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17 **SUPERIOR COURT OF ARIZONA**

18 **IN MARICOPA COUNTY**

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

21 Plaintiff,

22 v.

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

Defendants.

Case No.: CV2020-015610

**STIPULATED CONSENT DECREE
BETWEEN THE STATE OF ARIZONA
AND DEFENDANTS AUCTION NATION
LLC, GABRIEL J. PRADO, AND BRIAN
LONG**

(Assigned to the Hon. Katherine Cooper)

26 The State of Arizona, *ex rel.* Mark Brnovich, the Attorney General (the “State”), filed a
27 Complaint alleging violations of the Arizona Consumer Fraud Act, A.R.S. §§ 44-1521 to -1534
28 (the “ACFA”) against Defendants Auction Nation LLC (“Auction Nation”), Auction Yard, LLC

1 (“Auction Yard”), Gabriel J. Prado (“Prado”), Brian Long (“Long”) and Amy Long and William
2 and Melody Russell. Defendants Auction Nation, Prado, and Brian Long are referred to in this
3 Consent Decree collectively as “Auction Nation Defendants.” Auction Nation Defendants have
4 been served with the Complaint and have been advised of the right to a trial in this matter and
5 have waived the same. Auction Nation Defendants admit the jurisdiction of this Court over the
6 subject matter and parties, stipulate that this Court may enter this Consent Decree, and
7 acknowledge that the Court retains jurisdiction for the purpose of interpreting and enforcing this
8 Consent Decree.

9 Auction Nation Defendants have consented and stipulated to entry of this Consent Decree
10 to compromise and settle claims in connection with a suit brought under the ACFA and not out
11 of any admission of guilt, wrongdoing, or violation of law, which they expressly deny. The parties
12 have agreed to the entry of this Consent Decree by this Court without trial or adjudication of any
13 issue of fact or law and without admission or finding of any violations of any law, to resolve the
14 State’s suit, to provide restitution to Arizona consumers, and to avoid the expense and uncertainty
15 of further litigation.

16 **PARTIES**

17 1. The State is authorized to and did bring this action against the Auction Nation
18 Defendants under the ACFA.

19 2. Defendant Auction Nation is an Arizona limited liability company with its
20 principal place of business and operations in Maricopa County.

21 3. Defendant Prado is a resident of Maricopa County and a co-owner of Auction
22 Nation. Prado is unmarried.

23 4. Defendant Long is a resident of Maricopa County and the other co-owner of
24 Auction Nation.

25 5. This Consent Decree is entered only as to Defendants listed here (Auction Nation
26 Defendants), and not to any other party to the action.

27 6. This Court has jurisdiction over the complaint and the parties necessary for the
28 Court to enter this Consent Decree and any other appropriate orders pursuant to A.R.S. § 44-1528

1 and this Consent Decree.

2 7. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401.

3 **THE STATE'S ALLEGATIONS**

4 8. The State alleges that since 2010, Prado and Long owned and operated Auction
5 Nation, conducting auctions both on-site and online. In addition, since 2017, Auction Nation has
6 allowed Auction Yard to use its platform for automobile auctions and receives a portion of the
7 vehicle auction proceeds from Auction Yard.

8 9. The State alleges that Prado and Long controlled, directed, or authorized Auction
9 Nation in the practices described in subsections (a)-(c) below:

10 10. Until December 11, 2018, to place bids in Auction Nation auctions, potential
11 bidders agreed to the user agreement for Auction Nation's website. This user agreement did not
12 advise bidders that Auction Nation placed unidentified house bids on behalf of the seller, under
13 multiple bidder numbers, in Auction Nation's auctions.

14 11. Auction Nation did not disclose that Auction Nation could view bidders' maximum
15 bids before placing multiple bids, under multiple bidder numbers, in Auction Nation's auctions.

16 12. For a time after December 11, 2018, Auction Nation did not disclose meaningfully
17 that individual auction items had reserve prices and that Auction Nation and their independent
18 sellers were placing multiple bids, under multiple bidder numbers, in Auction Nation's auctions.

19 13. The State alleges that Auction Nation Defendants violated the ACFA by engaging
20 in, directing, or authorizing others to engage in the actions described in paragraphs 8 and 9 above.

21 14. The Auction Nation Defendants deny all of the State's allegations listed above and
22 alleged in this action.

23 **ORDER**

24 NOW, THEREFORE, IT IS DECREED:

25 15. The injunctive relief set forth in this Consent Decree is binding upon Auction
26 Nation Defendants without any admission of liability or wrongdoing by them.

27 16. Pursuant to A.R.S. § 44-1528, Auction Nation Defendants are permanently
28 enjoined, restrained, and prohibited from:

1 a. Failing to preserve records of a writing containing the name and address of the
2 person or entity whose merchandise is sold at auction by Auction Nation Defendants or their
3 agents or employees, and the reserve price, if any, for merchandise sold by Auction Nation
4 Defendants or their agents or employees at auction. Such records will be maintained for 3 years
5 after each auction and will be in a form reasonably verifiable by the State;

6 b. Failing to disclose prominently, as the first item in a pop-up requiring specific
7 agreement by a bidder upon placing their initial bid for an item, that a specific auction item has
8 a reserve price and Auction Nation Defendants or its agents, employees, or affiliates may place
9 house bids (using that specific term), using multiple bidder numbers, up to the reserve price, on
10 the auction item up for bid;

11 c. Placing or allowing house bids above the reserve price;

12 d. Failing to disclose prominently, in the section of the auction listing for each
13 auction item that displays the current bid amount, the high bidder, minimum bid, bid increment,
14 and the area for a bidder to enter a bid amount, that, in any auction with reserve, each specific
15 auction item is placed for auction “with reserve;”

16 e. Failing to disclose prominently in the “Details” section of each auction item
17 listing, notice that house bids (using this specific term) may be placed up to the reserve price for
18 that auction item, using multiple bidder numbers;

19 f. Failing to disclose prominently in the “Details” section of each auction item
20 listing, notice that the amount of maximum bids may be viewed by the auction house;

21 g. Failing to disclose the means (such as through a specific email or telephone
22 number) by which a bidder may retract their bid before the auctioneer’s announcement of
23 completion of the sale. Such retraction must be effective upon receipt and not act to revive a
24 prior bid;

25 h. Failing to ensure that, before any house bidding for a seller occurs, the seller
26 has specifically authorized house bidding on their behalf and has set a reserve price; and
27
28

1 i. Making the following representations to consumers, including through auction
2 websites such as in the terms and conditions or on a page describing house bidding and reserve
3 auctions:

4 • Stating or implying that house bidding will only take place on the last day
5 of an auction, if that is not always the case; or

6 • Stating or implying that reserve prices are set through negotiations with
7 sellers during the bidding process, if that is not always the case.

8 **MONETARY AWARD**

9 17. Pursuant to A.R.S. § 44-1528(A)(2), and without admitting any liability or
10 wrongdoing, Auction Nation, on behalf of all Auction Nation Defendants, will pay to the
11 Attorney General the amount of \$210,000, due before the entry of this Consent Decree, to be
12 deposited into an interest-bearing subaccount of the Consumer Restitution and Remediation
13 Revolving Fund and to be distributed by the Attorney General's Office, pursuant to
14 A.R.S. § 44-1531.02(B).

15 18. Before the filing of this Consent Decree by the State, Auction Nation, on behalf of
16 all Auction Nation Defendants, has paid \$210,000 in complete satisfaction of their obligations
17 under paragraph 17.

18 19. In the event this Consent Decree is not entered for any reason, Auction Nation is
19 entitled to recover the \$210,000 payment listed above from the Attorney General within 21 days
20 of the entry of an order denying entry or approval of this Consent Decree.

21 20. The Arizona Attorney General has sole discretion regarding how and when
22 payments to the fund created by A.R.S. § 44-1531.02 are distributed.

23 21. In the Arizona Attorney General's discretion, the Arizona Attorney General may
24 transfer all or any part of the payment ordered herein into the Consumer Protection-Consumer
25 Fraud Revolving Fund, pursuant to A.R.S. § 44-1531.02(B) for the purposes specified in
26 A.R.S. § 44-1531.01.

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26. This Court retains jurisdiction for the purpose of entertaining an application by the State for the enforcement of this Consent Decree.

27. This Consent Decree is the result of a compromise and settlement agreement between the parties. Only the State may seek enforcement of this Consent Decree against Auction Nation Defendants. Nothing in this Consent Decree is intended to create a private right of action by other parties.

28. This Consent Decree does not limit the rights of any private party to pursue any remedies allowed by law.

29. The effective date of this Consent Decree is the date that it is entered by the Court.

30. This Consent Decree may be executed by the parties in counterparts and be delivered by facsimile or electronic transmission, or copies of the same, such constituting an original counterpart hereof, all of which together will constitute one and the same document.

31. This Consent Decree resolves all outstanding claims contained in the Consent Decree and the State's Complaint or proposed amended complaint as to any Auction Nation Defendants.

32. Because there is no reason for any delay, this is a final Decree against Auction Nation Defendants entered pursuant to Ariz. R. Civ. P. 54(b).

DATED this _____, 2022.

Hon. Katherine Cooper
Judge of the Maricopa County Superior Court

CONSENT TO DECREE

1. Auction Nation Defendants acknowledge that they were served with a copy of the Summons and Complaint and have received a copy of the State's proposed amended complaint, have read the Consent Decree and Order, and further, are aware of their right to a trial in this matter and have waived the same.

2. Auction Nation Defendants admit the jurisdiction of this Court and consent to the entry of the foregoing Order.

3. Auction Nation Defendants state that no promise of any kind or nature whatsoever was made to them to induce entry of this Consent Decree and declare that they have entered into this Consent Decree voluntarily.

4. This Consent Decree is entered because of a compromise and a settlement agreement between the parties. Only the State may seek enforcement of this Consent Decree. Nothing in this Decree creates a private right of action by other parties; however, this Consent Decree does not limit the rights of any private party to pursue any remedies allowed by law.

5. Auction Nation Defendants acknowledge that their acceptance of this Consent Decree is for the purpose of settling the ongoing consumer fraud lawsuit filed by the State, and further acknowledge that this Consent Decree does not preclude any agency or officer of this State or subdivision thereof from instituting other civil or criminal proceedings as may be appropriate, except as otherwise precluded by the Consent Decree.

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6. This Consent to Decree may be executed in counterparts and be delivered by facsimile or electronic transmission, or copies of the same, such constituting an original counterpart hereof, all of which together will constitute one and the same document.

Auction Nation, LLC



Gabriel J. Prado, Manager

Date: February 28, 2022.

Brian Long, Manager

Date: February ____, 2022.



Gabriel J. Prado, in his individual capacity


Date: February 28, 2022.

Brian Long, in his individual capacity

Date: February ____, 2022.

APPROVED AS TO FORM AND CONTENT:

MARK BRNOVICH
Attorney General



Rebecca Salisbury
Assistant Attorney General
Attorney for the State of Arizona

6. This Consent to Decree may be executed in counterparts and be delivered by facsimile or electronic transmission, or copies of the same, such constituting an original counterpart hereof, all of which together will constitute one and the same document.


Auction Nation, LLC

Date: February ____, 2022.

Gabriel J. Prado, Manager

 Date: February 27, 2022.
Brian Long, Manager

Date: February , 2022
Gabriel J. Prado, in his individual capacity

 Date: February 27, 2022.
Brian Long, in his individual capacity

APPROVED AS TO FORM AND CONTENT:

MARK BRNOVICH
Attorney General


Rebecca Salisbury
Assistant Attorney General
Attorney for the State of Arizona