and investigative costs, to be deposited into the Consumer Protection – Consumer Fraud
19 Revolving Fund pursuant to A.R.S. § 44-1531.01, used for the purposes set forth therein, and
20 paid pursuant to the terms in paragraph 5.

21 4. Defendants shall, jointly and severally, pay to the Arizona Attorney General the
22 amount of Fifteen Thousand Seven Hundred Sixteen Dollars (\$15,716) in consumer
23 restitution, paid pursuant to the terms in paragraph 5 below. The payment ordered herein shall
24 be deposited by the Attorney General into the consumer restitution subaccount of the interest-
25 bearing consumer restitution and remediation revolving fund pursuant to A.R.S. § 44-1531.02
26 (B) and distributed to eligible consumers by the Attorney General's Office. For purposes of

1 this Stipulated Consent Judgment, "eligible consumers" mean consumers who filed a
2 complaint with the Arizona Attorney General's Office before the date this Stipulated Consent
3 Judgment is submitted to the Court for its approval, whose complaint arose as a result of the
4 consumer purchasing a vehicle or vehicles from Prieto's Auto, and who were not previously
5 refunded the monies they paid to Prieto's Auto. In the event the amount ordered as restitution
6 herein is not sufficient to fully restore eligible consumers the amounts they paid Prieto's Auto,
7 the amount shall be distributed to them on a pro rata basis. In the event that any portion of the
8 restitution ordered herein cannot be distributed to eligible consumers, or exceeds the amount
9 of restitution, such portion shall be deposited by the Attorney General's Office into the
10 Consumer Protection – Consumer Fraud Revolving Fund in accordance with A.R.S. § 44-
11 1531.01 and used for the purposes specified therein.

12 5. Defendants shall make monthly payments of Fifteen Hundred Dollars (\$1,500)
13 each month, to be applied to the restitution, civil penalties, and fees and costs due under this
14 Consent Judgment. Each payment is to be delivered, or mailed and postmarked, to the
15 Attorney General on or before the 1st day of each month, beginning July 1, 2014. If all
16 payments are made in a timely fashion, no interest or collection costs shall accrue. Failure to
17 make a payment within ten (10) days of the date due is a default, and the entire unpaid balance
18 shall be accelerated and shall become due and owing in its entirety, plus interest at a rate of ten
19 percent (10%) from the date of the entry of this Consent Judgment and costs of collection.

20 6. The effective date of this Consent Judgment is the date it is entered by the Court.

21 7. Notwithstanding the foregoing, the State may institute an action or proceeding to
22 enforce the terms and provisions of this Consent Judgment or to take action based on future
23 conduct by the Defendants.

24 8. Defendants shall not represent or imply that the Attorney General, the State, or
25 any agency thereof, has approved any of their actions or has approved any of their present or
26

1 future actions or practices, and Defendants are enjoined from representing anything to the
2 contrary.

3 9. Defendants shall not participate directly or indirectly in any activity to form a
4 separate entity or corporation for the purpose of engaging in acts prohibited in this Consent
5 Judgment or for any other purpose which would otherwise circumvent any part of this Consent
6 Judgment or the spirit or purposes of this Consent Judgment.

7 10. This Court retains jurisdiction of this matter for the purpose of entertaining an
8 application by the State for the enforcement of this Consent Judgment.

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

11 12. Pursuant to Rule 54(b) of the Arizona Rules of Civil procedure, the Court has
12 determined that there is no just reason for delay and hereby directs that this Judgment against
13 Defendants be entered forthwith.

14
15 DATED this _____ day of July, 2014.

16
17 _____
18 Judge of the Superior Court

19
20 **CONSENT TO JUDGMENT**

21 1. Defendants state that no promise of any kind or nature whatsoever was made to
22 them to induce them to enter into this Consent Judgment and have entered into the Consent
23 Judgment voluntarily.

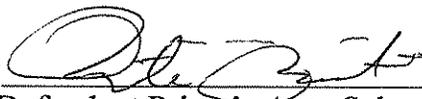
24 2. Defendants, or their authorized representative, have fully read and understand
25 this Consent Judgment, understand the legal consequences involved in signing it, assert that
26 this is the entire agreement of the parties, and that there are no other representations or

1 agreements not stated in writing herein, and no force, threats, or coercion of any kind have
2 been used to obtain its signature.

3 3. Defendants understand that acceptance of this Consent Judgment is solely for the
4 purpose of settling this litigation and does not preclude the Plaintiff, or any other agency or
5 officer of this State, or subdivision thereof, from instituting other civil or criminal proceedings
6 as may be appropriate for any acts unrelated to this litigation or committed after the entry of
7 this Consent Judgment.

8 4. Defendant Prieto's Auto Sales, Inc. represents and warrants that the person
9 signing below on its behalf is duly appointed and authorized to do so.

10 DATED this 12th day of June, 2014.

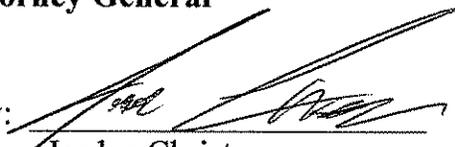
12 By: 
13 Defendant Prieto's Auto Sales, Inc
14 Rita Prieto, President

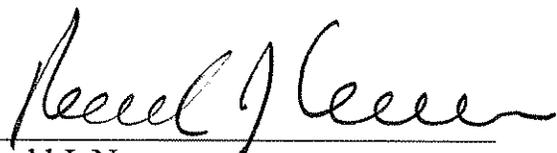
15 By: 
16 Defendant Gustavo Prieto

17 By: 
18 Defendant Rita Prieto

19
20 **APPROVED AS TO FORM AND CONTENT:**

21 **Thomas C. Horne**
22 **Attorney General**

23
24 By: 
25 Jordan Christensen
26 Assistant Attorney General

By: 
Ronald J. Newman
Counsel for Defendants

eSignature Page 1 of 1

Filing ID: 5965249 Case Number: CV2014-007493
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Granted as Submitted



/S/ Colleen French Date: 7/2/2014
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2014-007493

SIGNATURE DATE: 7/2/2014

E-FILING ID #: 5965249

FILED DATE: 7/3/2014 8:00:00 AM

JORDAN JOHN CHRISTENSEN

GUSTAVO PRIETO
NO ADDRESS ON RECORD

PRIETOS AUTO SALES INC
NO ADDRESS ON RECORD

RITA PRIETO
NO ADDRESS ON RECORD