

1 **MARK BRNOVICH**
2 **ATTORNEY GENERAL**
(Firm State Bar No. 14000)
3 DYLAN JONES (BAR NO. 034185)
4 REBECCA SALISBURY (BAR NO. 022006)
5 ASSISTANT ATTORNEY GENERAL
6 OFFICE OF THE ATTORNEY GENERAL
7 2005 North Central Avenue
8 Phoenix, AZ 85004-1592
9 Telephone: (602) 542-5210
10 Facsimile: (602) 542-4377
11 Email: Dylan.Jones@azag.gov
12 Email: consumer@azag.gov
13 *Attorneys for the State of Arizona*

11 **SUPERIOR COURT OF ARIZONA**
12 **IN MARICOPA COUNTY**

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

15 Plaintiff,

16 v.

17 PINNACLE NISSAN LLC D/B/A PINNACLE
18 NISSAN,

19 Defendant.

Case No.

COMPLAINT

21 Plaintiff, State of Arizona *ex rel.* Mark Brnovich, the Attorney General (the “State”),
22 alleges the following for its Civil Complaint (the “Complaint”) against Defendant Pinnacle Nissan
23 LLC d/b/a Pinnacle Nissan (“Pinnacle”).

24 **INTRODUCTION**

- 25 1. Pinnacle is a Nissan dealership that has been operating in Scottsdale, Arizona since
26 1996.
- 27 2. Pinnacle advertises its merchandise online, which allows consumers to view the
28 vehicle prices before coming to the dealership.

1 ALLEGATIONS

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

4 14. Pinnacle, on its website, posted misleading and/or deceptive prices for its
5 vehicles, by engaging in the below-mentioned conduct.

6 15. Pinnacle listed new vehicles for sale by listing two prices. The first price was the
7 “Manufacturer’s Suggested Retail Price” (“MSRP”) and the second price was the “Everyday
8 Price.”

9 16. Pinnacle typically listed used vehicles for sale by listing two prices. The first
10 price was the “Retail Value” and the second price was the “Pinnacle Nissan Value Price.”

11 17. Pinnacle did not disclose clearly that it subjected all vehicles—both new and
12 used—to additional costs for a package of “add-on” accessories.

13 18. While Pinnacle officially claims these add-on accessories are optional, in practice
14 Pinnacle employees frequently have represented to customers that the add-on accessories are
15 mandatory, which increases the price of the vehicles above the Everyday Price or Pinnacle
16 Nissan Value Price.

17 19. Pinnacle, on some occasions, refused to honor the Everyday Price or Pinnacle
18 Nissan Value Price by (1) refusing to sell vehicles if consumers did not agree to purchase the
19 add-on accessories when consumers attempted to purchase the vehicles at the price advertised
20 on the website or (2) including add-on accessories which the consumer did not want in the
21 purchase price.

22 20. In cases where the Everyday Price or Pinnacle Nissan Value Price was not
23 honored due to the addition of add-on accessories, when consumers asked why, Pinnacle
24 employees provided a variety of explanations. In some instances, employees informed the
25 consumer that certain add-on accessories had been installed already on the vehicle and could
26 not be removed, thus increasing the price of the vehicle above the advertised price. In other
27 instances, Pinnacle employees informed consumers that they could not remove the add-on
28 ...

1 accessories, because if they removed the add-on accessories for one person, then they would
2 have to remove add-on accessories for everyone.

3 21. Despite Pinnacle's knowledge that some consumers reasonably believed the
4 Everyday Price or the Pinnacle Nissan Value Price reflected the actual price for the vehicle,
5 Pinnacle continued to advertise its online prices in the manner described in paragraphs 14-20
6 above.

7 22. Pinnacle regularly makes outbound telephone calls to consumers who have
8 provided Pinnacle with contact information and have consented to allow Pinnacle to contact
9 them regarding advertisements, promotions, and solicitations.

10 23. Repeatedly, Pinnacle continued to make outbound telephone calls to consumers
11 after they stated a desire to no longer receive telephone calls from Pinnacle, in violation of
12 A.R.S. § 44-1278(B). Many of these consumers also are on the national do-not-call registry.

13 **FIRST CLAIM FOR RELIEF**

14 **VIOLATIONS OF THE ARIZONA CONSUMER FRAUD ACT, A.R.S. §§ 44-1521 to -1534**

15 24. The State realleges all prior allegations of this Complaint as though fully set forth
16 herein.

17 25. The conduct described in the preceding paragraphs of this Complaint constitutes
18 deception, deceptive or unfair acts or practices, fraud, false pretenses, false promises,
19 misrepresentations, or concealment, suppression or omission of material facts with intent that
20 others rely on such concealment, suppression or omission, in connection with the sale or
21 advertisement of merchandise in violation of A.R.S. §§ 44-1521 to -1534, including, but not
22 limited to:

23 a. Pinnacle engaged in deceptive and unfair acts and practices by refusing to
24 sell the vehicles at the price that was advertised;

25 b. Pinnacle engaged in deceptive and unfair acts and practices by concealing,
26 suppressing, or omitting the material fact of the true purchase price of vehicles, and did so with
27 intent that others rely on such concealments, suppressions, or omissions;

28 ...

1 c. Pinnacle engaged in deceptive and unfair acts and practices by falsely stating
2 the certain add-on accessories were mandatory; and

3 d. Pinnacle engaged in deceptive and unfair acts and practices by concealing,
4 suppressing, or omitting the material fact that the purchase of certain add-on accessories was not
5 required to purchase a vehicle, and Pinnacle did so with intent that others rely on such
6 concealments, suppressions, or omissions.

7 26. While engaging in the acts and practices alleged in this Complaint, Pinnacle knew
8 or should have known that that its conduct was of the nature prohibited by A.R.S. § 44-1522,
9 subjecting itself to enforcement and penalties as provided in A.R.S. § 44-1531(A).

10 27. With respect to the unfair acts and practices described above, these acts and
11 practices caused or were likely to cause substantial injuries to consumers that were not reasonably
12 avoidable by consumers and were not outweighed by countervailing benefits to consumers or to
13 competition.

14 **SECOND CLAIM FOR RELIEF**

15 **VIOLATIONS OF THE ARIZONA TELEPHONE SOLICITATIONS ACT,**

16 **A.R.S. §§ 44-1271 to -1282**

17 28. The State realleges all prior allegations of this Complaint as though fully set forth
18 herein.

19 29. Pinnacle was a “seller” as defined under the ATSA, A.R.S. § 44-1271. As a
20 “seller” Pinnacle was required to comply with the mandates of the ATSA.

21 30. The conduct described in the preceding paragraphs of this Complaint violates the
22 ATSA, including, but not limited to:

23 a. Pinnacle continued to call consumers after those consumers requested that
24 Pinnacle stop calling, in violation of A.R.S. §§ 44-1278(B)(2) and 44-1278(B)(6) and 16 C.F.R
25 § 310.4(b)(1)(iii)(A).

26 b. Pinnacle called consumers whose numbers were on the Do Not Call
27 Registry, in violation of A.R.S. §§ 44-1282 and 44-1278(B)(6) and
28 16 C.F.R § 310.4(b)(1)(iii)(B).

1 31. Pinnacle is not exempt from the ATSA.

2 32. Pinnacle's violations of the ATSA constitute unlawful practices under the ACFA,
3 A.R.S. § 44-1522, pursuant to A.R.S. § 44-1278(C) and 44-1282(B).

4 33. In all matters alleged in the preceding paragraphs, Pinnacle knew or should have
5 known that its conduct was of the nature prohibited by A.R.S. § 44-1522, subjecting itself to
6 enforcement and penalties as provided in A.R.S. § 44-1531(A).

7 **PRAYER FOR RELIEF**

8 WHEREFORE, the State respectfully requests that the Court:

9 34. Pursuant to A.R.S. § 44-1528(A)(1), issue a permanent injunction in accordance
10 with Ariz. R. Civ. P. 65(d)(1), enjoining and restraining (a) Pinnacle, (b) its officers, agents,
11 servants, employees, attorneys, and (c) all persons in active concert or participation with anyone
12 described in part (a) or (b) of this paragraph, directly or indirectly, from engaging in deceptive,
13 misleading, or unfair acts or practices, or concealments, suppressions, or omissions, that violate
14 the ACFA, A.R.S. § 44-1522(A), including specific injunctive relief barring Pinnacle from
15 engaging in the unlawful acts and practices set forth above;

16 35. Pursuant to A.R.S. § 44-1528(A)(2), order Pinnacle to restore to all persons in
17 interest any monies or property, real or personal, which may have been acquired by any means or
18 any practice in this article declared to be unlawful;

19 36. Pursuant to A.R.S. § 44-1528(A)(3), order Pinnacle to disgorge all profits, gains,
20 gross receipts, or other benefits obtained as a result of its unlawful acts alleged herein;

21 37. Pursuant to A.R.S. § 44-1531, order Pinnacle to pay to the State of Arizona a civil
22 penalty of up to \$10,000 for each willful violation of A.R.S. § 44-1522;

23 38. Pursuant to A.R.S. § 44-1534, order Pinnacle to reimburse the State for its costs and
24 attorneys' fees incurred in the investigation and prosecution of Pinnacle's activities alleged in this
25 Complaint;

26 39. Pursuant to A.R.S. § 44-1201, require Pinnacle to pay pre-judgment and post-
27 judgment interest to the State and all consumers;

28 ...

