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10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF MARICOPA**

12 STATE OF ARIZONA, *ex rel.* THOMAS C.
HORNE, Attorney General,
13
14 Plaintiff,
15
16 vs.
17 DENNIS N. SABAN and TRACEY L. SABAN,
husband and wife; D S RENTCO, INC., an
18 Arizona corporation; A-AAABLE RENTAL
LTD., an Arizona corporation; and SABAN
19 RENT-A-CAR, L.L.C., an Arizona limited
liability company; dba PHOENIX CAR
20 RENTAL and SABAN'S RENT-A-CAR
21
22 Defendants.

Case No.: CV2014-005556

**APPLICATION FOR
PRELIMINARY INJUNCTION
AND FOR ORDER TO SHOW
CAUSE**

22 Plaintiff, State of Arizona, *ex rel.* Thomas C. Horne, Attorney General alleges in its
23 Complaint that consumers who rented vehicles from DENNIS N. SABAN and TRACEY L.
24 SABAN, husband and wife; D S RENTCO, INC., an Arizona corporation; A-AAABLE
25 RENTAL LTD., an Arizona corporation; and SABAN RENT-A-CAR, L.L.C., an Arizona
26

1 limited liability company (hereinafter "SABAN'S RENT A CAR DEFENDANTS") have
2 been deceived and treated unfairly by SABAN'S RENT A CAR DEFENDANTS in violation
3 of Arizona's Consumer Fraud Act. By applying for a preliminary injunction regarding certain
4 deceptive and unfair acts repeatedly undertaken by SABAN'S RENT A CAR
5 DEFENDANTS, the State seeks to protect consumers from further deception and unfairness
6 until the Court can make a final determination on the merits. The State also hereby petitions
7 the Court for an order to SABAN'S RENT A CAR DEFENDANTS to show cause why the
8 State should not be granted the relief prayed for herein.

9
10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. INTRODUCTION**

12 SABAN'S RENT A CAR DEFENDANTS have operated a rental vehicle business in
13 Phoenix for over 20 years. Their business differs from other rental vehicle businesses
14 because it is a local business and because it offers rentals to individuals who do not have a
15 credit card and/or are under the age of 21, as well as to other customers, from its two Phoenix
16 locations. SABAN'S RENT A CAR DEFENDANTS also rent vehicles as old as ten years,
17 with mileage in excess of 100,000 or 200,000 miles. Over the years, SABAN'S RENT A
18 CAR DEFENDANTS have generated numerous complaints to the Attorney General and
19 Better Business Bureau. Most complaints concern the failure to fully disclose the price of the
20 rental and that the vehicles are not in good operating condition, as well as that SABAN'S
21 RENT A CAR DEFENDANTS verbally abuse their customers. The State's instant suit was
22 brought against SABAN'S RENT A CAR DEFENDANTS as a result of 174 consumer
23 complaints received by the Attorney General since 2009, and 205 complaints received by
24 Better Business Bureau since 2010, showing a pattern of deceptive and unfair practices. The
25 State's also bases its suit upon the results of an undercover investigation it conducted in
26 February 2013, where the full price of the rental was not disclosed, copies of the full contract

1 were not provided, the vehicle's odometer reading was altered and the nature of additional
2 charges was misrepresented.

3 **II. PRELIMINARY INJUNCTIVE RELIEF REQUESTED**

4
5 The State requests that the Court award the State the preliminary injunctive relief
6 necessary to avert the likelihood of consumer injury during the pendency of this action by
7 entering an order:

8 A. Enjoining and restraining SABAN'S RENT A CAR DEFENDANTS from:

9 1. Blocking, obscuring, disconnecting or otherwise concealing vehicle
10 warning lights;

11 2. Blocking, obscuring, disconnecting or otherwise concealing vehicle
12 odometers;

13 3. Failing to provide a receipt and itemization of the full amount charged to
14 the customer at the time of rental vehicle return;

15 4. Renting vehicles that are not in good operating condition;

16 5. Separately charging any fees, surcharges or additional amounts in
17 addition to the base rate for the vehicle rental, such as the current "PKG," "SERVICE
18 AND CLEANING" and "S/C" charges, when such fees, surcharges or additional
19 amounts are not included in the price quoted or related to any additional service or
20 product specifically agreed to by a customer who has been given an opportunity to
21 accept or decline after being orally informed of the price of each;

22 6. Falsely advertising that renting a vehicle from SABAN'S RENT A CAR
23 DEFENDANTS will produce tax savings in comparison with taxes charged on vehicles
24 rented at the airport.

25 B. Affirmatively requiring SABAN'S RENT A CAR DEFENDANTS to:
26

1 1. Disclose in any price quote or advertisement for a specific time period the
2 minimum cost of a rental if the vehicle is returned on time, including all taxes or stating
3 “plus [actual tax rate] in taxes” and disclosing upon inquiry additional costs and fees for
4 additional optional products and services.

5 2. To disclose, in writing, prior to rental, the minimum total cost of the
6 rental if the vehicle is returned on time, including all taxes;

7 3. To disclose, both orally and in writing, prior to rental, specific insurance
8 coverage requirements, the proof of insurance required to avoid the daily liability
9 surcharge if proof is not provided; and

10 4. Provide a prorated refund to customers for vehicles returned prior to the
11 expiration of the full rental period if the customer is dissatisfied with the vehicle’s
12 operation and the customer refuses a replacement vehicle. The fee shall be determined
13 by figuring a daily rate based upon the costs of the original term.

14 **III. ARGUMENT**

15
16 A. The Court Has Authority Under the CFA to Grant the Requested Relief

17
18 Arizona’s Consumer Fraud Act has specific statutory provisions regarding injunctive
19 relief, stating:

20 ...when it appears to the attorney general that a person has engaged in or is
21 engaging in any practice declared to be unlawful by this article, he may
22 seek and obtain in an action in the superior court an injunction prohibiting
23 such person from continuing such practices or engaging in the practice or
24 doing any acts in furtherance of the practice after notice as is required by
25 the rules of civil procedure. The court may make such orders or judgments
26 as may be necessary to:

1. Prevent the use or employment by a person of any unlawful
practices....

A.R.S. § 44-1528(A).

1 Typically, a party seeking a preliminary injunction must meet four criteria: (1) a strong
2 likelihood of success on the merits; (2) the possibility of irreparable injury; (3) a balance of
3 hardships in the party's favor; and (4) public policy favoring the requested relief. *Shoen v.*
4 *Shoen*, 167 Ariz. 58, 63, 804 P.2d 787, 792 (App.1990). These factors are each present in the
5 instant case where hundreds of consumers have been injured by the Defendants' past and
6 ongoing unlawful practices. However, because of the specific provisions of the Arizona
7 Consumer Fraud Act, the State has a lighter burden. A.R.S. § 44-1528(A).
8 A.R.S. § 44-1528(A) authorizes injunctive relief when a person "has engaged in" an unlawful
9 practice, which accords with the widely accepted rule that when a right for injunction arises
10 from statute, the usual grounds for injunctive relief need not be established. *People ex rel.*
11 *Babbitt v. Green Acres Trust*, 127 Ariz. 160, 167, 618 P.2d 1086, 1093 (App.1980) *see also*
12 *Arizona State Board of Dental Examiners v. Hyder*, 114 Ariz. 544, 546, 562 P.2d 717, 719
13 (1977)("The state's policy having been declared, the sole conditions for the issuance of the
14 injunction are those fixed by the act itself.") The trial court issues an injunction by
15 determining which allegations are effectively set forth and supported pursuant to the
16 Consumer Fraud Act. *Id.* Here, the State has set forth the specific injunctive relief sought
17 and will support it, at an evidentiary hearing, with evidence showing that SABAN'S RENT
18 A CAR DEFENDANTS have engaged in unlawful practices prohibited by the Consumer
19 Fraud Act.

20 B. Saban's Rent A Car Defendants Have Engaged in Unlawful Practices

21 At the evidentiary hearing, the State will present evidence that an injunction should be
22 issued prohibiting SABAN'S RENT A CAR DEFENDANTS from continuing, engaging or
23 doing any acts in furtherance of their deceptive and unfair practices. The State considers each
24 injunctive request in turn, asking that Defendants be prohibited from:

- 25 1. Blocking, obscuring, disconnecting or otherwise concealing vehicle
26 warning lights;

1 This first request for injunctive relief is justified because SABAN'S RENT A CAR
2 DEFENDANTS, through the testimony of their President, Dennis N. Saban, readily admit
3 that the check engine lights on their rental vehicles are purposely obscured and they will not
4 agree to allow the warning light to be viewed by the customers in their rental vehicles. Not
5 only does this create a dangerous situation, but it prevents customers from knowing that the
6 check engine light is on, or knowing that a check engine light will not serve as a warning if a
7 dangerous condition develops, in a vehicle they are renting. Customers who would decide not
8 to rent a vehicle with a check engine light on (or a check engine light blocked) are deprived of
9 the knowledge to make this decision. This practice is unfair and deceptive and therefore
10 prohibited by the Arizona Consumer Fraud Act.

11 2. Blocking, obscuring, disconnecting or otherwise concealing vehicle
12 odometers;

13 Second, the State asks the Court to enjoin SABAN'S RENT A CAR DEFENDANTS
14 from blocking, obscuring, disconnecting or otherwise concealing rental vehicle odometers.
15 This injunctive relief is justified because SABAN'S RENT A CAR DEFENDANTS, through
16 the testimony of their President, Dennis N. Saban, readily admit that the odometers on their
17 rental vehicles are purposely obscured so as to cover the number which indicates how many
18 hundred thousand miles the vehicle has been driven. This prevents their customers from
19 knowing how many miles the rental vehicle has been driven, an important indicator of
20 reliability and condition, in a vehicle they are renting. Customers who would decide not to
21 rent a vehicle with over 100,000 or 200,000 miles of service are deprived of the knowledge to
22 make this decision and misled with a reading that is 100,000 or 200,000 miles lower than the
23 actual reading. This practice is unfair and deceptive and therefore prohibited by the Arizona
24 Consumer Fraud Act.

25 3. Failing to provide a receipt and itemization of the full amount charged to the
26 customer at the time of rental vehicle return;

1 Third, the State asks the Court to enjoin SABAN'S RENT A CAR DEFENDANTS
2 from failing to provide a receipt and itemization of the full amount charged to the customer at
3 the time of rental vehicle return. This injunctive relief is justified because numerous
4 customers complain that they are charged more than the agreed upon price for their vehicle
5 rentals, and are denied a final bill at the time they return the rental vehicle. Customers do not
6 know the final price or the justification for the final price, how much of their deposit will be
7 returned, or receive an itemization of the amounts billed. Indeed, customers who question
8 the bill receive no documentation of the final charges and are often asked to leave the premises
9 and not return, or face trespass charges. This practice is unfair and deceptive, because it
10 prevents a customer from knowing how much they have been charged for their vehicle rental.
11 It is also unfair, because without a final bill, a customer is hindered in any dispute regarding
12 the charges. Both such deceptive and unfair practices are prohibited by the Arizona Consumer
13 Fraud Act.

14 4. Renting vehicles that are not in good operating condition.

15 Next, the State ask the Court to enjoin SABAN'S RENT A CAR DEFENDANTS from
16 renting vehicles that are not in good operating condition as promised in SABAN'S RENT A
17 CAR DEFENDANTS' the rental car contract. Many customers have complained of
18 overheating, shaking, broken headlights, dead batteries, bad tires, lit warning lights, turn signal
19 problems, transmission problems, electrical system failure, bad brakes, no air conditioning, gas
20 leaks, break downs and that a towel or similar item was being used as the gas cap, among
21 others. Renting such vehicles is unfair and deceptive (as well as dangerous), because
22 SABAN'S RENT A CAR DEFENDANTS' own contract promises a vehicle in good operating
23 condition. These acts are deceptive and therefore prohibited by the Arizona Consumer Fraud
24 Act.

25 5. Separately charging any fees, surcharges or additional amounts in addition to the
26 base rate for the vehicle rental, such as the current airport shuttle, "PKG," "SERVICE AND

1 CLEANING” and “S/C” charges, when such fees, surcharges or additional amounts are not
2 included in the price quoted or related to any additional service or product specifically agreed
3 to by a customer who has been given an opportunity to accept or decline after being orally
4 informed of the price of each;

5 Each customer who rents a vehicle from SABAN’S RENT A CAR DEFENDANTS can
6 expect to pay a total of \$17.50 for “PKG,” “SERVICE AND CLEANING” and “S/C.” These
7 charges are not optional and they are not included in SABAN’S RENT A CAR
8 DEFENDANTS’ quoted or advertised prices. Additional charges that are not disclosed or
9 agreed to upfront include a liability surcharge at up to \$19.95 a day and shuttle service to or
10 from the airport at \$12.00 each way. These practices are deceptive, because a customer who is
11 given a quote or seen an advertised price must always pay more upon vehicle return. Such
12 practices prevent a customer from knowing how much they will be charged for their vehicle
13 rental and determining whether or not to rent the vehicle on that basis. These acts are
14 deceptive and unfair and therefore prohibited by the Arizona Consumer Fraud Act.

15 6. Falsely advertising that renting a vehicle from SABAN’S RENT A CAR
16 DEFENDANTS will produce tax savings in comparison with taxes charged on vehicles rented
17 at the airport.

18 SABAN’S RENT A CAR DEFENDANTS advertise that customers renting a vehicle
19 from them will pay “no airport taxes” however, there are no savings in taxes from renting from
20 SABAN’S RENT A CAR DEFENDANTS. SABAN’S RENT A CAR DEFENDANTS
21 maintained this advertisement on their website until October 2013 and maintain it on a
22 billboard outside their 2934 E. McDowell location to this day. A customer of SABAN’S
23 RENT A CAR DEFENDANTS pays 18.55% in taxes, the same tax rate as a customer renting
24 a vehicle at the airport. Customers are therefore misled into thinking they will save on the tax
25 rate by renting at SABAN’S RENT A CAR DEFENDANTS. These acts are deceptive and
26 unfair and therefore prohibited by the Arizona Consumer Fraud Act.

1 The State next asks that Defendants affirmatively be required to:

2 1. Disclose in any price quote or advertisement for a specific time period the
3 minimum cost of a rental if the vehicle is returned on time, including all taxes or stating “plus
4 [actual tax rate] in taxes” and disclosing upon inquiry additional costs and fees for additional
5 optional products and services.

6 Customers who rent a vehicle from SABAN’S RENT A CAR DEFENDANTS are
7 quoted or advertised “base rate” prices, typically at \$129 or \$189 a week, without taxes, daily
8 liability surcharge or the mandatory ancillary charges. Additional charges that are not
9 disclosed or agreed to upfront include a liability surcharge at up to \$19.95 a day if printed
10 proof of insurance showing liability, property damage, comprehensive and collision coverage
11 that transfers to rental cars on a primary basis is not provided (although the details of this
12 requirement are not stated), shuttle fees, after hours drop-off fees and the \$17.50 in ancillary
13 charges added to every rental. The tax rate is 18.55%. To use the prices revealed in the
14 State’s undercover investigation, for a vehicle that was quoted at \$129.00 for one week, the
15 final cost was \$266.76. These practices are deceptive, because a customer who is given a
16 quote or seen an advertised price must always pay more upon vehicle return. Such practices
17 prevent a customer from knowing how much they will be charged for their vehicle rental and
18 determining whether or not to rent the vehicle on that basis. These acts are deceptive and
19 unfair and therefore prohibited by the Arizona Consumer Fraud Act.

20 2. To disclose, in writing, prior to rental, the minimum total cost of the rental if the
21 vehicle is returned on time, including all taxes;

22 Customers who rent a vehicle from SABAN’S RENT A CAR DEFENDANTS receive
23 a printed contract showing “base rate” prices, typically at \$129 or \$189 a week. Other
24 possible charges are added to the base rate upon vehicle return or left blank and only filled in
25 after return. Customers are given no written estimate that includes the total of taxes, liability
26 surcharge or the mandatory ancillary charges. Additional charges that are not meaningfully

1 disclosed or agreed to upfront include a liability surcharge at up to \$19.95 a day if printed
2 proof of insurance showing liability, property damage, comprehensive and collision coverage
3 that transfers to rental cars on a primary basis is not provided (although the details of this
4 requirement are not stated), airport shuttle fees, after hours drop-off fees and the \$17.50 in
5 ancillary charges added to every rental. The tax rate is 18.55%. To use the prices revealed in
6 the State's undercover investigation, for a vehicle that was quoted at \$129.00 for one week, the
7 final cost was \$266.76. These practices are deceptive, because a customer is never given an
8 estimate of even the minimum possible payment upon vehicle return. Such practices prevent a
9 customer from knowing how much they will be charged for their vehicle rental and
10 determining whether or not to rent the vehicle on that basis. These acts are deceptive and
11 unfair and therefore prohibited by the Arizona Consumer Fraud Act.

12 3. To disclose, both orally and in writing, prior to rental, specific insurance
13 coverage requirements and the proof of insurance required to avoid additional daily liability
14 surcharges charges if proof is not provided.

15 Customers who rent a vehicle from SABAN'S RENT A CAR DEFENDANTS
16 sometimes are told that they must provide proof of "full coverage insurance" and sometimes
17 not told of any insurance proof requirement in order to avoid the liability surcharge. The
18 actual requirement is that the customer provide printed proof of insurance showing liability,
19 property damage, comprehensive and collision coverage that transfers to rental cars on a
20 primary basis. Many customers who have auto insurance or rent with a credit card that
21 provides rental insurance do not meet these requirements, but do not discover they will be
22 required to pay for SABAN'S RENT A CAR DEFENDANTS' daily liability surcharge until
23 rental return. This expense adds significant costs to the rental. Customers who are not
24 notified that they must provide printed proof of insurance meeting SABAN'S RENT A CAR
25 DEFENDANTS' are also required to pay the liability surcharge. These practices are
26 deceptive, because customers are not informed of the stringent insurance proof requirements in

1 advance or the amount of the daily liability surcharge. Such practices prevent a customer from
2 providing the requisite proof of insurance, knowing how much they will be charged in total for
3 their vehicle rental and determining whether or not to rent the vehicle on that basis. These acts
4 are deceptive and unfair and therefore prohibited by the Arizona Consumer Fraud Act.

5 4. Provide a prorated refund to customers for vehicles returned prior to the
6 expiration of the full rental period if the customer is dissatisfied with the vehicle's operation
7 and the customer refuses a replacement vehicle. The fee shall be determined by figuring a
8 daily rate based upon the costs of the original term.

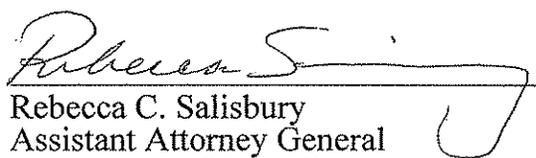
9 Customers who rent a vehicle from SABAN'S RENT A CAR DEFENDANTS are
10 required to pay for the full time period of their rental regardless of whether the vehicle breaks
11 down or they return the vehicle early because it is dangerous to operate or not in good
12 operating condition. Such practices require a customer to pay the full price for a vehicle they
13 cannot or will not use for the full time because of its condition. This practice is deceptive and
14 unfair and therefore prohibited by the Arizona Consumer Fraud Act.

15 **IV. CONCLUSION**

16 The State respectfully requests that the Court consider this Application for Preliminary
17 Injunction as supported by the Verified Complaint and the above Memorandum of Points and
18 Authorities and issue the Order to Show Cause. A proposed Form of Order is submitted
19 herewith.

20 RESPECTFULLY SUBMITTED this 4th day of March, 2014.

21 THOMAS C. HORNE
22 Attorney General

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24 
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