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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

Case No.: CV2014-005556

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

Plaintiff,

vs.

DENNIS N. SABAN, *et al.*;

Defendants.

RULING

(Assigned to the Hon. Connie Contes)

This matter was tried to the Court on September 19, 2017 through October 19, 2017. The parties presented their evidence and rested. As requested by the Court, the State of Arizona, *ex rel.* Mark Brnovich, Attorney General (“State”) submitted before closing argument proposed findings of fact and conclusions of law regarding injunctive relief and a Motion for Entry of Judgment. Saban Defendants also filed on that same date proposed findings of fact and trial verdict. Defendant Spadafore also lodged that same date a proposed form of judgment. On October 25, 2017, the State filed a Supplement to Motion for Entry of Judgment.

1 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

2 **1.** All parties having waived all rights to a trial by jury, the Court received
3 evidence during the trial to the Court at which the parties introduced witness testimony and
4 exhibit evidence. Based upon the evidence presented, in the context of the applicable law, the
5 Court finds that the State has met its burden of proving by a preponderance of the evidence
6 numerous violations of the Consumer Fraud Act,, A.R.S. § 44-1522 *et seq.*, by the Defendants
7 Dennis N. Saban, James C. Spadafore and the Entity Defendants (collectively DS Rentco, Inc.,
8 A-AAABLE Rental Ltd., and Saban Rent-A-Car, L.L.C. dba Phoenix Car Rental and Saban’s
9 Rent-a-Car; and Phoenix Car Rental LLC) (“Saban, Spadafore and the Entity Defendants”).
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12 **2.** The Court finds that the State has met its burden of proving by clear and
13 convincing evidence wilful violations of the Consumer Fraud Act by Defendants Saban,
14 Spadafore and the Entity Defendants because “the party committing the violation knew or
15 should have known that his conduct was of the nature prohibited by § 44-1522” as set forth in
16 A.R.S. § 44-1531.B.
17

18 **3.** The Court finds that the marital community of Dennis N. Saban and Tracey
19 L. Saban, husband and wife, is subject to liability for wilful violations of the Consumer Fraud
20 Act.
21

22 **4.** Pursuant to A.R.S. § 44-1528.A.2, the Court is authorized to enter a
23 judgment for restitution in an amount equal to money or property “which may have been
24 acquired by means of any practice... declared to be unlawful” under A.R.S. § 44-1522.
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1 5. Pursuant to A.R.S. § 44-1528.A.1 and A.4, the Court is authorized to enter
2 injunctive relief to prohibit unlawful practices and to “[p]rohibit a person found to have violated
3 this article from engaging in a specified trade or occupation.”
4

5 6. Pursuant to A.R.S. § 44-1531.A., the Court is authorized to enter a civil
6 penalty of not more than ten thousand dollars per violation where there is evidence of a wilful
7 violation of A.R.S. § 44-1522.
8

9 7. The Court finds that the evidence presented at the trial of this case
10 established by a preponderance of the evidence that Defendants acquired money from the
11 testifying consumer witnesses and from additional consumers who did not testify by means of
12 practices that are unlawful under A.R.S. § 44-1522.
13

RELIEF ENTERED

14 8. The Court enters an award in favor of the State and against Defendants
15 Dennis N. Saban and Tracey L. Saban as husband and wife; DS Rentco, Inc.; A-AAABLE Rental,
16 Ltd.; Saban Rent-A-Car, L.L.C. dba Phoenix Car Rental; and Saban’s Rent-a-Car; jointly and
17 severally (“Saban Defendants”) as follows:
18

19 a. Restitution, pursuant to A.R.S. § 44-1528.A.2., in the total aggregate
20 amount of **\$839,520.00**, for unlawful fees and charges of \$17.49 per rental
21 contract (\$3.00 for PKG, \$11.99 for service & cleaning, and \$2.50 for s/c) that
22 Saban charged to consumers as unlawful fees and charges over the eight-year time
23 period from 2009 through 2016 on at least 48,000 separate rental transactions,
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1 together with interest thereon at the statutory rate pursuant to A.R.S. § 44-1201.B.
2 per annum from the date of entry of the judgment until paid.

3 **b.** Restitution, pursuant to A.R.S. § 44-1528.A.2., in the total aggregate
4 amount of **\$155,730.96**, for mandatory taxes that Saban charged to consumers on
5 the foregoing unlawful fees and charges together with interest thereon at the
6 statutory rate pursuant to A.R.S. § 44-1201.B. per annum from the date of entry
7 of the judgment until paid.
8

9 **9.** The Court further finds likely that thousands of consumers also were
10 improperly charged for a variety of other fees including, but not limited to:
11

- 12 a. charges for drivers under a specific age,
- 13 b. charges for paying with cash or debit card or certain forms of payment,
- 14 c. charges for lack of proof of valid insurance,
- 15 d. charges for additional drivers,
- 16 e. charges for out-of-state travel,
- 17 f. charges for international driver's licenses,
- 18 g. charges for after-hours drop off, and
- 19 h. charges for shuttle, taxi or other transportation charges.
20
21

22 Due to the difficulty in calculating the number of consumers who were charged each of these
23 fees over the eight-year time period from 2009 through 2016, and the fact that the State is not
24 seeking a judgment that includes restitution for many of these fees paid by consumers who did
25 not testify at trial, the Court declines to award restitution to the State against Defendants Saban,
26

1 Spadafore and the Entity Defendants for these improper charges. Yet, this finding provides
2 further support for the reasonableness of the restitution award for the foregoing improperly-
3 imposed unlawful fees and mandatory taxes thereon.

4
5 **10.** The Court enters an award in favor of the State and against Defendant
6 Dennis N. Saban for civil penalties, pursuant to A.R.S. § 44-1531, in the total aggregate amount
7 of **\$637,500.00** based upon at least 214 wilful violations (representing at least 173 violations
8 occurring before the entry of the Preliminary Injunction at \$2,500.00 per violation for a subtotal
9 of \$432,500.00, and at least 41 violations occurring after entry of the Preliminary Injunction at
10 \$5,000.00 per violation for a subtotal of \$205,000.00), together with interest thereon at the
11 statutory rate pursuant to A.R.S. § 44-1201.B. per annum from the date of entry of the judgment
12 until paid.
13

14
15 **11.** The Court enters an award in favor of the State and against Defendant
16 James Spadafore, individually and as an agent of the Entity Defendants, as follows:

17 **a.** Restitution, pursuant to A.R.S. § 44-1528.A.2., in the total
18 aggregate amount of **\$1,449.79**, to restore monies unlawfully acquired to
19 consumers who testified at the trial of this matter, together with interest thereon at
20 the statutory rate pursuant to A.R.S. § 44-1201.B. per annum from the date of
21 entry of the judgment until paid. *See* Exhibit 1, Section B. to State's Supplement
22 to Motion for Entry of Judgment, filed 10/25/2017.

23
24 **b.** Civil penalties, pursuant to A.R.S. § 44-1531, for wilful violations in
25 the total aggregate amount of **\$90,000.00** (representing at least 45 violations at
26

1 \$2,000.00 per violation), together with interest thereon at the statutory rate
2 pursuant to A.R.S. § 44-1201.B. per annum from the date of entry of the
3 judgment until paid.
4

5 **12.** Pursuant to A.R.S. § 44-1534, Dennis N. Saban, the marital community of
6 Dennis N. Saban and Tracey L. Saban, husband and wife, DS Rentco, Inc., A-AAABLE Rental
7 Ltd. and Saban Rent-A-Car, L.L.C., jointly and severally, shall pay the State's costs and
8 attorney's fees in the total amount of \$ (TBD).
9

10 **13.** The following terms of permanent injunction are binding on Defendant
11 Dennis N. Saban individually and when acting through his attorneys, officers, agents, servants,
12 employees, and persons in active concert or participation with any of them, DS Rentco, Inc., A-
13 AAABLE Rental Ltd. and Saban Rent-A-Car, L.L.C., dba Phoenix Car Rental, Saban's Rent-a-
14 Car, James Spadafore, and Phoenix Car Rental LLC (collectively "Saban, Spadafore and the
15 Entity Defendants"); any and all DBAs used by Saban, Spadafore and the Entity Defendants;
16 and all Saban, Spadafore and the Entity Defendants' attorneys, officers, agents, employees, and
17 persons in active concert or participation with any of them.
18

19 **14.** The following definitions shall apply for purposes of this order and shall be
20 controlling unless otherwise specified in this order:
21

22 **a.** "Good Operating Condition" means, with reference to a vehicle,
23 fully functioning, maintained in accordance with normal industry practice, and
24 suitable for the purposes for which it is presently used.
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1 **b.** “Charged Feature” means any optional feature of the rental cost for
2 which there is an additional charge, including, but not limited to, charges for
3 drivers under a specific age, charges for additional drivers, charges for out-of-state
4 rentals, charges for foreign driver’s licenses, charges for the use of certain
5 forms of payment, charges for after-hours drop off, and shuttle charges.
6

7 **c.** “Optional Equipment” means any equipment that may be provided
8 to the consumer upon request, including, but not limited to, GPS units and
9 children’s car seats for which there is an additional charge.
10

11 **d.** “Good Faith Estimate” means an accurate estimate of the total cost
12 to rent a vehicle including all charges, taxes, and fees that will apply based on the
13 information supplied by the consumer and information requested by Saban,
14 Spadafore and the Entity Defendants, which shall include all Necessary
15 Information to give an accurate total of the cost to rent the vehicle.
16

17 **e.** “Necessary Information” means the information that Defendants
18 must know to accurately determine the amount of each applicable charge and fee,
19 including, at a minimum, the type of rental vehicle, age of renter, insurance
20 information, driver’s license information, date of rental, anticipated length of
21 rental, payment information, additional drivers, anticipated mileage, anticipated
22 destinations, and the need for any Optional Equipment.
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1 **f.** “Advertising” and “Advertisement” means online, print, radio, or
2 televised advertising, as well as oral and written statements used by the
3 Defendants to induce consumers to rent or lease a vehicle.

4
5 **15.** Saban, Spadafore and the Entity Defendants are prohibited from advertising
6 the condition of their vehicles, unless such advertising includes accurate, up-to-date information
7 about the current condition of the vehicles offered for rent, including, but not limited to, mileage
8 in excess of 100,000 miles and the age of the vehicles. If Saban, Spadafore and the Entity
9 Defendants’ advertising contains any pictures, photographs or other depictions of vehicles, the
10 pictures, photographs and other depictions of the vehicles must accurately reflect the current up-
11 to-date condition of the vehicles available for rent at the advertised price.

12
13 **16.** Saban, Spadafore and the Entity Defendants are prohibited from advertising
14 that rentals are available “from” a specific rate or “starting at” a specific rate unless consumers
15 can rent vehicles for that price plus applicable, government-imposed taxes, without the benefit
16 of any optional fee waivers by Saban, Spadafore and the Entity Defendants.

17
18 **17.** Saban, Spadafore and the Entity Defendants are prohibited from
19 advertising the cost to rent any of their vehicles unless that cost accurately reflects the actual
20 cost to rent a vehicle minus applicable government-imposed taxes and fees (the “base rate”).
21 Any advertised base rate must include all mandatory fees and surcharges and must disclose in
22 clear conspicuous language:

23
24 **a.** Additional taxes *will* apply to the advertised rate;

25 **b.** Additional fees and surcharges *may* apply; and
26

1 c. Any restrictions that apply on the advertised rate, including,
2 but not limited to, mileage restrictions, geographic restrictions, age
3 restrictions, insurance restrictions, licensing restrictions, and form of
4 payment restrictions.
5

6 **18.** Saban, Spadafore and the Entity Defendants are prohibited from
7 advertising any Charged Feature of their rental vehicles unless the actual cost of the Charged
8 Feature is prominently disclosed in the same advertisement.
9

10 **19.** Saban, Spadafore and the Entity Defendants are prohibited from advertising
11 that there is no additional charge for renters under a certain age without accurately disclosing the
12 age range for which no additional charges applies. For example, if Saban, Spadafore and the
13 Entity Defendants impose an additional charge for renters 21 and younger, they cannot advertise
14 “no additional charge for renters under 25”, but may advertise “no additional charge for renters
15 age 22 to 25”.
16

17 **20.** Saban, Spadafore and the Entity Defendants are prohibited from telling
18 consumers that the cost of the shuttle or transportation to or from their rental facility will be
19 reimbursed and then charging consumers for transportation.
20

21 **21.** Saban, Spadafore and the Entity Defendants are prohibited from referring
22 in any way to “airport taxes” in their advertising, and in any other form of communication that is
23 directed at any member of the public.
24

25 **22.** Upon receipt of a telephone inquiry asking about the rental charge for a
26 vehicle, Saban, Spadafore and the Entity Defendants must provide a Good Faith Estimate, and

1 must affirmatively request from the consumer the Necessary Information to provide a Good
2 Faith Estimate to the consumer. If consumers do not provide the Necessary Information, Saban,
3 Spadafore and the Entity Defendants must explain that they cannot provide an estimate of the
4 cost to rent the vehicle without that information.
5

6 **a.** Any rates and charges quoted over the phone must include all
7 mandatory fees, regardless of why those fees are charged. If for any reason
8 all mandatory fees and surcharges cannot be accurately included in the quoted
9 rates, Saban, Spadafore and the Entity Defendants must affirmatively state that
10 additional fees and/or surcharges apply and affirmatively state the amount of those
11 fees and/or surcharges.
12

13 **b.** If additional restrictions apply to vehicles rented at the quoted price,
14 including, but not limited to, mileage restrictions and geographical restrictions,
15 Saban, Spadafore and the Entity Defendants must affirmatively state the specific
16 restrictions that apply to the rental.
17

18 **c.** Saban, Spadafore and the Entity Defendants must inform consumers
19 of any charge that consumers will incur for failing to present satisfactory evidence
20 of full-coverage insurance that transfers to rental vehicles for all drivers of
21 the vehicle being rented and how this charge can be avoided by the consumers.
22

23 **23.** If consumers request an itemized breakdown of the Good Faith Estimate,
24 Saban, Spadafore and the Entity Defendants must provide the amount of each charge and
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1 accurately explain why it is being charged in sufficient detail to allow consumers to understand
2 what they are being charged for and whether they may avoid that charge.

3 **24.** If consumers ask any questions or provide any information regarding a
4 feature or condition of the rental that could cause the consumer to incur additional charges,
5 Saban, Spadafore, and the Entity Defendants must affirmatively state the amount of the charge,
6 and how it will apply to the rental.
7

8 **25.** Saban, Spadafore and the Entity Defendants must disclose the existence
9 and amount of any deposit that will be charged to the consumer, and must also disclose the
10 projected amount of the deposit that consumers will receive at the end of the rental, based on the
11 Good Faith Estimate.
12

13 **26.** When consumers appear in person to begin the rental process and fail to
14 present satisfactory evidence of full-coverage insurance that transfers to rental vehicles for all
15 drivers of the vehicle being rented, Saban, Spadafore and the Entity Defendants must inform
16 them, both orally and in writing, that they can avoid the liability surcharge if they provide
17 sufficient proof that they carry their own full liability and collision coverage insurance in effect
18 at the time of rental that will transfer to the rented vehicle.
19

20 **a.** Saban, Spadafore, and the Entity Defendants must also inform the
21 consumer, both orally and in writing, that such proof may be provided through
22 the time when the vehicle is returned.
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1 **b.** Saban, Spadafore, and the Entity Defendants must also inform the
2 consumer, both orally and in writing, of the specific forms of proof that will or
3 will not be accepted.
4

5 **27.** Saban, Spadafore, and the Entity Defendants will:

6 **a.** Provide each consumer, at the time a vehicle is rented, with an
7 itemized statement that includes on its front page an itemized Good Faith
8 Estimate, including the base rate, all taxes, all charges that result from consumer
9 requests for Optional Equipment, and all charges that will be applied in the
10 absence of some affirmative action by the consumer, including, but not limited to,
11 fees for services and cleaning, the liability surcharge (if applicable), any charges
12 for the use of a specific form of payment or failure to use a specific form of
13 payment, any charge based upon the age of the renter, any charge for additional
14 drivers, and any charge for use of an international license;
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16

17 **b.** Require each consumer to initial each itemized charge on the Good
18 Faith Estimate; and

19 **c.** Provide each consumer, at the time a vehicle is rented, with
20 photocopies of all documents signed or shown to the consumer at the rental
21 counter.
22

23 **28.** When a consumer returns a rented vehicle, Saban, Spadafore, and the Entity
24 Defendants will provide that consumer with an itemized statement that identifies each amount
25 for which payment is required and the total amount, together with a photocopy of the original
26

1 itemized statement with the Good Faith Estimate provided at the beginning of the rental period.
2 If Saban, Spadafore, and the Entity Defendants are unable to provide these documents at the end
3 of the rental, they shall mail a copy of these documents to the consumer within 48 hours of the
4 return of the vehicle.
5

6 **29.** If a vehicle rented by a consumer experiences any mechanical problem that
7 prevents the consumer from using it in a reasonable manner, Saban, Spadafore, and the Entity
8 Defendants will make a replacement vehicle available within a commercially reasonable time at
9 no additional cost to the consumer, provided that the consumer has not materially breached the
10 rental contract. The consumer then will have the option of accepting the replacement vehicle or
11 canceling the contract and paying a prorated amount for the time period the consumer was able
12 to use the vehicle.
13

14 **a.** Saban, Spadafore, and the Entity Defendants shall prorate the
15 amount charged to consumers who experience a mechanical problem, reducing the
16 total charge by the amount of time the consumers were unable to use the vehicle in
17 a reasonable manner.
18

19 **b.** Saban, Spadafore, and the Entity Defendants must inform
20 consumers orally and in writing when the rental period begins that, should their
21 vehicle experience a mechanical defect, they shall be entitled to another vehicle at
22 no additional charge.
23

24 **30.** Saban, Spadafore, and the Entity Defendants are prohibited from altering
25 any odometer in a way that prevents a consumer from reading the odometer, renting any vehicle
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1 in which the odometer is in any way obscured (meaning that all the odometer's numbers must be
2 visible to the average person while seated behind the vehicle's steering wheel), or
3 misrepresenting the mileage of any rental vehicle to consumers orally or in writing. Any
4 disclosure made to a consumer concerning the mileage of any rental vehicle must be complete
5 and accurate, regardless of the purpose for which it is provided.
6

7 **31.** Saban, Spadafore, and the Entity Defendants are prohibited from altering,
8 covering, concealing, or disengaging the warning lights or warning light system in any rental
9 vehicle. Saban, Spadafore, and the Entity Defendants are further prohibited from renting any
10 vehicle in which any warning light is altered, disengaged, or in any way obscured from the sight
11 of an average person while seated behind the vehicle's steering wheel.
12

13 **32.** Saban, Spadafore, and the Entity Defendants are prohibited from
14 knowingly renting any vehicles that are not in Good Operating Condition.
15

16 **33.** Saban, Spadafore, and the Entity Defendants are prohibited from renting
17 any vehicle without completing regularly scheduled maintenance on the vehicle, as directed by
18 the vehicle manufacturer. For the purpose of complying with this provision, Saban, Spadafore,
19 and the Entity Defendants must create and retain written maintenance records for each rental
20 vehicle that reflects all repairs and maintenance work completed to that vehicle and all consumer
21 complaints related to the performance of that vehicle.
22

23 **34.** Saban, Spadafore, and the Entity Defendants are prohibited from renting
24 any vehicle in which a vehicle indication warning light is lit at the beginning of the rental
25 period.
26

1 **35.** Saban, Spadafore, and the Entity Defendants are prohibited from renting
2 vehicles without first allowing consumers the opportunity to inspect the vehicle that they will be
3 renting and to cancel their reservation free of charge after inspecting the vehicle.
4

5 **36.** The order and injunction shall be effective upon entry the Judgment by the
6 clerk of the court and will remain in effect until further order of the Court.

7 **37.** The amounts awarded in this Ruling for restitution are due at the time of
8 entry of Judgment and shall be paid to the Arizona Attorney General, to be deposited into an
9 interest bearing consumer restitution subaccount of the Consumer Restitution and Remediation
10 Revolving Fund, pursuant to A.R.S. § 44-1531.02.B. If the total restitution amount is not
11 sufficient to fully restore eligible consumers, restitution shall be distributed to eligible
12 consumers at the sole discretion of the Attorney General. In the event that any portion of the
13 restitution ordered herein cannot be distributed to eligible consumers, such portion shall be
14 distributed to the Consumer Protection – Consumer Fraud Revolving Fund pursuant to A.R.S. §
15 44-1531.01.
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18 **38.** The amounts awarded in this Ruling for civil penalties and attorney's fees
19 and costs are due at the time of entry of Judgment and shall be paid to the Arizona Attorney
20 General, to be deposited into the Consumer Protection – Consumer Fraud Revolving Fund
21 pursuant to A.R.S. § 44-1531.01, and be used for the purposes set forth therein.
22

23 **39.** Plaintiff State of Arizona is directed to submit a proposed form of
24 Judgment and application for attorney's fees and taxable costs within 20 calendar days of the
25 filing of this Ruling, leaving blank spaces for attorney's fees and taxable costs. That form of
26

1 Judgment may incorporate by reference this Ruling and should be confined to the relief being
2 awarded along with Rule 54(c) language. If Defendants wish to oppose the application for
3 attorney's fees and taxable costs, a response must be filed not later than 20 calendar days after
4 service of the application. No reply is permitted unless requested by the Court.
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6
7 DATED this _____ day of February, 2018.

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10 _____
11 Honorable Connie Contes
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eSignature Page 1 of 1

Filing ID: 9083244 Case Number: CV2014-005556
Original Filing ID: 8764369

Granted with Modifications



/S/ Connie Contes Date: 2/13/2018
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2014-005556

SIGNATURE DATE: 2/13/2018

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KURT E HAMMOND

RONALD E HUSER

TIMOTHY J WATSON