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8
9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF MARICOPA**

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

12 Plaintiff,

13 vs.

14 MALOWS JETSKI RENTALS, LLC, d/b/a
MALOW'S JET SKI RENTALS LLC, an
15 Arizona limited liability company;
MAHRIAR AKBARI, a/k/a MALOW
16 AKBARI, a single man; and FARIBA
BADRE, a single woman.

17 Defendants.
18

Case No: CV2017-009036

STIPULATED CONSENT DECREE

(Assigned to the Hon. Margaret Mahoney)

19 Plaintiff, the State of Arizona *ex rel.* Mark Brnovich, the Attorney General (the "State"),
20 has filed a complaint alleging violations of the Arizona Consumer Fraud Act, Arizona Revised
21 Statutes ("A.R.S.") §§ 44-1521 to 44-1534 (the "CFA"), against defendants Malows Jetski
22 Rentals, LLC, d/b/a Malow's Jet Ski Rentals LLC, and Mahriar Akbari, a/k/a Malow Akbari
23 (collectively "Defendants"). After being fully advised of their right to a trial in this matter,
24 Defendants have waived their right to trial, and have admitted that this Court has jurisdiction
25 over the subject matter and the parties for the purposes of entry and enforcement of this
26 Consent Decree.

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

3 **FINDINGS OF FACT**

4 **I. PARTIES**

5 1. Plaintiff is the State, who is authorized to bring this action under the CFA.

6 2. Defendant Malows Jetski Rentals, LLC, d/b/a Malow's Jet Ski Rentals LLC, is an
7 Arizona limited liability company that incorporated and began doing business in February 2012
8 as a jet ski and boat rental business in Bullhead City, Arizona.

9 3. Defendant Mahriar Akbari, a/k/a Malow Akbari, an Arizona resident, is the
10 manager at Defendant Malows Jetski Rentals, LLC and directed, managed, and controlled the
11 affairs of Defendant Malows Jetski Rentals, LLC.

12 **II. DEFINITIONS**

13 4. "Advertisement" shall mean any attempt by publication, dissemination,
14 solicitation or circulation, oral or written, to induce directly or indirectly any person to enter
15 into any obligation or acquire any title or interest in any merchandise, including the rental or
16 lease of any watercraft.

17 5. "Clearly and conspicuously" shall mean as follows:

- 18 a. In textual communications (e.g., printed publications, signs, or words displayed
19 on the screen of a computer or a mobile device), the required disclosures must
20 be unavoidable and of a type, size, and location sufficiently noticeable for
21 consumers to read and comprehend them, in print that contrasts highly with the
22 background on which they appear, sufficient for an ordinary consumer to
23 notice, read, and comprehend it;
- 24 b. In communications disseminated orally or through audible means, including by
25 telephone, television, or streaming video, the required disclosures must be
26

1 delivered in a volume, speed, and cadence sufficient for consumers to hear and
2 understand them;

3 c. In communications disseminated through written means on television or
4 through a streaming video, the written communications must be presented in a
5 form consistent with subparagraph (a) of this definition and must appear on the
6 screen for a duration sufficient for an ordinary consumer to read and
7 comprehend them;

8 d. In communications made through interactive media, such as the Internet,
9 online services, and software, the required disclosures must be unavoidable and
10 presented in a form consistent with subparagraph (a) of this definition and any
11 audio or video presentation of them must be consistent with subparagraphs (b)
12 or (c) respectively;

13 e. Disclosures must comply with these requirements in each medium through
14 which they are received; and,

15 f. Disclosures cannot be contrary to, mitigated by, or inconsistent with anything
16 else in the communication.

17 6. "Digital Picture" means an electronic snapshot or video that can be stored as a
18 data file on a computer or other electronic device. Still pictures should be electronically stored
19 in their Native Format with 24-bit color and a resolution of at least 1280 x 720 (minimum HD
20 quality). Videos images should be electronically stored in their Native Format and should be a
21 minimum of 720p HD video quality or its equivalent.

22 7. "Effective Date" is the date on which a copy of this Consent Decree is approved
23 by and becomes a judgment of the Court.

24 8. "In Close Proximity" means, for any communication presented solely through
25 visual means, on the same webpage, online service page, mobile device screen, or other
26 electronic page, and immediately adjacent to the cost-related claim and viewable in conjunction

1 with the cost-related claim in such a manner that the communication is viewable without
2 requiring the consumer to scroll up, down, or sideways, or otherwise adjust their browser
3 window or mobile device window in any way. Representations or disclosures in response to
4 cost-related claims that are accessed or displayed through hyperlinks, pop-ups, interstitials or
5 other means are NOT “In Close Proximity.”

6 9. “Native Format” means the format of a digital file as it was created by the
7 application or device. For image files, this would include .jpg, .jpeg, .tiff, .png, and .gif. For
8 video files, this would include .avi, .mpg, .mpeg, .wmv, and .mov.

9 10. “Rental Watercraft” means a jet ski or boat which, upon the execution of a rental
10 agreement, is made available to a consumer for the consumer’s use or other authorized
11 operators’ use.

12 **III. DEFENDANTS’ BUSINESS PRACTICES**

13 11. At all times relevant to this Consent Decree, Defendants have advertised and
14 provided jet ski and boat rental services in Bullhead City, Arizona.

15 12. Defendants’ employees perform almost all maintenance and repair services for
16 their Rental Watercraft.

17 13. Consumers may rent Rental Watercraft from Defendants at an hourly or full day
18 rental rate.

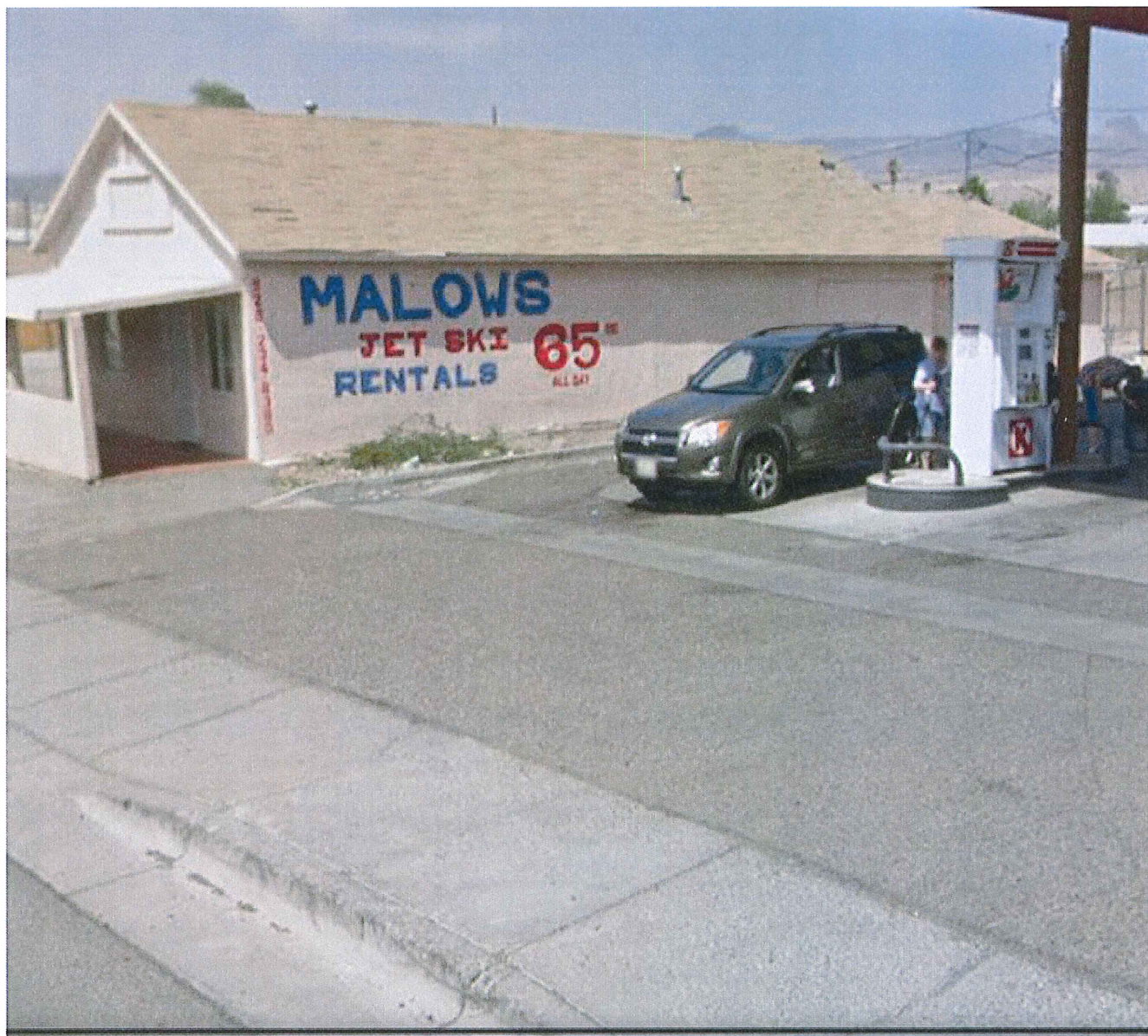
19 ***a. Defendants’ Advertising***

20 14. From approximately 2014 through 2017, Defendants advertised their Rental
21 Watercraft services in a variety of places, including on the side of a building next to a gas
22 station; with a sign located on the sidewalk outside their business; on their website,
23 www.Malowsjetskirentals.com; and on their Facebook page.

24 15. From approximately 2014 through 2017, Defendants used numerous
25 advertisements touting “\$65 All Day” and “\$75 All Day” jet ski rentals.

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1 16. From approximately June 2016 through January 2017, Defendants displayed an
2 advertisement (“Building Ad”) on the side of a building next to a gas station stating
3 “MALOWS JET SKI RENTALS 65⁰⁰ ALL DAY”:
4



23
24
25 ///

26 ///

1 17. Defendants displayed the following sign (“\$65 A-Frame Sign”) next to the
2 sidewalk outside their business from approximately June 2015 to January 2017:



15 18. Defendants displayed a similar sign advertising, “JET SKI \$75 ALL DAY” (“\$75
16 A-Frame Sign”), next to the sidewalk outside their business from approximately January 2014
17 through May 2015.

18 19. During the summer of 2016, Defendants’ website,
19 www.Malowsjetskirentals.com, advertised “\$65 ALL DAY RENTALS” (“Website Ad”).

20 20. In April 2016, Defendants posted an advertisement (“Facebook Ad 1”) on their
21 Facebook page for “\$65 ALL DAY RENTALS.” In February 2017, Defendants posted an
22 advertisement (“Facebook Ad 2”) on their Facebook page for “\$65 ALL DAY RENTALS!
23 Monday – Thursday Only Excluding Holidays.”

24 21. In March 2017, Defendants posted an advertisement (“Facebook Ad 3”) on their
25 Facebook page for “\$65 ALL DAY RENTALS! Monday – Thursday Only Excluding
26 Holidays.”

1 ***b. Defendants' Rental Practices***

2 22. When consumers arrive at Defendants' counter, Defendants present consumers
3 with a contract that contains information such as rules and regulations associated with the
4 Rental Watercraft, releases of Defendants' liability, and dollar amounts Defendants will assess
5 if consumers return Rental Watercraft with damages.

6 23. Until approximately 2017, the contract Defendants presented to consumers did
7 not include specific rental terms such as the following: an itemized list of Defendants' rental
8 charges, the specific watercraft rented, the rental period, the amount of the refundable deposit
9 collected, the method of payment of the refundable deposit, or any fees for gasoline, launch and
10 recovery of jet skis, or labor to repair damages.

11 ***c. Undisclosed Rates and Fees in Advertisements***

12 24. Defendants charged consumers more than the price their advertisements
13 disclosed.

14 25. Since approximately June 2015, on Mondays through Thursdays, Defendants
15 have been charging consumers a base rental rate of \$65 per jet ski for a full-day rental.

16 26. If consumers rented jet skis from Defendants on a Friday, Saturday, Sunday, or
17 on a holiday—i.e., the days that most consumers rent jet skis—Defendants charged consumers
18 varying base rental rates ranging from approximately \$150 to \$299 per jet ski for a full-day
19 rental.

20 27. In addition to the base rental rate, Defendants required renters to pay a \$15 launch
21 and recovery fee.

22 28. In addition to the base rental rate and launch and recovery fee, Defendants
23 charged fees for gasoline. At times, Defendants charged a flat rate for an unlimited quantity of
24 gasoline. At times, Defendants charged at a per-gallon rate based on the amount of gasoline
25 used. Other times, Defendants charged for gasoline at a per-gallon rate by checking the number
26 of bars measuring fuel consumption on the gasoline gauge. Defendants also sometimes

1 included the price of gasoline in the total cost of the rental when they ran specials.

2 29. Defendants' Building Ad, which they used during the time set forth above, did
3 not disclose that the advertised \$65 all-day rental rate did not apply on Fridays, Saturdays,
4 Sundays, or on holidays. Defendants' Building Ad did not disclose that the advertised rate did
5 not include Defendants' \$15 launch and recovery fee or Defendants' extra charge for gasoline.

6 30. Defendants' \$65 A-Frame Sign, which they used during the time set forth above,
7 did not adequately notify consumers that the \$65 all-day base rental rate did not apply on
8 Fridays, Saturdays, Sundays, or on holidays. Defendants' \$65 A-Frame Sign prominently
9 disclosed the "\$65 ALL DAY" base rental rate in large, bold print; however, Defendants' only
10 disclosure regarding time period limitations to this rate was included in extremely tiny print
11 that consumers could not readily see. Defendants' \$65 A-Frame Sign also did not disclose that
12 the advertised rate did not include Defendants' \$15 launch and recovery fee or Defendants'
13 extra charge for gasoline.

14 31. Defendants' \$75 A-Frame Sign, , which they used during the time set forth above,
15 did not disclose or adequately disclose that the advertised \$75 all-day rental rate did not apply
16 on Fridays, Saturdays, Sundays, or on holidays. Defendants' \$75 A-Frame Sign also did not
17 disclose that the advertised rate did not include Defendants' extra charge for gasoline.

18 32. Defendants' Website Ad, which they used during the time set forth above, did not
19 disclose that the advertised \$65 all-day rental rate did not apply on Fridays, Saturdays,
20 Sundays, or on holidays. Defendants' Website Ad also did not disclose that the advertised rate
21 did not include Defendants' \$15 launch and recovery fee or Defendants' extra charge for
22 gasoline.

23 33. Defendants' Facebook Ad 1, which they posted during the time set forth above,
24 did not disclose that the advertised \$65 all-day rental rate did not apply on Fridays, Saturdays,
25 Sundays, or on holidays. Defendants' Facebook Ad 1 also did not disclose that the advertised
26 rate did not include Defendants' extra charge for gasoline or Defendants' launch and recovery

1 fee.

2 34. Defendants' Facebook Ad 2, which they posted during the time set forth above,
3 did not disclose that the advertised rate did not include Defendants' extra charge for gasoline or
4 Defendants' launch and recovery fee.

5 35. Defendants' Facebook Ad 3, which they posted during the time set forth above,
6 did not disclose that the advertised rate did not include Defendants' extra charge for gasoline or
7 Defendants' launch and recovery fee.

8 ***d. Gasoline Charges***

9 36. Consumers have alleged that Defendants did not disclose, prior to consumers
10 entering into a rental agreement for Rental Watercraft, the amount to be charged for gasoline or
11 the method Defendants would use to determine the gasoline charge.

12 37. Some consumers have alleged that Defendants charged consumers a \$64
13 "unlimited gas" rate, and then also required consumers to pay additional amounts for gasoline
14 at a per-gallon rate to refuel the Rental Watercraft.

15 38. Some consumers have alleged that Defendants did not provide consumers with a
16 full tank of gasoline at the beginning of the rental and then Defendants charged the consumers
17 at a per gallon rate as though consumers took possession of the Rental Watercraft with a full
18 tank of gasoline.

19 39. Some consumers have alleged that Defendants overcharged consumers by
20 charging for gasoline based on the wrong size of gasoline tank.

21 ***e. Failure to Refund Deposits and Amounts Paid***

22 40. Defendants required consumers to provide \$200 per jet ski as a security deposit,
23 which they told consumers is "refundable."

24 41. Some consumers have alleged that Defendants refused to refund consumers'
25 refundable deposit even when the consumers did not cause damage to Defendants' jet skis, did
26 not owe Defendants the full amount of the deposit, and/or did not owe any additional money to

1 Defendants.

2 42. In at least one instance, when a consumer signed Defendants' credit card slips and
3 then decided not to rent Rental Watercraft, Defendants cited their "no refund" policy and
4 refused to refund the monies paid by the consumer, including the base rental rate, deposits,
5 gasoline charges, and other associated fees.

6 43. In at least one instance, when consumers disputed Defendants' charges to their
7 credit cards, consumers alleged that Defendants misrepresented and/or mischaracterized the
8 basis of the credit card charges to credit card companies so that Defendants would prevail in the
9 credit card disputes and retain the consumers' money.

10 44. Prior to renting Rental Watercraft, Defendants instructed consumers to identify
11 any damage to the equipment. Defendants noted the damage on a document entitled:
12 "Customer Inspection Sheet: Record of Damage Leaving Our Dock" ("Inspection Sheet").

13 45. Some consumers have alleged that Defendants charged consumers for damage to
14 Rental Watercraft when the Rental Watercraft had damage prior to the consumers renting it
15 and/or the consumers did not damage the Rental Watercraft.

16 46. Some consumers have alleged that Defendants required consumers to sign a blank
17 "Watercraft Rental Damage Report" prior to taking possession of Rental Watercraft even
18 though the signature on the form purportedly constitutes consumers' "Acknowledgement of
19 Damages" that occurred during the rental.

20 47. Some consumers have alleged that when consumers questioned Defendants'
21 additional charges for alleged damage to Rental Watercraft, Defendants refused to answer
22 questions about the charges by becoming verbally abusive and/or threatening to increase the
23 charges.

24 48. Some consumers have alleged that Defendants rented faulty or inoperable Rental
25 Watercraft to consumers and refused to refund amounts paid for the faulty or inoperable Rental
26 Watercraft.

1 ***f. Other Conduct***

2 49. Some consumers have alleged that Defendants provided quotes to specific
3 consumers prior to the rental date, but did not honor the quoted prices when those consumers
4 arrived at Defendants' business location.

5 50. The State alleged that, in at least one instance, Defendants' employees posted
6 positive, five-star reviews on the internet without disclosing to consumers that the reviews were
7 posted by employees.

8 **IV. CONCLUSIONS OF LAW**

9 51. The acts of Defendants, including, without limitation, those set forth in the
10 Findings of Fact above, constitute violations of A.R.S. §§ 44-1521 to 44-1534.

11 52. At all times material and relevant to this Consent Decree, as set forth in A.R.S.
12 § 44-1531(B), Defendants acted willfully while engaging in the acts and practices alleged
13 herein.

14 **V. ORDER**

15 53. The injunctive relief set forth in this Consent Decree is binding upon the
16 Defendants, their officers, agents, servants, employees, attorneys, and any entity established by
17 the Defendants, whether a partnership, corporation, or limited liability company, if any, and
18 those persons in active concert or participation with the Defendants, directly or indirectly, who
19 receive actual notice of this Consent Decree by personal service or otherwise.

20 54. Defendants shall comply with the Arizona Consumer Fraud Act, A.R.S. §§ 44-
21 1521 to 44-1534, as it is currently written, and as it may be amended in the future.

22 55. Advertising: All Advertisements used by Defendants must be truthful and not
23 misleading.

- 24 a. All Advertisements that include any representation involving price and/or fees
25 must Clearly and Conspicuously disclose the amount of the base rental rate for
26 Rental Watercraft and all fees and charges that may be charged in excess of the

1 base rental rate. If there are limitations on specific days of the week that a price
2 applies, Defendants must Clearly and Conspicuously disclose such limitations In
3 Close Proximity to the advertised rate.

4 b. In all website advertisements, Defendants must disclose the base rental rate and
5 any and all fees and charges that may be charged. Any fees and charges in
6 addition to the base rental rate that Defendants charge to rent Rental Watercraft
7 must be listed In Close Proximity to the amount of the base rental rate for Rental
8 Watercraft.

9 56. Telephone Inquiries: When responding to telephone inquiries, Defendants must
10 provide sufficient information so that consumers may ascertain (a) the applicable base rental
11 rate; (b) each applicable additional fee, including fees for launch and recovery and prices and
12 options for gasoline charges, (c) the applicable tax rate which consumers will be obligated to
13 pay, and (d) the amount of the refundable deposit that will be refunded if no charges other than
14 the rental charges are imposed.

15 57. Watercraft Rental Transaction:

16 a. When consumers appear in person to rent Rental Watercraft from Defendants,
17 Defendants must Clearly and Conspicuously disclose, both orally and in a written
18 itemized statement that lists the registration number(s) of Rental Watercraft:
19 (i) the applicable base rental rate, (ii) each applicable additional fee, including
20 fees for launch and recovery and the rate for gasoline, (iii) the applicable tax rate
21 and charge, (iv) the total of all Watercraft Rental charges, (v) the amount of and
22 method of payment of the refundable deposit that will be refunded if no charges
23 other than the rental charges are imposed, and (vi) the time period of the rental.

24 b. Defendants' contract must disclose, to the best of their ability, the dollar amounts
25 that Defendants will charge if consumers return Rental Watercraft with damages.
26 If Defendants charge additional amounts for labor, Defendants must disclose the

1 specific rate or amount Defendants will charge for labor.

- 2 c. Defendants may not collect payment from consumers until after Defendants
3 provide full disclosure of all costs and fees, as required in paragraph 57(a), and
4 consumers review and sign an acknowledgement of the itemized statement.
- 5 d. When requested, Defendants must provide consumers a photocopy or scanned
6 copy of their signed contract, including the itemized statement.
- 7 e. Defendants may not charge rental consumers for damage(s) to Rental Watercraft
8 unless Defendants permit consumers to take pictures of Rental Watercraft both
9 before they take possession of the Rental Watercraft and when consumers return
10 Rental Watercraft.
- 11 f. Defendants may not charge rental consumers for damage(s) to Rental Watercraft
12 unless Defendants take Digital Pictures of Rental Watercraft, in the presence of
13 the rental consumer, during the pre-rental inspection of Rental Watercraft before
14 leaving the dock (“pre-rental pictures”). These pre-rental pictures must include
15 Digital Pictures that capture the hull number or VIN number of the Rental
16 Watercraft.
- 17 g. Defendants may not charge a consumer for gasoline that the consumer did not
18 use.
- 19 h. Defendants must refund all payments taken from a consumer if the consumer
20 never takes possession of the Rental Watercraft, except that Defendants may
21 retain up to a fifty dollar (\$50) cancellation fee for reservations made at least
22 twenty-four (24) hours in advance and cancelled less than twenty-four (24) hours
23 in advance. Defendants may not charge a cancellation fee unless they disclose
24 the cancellation fee to consumers prior to taking payment.
- 25 i. Defendants must record on their contract both the time that a consumer takes
26 possession of and the time that the consumer returns Rental Watercraft.

1 58. Return of Rental Watercraft:

- 2 a. Defendants may not charge a consumer for damage(s) that the consumer did not
3 cause.
- 4 b. Defendants may not charge a consumer for damage(s) to Rental Watercraft
5 unless, upon return of the Rental Watercraft, Defendants perform all damage
6 inspections of Rental Watercraft in the presence of at least one of the consumers
7 who rented the Rental Watercraft being inspected. Defendants may not remove
8 any Rental Watercraft from the presence of the renter prior to performing a
9 damage inspection.
- 10 c. Defendants may not charge a consumer for damage(s) to Rental Watercraft unless
11 Defendants take Digital Pictures of the damaged Rental Watercraft during the
12 post-rental inspection (“post-rental pictures”). The post-rental pictures must
13 include Digital Pictures that identify which Rental Watercraft is depicted by
14 capturing the hull number or VIN number along with the damaged portion(s) of
15 the Rental Watercraft.
- 16 d. Defendants may not charge a consumer for damage(s) to Rental Watercraft unless
17 Defendants disclose in the contract that consumers may review and obtain a copy
18 of the pre-rental and post-rental pictures taken of the allegedly damaged portion
19 of the Rental Watercraft.
- 20 e. Defendants may not charge a consumer for damage(s) to Rental Watercraft unless
21 Defendants, upon request of the consumer, provide the consumer with electronic
22 copies of the pre-rental pictures and post-rental pictures taken of the Rental
23 Watercraft, and specifically, pictures depicting the portion(s) of the Rental
24 Watercraft that the consumer allegedly damaged.
- 25 f. In all instances where Defendants charge consumers for damage(s) to Rental
26 Watercraft, Defendants must retain, for at least two years after the date of the

1 rental transaction, electronic copies of all pre-rental pictures and post-rental
2 pictures taken of Rental Watercraft immediately before and after a rental
3 transaction.

4 g. Defendants must retain copies of all Watercraft Rental contracts for at least two
5 years after the date of the rental transaction.

6 59. Mechanical Difficulties: If a Rental Watercraft experiences any mechanical
7 difficulty, which was not caused by the renter and/or rental operator:

8 a. If the mechanical difficulty is reported during the first hour of the rental,
9 Defendants will give the consumer the option of either: (i) terminating the rental
10 agreement and obtaining a full refund, or (ii) accepting a different Rental
11 Watercraft that can be used for the remainder of the rental period.

12 b. If the mechanical difficulty is reported after the first hour, Defendants will give
13 the consumer the option of either (i) terminating the rental agreement and paying
14 an hourly rate for the Rental Watercraft for its *pro rata* use as set forth in the
15 parties' original contract, or (ii) accepting a different Rental Watercraft that can
16 be used for the remainder of the rental period.

17 60. Maintenance and Repair Records:

18 a. Defendants must complete regularly scheduled maintenance on all of their Rental
19 Watercraft, as may be directed by the watercraft manufacturer.

20 b. Defendants must document all maintenance and repair work performed on each
21 Rental Watercraft and maintain records and information, including, but not
22 limited to: (i) the dates of work performed; (ii) a detailed description of the work
23 performed on each date; (iii) if applicable, the amount charged to consumers for
24 each repair performed; and (iv) if applicable, Digital Pictures that show the
25 damage that the Defendants repaired.

26 c. Defendants must retain all maintenance and repair records for at least two years.

1 61. Pursuant to A.R.S. § 44-1528(A)(2), the State is awarded judgment against
2 Defendants, jointly and severally, in the amount of One Hundred Thousand Dollars (\$100,000)
3 as restitution (“Restitution Award”).

4 All restitution payments ordered herein shall be deposited by the Attorney General’s
5 Office into an interest-bearing consumer restitution subaccount of the consumer restitution and
6 remediation revolving fund, pursuant to A.R.S. § 44-1531.02(B), and distributed to eligible
7 consumers by the Attorney General’s Office. For purposes of this Consent Decree, “eligible
8 consumers” includes consumers who filed complaints that are currently in the possession of the
9 Attorney General’s Office as well as consumers who file complaints with the Attorney
10 General’s Office within ninety (90) days after the Effective Date of this Consent Decree. The
11 amount of restitution due to each eligible consumer, if any, will be determined at the sole
12 discretion of the Attorney General. In the event that any portion of the restitution ordered
13 herein cannot be distributed to eligible consumers, or exceeds the amount of restitution, such
14 portion shall be deposited by the Attorney General’s Office into the Consumer Protection –
15 Consumer Fraud Revolving Fund in accordance with A.R.S. § 44-1531.01, and used for the
16 purposes set forth therein.

17 62. Pursuant to A.R.S. § 44-1534, the State is awarded judgment against Defendants,
18 jointly and severally, in the amount of Twenty Thousand Dollars (\$20,000), as attorneys’ fees,
19 costs, and investigative fees (“Fee and Cost Award”). The payment for the Fee and Cost
20 Award shall be deposited into the Consumer Protection – Consumer Fraud Revolving Fund,
21 pursuant to A.R.S. § 44-1531.01, and used for the purposes set forth therein.

22 63. Pursuant to A.R.S. § 44-1531, the State is awarded judgment against Defendants,
23 jointly and severally, in the amount of Forty Thousand Dollars (\$40,000), as civil penalties
24 (“Civil Penalty Award”). The payment for the Civil Penalty Award shall be deposited into the
25 Consumer Protection – Consumer Fraud Revolving Fund pursuant to A.R.S. § 44-1531.01, and
26 used for the purposes set forth therein.

1 64. The Defendants, jointly and severally, shall pay a total of One Hundred Sixty
2 Thousand Dollars (\$160,000) as follows: Defendants shall pay Five Thousand Dollars (\$5,000)
3 on or before the Effective Date of this Consent Decree, and thereafter, shall make the following
4 additional payments to the Office of the Attorney General: (1) Thirty-Five Thousand Dollars
5 (\$35,000) on or before June 1, 2018; (2) Forty Thousand Dollars (\$40,000) on or before
6 January 10, 2019; (3) Forty Thousand Dollars (\$40,000) on or before January 10, 2020; and (4)
7 Forty Thousand Dollars (\$40,000) on or before January 10, 2021. There will be no prepayment
8 penalty for early payments.

9 a. Each payment, payable to the Office of the Attorney General, State of Arizona, is
10 to be delivered or mailed and post marked, postage prepaid, to the Attorney
11 General's Office, Consumer Protection and Advocacy Section, Attn: Stephanie
12 Paine, 2005 N. Central Ave, Phoenix, AZ 85004.

13 b. If all payments are made in a timely fashion, the judgment shall bear no interest
14 or collection costs. If any payment is not made within twenty (20) calendar days
15 of the date the payment is due, Defendants will be deemed in default of their
16 payment obligation. In the event of a default of any payment obligation imposed
17 by this Consent Decree, and in addition to any other relief or remedy elected or
18 pursued by the State, all payments set forth in paragraphs 61 through 63 above,
19 plus interest at a rate of ten percent (10%) per annum from the date of the entry of
20 the Consent Decree and costs of collection, less any amount previously paid, shall
21 be accelerated and be immediately due and owing.

22 65. The State shall allocate payments received from Defendants pursuant to this
23 Consent Decree first to the Restitution Award, second to the Fee and Cost Award, and finally to
24 the Civil Penalty Award.

25 66. Fariba Badre, Malows Jetski Rentals, LLC's member, personally guarantees the
26 full amount of all payments ordered herein, as indicated on the guaranty agreement that is

1 attached to this Consent Decree as Exhibit A and incorporated herein by reference. In the event
2 of a default by Defendants, the State may file an action to collect from Fariba Badre on any
3 amounts that remain unpaid.

4 67. Upon Defendants' payment of the first Five Thousand Dollars (\$5,000) to the
5 State, the State shall file a motion to dismiss Fariba Badre from this case without prejudice.
6 Defendants acknowledge that, regardless of the State's dismissal of Fariba Badre from this
7 case, the injunctive terms set forth in this Consent Decree apply to Fariba Badre, and the State
8 may file an action to enforce this Consent Decree against both the Defendants and Fariba Badre
9 if they violate this Consent Decree.

10 68. The Attorney General may conduct undercover or other investigations of
11 Defendants' practices as the State deems fit to monitor compliance with the CFA and this
12 Consent Decree.

13 69. Defendants shall not represent or imply, directly or indirectly, that the Attorney
14 General, the State of Arizona, or any agency thereof has approved any of their actions in
15 Arizona or has approved any of their past, present, or future business practices in Arizona.

16 70. Defendants shall not participate directly or indirectly in any activity to form a
17 separate entity or corporation for the purpose of engaging in acts in Arizona that are prohibited
18 in this Consent Decree.

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

24 72. Defendants further stipulate and agree that the Findings of Fact and Conclusions
25 of Law set forth in this Consent Decree establish all elements necessary to sustain an action by
26 the State pursuant to Section 523(a)(2)(A) and (a)(7) of the Bankruptcy Code, 11 U.S.C.

1 § 523(a)(2)(A) and (a)(7), and that this Order shall have res judicata and collateral estoppel
2 effect for such purposes.

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

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

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

12 DATED: _____, 2018.

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16 Judge of the Superior Court
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APPROVED AS TO FORM AND
CONTENT: March 26, 2018.

Mark Brnovich
Attorney General

Alyse Meislik

Alyse C. Meislik
Assistant Attorney General

APPROVED AS TO FORM AND
CONTENT: March 26th, 2018.

Carmen A. Chenal
The Law Offices of David W. Dow

Carmen A. Chenal

Attorneys for Defendants

1 **EXHIBIT A**

2 **PERSONAL GUARANTY**

3 This Guaranty Agreement (“Guaranty”) is entered into by:

- 4 1. Guarantor: Fariba Badre (“Guarantor”) and
5 2. Creditor: The State of Arizona (“Creditor” or “State”).
6 3. Amount Guaranteed: up to One Hundred Sixty Thousand Dollars (\$160,000),
7 (“Guaranteed Obligations”).

8 **Guaranty**

9 4. For valuable consideration, the receipt of which is hereby acknowledged, the
10 Guarantor personally, unconditionally and irrevocably guarantees the full and prompt payment
11 in lawful money of the United States to the Creditor, whether at stated maturity, by acceleration,
12 demand or otherwise, of the amount of One Hundred Thousand Dollars (\$100,000) as consumer
13 restitution, Twenty Thousand Dollars (\$20,000) as attorneys’ fees, costs, and investigative fees,
14 and Forty Thousand Dollars (\$40,000) as civil penalties, or any unpaid balance thereunder, now
15 or hereafter owed by Malows Jetski Rentals, LLC and Mahriar Akbari (collectively “Debtor”)
16 to the Creditor under or pursuant to the Consent Decree to which this Guaranty is attached as
17 Exhibit A.

18 5. This is a guaranty of payment only and not of collection. Guarantor’s obligations
19 under this Guaranty are independent of those of Debtor. Creditor may bring a separate action
20 against Guarantor without proceeding against Debtor and without pursuing any other remedy.
21 Guarantor waives any right to require Creditor to proceed against Debtor, or pursue any other
22 remedy in Creditor’s power whatsoever.

23 **Waiver of Defenses and Claims**

- 24 6. Guarantor waives and agrees not to assert or take advantage of:
25 a. any defense based upon any disability or other defense of Debtor, or any
26 limitation or discharge from any cause whatsoever of the liability of Debtor, or any

1 defense based upon any restraint or stay applicable to actions against Debtor, whether
2 such disability, discharge, limitation, restraint or stay is consensual, or arising by order
3 of a court or other governmental authority, or arising by operation of law or any
4 liquidation, reorganization, insolvency, receivership, bankruptcy, assignment for the
5 benefit of creditors or other debtor relief proceeding, or from any other cause, including
6 any defense to the payment of interest, attorneys' fees and costs, and other charges that
7 would accrue or become payable in respect to the Guaranteed Obligations after the
8 commencement of any such proceedings;

9 b. setoff, counterclaim, presentment, demands for performance, notice of
10 non-performance, protest, notice of protest, notice of nonpayment, notice of dishonor of
11 this Guaranty or other notice of any kind and all surety and Guarantor defenses;

12 c. any defense based on a statute of limitations and any defense based upon
13 Creditor's delay in enforcing this Guaranty, the Consent Decree, or any other
14 agreement. Any payment to Debtor or other circumstance which operates to toll any
15 statute of limitations as to Debtor shall operate to toll the statute of limitations as to
16 Guarantor;

17 d. any defense based on the modification, renewal, compromise, settlement,
18 extension, substitution or other alteration of any of the Guaranteed Obligations or the
19 Consent Decree, or of the documents executed in connection therewith. Guarantor
20 authorizes Creditor, without notice or demand and without affecting Guarantor's
21 liability hereunder, from time to time to renew, compromise, extend, accelerate or
22 otherwise change the time for Debtor's payments under the Consent Decree. No right or
23 power of Creditor hereunder shall be deemed to have been waived by any act or conduct
24 on the part of Creditor, or by any neglect to exercise such right or power, or by any
25 delay in so doing, and every right or power shall continue in full force and effect until
26 specifically waived or released by an instrument in writing executed by Creditor; or

1 e. any defense based on or arising out of any defense which Debtor or any
2 other guarantor or other person may have to the performance of any part of the
3 Guaranteed Obligations.

4 **Rights of Creditor**

5 7. Guarantor authorizes Creditor at any time in Creditor's sole discretion to take
6 any of the following actions on such terms and conditions as Creditor may elect, without giving
7 notice to Guarantor or obtaining the consent of Guarantor and without affecting Guarantor's
8 obligations under this Guaranty:

9 a. alter any of the terms and/or documentation of any of the Guaranteed
10 Obligations or the Consent Decree, including renewing, amending, releasing, waiving,
11 compromising, extending or accelerating or otherwise changing the time for payment
12 of, or increasing or decreasing the Guaranteed Obligations;

13 b. accept new or additional documents, instruments or agreements relative to
14 the Guaranteed Obligations or the Consent Decree;

15 c. accept partial payments on the Guaranteed Obligations or the Consent
16 Decree;

17 d. take and hold any security or additional guaranties for the Guaranteed
18 Obligations or the Consent Decree and amend, alter, exchange, substitute, transfer,
19 enforce, perfect or fail to perfect, waive, subordinate, terminate, compromise or release
20 any such security or guaranties;

21 e. settle, release on terms satisfactory to Creditor or by operation of law or
22 otherwise, compound, compromise, collect or otherwise liquidate the Guaranteed
23 Obligations and/or the security of any guaranty therefore in any manner;

24 f. release Debtor or any other person of its liability for all or any of the
25 Guaranteed Obligations or the Consent Decree;

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1 g. participate in any settlement offered by Debtor, any guarantor or any other
2 person, whether in liquidation, reorganization, receivership, bankruptcy, assignment for
3 the benefit of creditors or other debt relief proceeding or otherwise;

4 h. exercise or not exercise rights available to it in any liquidation,
5 reorganization, receivership, bankruptcy, assignment for benefit of creditors or other
6 debtor relief proceeding, including voting or not voting to accept a plan and filing or not
7 filing a proof of claim;

8 i. release, substitute or add any one or more guarantors or endorsers, or;

9 j. assign its rights under this Guaranty in whole or in part.

10 **Default**

11 8. In the event of default of Debtor to make payment to Creditor under the Consent
12 Decree when due, Guarantor agrees, without the Creditor first having to proceed against the
13 Debtor, to pay on demand all sums due and to become due to the Creditor for Debtor and all
14 losses, costs, attorneys' fees, or expenses which the Creditor may incur in enforcing this
15 Guaranty or in any action or proceeding arising out of, or relating to, this Guaranty, by reason
16 of Debtor's default.

17 9. Each of the following shall constitute a default of Guarantor under this Guaranty,
18 entitling Creditor, at its option and in addition to its other remedies, to collect immediately from
19 Guarantor the full amount of the Guaranteed Obligations notwithstanding any otherwise
20 applicable due date with respect thereto:

21 a. the occurrence of any breach of, default or event of default under, or
22 failure to comply with, perform or pay when due, whether on demand or otherwise, any
23 term, provision, covenant, representation or warranty or condition under the Consent
24 Decree by Debtor or Guarantor;

25 b. the failure of Guarantor to perform any of her obligations under this
26 Guaranty;

1 c. the failure of Guarantor to comply with any of the other terms or
2 provisions of this Guaranty;

3 d. the revocation or purported revocation by Guarantor of this Guaranty; or

4 e. the death of Guarantor.

5 **Bankruptcy**

6 10. The obligations of Guarantor under this Guaranty shall not be altered, limited,
7 stayed or affected by any proceeding, voluntary or involuntary, involving the bankruptcy,
8 insolvency, receivership, reorganization, liquidation or arrangement of Debtor, or by any
9 defense Debtor may have by reason of any order, decree or decision of any court or
10 administrative body resulting from any such proceeding. Any stay of enforcement or of
11 acceleration of the time for payment of any of the Guaranteed Obligations as against Debtor or
12 any other person shall have no effect upon Guarantor's liability under this Guaranty or the time
13 for payment by Guarantor hereunder.

14 11. Guarantor waives any defense based upon any action taken or omitted by
15 Creditor in any bankruptcy or other insolvency proceeding involving Debtor or any other
16 person, including any election to have Creditor's claim allowed as secured, partially secured or
17 unsecured.

18 12. The liability of Guarantor hereunder shall continue in effect notwithstanding
19 any payment or performance of the Guaranteed Obligations by Debtor or any other person, such
20 that, if any such payment or performance is avoided or recovered from Creditor or Creditor is
21 otherwise required to restore or return any such payment or performance in connection with the
22 bankruptcy, insolvency or reorganization of Debtor or otherwise, Guarantor shall remain liable
23 hereunder as though such payment or performance had not occurred.

24 **Subordination**

25 13. All existing and future obligations of Debtor to Guarantor (including, without
26 limitation, any obligations arising by reason of any payment or performance of the Guaranteed

1 Obligations hereunder) are hereby subordinated to the full and indefeasible payment and
2 performance of the Guaranteed Obligations to Creditor.

3 14. Upon any default under any of the Guaranteed Obligations or hereunder, all
4 obligations of Debtor to Guarantor shall be collected, enforced and received by Guarantor as
5 trustee for Creditor, and all amounts received shall be paid over to Creditor, for application to
6 the Guaranteed Obligations.

7 **Governing Law and Venue**

8 15. This Guaranty shall be governed by and construed in accordance with the laws
9 of the State of Arizona. Venue for any action or proceeding brought under this Guaranty will
10 be, at the Creditor's option, in Maricopa County Superior Court in the State of Arizona. The
11 Attorney General of the State of Arizona may enforce this Guaranty and may commence an
12 action or proceeding on behalf of the State. Guarantor waives any defense or objection based on
13 lack of personal jurisdiction in any such action or proceeding. Guarantor hereby accepts for
14 herself, generally and unconditionally, the non-exclusive jurisdiction of the foregoing court.
15 Guarantor irrevocably consents to the service of process in any action or proceeding by the
16 mailing of copies thereof by registered or certified mail, postage prepaid, to Guarantor at her
17 respective address for notices pursuant to this Guaranty. Nothing contained herein shall affect
18 the right of Creditor to serve process in any other manner permitted by law. Guarantor waives
19 any defense of inconvenient forum to the maintenance of any action or proceeding so brought.

20 **Binding Effect**

21 16. This Guaranty is binding on Guarantor and her respective heirs, executors,
22 administrators, successors and assigns, and inures to the benefit of and is enforceable by
23 Creditor and its successors, transferees and assigns.

24 **Miscellaneous Provisions**

25 17. This Guaranty constitutes the entire agreement between the parties with respect
26 to its subject matter, and supersedes all prior or contemporaneous agreements, representations

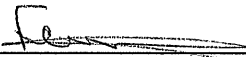
1 and understandings. No provision of this Guaranty or Creditor's rights hereunder can be waived
2 or modified nor can Guarantor be released from its obligations hereunder except by a writing
3 executed by Creditor.

4 **Severability**

5 18. The invalidity or unenforceability of any one or more provisions of this
6 Guaranty will not affect the validity or enforceability of any other provision.

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8 DATED this 20th day of March, 2018.

9 GUARANTOR:

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13 Fariba Badre

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