

1 **MARK BRNOVICH**

2 **ATTORNEY GENERAL**

3 (Firm State Bar No. 14000)

4 Rebecca Salisbury (State Bar No. 022006)

5 Dylan Jones (State Bar No. 034185)

6 Kristin Schriner (State Bar No. 026631)

7 Joseph Hubble (State Bar No. 037113)

8 Assistant Attorneys General

9 **OFFICE OF THE ATTORNEY GENERAL**

10 2005 North Central Avenue

11 Phoenix, Arizona 85004-1592

12 Telephone: (602) 542-7757

13 [Rebecca.Salisbury@azag.gov](mailto:Rebecca.Salisbury@azag.gov)

14 [Dylan.Jones@azag.gov](mailto:Dylan.Jones@azag.gov)

15 Electronic Filing: [consumer@azag.gov](mailto:consumer@azag.gov)

16 *Attorneys for Plaintiff State of Arizona*

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,

Defendant[s].

Case No.: CV2020-015610

**STIPULATED CONSENT DECREE  
BETWEEN THE STATE AND AUCTION  
YARD, LLC AND WILLIAM M.  
RUSSELL**

(Assigned to the Hon. Katherine Cooper)

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

1  
2 hereafter as “Auction Yard Defendants.” Auction Yard Defendants have been served with the  
3 Complaint, been advised of the right to a trial in this matter, and have waived the same. Auction  
4 Yard Defendants admit the jurisdiction of this Court over the subject matter and parties, stipulate  
5 that this Court may enter the following Consent Decree, and acknowledge that this Court will  
6 retain jurisdiction for the purpose of enforcing this Consent Decree.

7 Auction Yard Defendants have consented and stipulated to entry of this Consent Decree  
8 to compromise and settle claims in connection with a suit brought under the Arizona Consumer  
9 Fraud Act and not out of any admission of guilt, wrongdoing, or violation of law. The parties  
10 have agreed to the entry of this Consent Decree by this Court without trial or adjudication of any  
11 issue of fact or law and without admission or finding of any violations of any law, in order to  
12 resolve the State’s suit and to avoid the expense and uncertainty of further litigation.

13 **PARTIES**

14 1. The State is authorized to bring this action under the ACFA.

15 2. Defendant Auction Yard, LLC is an Arizona limited liability company with its  
16 principal place of business located in Phoenix, Arizona.

17 3. Defendant William M. Russell is a resident of Maricopa County and the sole  
18 owner of Auction Yard.

19 4. This Court has jurisdiction over the Complaint and the parties necessary for the  
20 Court to enter this Consent Decree and any orders hereafter appropriate pursuant to A.R.S. § 44-  
21 1528 and this Consent Decree.

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

23 **FINDINGS OF FACT**

24 6. The State alleges that:

25 a. Since October 2017, William M. Russell has owned and operated Auction  
26 Yard, LLC, conducting automobile auctions both on-site and online, using the Defendant  
27 Auction Nation, LLC’s platform and paying Defendant Auction Nation, LLC a portion of the  
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1 vehicle auction proceeds.

2 b. Until December 11, 2018, in order to place bids in Auction Yard Defendants'  
3 vehicle auctions, potential bidders agreed to the terms of use for Defendant Auction Nation,  
4 LLC's website. This user agreement did not advise bidders that Auction Yard Defendants  
5 placed unidentified house bids on behalf of the seller, under multiple bidder numbers, in Auction  
6 Yard's vehicle auctions;

7 c. Until December 11, 2018, Auction Yard Defendants' separate terms and  
8 conditions in their vehicle auctions did not advise bidders that Auction Yard Defendants were  
9 placing multiple bids, under multiple bidder numbers, in Auction Yard's vehicle auctions;

10 d. For a time after December 11, 2018, Auction Yard Defendants failed to  
11 disclose meaningfully that individual auction items had reserve prices and that Auction Yard  
12 Defendants and their independent sellers were placing multiple bids, under multiple bidder  
13 numbers, in its vehicle auctions.

14 e. Auction Yard Defendants violated the ACFA by engaging in or directing  
15 others to engage in the actions described in paragraphs (a) through (e) above.

16 7. Auction Yard Defendants deny any violation of the ACFA.

17 8. Auction Yard Defendants have consented and stipulated to entry of this Consent  
18 Decree because, although A.R.S. § 47-2328 (C) provides that "sale [by] auction is with reserve  
19 unless the goods are in explicit terms put up without reserve," some of the least sophisticated  
20 auction consumers in Arizona may be unaware of this law.

21 **ORDER**

22 NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

23 9. The injunctive relief set forth in this Consent Decree is binding upon Auction Yard  
24 Defendants and their officers, agents, servants, and employees that receive actual notice of this  
25 Consent Decree through personal service or otherwise.

26 10. Pursuant to A.R.S. § 44-1528, when operating any auction owned or controlled by  
27 Auction Yard and/or William Russell, Auction Yard Defendants are permanently enjoined,  
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1 restrained and prohibited from:

2 a. Failing to maintain records, in a form verifiable by the State, for three years, of  
3 the written contract including the name and address of the person to whom a motor vehicle is  
4 sold, the name and address of the person from whom the motor vehicle was purchased or  
5 otherwise acquired, the reserve price, if any, for the motor vehicle sold by Auction Nation  
6 Defendants at auction and the date of the sale or purchase;

7 b. In any online auction, failing to disclose prominently, in a pop-up requiring  
8 specific agreement by a bidder upon placing their initial bid for a vehicle, that a specific auction  
9 item has a reserve price and Auction Yard, LLC or their affiliates may place house bids, using  
10 multiple bidder numbers, up to the reserve price, on the auction item up for bid;

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

12 d. Failing to disclose prominently, in the listing of each item being auctioned with  
13 reserve, that the specific auction item is placed up for auction “with reserve,” or “reserve not  
14 met,” or other similar language using the term “reserve,” disclosing the existence of a reserve;

15 e. Failing to disclose prominently, in the “Details” section of each auction item  
16 listing, notice that house bids may be placed up to the reserve price in any reserve auction, using  
17 multiple bidder numbers; and

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

### 22 **MONETARY AWARD**

23 11. Pursuant to A.R.S. § 44-1528(A)(2), Auction Yard Defendants are jointly and  
24 severally liable and obligated to pay to the Attorney General the amount of \$50,000 to the fund  
25 created by A.R.S. § 44-1531.02(B) due prior to the entry of this Consent Decree, to be deposited  
26 into an interest-bearing subaccount of the Consumer Restitution and Remediation Revolving  
27 Fund and to be distributed by the Attorney General’s Office, pursuant to  
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1 A.R.S. § 44-1531.02(B).

2 12. Prior to the filing of this Consent Decree by the State, Auction Nation Defendants  
3 have paid \$50,000 in complete satisfaction of their obligations under paragraph 11.

4 13. The Arizona Attorney General shall have sole discretion as to how and when  
5 payments to the fund created by A.R.S. § 44-1531.02(B) are distributed.

6 14. In the Arizona Attorney General's Discretion, the Arizona Attorney General may  
7 transfer all or any part of the payment ordered herein, that is not distributed under the provisions  
8 of A.R.S. § 44-1531.02(B), into the Consumer Protection-Consumer Fraud Revolving Fund,  
9 pursuant to A.R.S. § 44-1531.02(B) for the purposes specified in A.R.S. § 44-1531.01.

10 **RELEASE**

11 15. The parties acknowledge by the execution hereof that this Consent Decree  
12 constitutes a complete settlement of the allegations contained in this Consent Decree and the  
13 State's Complaint against Auction Yard Defendants, for the violations of the ACFA alleged  
14 therein. Notwithstanding the foregoing, the State may institute an action or proceeding to  
15 enforce the terms and provisions of this Consent Decree, take action based on future conduct by  
16 Auction Yard Defendants, take action based on past conduct not specified in this Consent Decree  
17 or the State's Complaint, and/or institute an action or proceeding to prevent the discharge of any  
18 debt acquired through this Consent Decree.

19 **GENERAL PROVISIONS**

20 16. Nothing in this Consent Decree will be construed as an approval by the Attorney  
21 General, the Court, the State of Arizona, or any agency thereof of Auction Yard Defendants'  
22 past, present, or future conduct. Auction Yard Defendants must not represent or imply that the  
23 Attorney General, the Court, the State of Arizona, or any agency thereof has approved or  
24 approves of any of Auction Yard Defendants' actions or any of Auction Yard Defendants' past,  
25 present or future business practices.

26 17. The State makes no allegations of moral turpitude. The parties acknowledge that  
27 Defendant William M. Russell is currently in the process of adopting children. This Consent  
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1 Decree does not restrict or impair Defendant William M. Russell's eligibility to pursue and  
2 finalize the adoption of children.

3 18. Nothing in this Consent Decree prohibits or restricts Defendant William M.  
4 Russell from engaging in any profession or occupation.

5 19. This Consent Decree represents the entire agreement between the parties, and  
6 there are no representations, agreements, arrangements, or understandings, oral or written,  
7 between the parties relating to the subject matter of this Consent Decree which are not fully  
8 expressed herein or attached hereto.

9 20. If any portion of this Consent Decree is held invalid by operation of law, the  
10 remaining terms thereof will not be affected and will remain in full force and effect.

11 21. Jurisdiction is retained by this Court for the purpose of entertaining an application  
12 by the State for the enforcement of this Consent Decree.

13 22. This Consent Decree is the result of a compromise and settlement agreement  
14 between the parties. Only the State may seek enforcement of this Consent Decree. Nothing  
15 herein is intended to create a private right of action by other parties.

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

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

19 25. This Consent Decree may be executed by the parties in counterparts and be  
20 delivered by facsimile or electronic transmission, or a copy thereof, such constituting an original  
21 counterpart hereof, all of which together will constitute one and the same document.

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26. This Consent Decree resolves all outstanding claims expressly identified in the Complaint as to Defendants Auction Yard, LLC and Defendant William Russell. As there is no just reason for delay, this is a final Decree as to Defendants Auction Yard, LLC and Defendant William Russell entered pursuant to Ariz. R. Civ. P. 54(b).

DATED this \_\_\_\_\_ day of March, 2022.

JUDGE OF THE SUPERIOR COURT

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1           7. Defendant Auction Yard, LLC represents and warrants that the persons signing  
2 below on their behalf are duly appointed and authorized to do so.  
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5 Auction Yard, LLC

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8 William Russell  
9 Owner and President

Date: 1-25-2022

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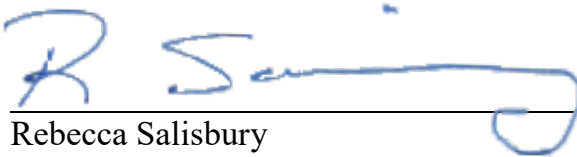
12 William Russell, in his individual capacity  
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Date: 1-25-2022

15 **APPROVED AS TO FORM AND CONTENT:**  
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18 MARK BRNOVICH  
19 Attorney General

Rose Law Group PC

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22 Rebecca Salisbury  
23 Assistant Attorney General  
24 *Attorney for the State of Arizona*  
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Logan Elia, Esq.  
*Attorney for Auction Yard, LLC; and*  
*William Russell*