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Attorneys for Plaintiff

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

12 STATE OF ARIZONA, ex rel. MARK  
13 BRNOVICH, Attorney General,

Plaintiff,

vs.

16 ABC NISSAN, LP, an Arizona Limited  
17 Partnership; and ABC NISSAN LLC, a  
Delaware Limited Liability Company

Defendants.

Case No.: CV2018-006693

**CONSENT DECREE**

(Assigned to Honorable Margaret R. Mahoney)

20 The State of Arizona, having filed a complaint alleging violations of the Arizona  
21 Consumer Fraud Act (“CFA”), Arizona Revised Statutes (“A.R.S.”) § 44-1521, *et seq.*, and  
22 Defendants having waived service of the complaint and having been fully advised of the right  
23 to a trial in this matter and having waived the same, and the parties having agreed to the entry  
24 of this Consent Decree by this Court without trial or adjudication of any issue of fact or law  
25 and without admission or finding of any violations of any law, in order to resolve the State’s  
26

1 investigation, to provide restitution to Arizona consumers, and to avoid the expense and  
2 uncertainty of further investigation or litigation,

3 NOW, THEREFORE, upon the consent of the parties hereto, IT IS HEREBY  
4 ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

5 **FINDINGS OF FACT**

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

9 2. Defendants are ABC Nissan, LP, an Arizona limited partnership, formerly doing  
10 business as ABC Nissan, and formerly having its principal place of business at 1300 E.  
11 Camelback Road, Phoenix, Arizona, and ABC Nissan LLC, a Delaware limited liability  
12 company that currently engages in business at that same address (collectively, “Defendants”).

13 3. Defendants advertised new and used vehicles, parts, accessories, and related  
14 products and services in the State of Arizona, in connection with the sale of merchandise.

15 4. The Attorney General has reason to believe and therefore alleges that:

16 A. Defendant ABC Nissan, LP, on its website, posted misleading and/or deceptive  
17 prices for its vehicles, including:

18 (1) ABC Nissan, LP listed new vehicles for sale next to two numbers. The  
19 first number was the Manufacturer’s Suggested Retail Price (“MSRP”) and the second number was the “Internet Price.”

20 (2) ABC Nissan, LP did not prominently disclose to consumers that the  
21 “Internet Price” could only be obtained if a consumer met every condition  
22 required to obtain the full “ABC Discount.” Further, ABC Nissan, LP did  
23 not prominently disclose to consumers that the “ABC Discount” was not  
24 an actual discount offer by the dealer, but was instead made up of a dealer  
25 discount and several possible rebates.  
26

- 1 (3) When consumers came to ABC Nissan to purchase the vehicles at the  
2 prices advertised on the website, ABC Nissan, LP on some occasions  
3 refused to honor the “Internet Price.”  
4 (4) In cases where the “Internet Price” was not honored, when consumers  
5 asked why, ABC Nissan, LP’s employees provided a variety of  
6 explanations. In some cases, employees told consumers that the “Internet  
7 Price” was a “mistake” or an “error.” In other cases, employees informed  
8 consumers that dealer add-ons, such as window tinting, fog lights, custom  
9 wheels, leveling kits, and “brushed emblems,” had increased the price of  
10 the car above the “Internet Price,” and that the price could not be reduced  
11 because those add-ons could not be removed. And in other cases,  
12 employees informed consumers that they could not receive the “Internet  
13 Price” because they did not qualify for all of the rebates that were used to  
14 create the “ABC Discount.”  
15 (5) Despite ABC Nissan, LP’s knowledge that some consumers believed the  
16 “Internet Price” reflected the actual price for the vehicle, ABC Nissan, LP  
17 continued to advertise the “Internet Price” in this same manner.

18 B. Defendant ABC Nissan, LP used misleading and/or deceptive financing  
19 practices, including:

- 20 (1) ABC Nissan, LP used forms for financing in which ABC Nissan, LP  
21 employees entered data from consumers, such as their monthly income  
22 and rent, on the first page, and later directed consumers to sign on a  
23 different page.  
24 (2) In some cases, ABC Nissan, LP employees inflated consumers’ income,  
25 or deflated consumers’ rent, in order to increase the chances that the  
26 financing application would be approved.

27 C. Defendant ABC Nissan LLC commenced business operations under the name  
28 “ABC Nissan” in February of 2015. Prior to ABC Nissan LLC commencing  
29 business, ABC Nissan, LP had previously changed its Internet advertising and  
30 financing practices, and as a result:

- 31 (1) ABC Nissan LLC’s website advertised, and now advertises, vehicle prices  
32 without including conditional incentives for which some consumers may  
33 not be eligible.

1 (2) ABC Nissan LLC's electronic financing forms required, and now require,  
2 consumers to affix a digital signature next to their income and rent  
disclosures.

3 D. However, on occasion, ABC Nissan LLC engaged in deceptive, misleading,  
4 and/or unfair practices, including refusing to honor prices advertised on the  
5 Internet and claiming that "add-ons" had increased the price of the vehicle  
6 beyond the price advertised on the Internet and could not be removed.

7  
8 5. Defendants neither admit nor deny the allegations above, but have agreed to the  
9 entry of this Consent Decree in order to resolve the State's investigation, to provide restitution  
10 for consumers, and to avoid the expense and uncertainty of further investigation or litigation.  
11 The agreement to enter this Consent Decree should not be construed to be an admission by any  
12 Defendant of any liability.

13 **ORDER**

14 NOW, THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED:

15 6. For the purposes of this Consent Decree, unless the context otherwise requires,  
16 the term:

17 A. "Advertising" or "advertisement" includes the attempt by publication,  
18 dissemination, solicitation or circulation, oral or written, to induce directly or  
indirectly any person to enter into any obligation or acquire any title or interest in  
any merchandise.

19 B. "Merchandise" means any objects, wares, goods, commodities, intangibles, real  
20 estate, or services.

21 C. "Person" means any natural person or his legal representative, partnership,  
22 domestic or foreign corporation, any company, trust, business entity, or  
association, any agent, employee, salesman, partner, officer, director, consumer,  
23 stockholder, associate, or trustee.

24 D. "Internet Price" means a price at which a website expressly or impliedly  
25 represents that a product may be purchased.



- 1 A. Engage in truthful and non-misleading advertising, regardless of the  
2 communication medium (i.e., print, mail, Internet, email, phone, etc.). All  
3 disclosures and disclaimers, including footnotes, must be clear, conspicuous, and  
4 in close proximity to the claims to which they apply.
- 5 B. Not advertise or offer for sale any vehicle at a price that incorporates discounts  
6 and rebates for which some consumers are not eligible unless the limitation on  
7 eligible consumers is clear and conspicuous.
- 8 C. Provide truthful information to prospective buyers who communicate with  
9 Defendants, regardless of the communication medium (i.e., print, mail, Internet,  
10 email, phone, etc.).
- 11 D. Not advertise a price for a vehicle (including an “Internet Price”) unless the  
12 categories of parties qualifying for the price are clearly and conspicuously  
13 disclosed. Defendants may exclude tax, title, license, and a documentation fee  
14 from the price, but must prominently disclose this exclusion and must  
15 prominently disclose the amount of the documentation fee. Defendants may not  
16 exclude mandatory “add-on” features or accessories that increase the price of the  
17 car above the advertised price.
- 18 E. Maintain copies of all of their direct mail, emails, Internet chat transcripts with  
19 consumers, Internet ads on third-party sites, sales calls, and Better Business  
20 Bureau correspondence for a period of two years from the Court’s entry of this  
21 consent decree, and provide any or all such copies to the Arizona Attorney  
22 General’s office upon request.
- 23 F. Provide all written complaints received, regarding their advertising, to the  
24 Arizona Attorney General’s office within ten business days of receipt of the  
25 complaint.

26 12. With regard to the allegations listed in 4(B) above, Defendants must collectively  
pay to the Arizona Attorney General the amount of \$15,000 in consumer restitution, to be  
deposited into an interest-bearing consumer restitution subaccount of the Consumer Restitution  
and Remediation Revolving Fund, pursuant to A.R.S. § 44-1531.02(B), and distributed at the  
sole discretion of the Arizona Attorney General’s Office to consumers who complain that they  
have been harmed by the practices alleged in 4(B) above, provided that the complaint is  
received by the Arizona Attorney General’s Office within 90 days of the date of the Court’s  
entry of this Consent Decree. In the event that any portion of the restitution ordered herein

1 cannot be distributed to eligible consumers, such portion shall be distributed to the Consumer  
2 Protection – Consumer Fraud Revolving Fund pursuant to A.R.S. § 44-1531.01.

3 13. In addition, with regard to the allegations listed in 4(B) above, Defendants must  
4 collectively pay to the State of Arizona the additional amount of \$15,000 in civil penalties  
5 under A.R.S. § 44-1531. This payment will be deposited into the Consumer Protection –  
6 Consumer Fraud Revolving Fund pursuant to A.R.S. § 44-1531.01, and used for the purposes  
7 set forth therein.

8 14. Defendants must, in their present business or in any future business in which they  
9 advertise, solicit or offer to sell automobiles within or from the State of Arizona:

- 10 A. Take reasonable steps to ensure that consumers’ financial information is  
11 accurately recorded and reported.
- 12 B. Provide consumers with credit applications in which consumers sign  
13 electronically or with an ink signature on the same page as their financial  
14 information, and, with regard to each value reported for their financial  
15 information, separately initial or otherwise confirm each value.
- 16 C. Immediately terminate the employment of any employee who knowingly enters  
17 any false information on a credit application.
- 18 D. Provide all written complaints received, regarding the accuracy of credit  
19 applications, to the Arizona Attorney General’s office within ten business days of  
20 receipt of the complaint.

21 15. The State has already accepted from Defendants a total of \$175,000 as full and  
22 complete satisfaction of the Defendants’ liability set forth in the preceding paragraphs.

23 16. Defendants must maintain sufficient documentation to demonstrate compliance  
24 with the standards set forth in this Consent Decree for a period of two years from the date of  
25 each claim or representation. For a period of six years from the Court’s entry of this Consent  
26 Decree, Defendants must make their business records available to the Attorney General or his  
authorized representative upon reasonable notice during business hours.





1 **CONSENT TO JUDGMENT**

2 1. Defendants acknowledge that they have waived service of the Summons and  
3 Complaint, have read the Consent Decree, including the Findings of Fact and the Order  
4 contained above, are aware of their right to a trial in this matter, and have waived the same.

5 2. Defendants admit the jurisdiction of this Court, admit that the Findings of Fact  
6 are true, and consent to the entry of the foregoing Findings of Fact and Order.

7 3. Defendants state that no promise of any kind or nature whatsoever was made to  
8 induce them to enter into this Consent Decree and declare that they have entered into this  
9 Consent Decree voluntarily.

10 4. This Consent Decree is entered as a result of a compromise and a settlement  
11 agreement between the parties. Only the parties to this action may seek enforcement of this  
12 Consent Decree. Nothing herein is intended to create a private right of action by other parties.

13 5. Defendants represent and warrant that the person signing below on their behalf is  
14 duly appointed and authorized to do so.

1 DATED this 18<sup>th</sup> day of APRIL, 2018.

2 **ABC NISSAN, LP**

3 By: 

4 Its: Secretary

5 **ABC NISSAN LLC**

6 By: 

7 Its: Manager

8  
9  
10  
11 **APPROVED AS TO FORM AND CONTENT**

12  
13  
14 **MARK BRNOVICH**  
15 **Attorney General**

16 

17 Matthew du Méc  
18 Assistant Attorney General  
19 Attorneys for Plaintiff

20 **CLARK HILL PLC**

21 

22 Darrell E. Davis  
23 Attorney for ABC Nissan, LP and  
24 ABC Nissan LLC

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Granted with Modifications



/S/ Margaret Mahoney Date: 6/14/2018  
Judicial Officer of Superior Court

**ENDORSEMENT PAGE**

CASE NUMBER: CV2018-006693

SIGNATURE DATE: 6/14/2018

E-FILING ID #: 9433126

FILED DATE: 6/15/2018 8:00:00 AM

MATTHEW B DU MEE