1 MARK BRNOVICH ATTORNEY GENERAL 2 (State Bar No. 14000) ALYSE C. MEISLIK (No. 024052) 3 ASSISTANT ATTORNEY GENERAL 4 OFFICE OF THE ATTORNEY GENERAL 1275 West Washington Street 5 Phoenix, AZ 85007-2926 Telephone: (602) 542-3702 6 Facsimile: (602) 542-4377 7 consumer@azag.gov Attorneys for Plaintiff 8 9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MARICOPA 10 11 STATE OF ARIZONA, ex rel. MARK Case No.: CV2016-000234 BRNOVICH, Attorney General, 12 Plaintiff, CONSENT JUDGMENT 13 VS. 14 (Assigned to the Honorable Douglas Gerlach) 15 GERARDO FIGUEROA HAROS, d/b/a GBY TRANSMISSIONS, and MARTHA SALINAS 16 DE FIGUEROA, husband and wife, and GERARDO FIGUEROA SALINAS and 17 MIRSHA IDANIA ROMAN, husband and wife. 18 Defendants. 19 Plaintiff State of Arizona ex rel. Mark Brnovich, the Attorney General, filed a complaint 20 alleging violations of the Arizona Consumer Fraud Act, Ariz. Rev. Stat. ("A.R.S.") §§ 44-1521 21 to 44-1534 (the "CFA"), against Defendants Gerardo Figueroa Haros, d/b/a GBY 22 Transmissions, and Martha Salinas De Figueroa, and Defendants Gerardo Figueroa Salinas, 23

a/k/a Lalo, and Mirsha Idania Roman. Said Defendants have waived service of the Summons

and Complaint. After being fully advised of their right to a trial in this matter, said Defendants

have waived their right to trial and have admitted that this Court has jurisdiction over the

Michael K Jeanes, Clerk of Court
*** Electronically Filed ***

A. Quintana, Deputy 1/8/2016 8:00:00 AM Filing ID 7110041

Granted as Submitted

24

25

26

*See eSignature page***

subject matter and the parties for the purposes of entry and enforcement of this Consent Judgment. Said Defendants stipulate that the Court may enter the following Findings of Fact, Conclusions of Law, and Judgment.

I. FINDINGS OF FACT

- 1. Plaintiff is the State of Arizona, *ex rel*. Mark Brnovich, the Attorney General ("the State"), who is authorized to bring this action under the CFA.
- 2. Defendant Gerardo Figueroa Haros ("Defendant Haros") is the owner of a business that operates under the registered trade name of GBY Transmissions at 11017 North 19th Avenue in Phoenix, Arizona as an automotive transmission service and repair shop. Defendant Haros also owns a business that operates under the registered trade name of DTB Transmissions at 1710 W. Hatcher Road in Phoenix, Arizona that is also an automotive transmission service and repair shop.
- 3. Defendant Haros' actions alleged herein were taken in furtherance of his and Defendant Martha Salinas De Figueroa's marital community. Defendant Martha Salinas De Figueroa is named solely for any interest she may have in her marital community. Defendant Martha Salinas De Figueroa is liable and obligated to pay the amounts set forth in this Consent Judgment only to the extent of her interest in the marital community. The marital community of Defendants Haros and Martha Salinas De Figueroa will be referred to herein as the "Haros Marital Community."
- 4. As the owner of GBY Transmissions, Defendant Haros, with actual and/or constructive knowledge, approved, endorsed, directed, ratified, controlled or otherwise participated in the illegal acts and practices alleged herein.
- 5. Defendant Gerardo Figueroa Salinas, a/k/a Lalo, ("Defendant Figueroa") is the manager of GBY Transmissions.
- 6. Defendant Figueroa's actions alleged herein were taken in furtherance of his and Defendant Mirsha Idania Roman's marital community. Defendant Mirsha Idania Roman is

named solely for any interest she may have in her marital community. Defendant Mirsha Idania Roman is liable and obligated to pay the amounts set forth in this Consent Judgment only to the extent of her interest in the marital community. The marital community of Defendants Figueroa and Mirsha Idania Roman will be referred to herein as the "Figueroa Marital Community."

- 7. As the manager of GBY Transmissions, Defendant Figueroa, with actual and/or constructive knowledge, approved, endorsed, directed, ratified, controlled or otherwise participated in the illegal acts and practices alleged herein.
- 8. Defendant Haros and Defendant Figueroa are responsible for the acts, practices, omissions, and misrepresentations of GBY Transmissions and its managers, employees, agents, and independent contractors.
- 9. Defendant Haros, d/b/a GBY Transmissions, and Defendant Figueroa will be referred to herein as "GBY Defendants."
- 10. At all times relevant to this Consent Judgment, GBY Defendants' managers, employees, agents, and independent contractors were the authorized agents of GBY Defendants.
- 11. GBY Defendants provide motor vehicle transmission repairs and related goods and services in the State of Arizona.

A. The State's Undercover Investigation

- 12. Prior to December 16, 2014, an automotive expert retained by the State inspected an undercover vehicle owned by the State and verified that the vehicle's transmission was fully functioning and operating in accordance with industry standards.
- 13. After inspecting the vehicle, the State's automotive expert disconnected the vehicle's transaxle/vehicle harness connector, which provides the electronic communications between the vehicle's computer and the vehicle's automatic transmission. The elimination of the communication link between the vehicle's computer and the vehicle's automatic

transmission prevented the vehicle's automatic transmission from shifting properly and caused both an illumination of the vehicle's check engine light and the multi-function: automatic transaxle/cooling system warning light. The State's expert estimated that the cost to repair this issue would be approximately forty (\$40) to one hundred dollars (\$100).

- 14. On or about December 16, 2014, at approximately 9:18 a.m., an undercover operator with the Arizona Attorney General's Office, using a fictitious name, took the State's undercover vehicle to GBY Defendants' location at 11017 North 19th Avenue, Phoenix, Arizona 85029 and spoke with Defendant Figueroa.
- 15. The State's undercover operator informed Defendant Figueroa that her check engine light was on and that she had been experiencing issues with the vehicle such as the vehicle jumping when shifted into drive and the vehicle taking "a long time to speed up."
- 16. After GBY Defendants test drove and examined the vehicle, Defendant Figueroa informed the State's undercover operator that the computer diagnostic revealed eight issue codes, which he said indicated that there was an issue with the transmission's solenoids.
- 17. Defendant Figueroa explained to the State's undercover operator that, to properly fix the car, the transmission clutches would need to be replaced. Defendant Figueroa stated that this would require rebuilding the transmission, at a minimum price of \$375 plus taxes, and additional costs if any "hard parts" needed replacement. Defendant Figueroa also explained that a cut wire could also cause all of the issue codes on the computer diagnostic.
- 18. The State's undercover operator left the State's vehicle at the shop with the understanding that the GBY Defendants would inspect the vehicle and call with the results before completing any repairs.
- 19. A video recording from a camera located within the State's undercover vehicle shows that at approximately 11:00 a.m., GBY Defendants discovered the vehicle's disconnected transaxle/vehicle harness connector, the true cause of the vehicle's transmission problems.

26 |]//.

- 20. The video recording from the undercover vehicle also shows that GBY Defendants never performed any diagnostic tests or test drove the vehicle after locating the vehicle's disconnected transaxle/harness connector and before removing the transmission to determine whether the disconnected part was the source of the vehicle's transmission problems.
- 21. At approximately 12:15 p.m. on December 16, 2014, Defendant Figueroa telephoned the State's undercover operator and informed her that GBY Defendants had discovered that the "harness" was disconnected and an additive was in the vehicle's transmission fluid.
- 22. Despite GBY Defendants' failure to perform any diagnostic tests or test drive the vehicle with the vehicle's transaxle/harness connector reconnected, Defendant Figueroa told the State's undercover operator that the disconnected "harness" was not the cause of the shifting issue, and he said that reconnecting the "harness" would not fix the low pressure code, the issue with the "hitting," or the issue with the additive in the vehicle's transmission fluid.
- 23. Defendant Figueroa told the State's undercover operator that GBY Defendants would check the internal parts of the transmission and would call her back.
- 24. At approximately 2:40 p.m. on December 16, 2014, Defendant Figueroa spoke with the State's undercover operator again over the phone and informed her that GBY Defendants found no issues with any of the internal hard parts of the transmission; however, they needed to replace the vehicle's valve body and torque converter and clean out the transmission lines.
- 25. Defendant Figueroa informed the State's undercover operator that the valve body "is the only part right now that could be giving you the problem" with the transmission.
- 26. During the call, Defendant Figueroa told the State's undercover agent that the cost of completing the repairs was \$1,010.69, which included the cost for a new valve body, the transmission kit, and torque converter replacement.

- 27. When the State's undercover agent inquired as to whether it was possible to fix the car without replacing the torque converter, Defendant Figueroa stated that the vehicle had a bad filter, which if not repaired, would result in additional, costly repairs in two or three months.
- 28. At approximately 3:30 p.m. on December 16, 2014, the State's undercover operator called GBY Defendants again and spoke to Defendant Figueroa, who reiterated the need to replace both the valve body and the torque converter in order to do a complete job. Defendant Figueroa also asserted that he could not give the State's undercover operator a warranty unless he replaced the torque converter.
- 29. The State's undercover operator gave GBY Defendants permission to do the recommended work.
- 30. On December 17, 2014, at approximately 3:37 p.m., the State's undercover operator picked up the vehicle from GBY Defendants.
- 31. GBY Defendants represented to the State's undercover operator that they rebuilt the vehicle's transmission, replaced the vehicle's torque converter and valve body, flushed out the lines, and filtered the automatic transmission fluid.
- 32. The State's undercover operator requested that GBY Defendants give her the old parts that GBY Defendants took out of her vehicle. Defendant Figueroa told her that he could give her the clutches, but said that they had sent the valve body and torque converter back to the supplier.
- 33. Defendant Figueroa gave used vehicle parts to the State's undercover operator. Although he represented that these parts were removed from the State's vehicle, the State's automotive expert found that the vehicle parts did not come from the State's vehicle.
- 34. After the State retrieved its vehicle from GBY Defendants, the State's automotive expert examined the vehicle and discovered that GBY Defendants never replaced the vehicle's valve body even though GBY Defendants represented to the State's undercover agent that they

had replaced this part.

- 35. The State's automotive expert also confirmed that the vehicle's transmission issues could have been repaired by simply reconnecting the vehicle's transaxle/harness connector.
- 36. GBY Defendants deceptively and unfairly charged the State's undercover operator one thousand ten dollars (\$1,010) for installing unnecessary parts, for making unnecessary repairs to the State's vehicle, and for parts never replaced.

B. Additional Factual Allegations

- 37. GBY Defendants advertise transmission repair services to Spanish speaking consumers in magazines such as Que Magazine, Que Calor, AZ Notas, Teleguía en Español, and Segunda Mano.
- 38. GBY Defendants advertised rates of "\$375" or "from \$375" for a transmission rebuild. Despite GBY Defendants' advertisements, GBY Defendants have never charged a consumer an amount as low as \$375 plus tax to rebuild a transmission.
- 39. At some time during the last two years, GBY Defendants lowered their advertised price to rates "from \$189" for a transmission rebuild. The fine print in the advertisements limits this price to vehicles older than 1979. Despite GBY Defendants' advertisements, GBY Defendants have never charged a consumer an amount as low as \$189 plus tax for a transmission rebuild.
- 40. GBY Defendants' advertised prices for transmission rebuilds do not include the price of a torque converter even though GBY Defendants replace the torque converter every time that they rebuild a transmission.
- 41. GBY Defendants consistently quote unrealistically low prices to rebuild transmissions before assessing the repair work needed. After disassembling a transmission, GBY Defendants typically notify consumers of the cost of the repair work, which is significantly more expensive than the initial estimate GBY Defendants provided. At that point,

consumers do not have a choice as to whether to agree to repairs because of the expense of reassembling the vehicles.

- 42. GBY Defendants perform repairs and demand payment for repairs even when consumers have not authorized GBY Defendants to perform repairs.
- 43. GBY Defendants, in the course of operating a vehicle transmission repair business, fail to complete repairs as promised, fail to honor warranties, and receive and keep payments for work not performed.

II. CONCLUSIONS OF LAW

- 1. The acts of GBY Defendants including, without limitation, those set forth in the Findings of Fact above, violate the CFA.
- 2. GBY Defendants at all times acted willfully, as defined by A.R.S. § 44-1531(B), while engaging in the acts and practices alleged herein.

III. ORDER

- 1. The "Effective Date" of this Consent Judgment is the date the Consent Judgment is entered by the Court.
- 2. GBY Defendants, their officers, directors, agents, servants, employees, successors and assigns, attorneys and any entity established by GBY Defendants, whether a partnership, corporation or limited liability company, if any, and all persons in active concert or participation with GBY Defendants, directly or indirectly, are permanently enjoined, restrained, and prohibited from:
 - a. Engaging in any and all deceptive acts or practices, fraud, false pretense, false promises, misrepresentations, and/or concealment, suppression or omission of material fact in violation of the CFA, as it is currently written, and as it may be amended in the future;
 - b. Departing from or disregarding accepted industry standards for goods and workmanlike repair;

- c. Advertising the price of a part, repair, or service when few, if any, of GBY Defendants' customers receive said part, repair, or service at the advertised price;
- d. Advertising or offering a service or repair in a manner suggesting that the advertised or offered price is the cost of the full service or repair when that is not the case;
- e. Failing to make repairs in accordance with advertised and promised warranties and/or statements made to consumers;
- f. Misrepresenting to consumers the need for servicing and repair of merchandise and installing unnecessary parts or performing unnecessary repairs;
- g. Representing to consumers that a part replacement or repair service has been made when it has not;
- h. Failing to provide a written estimate to all consumers, before performing any vehicle repair services, that specifically discloses all of the following: (1) the cost of any diagnostic work; (2) the total estimated cost of the repair, including the price of parts and labor; (3) an explanation of what GBY Defendants will charge for labor; (4) the terms of any applicable warranties, including the duration of the warranty, the parts and labor warranted, and the exclusions of the warranty; (5) the cost of storage, including an explanation of when storage charges will apply and; (6) any other relevant charges;
- i. Performing additional repairs and charging additional amounts for repairs over the written estimate provided to consumers without first obtaining the customer's approval to perform the repairs and exceed the written estimate; and
- j. Failing to provide an invoice to consumers at the completion of the repairs that indicates (1) the total price; (2) itemized costs of parts and labor; (3) a detailed list of all repair work performed on the vehicle; and (4) warranties, if any, with terms including the specific duration of the warranty, the parts and labor under warranty, and the exclusions of the warranty.

Payment Provisions

- 3. The payment provisions of this Consent Judgment are based on certain representations Defendants have made concerning their financial condition. If the State learns that these representations were incomplete or untrue, the State may immediately move the Court to modify this Judgment and find Defendants in contempt.
- 4. Pursuant to A.R.S. § 44-1528(A)(2), the State is awarded judgment against GBY Defendants, the Haros Marital Community, and the Figueroa Marital Community, jointly and severally, in the amount of Twenty Thousand Dollars (\$20,000) as restitution ("Restitution Award").

All restitution payments ordered herein shall be deposited by the State into the consumer restitution subaccount of the interest-bearing consumer restitution and remediation revolving fund, pursuant to A.R.S. § 44-1531.02(B), and distributed to eligible consumers by the Attorney General's Office. For purposes of this Consent Judgment, "eligible consumers" includes consumers (1) who filed a complaint with the Attorney General's Office or Better Business Bureau before the date this Consent Judgment is submitted to the Court for approval, (2) whose complaint arose as a result of the consumer hiring GBY Defendants for vehicle repair services, and (3) who have not otherwise been fully reimbursed by GBY Defendants. In the event the restitution amount does not fully compensate eligible consumers for the amounts they are owed by GBY Defendants, said restitution amount shall be distributed on a pro rata basis. The amount of restitution due to each eligible consumer will be determined at the sole discretion of the Attorney General's Office. In the event that any portion of the restitution cannot be distributed to eligible consumers, such portion shall be deposited by the Attorney General's Office into the Consumer Protection – Consumer Fraud Revolving Fund as provided in A.R.S. § 44-1531.01.

5. Pursuant to A.R.S. § 44-1534, the State is awarded judgment against GBY Defendants, the Haros Marital Community, and the Figueroa Marital Community, jointly and

severally, in the amount of Fifteen Thousand Dollars (\$15,000), as attorneys' fees, expert costs, and investigative fees ("Attorneys' Fee and Cost Award"). The payment for the attorneys' fees and costs shall be deposited into the Consumer Protection – Consumer Fraud Revolving Fund, pursuant to A.R.S. § 44-1531.01, and used for the purposes set forth therein.

- 6. Pursuant to A.R.S. § 44-1531, the State is awarded judgment against GBY Defendants, the Haros Marital Community, and the Figueroa Marital Community, jointly and severally, in the amount of Fifteen Thousand Dollars (\$15,000), as civil penalties ("Civil Penalty Award"). The payment for civil penalties shall be deposited into the Consumer Protection Consumer Fraud Revolving Fund pursuant to A.R.S. § 44-1531.01, and used for the purposes set forth therein.
- 7. GBY Defendants, the Haros Marital Community, and the Figueroa Marital Community, jointly and severally, shall pay a total of Fifty Thousand Dollars (\$50,000) as follows:
 - a. Defendant Haros and the Haros Marital Community shall pay One Thousand Dollars (\$1,000) within ten (10) calendar days after the Effective Date of this Consent Judgment.
 - b. Defendant Figueroa and the Figueroa Marital Community shall pay Five Hundred (\$500) within ten (10) calendar days after the Effective Date of this Consent Judgment.
 - c. The remaining balance owed of Forty-Eight Thousand Five Hundred Dollars (\$48,500) shall be paid by GBY Defendants, the Haros Marital Community, and the Figueroa Marital Community in sixty-five (65) monthly payments as follows:
 - i. Defendant Haros and the Haros Marital Community shall make sixty-four (64) monthly payments of Five Hundred Dollars (\$500) and a sixty-fifth (65th) payment of Two Hundred Fifty Dollars (\$250), due on or before the first day of each month, beginning after the Effective Date of this Consent

Judgment.

- ii. Defendant Figueroa and the Figueroa Marital Community shall make sixty-five (65) monthly payments of Two Hundred Fifty Dollars (\$250), due on or before the first day of each month, beginning after the Effective Date of this Consent Judgment.
- d. Each payment, payable to the Office of the Attorney General, State of Arizona, must be delivered or mailed and post marked, postage prepaid, to the Attorney General's Office, Consumer Protection and Advocacy Section, 1275 West Washington Street, Phoenix, Arizona 85007 on or before the first (1st) day of each month. If all payments are made in a timely fashion, the judgment shall bear no interest or collection costs. If payment is not made within fifteen (15) calendar days of the date the payment is due, GBY Defendants, the Haros Marital Community, and the Figueroa Marital Community will be deemed in default of their payment obligation. In the event of a default of any payment obligation imposed by this Consent Judgment, and in addition to any other relief or remedy elected or pursued by the State, all payments set forth in paragraphs 4 through 6 of the Order above, plus interest at a rate of ten percent (10%) per annum from the date of the entry of the Consent Judgment and costs of collection, less any amount previously paid, shall be accelerated and be immediately due and owing.
- 8. The State shall allocate payments received, pursuant to this Consent Judgment, first to the Restitution Award, second to the Attorneys' Fee and Cost Award, and finally to the Civil Penalty Award.

General Terms

9. GBY Defendants shall not represent or imply that the Attorney General, the State of Arizona, or any agency thereof has approved any of its actions in Arizona or has approved any of its past, present or future business practices in Arizona, and GBY Defendants are

| | //

enjoined from directly or indirectly representing anything to the contrary.

- 10. GBY Defendants shall not participate directly or indirectly in any activity to form a separate entity or corporation for the purpose of engaging in acts in Arizona that are prohibited in this Consent Judgment or for any other purpose which would otherwise circumvent any part of this Consent Judgment or the spirit or purposes of this Consent Judgment.
- 11. GBY Defendants, the Haros Marital Community, and the Figueroa Marital Community, agree that the facts set forth in the Findings of Fact of this Consent Judgment shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by the State to enforce its rights to any payment or money judgment owed pursuant to this Order, including but not limited to a nondischargeability complaint in any bankruptcy case.
- 12. GBY Defendants, the Haros Marital Community, and the Figueroa Marital Community, further stipulate and agree that the Findings of Fact and Conclusions of Law set forth in this Consent Judgment establish all elements necessary to sustain an action by the State pursuant to Section 523(a)(2)(A) and (a)(7) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A) and (a)(7), and that this Order shall have res judicata and collateral estoppel effect for such purposes.
- 13. If any portion of this Consent Judgment is held invalid by operation of law, the remaining terms shall not be affected and shall remain in full force and effect.
- 14. This Court retains jurisdiction of this matter for the purpose of entertaining an application by the State for the enforcement of this Consent Judgment. The State may institute an action or proceeding to enforce the terms and provisions of this Consent Judgment or to take action based on future conduct by the GBY Defendants.

1	15. This Consent Judg	gment resolves all outstanding claims alleged in the State's	S
2	Consumer Fraud Complaint. As no further matters remain pending, this is a final judgment		
3	entered pursuant to Ariz. R. Civ.	P. 54(c).	
4	DATED:	, 2016.	
5			
6		Y 1 0.1 0 1 0	
7		Judge of the Superior Court	
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

CONSENT TO JUDGMENT

- 1. GBY Defendants acknowledge that they were served with a copy of the Summons and Complaint, have read the Findings of Fact, Conclusions of Law and Order, are aware of their right to a trial in this matter, and have waived the same.
- 2. GBY Defendants state that no promise of any kind or nature whatsoever was made to induce it to enter into this Consent Judgment and declare that they have entered into this Consent Judgment voluntarily.
- 3. GBY Defendants have fully read and understand this Consent Judgment, understand the legal consequences involved in signing it, assert that this is the entire agreement of the parties, and that there are no other representations or agreements not stated in writing herein, and no force, threats, or coercion of any kind have been used to obtain its signature.
- 4. GBY Defendants understand that acceptance of this Consent Judgment is solely for the purpose of settling this litigation and does not preclude the State, or any other agency or officer of this State, or subdivision thereof, from instituting other civil or criminal proceedings as may be appropriate for any acts unrelated to this litigation or committed after the entry of this Consent Judgment.

-15-

1	5. This Consent Judgment is entered as a result of a compromise and settleme			
2	agreement between the parties. Only the parties to this action may seek enforcement of the			
3	Consent Judgment. Nothing herein is intended to create a private right of action by other			
4	parties; however, said Consent Judgment shall not limit the rights of any private party to pursu			
5	any remedies allowed by law.			
6				
7	EXECUTED: <u>December 31</u> , 2015.	EXECUTED: December 31, 2015.		
8	The state of the s	Martha Salinas DE Figuro		
9	Gerardo Figueroa Flaros	Martha Salinas De Figueroa		
0				
1				
2	EXECUTED: <u>December</u> 31, 2015.	EXECUTED: December 31, 2015.		
3	Como.	(Westa Alento		
4	Gerardo Figueroa Salinas	Mirsita Idania Roman		
5				
6	APPROVED AS TO FORM AND CONTENT: Quantum 1, 2015.	APPROVED AS TO FORM AND CONTENT: 1/4/1/2, 2015.		
17	Mark Brnovich			
8	Attorney General	Lorona Mead, PLC		
9	Olyse muslik	1865		
20	Alyse C. Meislik Assistant Attorney General	Joshua Black Attorneys for Defendants		
21.				
22				
23				
24				
25				

eSignature Page 1 of 1

Filing ID: 7110041 Case Number: CV2016-000234 Original Filing ID: 7106029

Granted as Submitted



ENDORSEMENT PAGE

SIGNATURE DATE: 1/7/2016

FILED DATE: 1/8/2016 8:00:00 AM

CASE NUMBER: CV2016-000234

E-FILING ID #: 7110041

ALYSE CHERYL MEISLIK

GERARDO FIGUEROA HAROS NO ADDRESS ON RECORD

GERARDO FIGUEROA SALINAS NO ADDRESS ON RECORD

MARK BRNOVICH NO ADDRESS ON RECORD

MARTHA SALINAS DE FIGUEROA NO ADDRESS ON RECORD

MIRSHA IDANIA ROMAN NO ADDRESS ON RECORD