

1 **MARK BRNOVICH**
2 **ATTORNEY GENERAL**
(Firm State Bar No. 14000)
3 DYLAN JONES (STATE BAR NO. 034185)
4 MATTHEW DU MEE (STATE BAR NO. 028468)
5 REBECCA SALISBURY (STATE BAR NO. 022006)
6 ASSISTANT ATTORNEYS GENERAL
7 OFFICE OF THE ATTORNEY GENERAL
8 2005 North Central Avenue
9 Phoenix, AZ 85004-1592
10 Telephone: (602) 542-7757
11 Facsimile: (602) 542-4377
12 Dylan.Jones@azag.gov
Matthew.DuMee@azag.gov
Rebecca.Salisbury@azag.gov
Electronic Filing: consumer@azag.gov
Attorneys for the State of Arizona

13 **SUPERIOR COURT OF ARIZONA**
14 **IN MARICOPA COUNTY**

15 STATE OF ARIZONA, *ex rel.* MARK
16 BRNOVICH, Attorney General,
17
18 Plaintiff,
19
20 v.
21
22 ABC NISSAN LLC, a Delaware Limited
Liability Company,
Defendant.

Case No.: CV2018-006693

**STIPULATED FIRST ADDENDUM TO
CONSENT DECREE**

(Assigned to the Hon. Margaret R. Mahoney)

23
24 The State of Arizona and the Defendant ABC Nissan LLC (“Defendant ABC Nissan”)
25 entered into a Consent Decree in CV2018-006693 filed on June 15, 2018. (Exhibit 1). Pursuant
26 to the Consent Decree, Defendant ABC Nissan admits that in accordance with
27 A.R.S. § 44-1532 the Court has continuing jurisdiction over the subject matter and the parties
28 for the purpose of entry of this First Addendum to Consent Decree.

1 **I. PARTIES**

2 1. Plaintiff is the State of Arizona, *ex rel.* Mark Brnovich, the Attorney General of
3 Arizona, who is authorized to bring this action under the Consumer Fraud Act,
4 A.R.S. § 44-1521, *et seq.*

5 2. Defendant is ABC Nissan LLC, a Delaware limited liability company that
6 currently engages in business at 1300 E. Camelback Road, Phoenix, Arizona 85014.

7 **II. THE STATE’S ALLEGATIONS**

8 3. Paragraph eleven (11) of the June 15, 2018 Consent Decree issued in this case
9 and attached as Exhibit 1, affirmatively requires Defendant ABC Nissan, among other
10 provisions, to:

11 a. Engage in truthful and non-misleading advertising, regardless of the
12 communication medium (i.e., print, mail, Internet, email, phone, etc.). All disclosures and
13 disclaimers, including footnotes, must be clear, conspicuous, and in close proximity to the
14 claims to which they apply.

15 b. Provide truthful information to prospective buyers who communicate with
16 Defendant ABC Nissan, regardless of the communication medium (i.e., print, mail, Internet,
17 email, phone, etc.).

18 c. Not advertise a price for a vehicle (including an “Internet Price”) unless the
19 categories of parties qualifying for the price are clearly and conspicuously disclosed. Defendant
20 ABC Nissan may exclude tax, title, license, and a documentation fee from the price, but must
21 prominently disclose this exclusion and must prominently disclose the amount of the
22 documentation fee. Defendant ABC Nissan may not exclude mandatory “add-on” features or
23 accessories that increase the price of the car above the advertised price.

24 4. The State alleges that ABC Nissan violated the above provisions of the
25 June 15, 2018 Consent Decree by advertising prices that did not include the cost of mandatory
26 dealer “add-on” features or accessories, subjecting them to enforcement and civil penalties
27 under A.R.S. § 44-1532.

28 5. ABC Nissan denies the allegations.

1 **III. INJUNCTION**

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

3 6. Defendant ABC Nissan shall comply with the Arizona Consumer Fraud Act,
4 A.R.S. § 44-1521, *et seq.* as it is currently written or as it is amended in the future.

5 7. Defendant ABC Nissan shall remove consumers from their telephone call list
6 upon the consumers' first request.

7 8. Defendant ABC Nissan shall produce, distribute and implement a written policy
8 regarding removing consumers from their call list, provide the policy to all personnel who
9 make sales or marketing calls, and keep a written, signed and dated record of personnel's
10 review of the policy.

11 9. Defendant ABC Nissan shall make reasonable efforts to refrain from making
12 appointments to view a certain vehicle on a day when that vehicle is not available for test drive
13 and sale. Defendant ABC Nissan shall make best efforts to inform any consumer with an
14 appointment to view a certain vehicle, prior to the date of the appointment, when the vehicle
15 has been sold prior to the date of the appointment. If a vehicle is sold earlier in the same day,
16 Defendant ABC Nissan shall make reasonable efforts to alert consumers that the vehicle is no
17 longer available prior to the consumers' visit to the Defendant ABC Nissan's sales location.
18 Defendant ABC Nissan shall provide reasonable evidence of the date of vehicle sale or
19 documenting the reason a vehicle is not present at the time of the appointment, upon the written
20 request of the State.

21 10. For a period of six years from the Court's entry of this First Addendum to
22 Consent Decree, Defendant ABC Nissan must make its business records available to the
23 Attorney General or his authorized representative upon reasonable notice during business
24 hours.

25 **IV. PAYMENT PROVISIONS**

26 11. Defendant ABC Nissan agrees to pay to the Attorney General the amount of
27 \$100,000 in consumer restitution (the "Restitution Award") prior to entry of this First
28 Addendum to Consent Decree, to be deposited into an interest-bearing consumer restitution

1 subaccount of the Consumer Restitution and Remediation Revolving Fund, pursuant to A.R.S.
2 § 44-1531.02(B). The Arizona Attorney General shall have sole discretion as to how and when
3 restitution funds are distributed to consumers and the eligibility of any consumer to receive
4 restitution.

5 12. Pursuant to A.R.S. § 44-1532, Defendant ABC Nissan agrees to pay to the
6 Attorney General the amount of \$25,000 in civil penalties (the “Civil Penalty Award”) prior to
7 entry of this First Addendum to Consent Decree, to be deposited into the Consumer Protection-
8 Consumer Fraud Revolving Fund pursuant to A.R.S. § 44-1531.01, and used for the purposes
9 set forth therein.

10 13. Pursuant to A.R.S. § 44-1534, Defendant ABC Nissan agrees to pay to the
11 Attorney General the amount of \$25,000 in attorneys’ fees and costs prior to the entry of this
12 First Addendum to Consent Decree, to be deposited into the Consumer Protection-Consumer
13 Fraud Revolving Fund pursuant to A.R.S. § 44-1531.01, and used for the purposes set forth
14 therein.

15 14. In the event the amount ordered as restitution herein is insufficient to provide full
16 restitution to all eligible consumers, the restitution collected will be distributed to eligible
17 consumers on a pro rata basis. In the event that any portion of the restitution ordered herein is
18 not distributed to eligible consumers, such portion will be deposited by the Attorney General’s
19 Office into the Consumer Protection-Consumer Fraud Revolving Fund, pursuant to
20 A.R.S. § 44-1531.02(B), and used for the purposes specified in A.R.S. §44-1531.01.

21 **V. GENERAL TERMS**

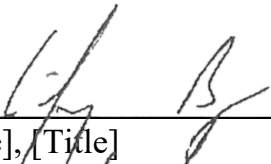
22 15. “Effective Date” of this First Addendum to Consent Decree means the date it is
23 entered by the Clerk of Court.

24 16. The terms and conditions agreed to by the parties in the original Consent Decree
25 are still in full effect and shall be construed in harmony with this First Addendum to Consent
26 Decree.

27 ...

1 6. Defendant ABC Nissan represents and warrants that the person signing below on its
2 behalf is duly appointed and authorized to do so.


3
4 **Defendant ABC Nissan LLC**

5
6 By:  GMGR
7 [Name], [Title]

8 Date: 3/14/22
9

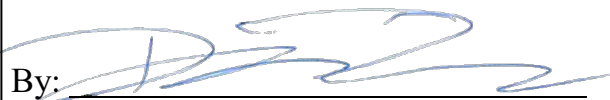
10 **APPROVED AS TO FORM AND CONTENT:**

11 **MARK BRNOVICH**
12 **Attorney General**

13
14 By: 
15 Dylan Jones
16 Assistant Attorney General
17 Attorneys for the State of Arizona

Date: 3/21/2022

18 **Clark Hill PLC**

19
20 By: 
21 Darrell Davis
22 Attorney for ABC Nissan LLC

Date: 3-16-2022

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EXHIBIT 1
CONSENT DECREE OF JUNE 15, 2018