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

13 STATE OF ARIZONA, *ex rel.* MARK  
14 BRNOVICH, Attorney General,  
15  
16 Plaintiff,  
17  
18 v.  
19 PINNACLE NISSAN LLC D/B/A PINNACLE  
20 NISSAN,  
21  
22 Defendant.

Case No.: [NUMBER]

**CONSENT JUDGMENT**

(Assigned to the Hon. [NAME])

21 The State of Arizona, *ex rel.* Mark Brnovich, the Attorney General (the “State”), filed a  
22 Complaint alleging violations of the Arizona Consumer Fraud Act, A.R.S. §§ 44-1521 to -1534  
23 (the “ACFA”) and the Arizona Telephone Solicitations Act, A.R.S. §§ 44-1271 to -1282, and  
24 Pinnacle Nissan LLC d/b/a Pinnacle Nissan (“Pinnacle”) has waived service of the Complaint,  
25 has been advised of the right to a trial in this matter, and has waived the same. Pinnacle admits  
26 the jurisdiction of this Court over the subject matter and parties, stipulates that this Court may  
27 enter the following Findings of Fact, Conclusions of Law and Judgment, and acknowledges that  
28 this Court will retain jurisdiction for the purpose of enforcing this Consent Judgment. Pinnacle

1 has consented and stipulated to entry of this Consent Judgment to compromise and settle claims  
2 in connection with an investigation under the Arizona Consumer Fraud Act and not out of any  
3 admission of guilt, wrongdoing, violation, or sanction.

4 **PARTIES**

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

6 2. Defendant is Pinnacle Nissan LLC d/b/a Pinnacle Nissan, a Delaware corporation  
7 having its principal place of business at 7601 E Frank Lloyd Wright Blvd, Scottsdale, AZ 85260.

8 3. All events, acts and practices described in, and relevant to, this Consent Judgment  
9 took place in Maricopa County, Arizona.

10 4. This Court has jurisdiction over the Complaint and the parties necessary for the  
11 Court to enter this Consent Judgment and any orders hereafter appropriate pursuant to  
12 A.R.S. § 44-1528 and this Consent Judgment.

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

14 **FINDINGS OF FACT**

15 6. The State alleges that the following conduct of Pinnacle constitutes deceptive  
16 and/or unfair acts and practices in violation of the ACFA:

17 7. Pinnacle advertised new and used vehicles, parts, accessories, and related products  
18 and services in the State of Arizona, in connection with the sale of merchandise.

19 8. Pinnacle, on its website, posted misleading and/or deceptive prices for its vehicles,  
20 by engaging in the below-mentioned conduct.

21 9. Pinnacle listed new vehicles for sale by listing two prices. The first price was the  
22 “Manufacturer’s Suggested Retail Price” (“MSRP”) and the second price was the “Everyday  
23 Price.”

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

26 11. Pinnacle did not clearly disclose that it subjected all vehicles—both new and  
27 used—to additional costs for a package of “add-on” accessories, often including nitrogen in the  
28 tires, an exterior protective coating, door edge guards, door cups, and window tint.

1           12. While Pinnacle officially claims these add-on accessories are optional, in practice  
2 Pinnacle employees frequently have conveyed to customers that the add-on accessories are  
3 mandatory, which increases the price of the vehicles above the Everyday Price or Pinnacle Nissan  
4 Value Price.

5           13. Pinnacle, on some occasions, refused to honor the Everyday Price or Pinnacle  
6 Nissan Value Price by (1) refusing to sell vehicles if consumers did not agree to purchase the  
7 add-on accessories when consumers attempted to purchase the vehicles at the price advertised on  
8 the website or (2) including add-on accessories which the consumer did not want in the purchase  
9 price.

10           14. In cases where the Everyday Price or Pinnacle Nissan Value Price was not honored  
11 due to the addition of add-on accessories, when consumers asked why, Pinnacle employees  
12 provided a variety of explanations. In some instances, employees informed the consumer that  
13 certain add-on accessories had been installed already on the vehicle and could not be removed,  
14 thus increasing the price of the vehicle above the advertised price. In other instances, Pinnacle  
15 employees informed consumers that they could not remove the add-on accessories, because if  
16 they removed the add-on accessories for one person, then they would have to remove add-on  
17 accessories for everyone.

18           15. Despite Pinnacle's knowledge that some consumers reasonably believed the  
19 Everyday Price or the Pinnacle Nissan Value Price reflected the actual price for the vehicle,  
20 Pinnacle continued to advertise its online prices in the manner described in paragraphs 7-14  
21 above.

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

25           17. Repeatedly, Pinnacle continued to make outbound telephone calls to consumers  
26 after they stated a desire to no longer receive telephone calls from Pinnacle, in violation of A.R.S.  
27 § 44-1278(B). Many of these consumers also are on the national do-not-call registry.  
28

1 **CONCLUSIONS OF LAW**

2 18. The State alleges that Pinnacle violated the ACFA by engaging in or directing  
3 others to engage in the actions described in paragraphs 11 through 15 and 17 above.

4 19. The State alleges that Pinnacle acted willfully, as defined by A.R.S. § 44-1531(B),  
5 while engaging in the acts, practices and conduct described in the preceding paragraphs of this  
6 Consent Judgment.

7 20. The State alleges that pursuant to the ACFA, Pinnacle’s violations entitle the State  
8 to relief necessary to prevent the unlawful acts and practices described in this Consent Judgment  
9 and to remedy the consequences of past unlawful practices.

10 **ORDER**

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

12 21. The “Effective Date” of this Consent Judgment is the date when the Court’s signed  
13 Judgement is entered with the Clerk of the Court.

14 22. For the purposes of this Consent Judgment, unless the context requires otherwise,  
15 the term:

16 A. “Add-on product or service” means any product or service relating to the  
17 sale, lease, or financing of a motor vehicle that is offered, provided, or arranged by the dealer  
18 that is not provided or installed by the motor vehicle manufacturer, including, but not limited to,  
19 extended warranties, payment programs, guaranteed automobile protection (“GAP”) or “GAP  
20 insurance,” etching, service contracts, additional oil changes, loan vehicles for vehicle services,  
21 exchange policy, theft protection or security devices, global positioning systems (“GPS”) or  
22 starter interrupt devices, window tint, door edge guards, wheel locks, application of interior  
23 and/or exterior surface protection, undercoating, rustproofing, fabric protection, nitrogen in tires,  
24 vehicle history reports, comprehensive reconditioning check list, road service or club  
25 memberships, appearance products, credit life insurance, credit accident or disability insurance,  
26 credit loss-of-income insurance, and debt cancellation and debt suspension coverage. The term  
27 excludes any such product or service that Pinnacle provides to the consumer at no charge.  
28

1           B.     “Advertising” or “advertisement” includes the attempt by publication,  
2 dissemination, solicitation, oral or written, to induce directly or indirectly any person to enter  
3 into any obligation or acquire any title or interest in any merchandise.

4           C.     “Internet Price” means a price at which a website expressly or impliedly  
5 represented that a product may be purchased.

6           D.     “Clear and conspicuous” (including the terms “clearly” and  
7 “conspicuously”) means that the statement, representation, or term is stated in words (including  
8 commonly used abbreviations or acronyms), numbers and symbols that are reasonably  
9 understandable by the person(s) to whom it is directed. If a statement, representation or term in  
10 an advertisement (including any statement, representation or term set forth in a footnote) purports  
11 to clarify, modify or explain any other statement, representation or term in the same or another  
12 advertisement, then the statement is clear and conspicuous if (1) it does not materially contradict  
13 such other statement, representation or term; (2) it is situated in the advertisement in a manner  
14 which makes its relation to the statement, representation or term it clarifies, modifies or explains  
15 reasonably apparent; and (3) it is printed in a font color and large enough type so that it is readily  
16 noticeable.

### **Injunctive Terms**

17  
18           23.     The injunctive relief set forth in this Consent Judgment is binding upon any of the  
19 following that receive actual notice of this Consent Judgment through personal service or  
20 otherwise: (a) Pinnacle; and (b) its officers, agents, servants, and employees.

21           24.     Pursuant to A.R.S. § 44-1528, Pinnacle is permanently enjoined, restrained and  
22 prohibited from engaging in any and all acts or practices in violation of the ACFA, as currently  
23 written or amended in the future.

24           25.     Pinnacle shall engage in truthful and non-misleading advertising, regardless of the  
25 communication medium (i.e., print, mail, internet, email, phone, etc.). All disclosures and  
26 disclaimers, including footnotes, must be clear, conspicuous, and in close proximity to the claims  
27 to which they apply.

28

1           26. Pinnacle additionally shall disclose in its advertising any material qualifications or  
2 restrictions for any discount or rebate, including but not limited to qualifications or restrictions  
3 on: (i) a consumer’s ability to obtain the discount, rebate, bonus, incentive, or price and (ii) the  
4 vehicles available at the discount, rebate, bonus incentive, or price.

5           27. Pinnacle shall provide truthful information to prospective buyers who  
6 communicate with Pinnacle, regardless of the communication medium (i.e. print, mail, internet,  
7 email, phone, etc.). This includes information regarding the availability and price of vehicles  
8 advertised for sale.

9           28. If a prospective buyer contacts Pinnacle to inquire if a specific vehicle is available  
10 for purchase, Pinnacle shall provide a truthful response to that person. If that vehicle becomes  
11 unavailable for sale or for the prospective buyer to view for any reason prior to their arrival at  
12 Pinnacle, a Pinnacle employee will exercise best efforts to notify that person of that fact as soon  
13 as is practicable. Upon request by the State, Pinnacle shall provide documentation to the State  
14 as to a vehicle’s availability on a date specified by the State.

15           29. Pinnacle shall include in any advertised price for a vehicle (including an “Internet  
16 Price”) the cost of any mandatory add-on products, services, fees, or charges.

17           30. Pinnacle shall include in any advertised price for a vehicle (including an “Internet  
18 Price”) the costs of any add-on products or services which have been installed on the vehicle if  
19 Pinnacle will attempt to charge or charge a customer for the add-on products, services, fees, or  
20 charges.

21           31. Pinnacle shall not include the cost of any add-on products or services in any online  
22 pricing tool without giving the consumer an option to remove that add-on product or services  
23 prior to submitting their inquiry to Pinnacle, unless the purchase of the add-on product or service  
24 is required.

25           32. Pinnacle shall provide consumers with documentation for each of the add-on  
26 products or services which are included in the purchase of a vehicle upon completion of the sale  
27 or at the time a customer enters into a lease agreement.

28

1           33. Pinnacle shall not charge a consumer for an optional add-on product or service  
2 without first having obtained the consumer's express, written, informed consent to the charge  
3 and informing the consumer, in writing, on the same document containing the customer's written  
4 consent, that purchase of the add-on product or service is optional and not required to purchase  
5 the vehicle.

6           34. Pinnacle shall not represent, orally or by any other means, that the purchase of an  
7 optional add-on product or service is required to purchase the vehicle.

8           35. Pinnacle shall not misrepresent, expressly or by implication:

- 9           A. The existence or amount of any discount, rebate, bonus, incentive, fee,  
10           charge, or price;
- 11           B. The availability of a vehicle advertised for sale in any medium;
- 12           C. That a consumer is required to purchase an optional add-on product or  
13           service;
- 14           D. The cost to purchase, receive or use the add-on product or service;
- 15           E. Any restriction, limitation or condition applicable to the purchase, receipt or  
16           use of the add-on product or service;
- 17           F. That any add-on product or service has the ability to improve or otherwise  
18           affect a consumer's credit record, credit history, credit rating or ability to  
19           obtain credit;
- 20           G. Any aspect of a consumer's credit application, or any finance, purchase or  
21           sale agreement; or
- 22           H. Whether the sale or lease of a motor vehicle is final or complete.

23           36. Pinnacle shall not initiate an outbound telephone call to any telephone number on  
24 the national do-not-call registry established by the federal trade commission in violation of  
25 A.R.S. § 44-1282 without meeting the consent requirements of the statute.

26           37. Pinnacle shall not initiate an outbound telephone call to any person that has  
27 previously stated a desire not to receive outbound telephone calls made by or on behalf of  
28 Pinnacle in violation of A.R.S. § 44-1278(B)(2).

1 38. Pinnacle shall establish and implement written procedures to comply with  
2 paragraphs 36-37 above.

3 39. Pinnacle shall train any person making outbound telephone calls on behalf of  
4 Pinnacle according to the written procedures described in paragraph 38 above.

5 40. Pinnacle shall establish and maintain a no-call list comprised of all persons who  
6 request not to be contacted and keep all do-not-call requests for at least ten years. Upon request  
7 by the State, Pinnacle shall produce this no-call list.

8 41. Pinnacle shall maintain sufficient documentation to demonstrate compliance with  
9 the standards set forth in this Consent Judgment for a period of two years from the date of each  
10 claim or representation. For a period of six years from the Court's entry of this Consent  
11 Judgment, Pinnacle must make their business records available to the Attorney General or his  
12 authorized representative upon reasonable notice during business hours.

### 13 **Payment Provisions**

14 42. Pursuant to A.R.S. § 44-1528(A)(2), Pinnacle is liable and obligated to pay to the  
15 Attorney General the amount of \$305,000 in consumer restitution (the "Restitution Award") due  
16 at the time of entry of this Consent Judgment, to be deposited into an interest-bearing consumer  
17 restitution subaccount of the Consumer Restitution and Remediation Revolving Fund, pursuant  
18 to A.R.S. § 44-1531.02(B). The State will have sole discretion as to how and when restitution  
19 funds are distributed to consumers and the eligibility of any consumer to receive restitution. The  
20 State may distribute restitution to consumers who were affected by Pinnacle's practices described  
21 above or any other Pinnacle practices the State determines may have violated the ACFA.

22 43. Pursuant to A.R.S. § 44-1531(A), Pinnacle is liable and obligated to pay to the  
23 Attorney General the amount of \$50,000 in civil penalties (the "Civil Penalty Award") due at the  
24 time of entry of this Consent Judgment, to be deposited into the Consumer Protection-Consumer  
25 Fraud Revolving Fund pursuant to A.R.S. § 44-1531.01, and used for the purposes set forth  
26 therein.

27 44. All communications accompanying restitution payments shall be agreed upon by  
28 Pinnacle and the State, however, in the event that a good-faith agreement cannot be reached, all



1 communications to consumers accompanying payments are at the sole discretion of the State.

2 45. In the event the amount ordered as restitution herein is insufficient to provide full  
3 restitution to all eligible consumers, the restitution collected will be distributed to eligible  
4 consumers on a pro rata basis. In the event that any portion of the restitution ordered herein is  
5 not be distributed to eligible consumers, such portion will be deposited by the Attorney General's  
6 Office into the Consumer Protection-Consumer Fraud Revolving Fund, pursuant to A.R.S. § 44-  
7 1531.02(B), and used for the purposes specified in A.R.S. § 44-1531.01.

8 46. The payments required herein must be paid in the form of cashier's checks or  
9 money orders made payable to "The State of Arizona." Payment must be delivered or mailed  
10 and postmarked to:

11 Consumer Protection and Advocacy Section  
12 The Office of the Arizona Attorney General  
13 2005 North Central Avenue  
14 Phoenix, Arizona 85004-1592

15 47. In the event of a material breach of this Consent Judgment, in addition to all other  
16 remedies available under Arizona law and the penalties specifically provided under A.R.S. § 44-  
17 1532, the State may, in its sole discretion, reopen proceedings and continue with this case as  
18 though this Consent Judgment had not been entered, provided that Pinnacle will be entitled to an  
19 offset for any amount actually paid to the State.

20 **General Terms**

21 48. The Attorney General may conduct undercover or other investigations of  
22 Pinnacle's practices as the State deems fit to monitor compliance with the ACFA and this Consent  
23 Judgment.

24 49. Nothing in this Consent Judgment will be construed as an approval by the Attorney  
25 General, the Court, the State of Arizona, or any agency thereof of Pinnacle's past, present, or  
26 future conduct. Pinnacle must not represent or imply that the Attorney General, the Court, the  
27 State of Arizona, or any agency thereof has approved or approves of any of Pinnacle's actions or  
28 any of Pinnacle's past, present or future business practices.

1           50. This Consent Judgment represents the entire agreement between the parties, and  
2 there are no representations, agreements, arrangements, or understandings, oral or written,  
3 between the parties relating to the subject matter of this Consent Judgment which are not fully  
4 expressed herein or attached hereto.

5           51. If any portion of this Consent Judgment is held invalid by operation of law, the  
6 remaining terms thereof will not be affected and will remain in full force and effect.

7           52. Jurisdiction is retained by this Court for the purpose of entertaining an application  
8 by the State for the enforcement of this Consent Judgment.

9           53. This Consent Judgment is the result of a compromise and settlement agreement  
10 between the parties. Only the State may seek enforcement of this Consent Judgment. Nothing  
11 herein is intended to create a private right of action by other parties.

12           54. This Consent Judgment does not limit the rights of any private party to pursue any  
13 remedies allowed by law.

14           55. The effective date of this Consent Judgment is the date that it is entered by the  
15 Court.

16           56. This Consent Judgment may be executed by the parties in counterparts and be  
17 delivered by facsimile or electronic transmission, or a copy thereof, such constituting an original  
18 counterpart hereof, all of which together will constitute one and the same document.

19           57. This Consent Judgment resolves all outstanding claims expressly identified in the  
20 Complaint as to Pinnacle. As no further matters remain pending, this is a final judgment entered  
21 pursuant to Ariz. R. Civ. P. 54(c).

22  
23           DATED this \_\_\_\_ day of \_\_\_\_\_, 2022.

24  
25  
26  
27           \_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

1 **CONSENT TO JUDGMENT**

2 1. Pinnacle acknowledges that it has waived service of the Summons and Complaint,  
3 has read the Findings of Fact, Conclusions of Law and Order, and is aware of its right to a trial  
4 in this matter and has waived the same.

5 2. Pinnacle admits the jurisdiction of this Court, admits that the Findings of Fact are  
6 true and that the Conclusions of Law are correct, and consents to the entry of the foregoing  
7 Findings of Fact and Conclusions of Law and Order.

8 3. Pinnacle states that no promise of any kind or nature whatsoever was made to  
9 induce it to enter into this Consent Judgment and declares that it has entered into this Consent  
10 Judgment voluntarily.

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

16 5. Pinnacle acknowledges that its acceptance of this Consent Judgment is for the  
17 purpose of settling the ongoing consumer fraud lawsuit filed by the State, and further  
18 acknowledges that this Consent Judgment does not preclude any agency or officer of this State  
19 or subdivision thereof from instituting other civil or criminal proceedings as may be appropriate.

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

1 7. Pinnacle represents and warrants that the person signing below on its behalf is duly  
2 appointed and authorized to do so.

3  
4 DATED this 15 day of January, 2022.

5 Pinnacle Nissan LLC

6  
7  
8 By: OM Partner  
9 [Name], [Title]

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

12 **MARK BRNOVICH**  
13 **Attorney General**

**Clark Hill PLC**

14  
15  
16 By: Dylan Jones 3/21/2022  
17 Dylan Jones  
18 Assistant Attorney General  
19 Attorneys for the State of Arizona

Darrell E. Davis  
20 Darrell E. Davis  
21 Clark Hill PLC  
22 Attorneys for Pinnacle Nissan

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