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

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

Plaintiff,

v.

AUCTION NATION, LLC, an Arizona limited
liability company; AUCTION YARD, LLC, an
Arizona limited liability company; GABRIEL
J. PRADO, individually; BRIAN LONG,
individually; BRIAN LONG and AMY LONG,
husband and wife; WILLIAM M. RUSSELL,
individually; and WILLIAM M. RUSSELL and
MELODY RUSSELL, husband and wife,

Defendants.

No.: CV2020-015610

COMPLAINT

(Assigned to the Hon.)

(Jury Trial Demanded)

Plaintiff, State of Arizona *ex rel.* Mark Brnovich, the Attorney General (the “State”),
alleges the following for its Civil Complaint (the “Complaint”) against Defendants Auction
Nation, LLC, Auction Yard, LLC, Gabriel Prado, Brian Long, Amy Long, William Russell and
Melody Russell.

1 **I. NATURE OF CLAIMS**

2 1. Auction Nation, LLC (“Auction Nation”) is an Arizona limited liability company
3 whose business is auctioning merchandise on its online auction platform. Auction Nation is co-
4 owned by Defendants Gabriel Prado and William Long. Since 2010, Auction Nation has
5 hosted its own auctions and auctions for other entities.

6 2. Auction Yard, LLC (“Auction Yard”) is an Arizona limited liability company
7 whose business is auctioning vehicles. Since October 2017, Auction Yard has been owned and
8 operated by Defendant William Russell. Auction Yard utilizes Auction Nation’s bidder
9 platform for its weekly vehicle auctions and in return pays Auction Nation a portion of the
10 proceeds.

11 3. Both Auction Nation and Auction Yard conduct online auctions for merchandise
12 or vehicles.

13 4. In those auctions, Auction Nation and Auction Yard identify bidders only by a
14 bidder number, the amount of their bid and time of their bid.

15 5. Both Auction Nation and Auction Yard create and use bidder numbers that are
16 created by Auction Nation and Auction Yard, that do not represent actual bidders and who will
17 not be required to purchase items if they place the highest bid on the item, generally referred to
18 or known as “shill bidders.” (Exhibit 1, Vehicle Auction Bid History, Lot #5294 with notations
19 added)

20 6. Both Auction Nation and Auction Yard use shill bidding to bid in their online
21 auctions, using multiple bidder numbers in the same auction and making multiple bids for the
22 same item in order to increase the selling price and perceived demand for the items auctioned.

23 7. Auction Nation and Auction Yard use these shill bidders to outbid other shill
24 bidder numbers and legitimate bidders multiple times in an auction.

25 8. There is no way to for an actual bidder to identify shill bidders by their bidder
26 number or bid, as the shill bidders look just like real bidders. (Exhibit 1, Vehicle Auction Bid
27 History, Lot #5294 with notations added)

28 9. Shill bidders who “win” an auction do not pay for the item and the item is often

1 relisted at a subsequent auction.

2 10. Independent sellers using Auction Nation as their online auction platform also are
3 allowed to place shill bids on their own items, in order to increase the selling price and
4 perceived demand for the items auctioned. Independent sellers also use bidder numbers that do
5 not represent actual bidders and are not required to purchase items if they place the highest bid
6 on the item.

7 11. On October 25, 2018, an undercover agent of the State registered and placed a bid
8 on an automobile for sale in Auction Yard's online auto auction on Auction Nation's online
9 auction platform. It was not disclosed to the State's agent when registering to bid or placing his
10 bid that shill bidding was permissible in the auto auction. The State's agent was immediately
11 outbid by an Auction Yard shill bidder. After several counterbids by shill bidders, an Auction
12 Yard shill bidder ultimately placed the highest bid in the auction.

13 12. Prior to December of 2018, all customers registering to bid on Auction Nation's
14 online auction platform agreed to a user agreement stating: "Auction Nation is only a venue for
15 Sellers to list Items and for Registered users to make bids on such Items," and "Auction Nation
16 is not a party to, nor involved in, the transactions between Buyers and Sellers." (Exhibit 2
17 Bidder Registration Page and Exhibit 3, User Agreement)

18 13. Potential bidders were further advised that the user agreement "is intended to
19 make sure that everyone plays fair." (Exhibit 3, User Agreement)

20 14. Auction Nation and Auction Yard did not abide by their user agreement. (Exhibit
21 3, User Agreement)

22 15. Auction Nation and Auction Yard did not provide "only a venue" for sellers and
23 users as stated in their user agreement. They manipulated transactions between Buyers and
24 Sellers by bidding on online auction items to drive up the selling price, and allowing
25 independent sellers using Auction Nation as their online auction platform to do the same.

26 16. In December 2018, after Auction Nation and Auction Yard became aware of the
27 State's investigation, they made several changes.

28 17. Since December 11, 2018, Auction Nation and Auction Yard have updated their

1 Terms and Conditions, which now have provisions stating “Pursuant to UCC § 2-328 and
2 applicable state law, notice is hereby given that in the event of a reserve, Auction Nation or its
3 affiliates may implement such reserves by bidding on behalf of the seller, using one or more
4 bidder numbers, until the lot or lots have reached a bid amount that is acceptable to the Seller.”
5 This provision does not sufficiently disclose to legitimate bidders that specific items have a
6 reserve price, that Auction Nation and Auction Yard will be able to see bidders’ maximum bids
7 before making shill bids, and will use multiple unidentified bidder numbers and multiple
8 unidentified shill bids to drive up the price of items for sale in the auctions.

9 18. As of the date of this Complaint, Auction Nation, Auction Yard and their
10 independent sellers continue to place multiple, unidentified shill bids in their merchandise and
11 vehicle auctions, deceiving actual bidders as to the value of items placed for auction and
12 number of bidders placing bids on items for sale.

13 **II. JURISDICTION AND VENUE**

14 19. The State brings this action pursuant to the Arizona Consumer Fraud Act,
15 Arizona Revised Statutes (“A.R.S.”) §§ 44-1521-1534 to permanently enjoin and prevent the
16 unlawful acts and practices alleged in this Complaint, and to obtain other relief, including
17 restitution, disgorgement of profits, gains, gross receipts, or other benefits, civil penalties, and
18 costs and attorneys’ fees.

19 20. This Court has subject-matter jurisdiction.

20 21. This Court may issue appropriate orders both prior to and following a
21 determination of liability pursuant to A.R.S. § 44-1528.

22 22. Defendants caused events to occur in this state out of which the claims which are
23 the subject of this Complaint arose.

24 23. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17).

25 **III. PARTIES**

26 24. Plaintiff is the State of Arizona *ex rel.* Mark Brnovich, the Attorney General of
27 Arizona, who is authorized to bring this action under the Arizona Consumer Fraud Act
28 (“ACFA”), A.R.S. §§ 44-1521 - 1534.

1 25. Defendant Auction Nation is an Arizona limited liability company with its
2 principal place of business located in Phoenix, Arizona.

3 26. Defendant Gabriel Prado is a resident of Maricopa County, Arizona. Defendant
4 Prado owns a 50% share of Auction Nation.

5 27. Defendant Brian Long is a resident of Maricopa County, Arizona. Defendant
6 Long owns a 50% share of Auction Nation.

7 28. Defendant Brian Long's actions alleged herein were taken in furtherance of his
8 and Defendant Amy Long's marital community. Defendant Amy Long is named solely for any
9 interest she may have in her marital community with Defendant Brian Long.

10 29. Defendant Gabriel Prado, Defendant Brian Long, and Defendant Auction Nation
11 are hereafter referred to as "Auction Nation Defendants."

12 30. Defendant Auction Yard is an Arizona limited liability company with its principal
13 place of business located in Phoenix, Arizona.

14 31. Defendant William Russell is the sole owner of Auction Yard.

15 32. Defendant William Russell's actions alleged herein were taken in furtherance of
16 his and Defendant Melody Russell's marital community. Defendant Melody Russell is named
17 solely for any interest she may have in her marital community with Defendant William Russell.

18 33. Defendant William Russell and Defendant Auction Yard are hereafter referred to
19 as "Auction Yard Defendants."

20 34. Defendants Auction Nation, Auction Yard, Gabriel Prado, Brian Long, Amy
21 Long, William Russell and Melody Russell are hereafter referred to as "Defendants."

22 **IV. ALLEGATIONS**

23 35. Since 2010, Defendant Gabriel Prado has owned and operated Defendant Auction
24 Nation, an auction business based in Phoenix that hosts both online and on-site auctions for
25 itself and other entities.

26 36. Since October 2011, Defendant Brian Long has owned and operated 50% of
27 Defendant Auction Nation.

28 37. From 2010 until October 2017, Defendant Auction Nation hosted its own

1 automobile auctions.

2 38. In October, 2017 Defendants Prado and Long transferred the automobile auction
3 portion of Defendant Auction Nation’s business to Defendant Russell, who has since operated
4 the automobile auctions both on-site and online as Auction Yard, using the online Auction
5 Nation platform and paying Auction Nation a portion of the vehicle auction proceeds.

6 **BIDDER REGISTRATION**

7 39. Consumers who wished to bid on vehicles offered in the Auction Yard
8 Defendants’ automobile auction or any auction on the Auction Nation Defendants’ online
9 auction platform were required to register on the Auction Nation Defendants’ website prior to
10 being able to place bids. (Exhibit 2, Bidder Registration Page)

11 40. In order to register as a bidder, consumers were required to provide their name,
12 address, phone number, email address, and create a password for their account. (Exhibit 2,
13 Bidder Registration Page)

14 41. On the registration page, consumers were also required to check a box agreeing
15 that “Yes, I have read the auctionnation.com **user agreement** and agree to be bound by its
16 terms and conditions” before they could be assigned a bidder number and bid on either the
17 Auction Yard Defendants’ online automobile auction or another auction hosted by the Auction
18 Nation Defendants. The bold text above is blue in the original and the user agreement was
19 hyperlinked from the words “user agreement.” (Exhibit 2, Bidder Registration Page)

20 42. Potential bidders were also informed that “the auctionnation.com user agreement
21 is intended to make sure that everyone plays fair. But don’t take our word for it – you should
22 **read the agreement** before using the website.” The bold text above is blue in the original and
23 the user agreement was hyperlinked a second time from the words “read the agreement.”
24 (Exhibit 2, Bidder Registration Page) As shown below:

25 User Agreement

26 ☐ Yes, I have read the auctionnation.com user agreement and agree to be bound by its terms and conditions. *

The auctionnation.com user agreement is intended to make sure that everyone plays fair. But don't take our word for it - You should read the agreement before using the website.

27 Have a question? Call or email us.

1 **AUCTION NATION AND AUCTION YARD DEFENDANTS' USER AGREEMENT**

2 43. Until December 11, 2018, the hyperlinks on the Auction Nation Defendants'
3 bidder registration page led to a document entitled "Terms of Use," the first section of which
4 stated that "if you do not agree to all of these terms, do not use this website." (Exhibit 3, User
5 Agreement)

6 44. The 4th section of the User Agreement stated:

7 **4. AUCTION NATION NOT A PARTY TO TRANSACTIONS**
8 **In the Online Auction, Auction Nation is not a party to any transaction**
9 **relating to Auction Items. Auction Nation is only a venue for Sellers to**
10 **list Items and for Registered Users to make bids on such Items. You and**
11 Auction Nation are independent contractors. Neither party is an agent,
12 representative, broker, employee, partner or joint venturer of the other party.
13 This Agreement shall not be interpreted or construed to create an association,
14 joint venture, agency, franchise or partnership between the parties or to
15 impose any partnership obligation or liability upon either party. **Auction**
16 **Nation is not a party to, nor involved in, the transactions between Buyers**
17 **and Sellers. Auction Nation has no control over the Sellers, Buyers or any**
18 **aspect of the transactions. From time to time, Auction Nation may have**
19 **title to or possess Auction Items listed on the Website; nevertheless,**
20 **Auction Nation is not a party to any transactions related to such Items.**
21 [emphasis added] (Exhibit 3, User Agreement)

22 45. The 10th section of the User Agreement provided that "Auction Nation reserves
23 the right to postpone or cancel any Auction, or any sale resulting therefrom, at its own
24 discretion without notice," and that "auction items may be withdrawn or sold prior to or after
25 the end of the designated auction period..." (Exhibit 3, User Agreement)

26 46. The 10th section of the User Agreement also provided "You acknowledge and
27 agree that once a bid has been submitted on Your behalf, You may not retract the bid." It also
28 stated that "In addition, sale price manipulation of any kind, directly or indirectly, by users is
prohibited, including shill bidding." (Exhibit 3, User Agreement)

 47. In the 10th section, the User Agreement also stated "Bidders agree that bidding
on the Website is the legal equivalent of a firm purchase order." (Exhibit 3, User Agreement)

 48. In the 15th section, the User Agreement provided that "These terms set out the

1 entire understanding between Auction Nation and customers, users, Sellers, and bidders with
2 respect to the use of the Website. No other terms, whether expressed or implied, shall apply
3 unless specifically incorporated by reference herein.” (Exhibit 3, User Agreement)

4 49. Consumer bidders were, by the terms of the 10th section of the user agreement,
5 not allowed to retract their bids. Yet the 10th section provided that the Auction Nation and
6 Auction Yard Defendants were allowed to sell auction items before or after the auction, and
7 cancel any sale or auction without liability to bidders. (Exhibit 3, User Agreement)

8 50. Until December 11, 2018, the Auction Nation and Auction Yard Defendants also
9 maintained a separate General Auction Nation Terms and Conditions webpage that included a
10 provision stating in all capital letters, “CONSIGNORS ARE NOT ALLOWED TO BID ON
11 THEIR OWN ITEMS,” although consignors were, in fact, allowed to bid on their items.

12 **VEHICLE AUCTIONS**

13 51. From 2011 until October 2017 the Auction Nation Defendants ran the online
14 automobile auction portion of the Auction Nation website. From October 2017 to the present,
15 the Auction Yard Defendants ran the automobile auction utilizing the Auction Nation website.

16 52. Prior to the Auction Yard Defendants taking over the automobile auctions from
17 Auction Nation Defendants, the Auction Nation Defendants utilized shill bidding, a practice
18 that is continued by Auction Yard Defendants.

19 53. The Auction Nation and Auction Yard Defendants, at the time each of them
20 operated the automobile auction, decided on a minimum selling price for the vehicles for sale in
21 the online auction.

22 54. The Auction Nation and Auction Yard Defendants, at the time each of them
23 operated the automobile auction, created and used bidder numbers that did not represent actual
24 bidders and who would not be required to purchase items if they placed the highest bid on the
25 item, generally referred to or known as “shill bidders.”

26 55. The Auction Nation and Auction Yard Defendants, at the time each of them
27 operated the automobile auction, routinely placed multiple shill bids to increase the sales price
28 of the automobiles offered in the auction and to deceive consumers as to the number of bidders

1 interested in purchasing the vehicles offered for sale and the price that bidders were willing to
2 pay. (Exhibit 1, Vehicle Auction Bid History, Lot #5294 with notations added)

3 56. Auction Yard Defendants admitted that the bids identified in Exhibit 1 as shill
4 bids are in fact shill bids in their response to the State's 2nd Civil Investigative Demand.

5 57. Shill bids placed by the Auction Nation and Auction Yard Defendants in the
6 online auction were not identified to other bidders as shill bids at any time. (Exhibit 1, Vehicle
7 Auction Bid History, Lot #5294 with notations added)

8 58. Shill bidders routinely placed multiple bids under different bidder numbers in the
9 same auction, and outbid other shill bidder numbers and legitimate bidders multiple times in an
10 auction. There was no way for a legitimate bidder to identify the shill bidders by their bidder
11 number or bid. Shill bidders who "won" an auction did not pay for the item and the item was
12 often relisted at a subsequent auction. (Exhibit 1, Vehicle Auction Bid History, Lot #5294
13 with notations added)

14 59. Bidders could place maximum bids that would automatically increase their bid up
15 to a set maximum bid when other bidders outbid their original bid. The Auction Nation and
16 Auction Yard Defendants could view actual bidders' maximum bids using the Auction Nation
17 Defendants' auction platform and make shill bids based on that information.

18 60. The Auction Nation and Auction Yard Defendants, at the time each of them
19 operated the automobile auction, allowed independent sellers (also known as consignors) using
20 the Auction Nation and Auction Yard Defendants' vehicle auctions to place shill bids on their
21 own vehicles to increase the selling price of the vehicles auctioned. The Auction Nation and
22 Auction Yard Defendants also allowed independent sellers to use shill bidder numbers that did
23 not represent actual bidders and were not required to purchase their vehicles if they placed the
24 highest bid on the item. Independent sellers also could view other bidders' maximum bids
25 using the Auction Nation Defendants' auction platform and make shill bids based on that
26 information.

27 61. The Auction Yard Defendants' separate Terms and Conditions did not advise
28 consumers that shill bidding was taking place or that their maximum bids could be viewed by

1 Auction Yard Defendants and their independent sellers. (Exhibit 4, Auction Yard Terms and
2 Conditions)

3 62. Consumers, who had each agreed to the Auction Nation Defendants' User
4 Agreement prohibiting shill bidding and advising that the Auction Nation Defendants were not
5 a party to, or involved in the transactions between buyers and sellers, did not know that shill
6 bidding on vehicles was allowed, and believed that the other bids represented actual good-faith
7 buyers seeking to purchase the vehicles auctioned.

8 63. Defendant Auction Yard has since updated the Terms and Conditions on the
9 automobile auctions to state:

10
11 Notice of Reserve- Pursuant to ARS 47-2328 and UCC 2-328. Notice is
12 hereby given that this auction is with reserve. In the event of a reserve,
13 Auction Nation, The Auction Yard or its affiliates may implement such
14 reserve by bidding on behalf of the seller, whether by opening bidding or
15 consecutively bidding in response to other bidders until reaching the
16 reserve using one or multiple bidding numbers. If we have an interest in an
17 offered lot and the proceeds there from other than our commissions, we
18 may bid in the same manner therefore to protect such interest. As
19 auctioneers, it is our job to get as much for these vehicles as possible. As a
20 bidder, It is your responsibility to stop bidding when you have reached an
21 amount you are willing to pay. Please stop bidding when you have reached
22 the amount that you are comfortable with paying.

23 64. Bidders still have no way to differentiate shill bids from real bids.

24 65. Although the Auction Yard Defendants have updated their Terms and Conditions,
25 bidders continue to be unaware that the Auction Yard Defendants are placing multiple shill bids
26 on vehicles, deceiving actual bidders as to the value of items placed for auction and number of
27 bidders placing bids on items for sale. Bidders are not informed that Defendants and
28 Independent Sellers can view bidders' maximum bids before making additional shill bids.

26 **AUCTION NATION DEFENDANTS' GENERAL MERCHANDISE AUCTIONS**

27 66. The Auction Nation Defendants run their own auctions and host auctions for
28 independent sellers on its auction platform. These auctions include their own merchandise

1 auctions, and those they host for independent sellers, estate sales, and business liquidations.

2 67. All bidding takes place on the Auction Nation Defendants' online platform.

3 68. Until December 11, 2018, bidders for the Auction Nation Defendants' auctions
4 went through the same registration process as those for the Auction Yard Defendants' auctions,
5 with the same User Agreement advising that Auction Nation was not a party to transactions and
6 that shill bidding. (Exhibit 2, User Agreement)

7 69. The Auction Nation Defendants utilize shill bidding for higher value items in
8 their own auctions and auctions hosted on their online platform by creating and using bidder
9 numbers that do not represent actual bidders and who are not required to purchase items if they
10 place the highest bid on the item, generally referred to or known as "shill bidders."

11 70. The Auction Nation Defendants routinely place multiple shill bids to increase the
12 sales price of higher value items offered on their online auction platform and to deceive
13 consumers as to the number of bidders interested in purchasing items offered for sale and the
14 price that bidders were willing to pay.

15 71. House bids placed by the Auction Nation Defendants in the online auction are not
16 identified in any way to other bidders as shill bids.

17 72. Shill bidders routinely place multiple bids under different bidder numbers in the
18 same auction, and outbid other shill bidder numbers and legitimate bidders multiple times in an
19 auction. There is no way to for a legitimate bidder to identify the shill bidders by their bidder
20 number or bid. Shill bidders who "win" an auction do not pay for the item and the item is
21 either relisted or returned to the seller.

22 73. Bidders can place maximum bids that automatically increase their bid up to a set
23 maximum bid when other bidders outbid their original bid. The Auction Nation Defendants
24 can view actual bidders' maximum bids using the Auction Nation Defendants' auction platform
25 and make shill bids based on that information.

26 74. The Auction Nation Defendants allow independent sellers using the Auction
27 Nation Defendants' platform to place shill bids on their own items to increase the selling price
28 of the items auctioned. The Auction Nation Defendants also allow independent sellers to use

1 shill bidder numbers that do not represent actual bidders and are not required to purchase their
2 items if they place the highest bid on the item. In addition, independent sellers can view other
3 bidders' maximum bids using the Auction Nation Defendants' auction platform and make shill
4 bids based on that information.

5 75. Until December 11, 2018, consumers, who had each agreed to the Auction Nation
6 Defendants' user agreement prohibiting shill bidding and advising that the Auction Nation
7 Defendants were not a party to, or involved in the transactions between buyers and sellers, did
8 not know that shill bidding was allowed, and believed that the other bids represented actual
9 good-faith buyers seeking to purchase the vehicles auctioned.

10 76. Records regarding which items shill bidders have bid on or the amounts of the
11 shill bids are not kept by the Auction Nation Defendants. On December 11, 2018, the Auction
12 Nation Defendants updated their Terms and Conditions linked to the bidder registration page to
13 state that "Pursuant to UCC § 2-328 and applicable state law, notice is hereby given that in the
14 event of a reserve, Auction Nation or its affiliates may implement such reserves by bidding on
15 behalf of the seller, using one or more bidder numbers, until the lot or lots have reached a bid
16 amount that is acceptable to the Seller." This provision does not sufficiently disclose to
17 legitimate bidders that specific items have a reserve price or that the Auction Nation and
18 Auction Yard Defendants will be able to see bidders' maximum bids before making shill bids
19 and will use multiple unidentified bidder numbers and multiple unidentified shill bids to drive
20 up the price of items for sale in the auctions.

21 77. In addition, bidders still have no way to differentiate shill bids from real bids.

22 78. Although the Auction Nation Defendants have updated their Terms and
23 Conditions, bidders continue to be unaware that the Auction Nation Defendants are placing
24 multiple shill bids on items, deceiving actual bidders as to the value of items placed for auction
25 and number of bidders placing bids on items for sale. Bidders also continue to be unaware that
26 the Auction Nation Defendants and independent sellers can view bidders' maximum bids
27 before making additional shill bids.

1 **V. CLAIM FOR RELIEF: VIOLATIONS OF THE ARIZONA CONSUMER FRAUD**
2 **ACT, A.R.S. §§ 44-1521—1534**

3 79. The State realleges all prior allegations of this Complaint as though fully set forth
4 herein.

5 80. The conduct described in the preceding paragraphs of this Complaint constitutes
6 deception, deceptive or unfair acts or practices, fraud, false pretenses, false promises,
7 misrepresentations, or concealment, suppression or omission of material facts with intent that
8 others rely on such concealment, suppression or omission, in connection with the sale or
9 advertisement of merchandise in violation of A.R.S. §§ 44-1521 - 1534, including, but not
10 limited to:

11 a. Until December 11, 2018, the Auction Nation and Auction Yard
12 Defendants deceptively and unfairly required potential bidders to agree to a user agreement
13 stating: “Auction Nation is only a venue for Sellers to list Items and for Registered users to
14 make bids on such Items,” and “Auction Nation is not a party to, nor involved in, the
15 transactions between Buyers and Sellers,” when the Auction Nation and Auction Yard
16 Defendants were not just a venue for Sellers to list items and were a party to, and manipulated,
17 the transactions between Buyers and Sellers, by placing multiple shill bids on auction items;

18 b. Until December 11, 2018, the Auction Nation and Auction Yard
19 Defendants deceptively and unfairly stated in their user agreement that shill bidding was not
20 allowed, when shill bidding by the Auction Nation and Auction Yard Defendants, their
21 independent sellers, and/or consignors was allowed;

22 c. Until December 11, 2018, the Auction Nation and Auction Yard
23 Defendants deceptively and unfairly displayed a separate General Auction Nation Terms and
24 Conditions webpage that included a provision stating in all capital letters, “CONSIGNORS
25 ARE NOT ALLOWED TO BID ON THEIR OWN ITEMS,” even though consignors were, in
26 fact, allowed to bid on their own items;

27 d. From December 11, 2018 to the present, the Auction Nation and Auction
28 Yard Defendants deceptively and unfairly failed to meaningfully disclose to bidders that the

1 Auction Nation Defendants, Auction Yard Defendants, consignors and/or independent sellers
2 continued to place multiple shill bids, using multiple bidder numbers to bid on auction items
3 where the bidder numbers do not represent actual bidders and who would not be required to
4 purchase items if they place the highest bid on the item;

5 e. At all times relevant to this Complaint, the Auction Nation and Auction
6 Yard Defendants unfairly held bidders to their bids, while reserving the right to “postpone or
7 cancel any auction, or any sale resulting therefrom, at their own discretion without notice,” and
8 withdraw or sell auction items “prior to or after the end of the designated auction period...”
9 thus making any bid or auction voidable entirely at the Auction Nation and Auction Yard
10 Defendants’ discretion; and

11 f. In addition to the above deceptive acts, the Auction Nation and Auction
12 Yard Defendants concealed, suppressed, or omitted material facts and did so with intent that
13 others rely on such concealments, suppressions, or omissions, including, but not limited to:

14 i. Until December 11, 2018, concealing, suppressing, or omitting
15 material facts by failing to disclose in their bidder registration user agreement that the Auction
16 Nation Defendants, the Auction Yard Defendants and their independent sellers were a party to,
17 and manipulating, the transactions between Buyers and Sellers, by placing multiple shill bids
18 on auction items;

19 ii. Until December 11, 2018, omitting material facts by displaying a
20 separate General Auction Nation Terms and Conditions webpage that included a provision
21 stating in all capital letters, “CONSIGNORS ARE NOT ALLOWED TO BID ON THEIR
22 OWN ITEMS,” when consignors were, in fact, allowed to bid on their own items;

23 iii. Concealing, suppressing or omitting material facts by failing to
24 disclose that the Auction Nation Defendants, the Auction Yard Defendants and independent
25 sellers can view bidders’ maximum bids before making additional shill bids;

26 iv. After December 11, 2018, concealing material facts from bidders by
27 failing to meaningfully disclose the use of unidentified house bidder numbers, placing multiple
28 bids, and that the Auction Nation Defendants, Auction Yard Defendants, and their independent

1 sellers were a party to, and manipulating, the transactions between Buyers and Sellers.

2 81. While engaging in the acts and practices alleged in this Complaint, Defendants
3 knew or should have known that their conduct was of the nature prohibited by
4 A.R.S. § 44-1522, subjecting themselves to enforcement and penalties as provided in A.R.S.
5 § 44-1531(A).

6 **VI. PRAYER FOR RELIEF**

7 WHEREFORE, the State respectfully requests that the Court:

8 82. Pursuant to A.R.S. § 44-1528(A)(1), issue a permanent injunction, enjoining and
9 restraining (a) Defendants and their officers, agents, servants, employees, attorneys, (b) their
10 officers, agents, servants, employees, attorneys, and (c) all persons in active concert or
11 participation with anyone described in part (a) or (b) of this paragraph, directly or indirectly,
12 from:

13 a. Placing bids or allowing bids to be placed in their online auctions by the
14 Auction Nation Defendants, the Auction Yard Defendants, independent sellers or consignors
15 for items in which they have an ownership or monetary interest, unless each bid is clearly,
16 conspicuously, and individually identified to consumer bidders as a bid placed by a person or
17 entity where the bidder has an ownership or monetary interest in the sale and that the person or
18 entity will not be required to purchase the item if placing the highest bid;

19 b. failing to clearly, conspicuously and individually identify each item placed
20 up for bid in an auction hosted or run by the Auction Nation Defendants or the Auction Yard
21 Defendants as having a reserve price that must be met before the item will be sold to a high
22 bidder;

23 c. reserving the right to postpone or cancel any Auction, or any sale resulting
24 therefrom, at their own discretion, without notice, and withdraw or sell auction items prior to or
25 after the end of the designated auction period, making any bid or auction voidable entirely at
26 the Auction Nation Defendants' and the Auction Yard Defendants discretion;

27 d. viewing or having the capacity to view bidders' maximum bids in auction
28 where shill bidding is permitted;

1 e. failing to clearly and conspicuously provide the means by which bidders
2 can retract their bids on auction items, prior to the close of bidding on an item; and

3 f. engaging in deceptive, misleading, or unfair acts or practices, or
4 concealments, suppressions, or omissions, that violate the ACFA, A.R.S. § 44-1522(A).

5 83. Pursuant to A.R.S. § 44-1528(A)(2), order that Defendants restore to all persons
6 in interest any monies or property, real or personal, which may have been acquired by any
7 means or any practice in this article declared to be unlawful, in the amount of at least
8 \$1,000,000.00;

9 84. Pursuant to A.R.S. § 44-1528(A)(3), order Defendants to disgorge all profits,
10 gains, gross receipts, or other benefits obtained as a result of their unlawful acts alleged herein,
11 in the amount of at least \$1,000,000.00;

12 85. Pursuant to A.R.S. § 44-1531, order Defendants to pay to the State of Arizona a
13 civil penalty of up to \$10,000 for each willful violation by each Defendant of A.R.S. § 44-1522,
14 in the amount of at least \$5,000,000;

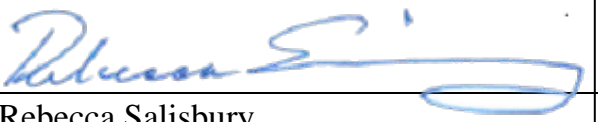
15 86. Pursuant to A.R.S. § 44-1534, order Defendants to reimburse the State for its
16 costs and attorneys' fees incurred in the investigation and prosecution of Defendants' activities
17 alleged in this Complaint;

18 87. Pursuant to A.R.S. § 44-1201, require Defendants to pay pre-judgment and post-
19 judgment interest to the State and all consumers; and

1 88. Award the State such further relief the Court deems just and proper under the
2 circumstances.

3 DATED this 2nd day of December, 2020.

4 MARK BRNOVICH
5 Attorney General

6 By: 
7 Rebecca Salisbury
8 Assistant Attorney General
9 Attorney for the State of Arizona

10
11 Document electronically transmitted
12 to the Clerk of the Court for filing using
13 AZTurboCourt this 2nd day of December, 2020.

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15 
16 /s/ _____

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EXHIBIT 1
VEHICLE AUCTION BID HISTORY
LOT 5294

MESA, AZ WEEKLY ONLINE/LIVE PUBLIC AUTO AUCTION 6/20/19 ID: 18933 (104 lots)

All items closed



CONTACT AUCTIONEER

ATTENTION: This Auction is being held in conjunction with The Auction Yard LLC. The Auction Yard LLC is a Public Consignment Auction Dealer and is exempt from Emissions testing under A.R.S 49-542(D) and The Implied warranty of Merchantability disclosure/disclaimer under A.R.S 28-4412 and 44-1267. The Auction Yard LLC makes no representations of any vehicle. Our inspection reports are not certified. We provide them only as a courtesy. You are still responsible to preview the vehicles you bid on. Do not go off our inspection reports alone. For any questions please feel free to contact us at (602) 412-3617.

UPDATE 9/28/17 IMPORTANT: We have recently updated some of our terms regarding placing your first bid in our vehicle auctions. A \$300.00 credit card authorization will now be processed when submitting your first bid at this auction. The \$300.00 is simply a pending hold on your card and is held by the credit card company for varying lengths but typically 24-72 hours. This \$300.00 authorization is not actually charged to your card. If you are the winning bidder, we will capture the \$300.00 authorization which is non-refundable along with a 5% Card fee and apply it to your invoice. If you do not win any items in the auction, the hold will drop off within 3-4 business days. Also there will be a \$175 Transaction Fee for each lot.

If you have any questions regarding this auction please call us at (602) 412-3617 or send an email to automotive@auctionnation.com



BID GALLERY



DATES & TIMES



LOCATIONS



AUCTION DETAILS



MY FAVORITES



TERMS AND CONDITIONS

Back to List

Lot # 5294: 2014 Fiat 500 Sport 2 Door Coupe VIN#3C3CFBFR0ET238312

Ask About Save Print

PREVIOUS ITEM

NEXT ITEM



Current Bid:	\$3,272.00 (bids: 52)
High Bidder:	142690
Min Bid:	\$3,322.00
Bidding Ended:	Thu, Jun 20, 2019 at 05:42:00 pm MT

Share this item!



Details

Bid History

Bid Date	Bid Amount	Bidder
Jun 20, 2019 - 5:40:44 PM	\$3,272.00	142690
Jun 20, 2019 - 5:40:20 PM	\$3,222.00	141076
Jun 20, 2019 - 5:40:20 PM	\$3,200.00	142690
Jun 20, 2019 - 5:40:13 PM	\$3,150.00	141076
Jun 20, 2019 - 5:40:13 PM	\$3,100.00	142690
Jun 20, 2019 - 5:33:28 PM	\$3,050.00	141076
Jun 20, 2019 - 5:33:28 PM	\$3,000.00	114860
Jun 20, 2019 - 5:33:21 PM	\$2,650.00	141076
Jun 20, 2019 - 5:33:21 PM	\$2,600.00	114860
Jun 20, 2019 - 5:33:18 PM	\$2,550.00	141076
Jun 20, 2019 - 5:33:18 PM	\$2,500.00	114860
Jun 20, 2019 - 5:33:15 PM	\$2,450.00	141076
Jun 20, 2019 - 5:33:15 PM	\$2,400.00	114860

SHILL BIDS

ACTUAL BIDDER
142690

Transaction Details

Payment Due: First \$300.00 will automatically be charged to card on file for each vehicle won along with a 5% card fee. This \$300.00 is non-refundable. The remainder must be paid no later than the next day following the auction. Non-payment will result in a re-listing service fee.
Payment Methods: We accept cash and wire/bank transfer. Credit cards & Debit Cards can be used for up to the first \$3000.00 of a vehicle purchase. Bidder will be charged an additional 5% convenience fee towards the total of any Credit Card or Debit Card transaction. Credit card/ Debit Card and valid photo ID must be presented when paying for vehicle. Also we can accept Cashiers Checks which are made payable to "The Auction Yard".

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EXHIBIT 2
BIDDER REGISTRATION PAGE



Auction Nation

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Welcome to Auction Nation - Register to bid

Basic Info

First Name:	<input type="text"/>	*
Last Name:	<input type="text"/>	*
Company Name:	<input type="text"/>	
Country:	<input type="text" value="United States"/>	▼ *
Address:	<input type="text"/>	*
Address 2:	<input type="text"/>	
City:	<input type="text"/>	*
State:	<input type="text" value="Select State"/>	▼ *
Postal Code:	<input type="text"/>	*
Phone:	<input type="text"/>	*
Phone 2:	<input type="text"/>	
Fax:	<input type="text"/>	
Heard About Us From:	<input type="text"/>	*
Email:	<input type="text"/>	*
Email 2:	<input type="text"/>	
Password:	<input type="password"/>	*
Password must not contain more than 50 characters.		
Confirm Password:	<input type="password"/>	*
Password must not contain more than 50 characters.		

Notifications

- ☒ Outbid Notices
- ☒ Auction Closing Alerts
- ☒ Special Auction Notices

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☐ Yes, I have read the auctionnation.com [user agreement](#) and agree to be bound by its terms and conditions. *

The auctionnation.com user agreement is intended to make sure that everyone plays fair. But don't take our word for it - You should [read the agreement](#) before using the website.

Have a question? [Call](#) or [email](#) us.

I'm not a robot

reCAPTCHA
Privacy - Terms

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EXHIBIT 3
AUCTION NATION TERMS OF USE



Auction Nation

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online.auctionnation.com Terms of Use

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These Terms may be updated by us from time to time without notice to You. You can review the most current version of the Terms at any time at online.auctionnation.com. This Agreement was last revised on June 10, 2016. If You have any questions regarding this Agreement, please contact (602) 516-7066.

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In consideration of Your use of the Website, You agree to: (a) provide accurate, current, and complete information about You as may be prompted by a registration form on the Website (the "Registration Data"); (b) maintain the security of Your password and identification; (c) maintain and promptly update the Registration Data, and any information You provide to Auction Nation, to keep it accurate, current and complete; and (d) accept all risks of unauthorized access to information and Registration Data. You have sole responsibility for adequate protection and backup of data and/or equipment used in connection with the Website; (e) notify Auction Nation immediately of any unauthorized use of Your username and password or any other breach of security regarding the Services; (f) allow Auction Nation to send notifications to your registration email address notifying you about auctions that are similar to ones on which you have already bid.

Auction Nation cannot and will not be liable for any loss or damage arising from Your failure to comply with this Section.

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Full Release: In the event that You have a dispute with a Seller or other user(s), You release Auction Nation (and our officers, directors, agents, subsidiaries and employees) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such disputes.

YOU CONFIRM THAT YOU HAVE CAREFULLY READ THESE TERMS AND FULLY UNDERSTAND THEIR CONTENTS. YOU FURTHER CONFIRM THAT YOU ARE AWARE THAT THIS IS A RELEASE OF LIABILITY AND A CONTRACT BETWEEN YOU AND AUCTION NATION YOU AND ENTER INTO IT OF YOUR OWN FREE WILL.

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Information Control: Information about Auction Items is posted by Auction Nation on behalf of Sellers. Users may find item information to be inaccurate or lacking in detail. Auction Nation makes no representations or warranties with respect to such information or Auction Items, all of which are provided "as is." We strongly advise that You make use of any available inspection period to personally inspect items so that You can make the best bidding and buying decision possible. Please use caution and common sense when using the Website. Auction Nation has no control over the quality, safety or legality of the Auction Items listed, the truth or accuracy of the listings or any other information provided by Sellers about the Items.

Auction Period: The Auction period shall be determined by Auction Nation and will end at a time to be determined by Auction Nation, at its sole discretion.

Bidder Conduct: You acknowledge and agree that once a bid has been submitted on Your behalf, You may not retract the bid. In addition, sale price manipulation of any kind, directly or indirectly, by users is prohibited, including still bidding.

Binding Offer to Purchase: If You are the highest bidder ("Buyer") at the end of an Auction and have met the reserve bid, if there is a reserve bid, then You are obligated to complete the transaction unless the transaction is prohibited by law or by this Agreement. Bidders agree that bidding on the Website is the legal equivalent of a firm purchase order.

Void Bids: Auction Nation reserves the right to reject or void bids, whether winning or not, which it believes have not been made in good faith, are intended to manipulate the Auction process, or are prohibited by applicable law.

Winning Bids: Auction Nation is the one and only judge for the determination of winning bids, but Auction Nation shall not be liable for any errors or omissions relating to such determination, whether by Auction Nation or some other person.

Postponement and Cancellation: Auction Nation reserves the right to postpone or cancel any Auction, or any sale resulting therefrom, at its own discretion, without notice. Auction Nation will have no liability to prospective bidders or Sellers as a result of any withdrawal, cancellation or postponement of Auctions or sales.

Withdrawal of Auction/Auction Items: User acknowledges and agrees that Auction Items may be withdrawn or sold prior to or after the end of the designated auction period, that the Auction may be discontinued, either temporarily or permanently, and that the Auction may, at Auction Nation's sole discretion, be extended beyond the designated auction period, all without notice to User. Generally, Auction Items shall be sold to the highest bidder, provided, however, that some Items may be auctioned with minimum reserve prices, and/or subject to Seller's right of confirmation.

11. Completion of Transactions

Liability for Auction Items: Auction Items shall be and remain at the risk of the Seller (and not Auction Nation) until the Item is removed from the posted Auction location by the Buyer or the Buyer's designated transportation provider. The Item shall be and remain at the risk of the Buyer and/or the Buyer's designated transportation provider (and not Auction Nation) while in transport. The Item shall be and remain at the risk of the Buyer once delivered to the designated location.

Sales and Use Tax: All bids and offers must be net of any taxes imposed with respect to the sale or purchase transaction. Buyers are liable for all such taxes or for establishing to Auction Nation satisfaction on behalf of the Seller a valid exemption certificate from such taxes. Buyers and Sellers acknowledge and agree that Auction Nation is providing a service in the calculation, reporting and remittance of sales or use taxes which may be assessed, due or owing to the taxing authorities of any taxing jurisdiction for transactions that arise in connection with Your use of the Service. Each Buyer shall indemnify Auction Nation against any tax, cost or expense relating to the failure of the Buyer to satisfy any sales or use tax liability related to a transaction. Each Seller shall indemnify Auction Nation against any tax, cost or expense relating to the failure of the Seller to satisfy any sales or use tax liability related to a transaction within their jurisdiction

Buyer's Premium: Auction Nation may, at its discretion, charge a Buyer's Premium and/or Processing Fee on Auction Items sold. The Buyer's Premium and/or Processing Fee is an additional service charge, for which the Buyer is responsible. It is a fixed percentage of the final selling price. If an Auction includes a Buyer's Premium and/or Processing Fee, it will be clearly indicated in the auction-specific terms, and on Item detail pages. All fees, including Buyer's Premiums, must be paid prior to releasing any Auction Items for pick-up and transport.

Payment and Payment Period: The Payment Period for all Auctions shall be determined by Auction Nation and will be posted in the auction-specific terms and on Item detail pages. Full payment from the winning bidder in the amount of the auction closing price, applicable Buyer's Premiums and sales tax must be posted to a secure payment account designated by Auction Nation within the posted Payment Period. Buyers may pay for their Items online with a valid credit card or send payments via wire transfer or certified bank check. Without limiting the foregoing, full payment is due prior to the removal or transportation of purchased Items.

Buyer Default: If, after the Payment Period has ended, the Buyer does not make full payment in accordance with the terms set forth above, the Buyer is considered in default and their Auction Item(s) will be re-listed in an Online Auction and a 15% re-listing fee (which You agree is a reasonable estimate of the minimum damages incurred by Auction Nation as a result of Your failure) will be charged to their account. The re-listing fee is based upon the original selling price of the Auction Item. By registering a valid credit card with Auction Nation, the Buyer authorizes Auction Nation to charge applicable re-listing fees to the credit card.

Item Removal and Removal Period: The Removal Period for Auction Items shall be determined by Auction Nation and will be posted in the auction-specific terms and on Item detail pages. Buyer may remove Auction Items from the Seller's location once the total purchase price (and any applicable sales tax and the Transaction Fee) has been received and posted to a secure payment account designated by Auction Nation. Buyers are responsible for loading and shipping Auction Items unless otherwise noted. Auction Nation shall have no responsibility with respect to disconnecting utilities to Auction Items, including electric, gas, waste and water lines. It is the Buyer's responsibility to arrange and pay for the insurance, removal and shipment of purchased Items. Item removal shall be conducted responsibly and with due care for the Seller's premises. The Buyer shall restore and repair all real and personal property that is altered or damaged as a result of the removal of purchased Items. In some cases the Buyer may be required to provide a deposit before removal but that deposit will be refunded immediately upon completion of removal and approval of the property owner or manager. If the Buyer does not remove an item within the designated removal period, the Buyer will be deemed to have abandoned the Item and the Buyer will have no further rights with respect to the Item. No claims of any kind shall be allowed after Item has been removed by the Buyer.

Freight and Transportation: The Buyer is responsible for all freight, shipping and other costs related to transporting Auction Items from the posted Auction location, including but not limited to any costs associated with certificates and/or permits required to move Auction Items within or across state, province and/or country borders. Buyers are advised to have all such certificates and permits issued and completed prior to transporting the equipment; otherwise Buyer may be subject to cleaning, permit, and/or other fees if the Items are stopped and held at a Port of Entry to a state, province or country. Buyers may arrange transportation of Auction Items on the Website through a third party, but Auction Nation will not be liable for any acts or omissions arising from such third party transportation and claims no responsibility for the actions of any transportation provider. If the person picking up and removing Items from an auction location will be someone other than the registered Buyer, the registered Buyer must establish that person or company as an "Authorized Agent" by completing an "Agent Release Authorization" form. Buyers may not transport Auction Items until full payment (including any applicable sales tax and Buyer's Premium) has been received posted to a secure payment account designated by Auction Nation.

Constructive Receipt: Once Constructive Receipt has occurred for any Auction Item, remittance of proceeds to the Seller may occur. Any dispute claims subsequently filed by the Buyer are invalid. Constructive Receipt of Auction Items occurs at the first occurrence of any of the following milestones (unless a dispute claim has been previously filed by the Buyer), provided full payment has been received by Auction Nation for the Item:

- a) At the time Buyer or Buyer's Authorized Agent removes the item from the Seller's location.
- b) At the time Buyer or Buyer's Authorized Agent begins disassembly of Item from its as-inspected configuration, including disassembly for transport.

Auction Nation does not transfer legal ownership of Items from the Seller to the Buyer, and nothing in this agreement shall modify the governing provisions of Uniform Commercial Code § 2-401(2), under which legal ownership of an Item is transferred upon physical delivery of the Item to the Buyer by the Seller. Unless the Buyer and the Seller agree otherwise, the buyer will become the Item's lawful owner upon physical receipt of the Item from the seller, in accordance with Uniform Commercial Code § 2-401(2).

12. Disclaimer, Indemnity, Limitation of Liability

Indemnification: You agree to defend, indemnify and hold harmless Auction Nation, its officers, directors, agents, subsidiaries and employees from claims, demands and damages, actual and consequential, of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, to the extent arising out of or in any way connected with any breach or violation by You of these Terms, any use by You of the Website or any disputes or damages arising out of Your use of or contracts formed with You through this Website.

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Dispute Resolution: YOU AGREE TO MEDiate AND ARBITRATE ANY DISPUTE OR CLAIM BETWEEN OR AMONG YOU AND ANY OTHER REGISTERED USER OR AUCTION NATION ARISING OUT OF OR RELATING TO THESE TERMS, AGREEMENTS, ANY SALE OF EQUIPMENT, ANY INSPECTION REPORT OR ANY OTHER TRANSACTION CONTEMPLATED BY THESE TERMS INCLUDING, BUT NOT LIMITED TO, ALL CONTRACT AND TORT CLAIMS, STATUTORY CLAIMS, CLAIMS FOR RELIEF WHETHER EQUITABLE OR LEGAL, ISSUES OF ARBITRABILITY, AND DISPUTES ABOUT THE SCOPE OF THIS CLAUSE. DISPUTE RESOLUTION SHALL BE CONDUCTED PURSUANT TO THE FOLLOWING PROCEDURES. BEFORE INITIATING ANY ARBITRATION, THE PARTIES SHALL ENGAGE IN MEDIATION, WHICH IS A PROCESS IN WHICH PARTIES ATTEMPT TO CONFIDENTIALLY RESOLVE ANY DISPUTE BY SUBMITTING IT TO AN IMPARTIAL, NEUTRAL MEDIATOR WHO IS AUTHORIZED TO FACILITATE THE RESOLUTION OF THE DISPUTE BUT WHO IS NOT EMPOWERED TO IMPOSE A SETTLEMENT. MEDIATION SHALL BE CONDUCTED IN, SOMESTATE, BY A MEDIATOR AFFILIATED WITH THE AMERICAN ARBITRATION ASSOCIATION ("AAA") UNLESS THE PARTIES MUTUALLY AGREE TO A DIFFERENT MEDIATOR. SHOULD MEDIATION PROVE UNSUCCESSFUL TO RESOLVE THE DISPUTE, AND WITHIN ONE YEAR OF THE DISPUTE ARISING, A PARTY SHALL MAKE A DEMAND FOR BINDING ARBITRATION TO BE CONDUCTED IN ACCORDANCE WITH THE RULES OF COMMERCIAL ARBITRATION OF THE AMERICAN ARBITRATION ASSOCIATION. A SINGLE ARBITRATOR WITH KNOWLEDGE OF THE AUCTION INDUSTRY SHALL CONDUCT THE ARBITRATION IN, SOMESTATE. THE PARTIES SHALL MUTUALLY AGREE UPON SUCH ARBITRATOR. IN THE EVENT THAT THE PARTIES HAVE NOT AGREED TO A MUTUALLY ACCEPTABLE ARBITRATOR WITHIN THIRTY (30) DAYS OF THE DATE OF THE NOTICE OF INTENTION TO ARBITRATE, THE AAA SHALL SELECT THE ARBITRATOR FROM ITS REGULARLY MAINTAINED LIST OF COMMERCIAL ARBITRATORS. THE ARBITRATOR SHALL BE BOUND TO APPLY THE LAW, INCLUDING THE FEDERAL RULES OF EVIDENCE AND THE FEDERAL RULES OF CIVIL PROCEDURE, AND SHALL BE EMPOWERED TO HEAR AND DETERMINE DISPOSITIVE MOTIONS INCLUDING MOTIONS TO DISMISS AND MOTIONS FOR SUMMARY JUDGMENT. THE PARTIES SHALL HAVE THE RIGHT TO CONDUCT TWO DEPOSITIONS OF EACH OPPOSING PARTY. THE AGGREGATE DEPOSITION DISCOVERY CONDUCTED IN CONNECTION WITH ANY SUCH ARBITRATION HEARING SHALL NOT EXCEED TEN HOURS FOR EACH PARTY. THE ARBITRATOR SHALL HAVE THE RIGHT TO ISSUE INJUNCTIONS AND ATTACHMENTS AND OTHER EQUITABLE REMEDIES AND AWARD COMPENSATORY DAMAGES. THE ARBITRATOR SHALL HAVE NO POWER TO AWARD CONSEQUENTIAL, PUNITIVE OR TREBLE DAMAGES, OR ANY OTHER MANNER OF ENHANCED DAMAGES. THE PREVAILING PARTY IN ANY ARBITRATION SHALL HAVE THE RIGHT TO AN AWARD OF ATTORNEYS' FEES AND COSTS. THE AWARD OF THE ARBITRATOR SHALL BE FINAL AND BINDING AND ANY PARTY TO THE DISPUTE MAY SEEK TO CONFIRM THE AWARD OF THE ARBITRATOR IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN, SOMESTATE AND ENFORCE THE AWARD AS A JUDGMENT. EXCEPT FOR THE FILING OF A JUDICIAL ACTION TO CONFIRM, MODIFY, VACATE, OR ENFORCE AN ARBITRATORS AWARD, INCLUDING THE AWARD OF AN INJUNCTION OR ATTACHMENT, WHICH FILING IS PERMISSIBLE, ANY PARTY WHO INITIATES LITIGATION, OR WHO INITIATES ARBITRATION WITHOUT FIRST MEDIATING A DISPUTE, SHALL FOREFEIT ANY AND ALL RIGHT TO ATTORNEYS' FEES AND COSTS AS A PREVAILING PARTY, AND SHALL REIMBURSE ANY OTHER PARTY TO THE LITIGATION FOR THEIR COSTS OF LITIGATION INCLUDING ATTORNEYS' FEES AND COSTS.

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EXHIBIT 4
AUCTION YARD TERMS AND CONDITIONS



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MESA, AZ Weekly Online/Live Public Auto Auction 9/13/18 ID: 12844 (91)

All items closed

ATTENTION: This Auction is being held in conjunction with The Auction Yard LLC. The Auction Yard LLC is a Public Consignment Auction Dealer and is exempt from Emissions testing under A.R.S 49-542(D) and The Implied warranty of Merchantability disclosure/disclaimer under A.R.S 28-4412 and 44-1267. The Auction Yard LLC makes no representations of any vehicle. Our inspection reports are not certified. We provide them only as a courtesy. You are still responsible to preview the vehicles you bid on. Do not go off our inspection reports alone. For any questions please feel free to contact us at (602) 412-3617.

UPDATE 9/28/17 IMPORTANT: We have recently updated some of our terms regarding placing your first bid in our vehicle auctions. A \$300.00 credit card authorization will now be processed when submitting your first bid at this auction. The \$300.00 is simply a pending hold on your card and is held by the credit card company for varying lengths but typically 24-72 hours. This \$300.00 authorization is not actually charged to your card. If you are the winning bidder, we will capture the \$300.00 authorization which is non refundable along with a 5% Card fee and apply it to your invoice. If you do not win any items in the auction, the hold will drop off within 3-4 business days. Also there will be a \$ 175 Transaction Fee for each lot.

If you have any questions regarding this auction please call us at (602) 412-3617 or send an email to automotive@auctionnation.com

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Please make sure you have read the terms of this auction before bidding.

Bidding Starts: Friday, September 7, 2018 at 12:00:00 am MT

Bidding Ends: Thursday, September 13, 2018 between 05:30:00 pm and 07:02:19 pm MT

See individual items for exact closing times.

Extended Bidding: [1](#)

Location: 1921 W. 1st Ave , Mesa, AZ 85202

Preview Times: Wednesday 9/12/18 10am to 4pm & Thursday 9/13/18 10am to 5pm

ATTENTION: This Auction is being held in conjunction with The Auction Yard LLC. The Auction Yard LLC is a Public Consignment Auction Dealer and is exempt from Emissions testing under A.R.S 49-542(D) and The Implied warranty of Merchantability disclosure/disclaimer under A.R.S 28-4412 and 44-1267. The Auction Yard LLC makes no representations of any vehicle. Our inspection reports are not certified. We provide them only as a courtesy. You are still responsible to preview the vehicles you bid on. Do not go off our inspection reports alone. For any questions please feel free to contact us at (602) 412-3617.

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If you have any questions regarding this auction please call us at (602) 412-3617 or send an email to automotive@auctionnation.com

Payment Due: First \$300.00 will automatically be charged to card on file for each vehicle won along with a 5% card fee . This \$300.00 is non refundable. The remainder must be paid no later than the next day following the auction! Non-payment will result in a re-listing service fee.

Payment Methods: We accept cash and wire/bank transfer. Credit cards & Debit Cards can be used for up to the first \$3000.00 of a vehicle purchase. Bidder will be charged an additional 5% convenience fee towards the total of any Credit Card or Debit Card transaction. Credit card/ Debit Card and valid photo ID must be presented when paying for vehicle. Also we can accept Cashiers Checks which are made payable to "The Auction Yard".

IMPORTANT: A \$300.00 credit card authorization will be processed when submitting your first bid at this auction. The \$300.00 is simply a pending hold on your card and is held by the credit card company for varying lengths but typically 24-72 hours. This \$300.00 authorization is not actually charged to your card. If you are the winning bidder, we will capture the \$300.00 authorization along with a 5% credit card fee which is non refundable and apply it to your invoice. If you do not win any items in the auction, the hold will drop off within 3-4 business days.

Payment: Payment must be made at 1921 W. 1st Ave Mesa, AZ 85202 (Cashiers checks made payable to : The Auction Yard, LLC)

Load Out Times: Thursday 9/13/18 till close of auction & Friday 9/14/18 10am to 4pm

Location: 1921 W. 1st Ave Mesa, AZ 85202

Removal Assistance: Buyers are solely responsible for the removal of purchased items.

Transaction Fee: There will be a \$175 Transaction Fee for each Lot

Buyer's Premium: There is a 0% Buyer's Premium in effect for this auction.

All items are sold "as-is" and "where-is" with no warranties expressed or implied.

Buyers in default will be charged a 15% re-listing service fee based upon their high bid amount to relist the vehicle in the next auction. Bidders still showing as unpaid status on the Thursday morning following the auction will automatically be charged this service fee.

There are no refunds or exchanges no exceptions! Please bid accordingly.