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12	Attorneys for the State of Arizona	
13	SUPERIOR COURT OF ARIZONA	
14	IN MARICOPA COUNTY	
15	STATE OF ARIZONA, <i>ex rel.</i> MARK	Case No.: CV2018-006693
16	BRNOVICH, Attorney General,	CTIDULATED FIDET ADDENDUM TO
17	Plaintiff,	STIPULATED FIRST ADDENDUM TO CONSENT DECREE
18		(A
19	V.	(Assigned to the Hon. Margaret R. Mahoney)
20	ABC NISSAN LLC, a Delaware Limited	
21	Liability Company,	
22	Defendant.	
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	

to the Consent Decree, Defendant ABC Nissan admits that in accordance with
A.R.S. § 44-1532 the Court has continuing jurisdiction over the subject matter and the parties
for the purpose of entry of this First Addendum to Consent Decree.

## I. PARTIES

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

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

## **II. THE STATE'S ALLEGATIONS**

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

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

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

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

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

5. ABC Nissan denies the allegations.

#### **III. INJUNCTION**

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

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

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

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

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

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

#### **IV. PAYMENT PROVISIONS**

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

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

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

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

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

#### V. GENERAL TERMS

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

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

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17. Defendant ABC Nissan shall not represent or imply that the Attorney General, the State of Arizona, or any agency thereof has approved any of its actions in Arizona or has approved any of its past, present or future business practices in Arizona.

18. Nothing in this First Addendum to Consent Decree restricts any person or entity from pursuing a private action or asserting any available right or remedy against Defendant ABC Nissan.

19. This Court retains jurisdiction of this matter for the purposes of entertaining an application by Plaintiff, State of Arizona, for the further enforcement of the Consent Decree and First Addendum to Consent Decree.

20. This First Addendum to Consent Decree is entered as a result of a compromise and settlement agreement between the parties. Only the parties to this action may seek enforcement of this First Addendum to Consent Decree. Nothing herein is intended to create a private right of action by other persons or entities.

21. The State reserves the right to institute an action or proceeding to enforce the terms and provisions of the Consent Decree, and the First Addendum to Consent Decree, or to take action based on future conduct by Defendant ABC Nissan.

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

Honorable

#### **CONSENT TO FIRST ADDENDUM TO CONSENT DECREE**

1. Defendant ABC Nissan admits the jurisdiction of this Court and consents to the relief described above.

2. Defendant ABC Nissan states that no promise of any kind or nature whatsoever was made to induce it to enter into this First Addendum to Consent Decree and declares that it has entered into this First Addendum to Consent Decree voluntarily.

3. This First Addendum to Consent Decree is entered as a result of a compromise and a settlement agreement between the parties. Only the State may seek enforcement of this First Addendum to Consent Decree. Nothing herein is intended to create a private right of action by other parties; however, this First Addendum to Consent Decree does not limit the rights of any private party to pursue any remedies allowed by law.

4. Defendant ABC Nissan acknowledges that its acceptance of this First Addendum to Consent Decree is for the purpose of resolving a potential enforcement action by the State, and further acknowledges that this First Addendum to 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.

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

1 6. Defendant ABC Nissan represents and warrants that the person signing below on its behalf is duly appointed and authorized to do so. 2 3 4 **Defendant ABC Nissan LLC** 5 GMGR 6 By: 7 [Name], [Title] 8 22 Date: 9 10 **APPROVED AS TO FORM AND CONTENT:** 11 MARK BRNOVICH **Attorney General** 12 13 14 By: Date: 3/21/2022 Dylan Jones 15 Assistant Attorney General 16 Attorneys for the State of Arizona 17 **Clark Hill PLC** 18 19 Date: \_ 3-16.2022 By: 20 Darrell Davis 21 Attorney for ABC Nissan LLC 22 23 24 25 26 27 28 -7-

## EXHIBIT 1

# CONSENT DECREE OF JUNE 15, 2018