

1 **MARK BRNOVICH**
2 **ATTORNEY GENERAL**
3 (Firm State Bar No. 14000)
4 **ALYSE C. MEISLIK** (Bar No. 024052)
5 **ASSISTANT ATTORNEY GENERAL**
6 Office of the Attorney General
7 1275 West Washington Street
8 Phoenix, AZ 85007-2926
9 Telephone: (602) 542-3702
10 Facsimile: (602) 542-4377
11 consumer@azag.gov
12 *Attorneys for State of Arizona*

8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

9 **IN AND FOR THE COUNTY OF MARICOPA**

10 STATE OF ARIZONA, *ex rel.* MARK
11 BRNOVICH, Attorney General,

12 Plaintiff,

13 vs.

14 PRIETO'S AUTO SALES, INC., an Arizona
15 corporation; and GUSTAVO PRIETO and RITA
16 PRIETO, husband and wife,

17 Defendants.

Case No.: CV2014-007493

**PETITION FOR ORDER TO SHOW CAUSE
RE CONTEMPT**

(Assigned to the Hon. Lori Horn Bustamante)

17 The State of Arizona, *ex rel.* Mark Brnovich, Attorney General, ("State") petitions the Court
18 for an order to show cause regarding contempt ("Petition") pursuant to Ariz. R. Civ. P., Rule 65(j)
19 ordering defendants Prieto's Auto Sales, Inc., Gustavo Prieto, and Rita Prieto (collectively
20 "Defendants") to appear and show cause why they should not be held in contempt for willful
21 violations of the Stipulated Consent Judgment entered in this matter by the Court on July 3, 2014
22 ("Consent Judgment").¹

23 _____
24 ¹ The Court has continuing jurisdiction to consider this Petition pursuant to the terms set forth in the
25 Consent Judgment at 10, ¶ 10 and A.R.S. § 44-1532. The Consent Judgment is designated in this
26 Petition as Exhibit 10, but was not refiled with the Court, pursuant to Ariz. R. Civ. P., Rule 5(g)(2)(d).
The State delivered a courtesy copy of all exhibits to this Petition to the Judge and Defendants. In
addition, the State filed the exhibits to this Petition under seal because A.R.S. § 44-1525 prohibits the
State from making the names of consumers public. Accordingly, each consumer's name is
abbreviated in this Petition.

1 The State has sufficient information to reasonably believe that Defendants have violated, and
2 continue to violate, the Consent Judgment and the Arizona Consumer Fraud Act, A.R.S. §§ 44-1521 to
3 44-1543 (collectively, the “CFA”). This is the third enforcement action by the State stemming from
4 Defendants’ violations of the CFA. Defendants’ clear, deliberate, and ongoing disregard for this
5 Court’s order undermines the Court’s authority and harms consumers. Accordingly, the State asks the
6 Court for the following relief:

- 7 1. Pursuant to A.R.S. § 44-1532, an order to show cause why Defendants should not be held
8 in contempt for violations of the July 3, 2014 Consent Judgment, pursuant to Ariz. R. Civ.
9 P., Rule 65(j);
- 10 2. Pursuant to A.R.S. § 44-1528(A)(4), an order permanently prohibiting Defendants from
11 engaging in the trade or occupation of operating a motor vehicle dealership or selling motor
12 vehicles;
- 13 3. Pursuant to A.R.S. § 44-1532, an award of up to \$25,000 in civil penalties for each
14 violation of the Consent Judgment;
- 15 4. Pursuant to A.R.S. § 44-1534, an award of the State’s attorney fees and costs for bringing
16 this contempt action;
- 17 5. Pursuant to the terms of the Consent Judgment, an order requiring Defendants to pay all
18 amounts due and owing under the Consent Judgment, which is a total of \$97,361 plus
19 interest at the rate of ten percent per annum since July 3, 2014;
- 20 6. Pursuant to A.R.S. § 44-1528(A)(2), an order requiring Defendants to pay consumer
21 restitution;
- 22 7. Pursuant to Ariz. R. Civ. P. Rule 65(j)(6), and in accordance with that rule’s requirements,
23 a commitment to jail until Defendants are purged of the contempt as may be directed by the
24 Court or until Defendants are discharged by law; and
- 25 8. An order granting such other relief as the Court may deem proper under the
26 circumstances.

1 **I. BACKGROUND**

2 Defendant Gustavo Prieto (“Defendant Prieto”) and Defendant Rita Prieto have sold used
3 motor vehicles in Phoenix, Arizona since 1998 through their solely owned and managed used motor
4 vehicle dealership, Defendant Prieto’s Auto Sales, Inc.

5 On May 8, 2006, this Court approved the entry of an Assurance of Discontinuance
6 (“Assurance”), in CV2006-006845, in which Defendants made numerous assurances that they would
7 remedy and discontinue any conduct in violation of the CFA. After receiving numerous consumer
8 complaints, on May 20, 2014, the State filed a lawsuit in this matter against Defendants, pursuant to
9 the CFA. On July 3, 2014, this Court entered a Consent Judgment with stipulated Findings of Fact and
10 Conclusions of Law. The Consent Judgment permanently enjoined Defendants from engaging in
11 specified conduct and mandated that Defendants comply with statutorily-imposed sale, condition,
12 warranty, and repossession requirements for used vehicle sales.

13 In the Consent Judgment, Defendants admitted to engaging in numerous acts in violation of the
14 CFA, including, but not limited to: failing to adequately inspect vehicles and repair defects before
15 placing the vehicles for sale, failing to honor statutorily mandated warranties required by A.R.S. § 44-
16 1267, denying consumers an opportunity to test drive vehicles to prevent discovery of material defects,
17 selling consumers’ trade-in vehicles before the consumer completed the purchase of their next vehicle,
18 selling vehicles for which they did not hold a valid title, selling vehicles with salvage titles without
19 disclosing the title defect, selling vehicles that had been involved in major collisions without
20 disclosing the damage, failing to deliver title to consumers who paid in full for vehicles, refusing to
21 refund deposits when consumers did not purchase a vehicle, failing to adequately disclose their policy
22 of requiring multiple down payments, making false statements with respect to financing, and
23 knowingly and repeatedly issuing consumers refund checks drawn upon bank accounts containing
24 insufficient funds. (Ex. 10 at 3-5).

25 Since July 3, 2014, the State has received at least thirty-four consumer complaints. (Ex. 1 ¶ 6
26 (Declaration of Tammy Miller, Consumer Information and Complaint Manager at Arizona Attorney

1 General's Office)). These complaints contain numerous allegations that Defendants have continued to
2 engage in conduct prohibited by the Consent Judgment's Order ("Order"). Defendants' actions
3 constitute clear, repeated, and ongoing violations of this Court's order. Defendants have also failed to
4 comply with the payment terms of the Order.

5 **II. The State's Attempts at Non-Judicial Remedies Have Failed**

6 Although the State has no legal requirement to do so, the State notified Defendants of their
7 continuing violations before seeking a judicial remedy. The State sent Defendants letters, emails, and
8 copies of each consumer complaint alleging violations of the Order. Despite the State's attempts to
9 convince Defendants to cease violations of the Order, the State continues to receive consumer
10 complaints. Defendants attempted to remedy some of their violations by providing refunds to
11 consumers who filed complaints, but Defendants have not altered their business practices to comply
12 with the Order. The injunctive provisions of the Order were designed to protect Arizona consumers.
13 Nevertheless, consumers continue to suffer monetary losses because of Defendants' disregard of the
14 Order.

15 **III. Violations of the Consent Judgment**

16 Defendants continue to violate specific provisions of the Order as follows:

17 **A. Defendants Continue to Violate the CFA.**

18 Order ¶ 1(A) permanently enjoins Defendants from directly or indirectly engaging in any and
19 all deceptive acts and practices, fraud, false pretenses, false promises, misrepresentations, and the
20 concealment, omission, and suppression of facts in violation of the CFA. (Ex. 10 at 6 ¶ 1(A)).
21 Nevertheless, Defendants continue to violate the CFA. Exhibits 2 through 8 to this Petition are
22 declarations detailing Defendants' misrepresentations, fraud, false promises, and deceptive acts that
23 occurred after July 3, 2014. The declarations describe Defendants' practices, which include selling
24 vehicles without conveying title, selling vehicles without clear title, failing to adequately inspect
25 vehicles and repair major defects before placing vehicles for sale, failing to honor statutorily mandated
26 warranties required by A.R.S. § 44-1267, denying consumers an opportunity to test drive vehicles,

1 failing to adequately disclose all significant contractual terms to consumers, making changes to
2 documents signed by a consumer without first obtaining the consumer's informed written consent,
3 selling vehicles with salvage titles without disclosing the title defect, refusing to return refundable
4 deposits, and knowingly issuing consumers refund checks drawn upon bank accounts containing
5 insufficient funds. (*See* Exs. 2-8).

6 In addition to the CFA violations identified below, Defendants have continued to sell vehicles
7 without obtaining clear title. On July 29, 2015, Defendant Prieto obtained a loan on a vehicle through
8 Check Into Cash and the title lender placed a lien on the vehicle's title. (Ex. 2 ¶¶ 16, 19, 20
9 (Declaration of Pete Vasquez, Detective at Arizona Department of Transportation)). Two days later,
10 despite the fact that his vehicle had a title lien, Defendant Prieto sold the vehicle to a consumer for
11 \$6,500. (*Id.* ¶ 14). When confronted by Detective Vasquez, Defendant Prieto admitted that he
12 obtained the title loan to pay debts he owed and for title transfers on vehicles he recently sold. (*Id.* ¶
13 20). Defendant Prieto told Detective Vasquez that he would pay off the title loan and transfer the title
14 to the consumer as soon as he received money from a third party. (*Id.* ¶ 20). So long as there is a lien
15 on the vehicle's title, the consumer may not legally take ownership of the vehicle. (*Id.* ¶ 21).
16 Defendant Prieto also admitted to obtaining title loans and selling five or six other vehicles without
17 notifying consumers of the liens. (*Id.* ¶ 21). Defendants violated the CFA and Order ¶ 1(A) by
18 knowingly selling vehicles without clear title and failing to disclose the title defects to consumers.

19 **B. Defendants Sell Vehicles With Defects.**

20 Order ¶ 1(B) permanently enjoins Defendants from “[s]elling or attempting to sell any vehicle
21 that has not been fully inspected for major defects.” (Ex. 10 at 6). Order ¶ 1(C) permanently enjoins
22 Defendants from “[s]elling or attempting to sell any vehicle that is not substantially free of any and all
23 defects that would significantly limit the use of the vehicle for the ordinary purpose of transportation
24 on a public roadway.” (*Id.*). Order ¶ 1(D) permanently enjoins Defendants from failing to honor the
25 statutorily mandated warranty for used vehicles, as required by A.R.S. § 44-1267. (*Id.*). Pursuant to
26 A.R.S. § 44-1267(C), a used vehicle must function in “a safe condition” and be “substantially free of

1 any defect that significantly limits the use of the vehicle for the ordinary purpose of transportation on
2 any public highway.” This requirement applies after delivery of a used vehicle for the first fifteen days
3 or for the first five hundred miles, whichever is sooner. A.R.S. § 44-1267(C).

4 Since July 3, 2014, Defendants have sold numerous vehicles that were not inspected for, and
5 are not substantially free from, major defects that significantly limit the use of the vehicles. (*See*
6 Exs. 3-6; 8). Defendants have also failed to honor the statutorily mandated warranty for used vehicles,
7 as required by A.R.S. § 44-1267 and the Consent Judgment. (*See* Exs. 3-6). As demonstrated by the
8 consumer declarations described herein, Defendants violated Order ¶¶ 1(B), 1(C), and 1(D).

9 On October 25, 2014, R.C. purchased a vehicle from Defendants. (*See* Ex. 3 ¶ 2 (Declaration
10 of Consumer R.C.)). The next day, R.C.’s vehicle began malfunctioning—the dash board instrument
11 cluster and windows did not work. (*Id.* ¶ 5). R.C. could neither tell how fast the vehicle was going
12 nor how much fuel was in the vehicle. (*Id.* ¶ 5). Defendants purportedly repaired the vehicle at least
13 four separate times, keeping the vehicle for three to four days each time, but they never resolved the
14 vehicle’s issues. (*Id.* ¶ 6). Beginning in November, R.C. requested that Defendants take the vehicle
15 back and return her down payment. (*Id.* ¶¶ 8-10). On or about February 3, 2015, R.C.’s vehicle was
16 repossessed. (*Id.* ¶ 11). When R.C. contacted the tow company, she was told that the vehicle had been
17 repossessed by someone who was the “rightful owner” of the vehicle. (*Id.* ¶ 12-13). When R.C.
18 contacted Defendants, they told her they would give her a different vehicle. (*Id.* ¶¶ 13-14). R.C. never
19 accepted a different vehicle and Defendants did not refund her down payment until February 12, 2015.
20 (*Id.* ¶¶ 15, 16). By selling R.C. a vehicle with a defective dash board instrument cluster, Defendants
21 violated Order ¶¶ 1(A), 1(B), and 1(C).

22 On September 6, 2014, Defendants sold a vehicle to J.T. that needed several repairs. (*See* Ex. 4
23 ¶¶ 3-9 (Declaration of Consumer J.T.)). The vehicle had several issues, including a knocking noise
24 coming from the engine, a missing knob on the shifter, low fluid levels, and nonfunctional windshield
25 wipers. (*Id.* ¶¶ 2-6). Defendants took a \$400 down payment from J.T., required him to sign a blank
26 purchase contract, and told him to return with the vehicle two days later for repairs. (*Id.* ¶¶ 20-22).

1 After Defendants failed to timely repair and deliver the vehicle, J.T. requested that Defendants return
2 his down payment. (*Id.* ¶ 36). Defendants refused to return J.T.'s down payment and told him that he
3 could choose another vehicle on the lot. (*Id.* ¶¶ 37-39). J.T. declined Defendants' offer to take
4 another vehicle. (*Id.* ¶¶ 37-38). Defendants failed to return J.T.'s down payment until approximately
5 one month after J.T. filed his consumer complaint with the Attorney General's Office. (*Id.* ¶¶ 41-42).
6 Defendants' sale of a vehicle with defects such as nonfunctional windshield wipers is a violation of
7 Order ¶¶ 1(A), 1(B), and 1(C).

8 In November of 2014, E.G. purchased a vehicle from Defendants and provided a down
9 payment of \$500. (*See* Ex. 5 ¶ 2 (Declaration of Consumer E.G.)). The vehicle did not have a driver's
10 seat. (*Id.* ¶ 5). When Defendants failed to timely repair the vehicle, they refused to return E.G.'s down
11 payment, but told E.G. he could choose a different vehicle. (*Id.* ¶¶ 9-12). E.G. accepted a different
12 vehicle. (*Id.* ¶ 13). When E.G. drove the vehicle off Defendants' lot, it made a loud noise. (*Id.* ¶ 14).
13 Defendants instructed E.G. to return with the vehicle the next day so that they could work on the
14 vehicle. (*Id.* ¶ 15). Two days later, E.G. returned the vehicle to Defendants to make repairs. (*Id.*).
15 Defendants supposedly worked on the vehicle, but two days later, the loud noise began again. (*Id.*
16 ¶ 16). E.G. could not drive the vehicle more than thirty miles per hour and after he pulled off the side
17 of the road, smoke came out of the vehicle. (*Id.* ¶ 16). When E.G. brought the vehicle back to
18 Defendants, they told him to take the vehicle to their offsite mechanic. (*Id.* ¶¶ 17-18). The offsite
19 mechanic supposedly resolved the issue. (*Id.* ¶ 19). Within an hour after leaving the mechanic, the
20 vehicle's check engine light went on again. (*Id.* ¶ 20). E.G. returned the vehicle to Defendants, who
21 said they needed to replace the entire exhaust manifold. (*Id.* ¶ 23). Defendants never returned E.G.'s
22 vehicle or refunded his down payment. (*Id.* ¶ 32). Defendants' sale of a vehicle with no driver's seat
23 and, later, sale of a vehicle that could not safely function at a speed over thirty miles per hour,
24 constitute sales of vehicles with major defects, in violation of Order ¶¶ 1(A), 1(B), and 1(C).

25 On March 15, 2015, A.R. purchased a vehicle from Defendants with a down payment of
26 \$1,200. (*See* Ex. 6 ¶¶ 2-6 (Declaration of Consumer A.R.)). When A.R. drove Defendants' vehicle off

1 the lot, the vehicle started shaking as it reached thirty miles per hour, A.R. lost control of the vehicle,
2 and he almost crashed it. (*Id.* ¶ 8). A.R. immediately turned around and had to drive five miles per
3 hour in order to return to Defendants’ lot. (*Id.*). A.R. requested that Defendants return his \$1,200, and
4 Defendant Prieto told him to return the following day. (*See id.* ¶¶ 9-12). Defendants waited at least a
5 month to refund A.R.’s money. (*See id.* ¶¶ 2, 42). By selling a vehicle that could not safely function
6 at a speed over thirty miles per hour, Defendants sold a vehicle with major defects in violation of
7 Order ¶¶ 1(A), 1(B), and 1(C).

8 On October 1, 2015, G.G. purchased a vehicle for \$1,500 with a down payment of \$1,000.
9 (Ex. 8 ¶¶ 4-5 (Declaration of Consumer G.G.)). Defendant Prieto told G.G. that before she could take
10 the vehicle, he needed to repair the vehicle’s air conditioning and replace the tires, which were bald
11 and unsafe. (*Id.* ¶ 4). On October 5, 2015, Defendant Prieto told G.G. that the vehicle was ready;
12 however, when G.G. inspected the vehicle, the tires were still bald and unsafe and the check engine
13 light was illuminated. (*Id.* ¶¶ 9-10). Also, some of the nuts securing the tires on the vehicle were
14 missing. (*Id.* ¶ 10). Prior to accepting delivery of the vehicle, G.G. notified Defendants that she no
15 longer wanted the vehicle. (*Id.* ¶ 11). As of the date of her declaration, Defendants still possessed
16 G.G.’s down payment. (*Id.* ¶ 17). Defendants’ sale of a vehicle with bald, unsafe tires and an
17 illuminated check engine light constitutes a sale of a vehicle with defects, in violation of Order ¶¶
18 1(A), 1(B), and 1(C).

19 **C. Defendants Fail to Disclose Salvage Title.**

20 Order ¶ 1(E) permanently enjoins Defendants from “selling vehicles with salvage title without
21 disclosing the salvage nature of the title in violation of A.R.S. § 28-2091.” (Ex. 10 at 6). Arizona law
22 requires sellers to disclose a salvage designation on used automobile titles *before* the sale is
23 completed. A.R.S. § 28-2091(O). Because there is inherent risk in purchasing a vehicle with a
24 salvage or restored salvage title, buyers must be given an opportunity to verify that repairs were made
25 correctly.

26 J.M. signed a purchase contract with Defendants and agreed to pay \$8,500 for a vehicle. (Ex. 7

1 ¶¶ 2, 6 (Declaration of Consumer J.M.)). Defendants never told J.M. that the vehicle had a salvage
2 title. (*Id.* ¶ 8). J.M. did not discover that the vehicle had a salvage title until his insurance company
3 later notified him. (*Id.*). By continuing to sell vehicles with salvage title without disclosing the
4 existence of the title defect, Defendants violated the permanent injunction in Order ¶ 1(E).

5 **D. Defendants Fail to Timely Return Refundable Deposits.**

6 Order ¶ 1(G) permanently enjoins Defendants from “(f)ailing to return a refundable deposit to
7 consumers in a timely manner in the event that the sale is not completed.” (Ex. 10 at 7). Several
8 consumers have complained that Defendants failed to timely return refundable deposits when the sale
9 was not completed, in violation of Order ¶ 1(G). (*See Exs.* 4-8).

10 As set forth above, J.T. paid Defendants \$400 as a down payment on a vehicle. (*See Ex.* 4
11 ¶ 19). After Defendants failed to timely repair and deliver his vehicle, J.T. requested that Defendants
12 return his down payment. (*Id.* ¶ 36). Defendants refused and told J.T. to choose another vehicle on
13 their lot. (*Id.* ¶¶ 37-39). When J.T. declined Defendants’ offer to take another vehicle, Defendant
14 Prieto told him that, by law, he had to fix the vehicle or give J.T. another vehicle. (*Id.* ¶ 38). Even
15 though the Consent Judgment requires Defendants to timely return down payments, Defendants did
16 not return J.T.’s down payment until approximately one month after J.T. filed a complaint with the
17 State. (*Id.* ¶¶ 41-42).

18 On November 11, 2014, E.G. paid Defendants \$500 as a down payment for a vehicle. (Ex. 5
19 ¶ 2). Defendants needed to repair the driver’s seat before E.G. could take possession of the vehicle.
20 (*Id.* ¶ 3). Defendant Prieto assured E.G. that he would return E.G.’s money if the vehicle was not
21 ready the next day or if he did not like another vehicle on the lot. (*Id.* ¶¶ 3, 8). The next day, the
22 vehicle was not finished being repaired and Defendants convinced E.G. to accept a different vehicle.
23 (*Id.* ¶¶ 9-13). Defendants provided E.G. a replacement vehicle, which they told him to bring back for
24 repairs the following day. (*Id.* ¶¶ 14-15). Defendants purportedly attempted to repair the vehicle
25 multiple times, but did not repair the vehicle. (*Id.* ¶¶ 15-23). After several unsuccessful repair
26 attempts, E.G. brought his vehicle to Defendant Prieto, who assured him he would repair the vehicle.

1 (*Id.* ¶ 22). Defendants failed to repair the vehicle by the date they represented they would and refused
2 to return E.G.’s down payment. (*Id.* ¶ 23-27). Every time E.G. went to Defendants’ lot to pick up the
3 vehicle, the vehicle was not there. (*Id.* ¶ 27). Defendants never returned E.G.’s vehicle to him. (*Id.* ¶
4 32). As of November 28, 2015, Defendants had not returned E.G.’s down payment, in violation of
5 Order ¶ 1(G). (*Id.* ¶ 32).

6 A.R. agreed to purchase a vehicle from Defendants late in the day on March 15, 2015. (Ex. 6
7 ¶¶ 2, 5). Defendant Prieto took \$1,200 from A.R., gave the vehicle to A.R. with temporary plates, and
8 told A.R. to return the following day to sign paperwork. (*Id.* ¶¶ 6-7). As described previously, as soon
9 as A.R. drove the vehicle off the lot, the vehicle started shaking when it approached thirty miles per
10 hour causing A.R. to almost crash the vehicle. (*Id.* ¶ 8). A.R. immediately returned the vehicle to
11 Defendants and requested the return of his \$1,200. (*See id.* ¶¶ 8-12). The following day, Defendant
12 Prieto told A.R. that he is permitted by law to wait thirty days to refund the money, despite the
13 Consent Judgment’s requirement that he “timely” refund deposits. (*Id.* ¶ 16). On March 23, 2015,
14 Defendant Prieto gave Roger’s fiancée a promissory note to refund A.R.’s \$1,200 by April 6, 2015.
15 (*Id.* ¶¶ 24, 31). Even though A.R. never signed a purchase contract with Defendants to buy a vehicle,
16 Defendants waited at least a month to refund his money. (*See id.* ¶¶ 7, 42).

17 On May 21, 2015, J.M. paid Defendants \$8,500 as a refundable deposit for a vehicle. (Ex. 7
18 ¶¶ 5-6, 14). Defendant Prieto told J.M. that he would refund J.M.’s \$8,500 if he did not want the
19 vehicle after Defendants repaired it. (*Id.* ¶ 5). J.M. never took possession of the vehicle because
20 Defendants retained the vehicle to make repairs. (*Id.* ¶¶ 4, 9, 14). When J.M. requested a refund,
21 Defendant Prieto refused and stated that “money was tight.” (*Id.* ¶ 10). On June 19, 2015, Defendants
22 provided J.M. a signed promissory note to return the \$8,500. (*Id.* ¶ 11). On June 22, 2015, Defendants
23 gave J.M. another signed promissory note. (*Id.* ¶ 12). Eventually, Defendants wrote J.M. a check that
24 did not clear due to the account’s insufficient funds. (*Id.* ¶ 13). As of September 21, 2015, the date of
25 J.M.’s Declaration, Defendants had not returned his refundable deposit of \$8,500, in violation of Order
26 ¶ 1(G). (*Id.* ¶ 14).

1 On October 1, 2015, G.G. paid Defendants \$1,000 as a down payment for a vehicle, but she
2 never signed a purchase contract. (Ex. 8 ¶¶ 4-5). Defendant Prieto told G.G. that the vehicle would not
3 be ready until the following day because he needed to complete some repairs and get the vehicle
4 emission tested and registered. (*Id.* ¶ 4-6). On October 5, 2015, Defendants told G.G. that the vehicle
5 was ready; however, G.G. refused to accept delivery of the vehicle because the vehicle was not
6 repaired and was still unsafe to drive. (*Id.* ¶ 9-11). G.G. requested that Defendant Prieto refund her
7 deposit. (*Id.* ¶ 11). Defendant Prieto offered to give G.G. a different vehicle, but she told him that she
8 just wanted her money back. (*Id.* ¶ 12). Defendant Prieto said he would need five days to get the
9 money and gave G.G. a promissory note stating he would return the \$1,000 deposit by October 10,
10 2015. (*Id.* ¶ 12). As of October 28, 2015, the date of G.G.'s Declaration, Defendants had not refunded
11 the \$1,000 deposit even though she neither signed a contract nor accepted delivery of a vehicle, in
12 violation of the Consent Judgment. (*Id.* ¶ 5, 11, 17).

13 **E. Defendants Issue Refund Checks on Accounts with Insufficient Funds.**

14 Order ¶ 1(J) permanently enjoins Defendants from “[k]nowingly issuing refund checks to
15 consumers on bank accounts that contain insufficient funds to pay the check.” (Ex. 10 at 7). Since
16 July 3, 2014, Defendants have continued issuing refund checks on bank accounts containing
17 insufficient funds, in violation of Order ¶ 1(J). (*See e.g.*, Ex. 7).

18 As previously set forth herein, after failing to timely refund J.M.'s deposit, when Defendants
19 finally wrote J.M. a check, it was returned because the account had insufficient funds, in violation of
20 Order ¶ 1(J). (*Id.* ¶ 13).

21 **F. Defendants Sell Vehicles Without Title.**

22 Order ¶ 1(K) permanently enjoins Defendants from “selling vehicles for which they do not
23 carry a valid title, in violation of A.R.S § 44-1267.” (Ex. 10 at 7). Defendants have continued to
24 violate Order ¶ 1(K).

25 On or about September 21, 2015, Detective Vasquez began an investigation into a title
26 complaint filed against Defendants by E.C. (Ex. 2 ¶ 3). E.C. signed a Purchase Order with

1 Defendants, dated July 10, 2015, but never obtained title to her vehicle. (*Id.* ¶ 4). Detective Vasquez
2 researched the vehicle’s title record and determined that Defendants never obtained title to the vehicle
3 prior to selling it to E.C. (*Id.* ¶ 5, 9). He also determined that the prior title holder had a restitution
4 lien that prohibited the transfer of title for the vehicle. (*Id.*). Defendants did not hold title to the
5 vehicle and, therefore, did not have the right to sell the vehicle to E.C. Defendants violated the
6 permanent injunction in Order ¶ 1(K) by selling vehicles for which they did not carry a valid title.

7 **G. Defendants Do Not Disclose Material Terms and Alter Signed Contracts.**

8 Order ¶ 1(H) permanently enjoins Defendants from “[f]ailing to adequately disclose all
9 significant contractual terms to consumers....” (Ex. 10 at 7). Order ¶ 1(O) prohibits Defendants from
10 “[m]aking changes to documents signed by a consumer without first obtaining the consumer’s
11 informed written consent.” (*Id.*). It is inherently deceptive, misleading, and unfair for Defendants to
12 enter into purchase contracts without disclosing all terms of the agreement and to unilaterally alter a
13 previously agreed upon contract. Despite the Court’s injunctive prohibitions, the State received
14 consumer complaints indicating that Defendants have continued these unlawful practices in violation
15 of Order ¶¶ 1(H) and 1(O). (*See e.g.*, Ex. 4).

16 Defendants took a down payment from J.T. and required him to sign a blank contract. (Ex. 4
17 ¶ 20-21). When J.T. told Defendants that he was not comfortable signing a blank contract, Defendant
18 Prieto told J.T. not to worry because he would fill out their agreement on the contract later. (*Id.* ¶ 21).
19 By having J.T. sign a blank contract, Defendants failed to properly disclose significant contractual
20 terms to J.T., in violation of Order ¶ 1(H). Defendant Prieto’s statement that he later would fill out the
21 agreement constitutes an admission that he intended to unilaterally alter a contract in violation of
22 Order ¶ 1(H) and 1(O).

23 **H. Defendants Prohibit Consumers from Test Driving Vehicles.**

24 Order ¶ 1(L) permanently enjoins Defendants from “(p)rohibiting consumers from test driving
25 vehicles placed for sale.” (Ex. 10 at 7). According to several consumers, Defendants have continued
26 to prohibit or discourage consumers from test driving vehicles before completing sales, in violation of

1 Order ¶ 1(L). (*See* Exs. 3, 5-7). By preventing consumers from test driving vehicles before completing
2 sales, Defendants are able to prevent consumers from discovering material defects in vehicles before
3 Defendants complete the sale.

4 R.C. requested to test drive the vehicle she was interested in, but she was assured that a test
5 drive was unnecessary because the vehicle was under a 90 day warranty. (*See* Ex. 3 ¶ 3). As set forth
6 above, after she purchased the vehicle, R.C. discovered various defects. (*Id.* ¶ 5). Later, when R.C.'s
7 vehicle was repossessed and Defendants offered R.C. a replacement vehicle, Defendants refused to
8 allow her to test drive any replacement vehicles because Defendants claimed they did not have dealer
9 plates. (*Id.* ¶ 15).

10 E.G. asked Defendants if he could test drive a Ford Explorer; however, Defendants did not
11 allow him to test drive the vehicle because the vehicle did not have a front driver's seat. (Ex. 5 ¶ 5).
12 Defendants took a \$500 deposit from E.G. and represented that they would fix the vehicle's seat by a
13 certain date, which did not occur. (*Id.* ¶¶ 2, 3, 8, 9). After Defendants were unable to repair the
14 Explorer, they agreed to sell E.G. another vehicle, which Defendants also did not permit E.G. to test
15 drive because the vehicle purportedly had no battery. (*Id.* ¶¶ 11, 12). After driving off the lot, the
16 vehicle immediately began malfunctioning. (*Id.* ¶¶ 14-16).

17 A.R. asked Defendant Prieto if he could test drive a vehicle and was told that he could not
18 because it was getting late. (Ex. 6 ¶ 5). Defendant Prieto assured A.R. that there was nothing wrong
19 with the vehicle and it was in good condition. (*Id.*). As stated previously, when A.R. drove
20 Defendants' vehicle off the lot, the vehicle started shaking as it approached thirty miles per hour, A.R.
21 lost control of the vehicle, and he almost crashed it. (*Id.* ¶ 8).

22 J.M. wanted to test drive a vehicle; however, Defendant Prieto told him that he could not test
23 drive the vehicle because it did not have a dealer's license plate. (Ex. 7 ¶ 3). Defendant Prieto told
24 J.M. that Defendants would make repairs to the vehicle and would have the dealer's license plate so
25 J.M. could go for a test drive when he returned. (*Id.* ¶ 5). Later, J.M.'s insurance company informed
26 him that the vehicle had a salvage title. (*Id.* ¶ 8). J.M. and his wife were never allowed to test drive the

1 vehicle, in violation of the Court's Order. (*Id.* ¶ 7).

2 Defendants' repeated refusals to allow consumers to test drive vehicles constitute violations of
3 Order ¶ 1(L).

4 **I. Defendants Failed to Comply with the Consent Judgment's Payment Terms.**

5 Defendants failed to comply with the payment terms set forth in the Consent Judgment. The
6 Order requires Defendants to jointly and severally pay the State a total judgment of \$106,361, which is
7 comprised of (1) \$80,000 in civil penalties; (2) \$10,645 in attorneys' fees, expert costs, and
8 investigative costs; and (3) \$15,716 in restitution. (Ex. 10 at 8-9 ¶¶ 2-4). The Order requires
9 Defendants to pay the civil penalties, fees and costs, and restitution in monthly installments of \$1,500,
10 due on the first day of each month, beginning July 1, 2014. (*Id.* at 9 ¶ 5). Under the terms of the
11 Order, if Defendants fail to make a payment within 10 days of the date it is due then Defendants are in
12 default, the entire unpaid balance of the judgment is due and owing in its entirety, interest begins to
13 accrue at ten percent per annum from the date of entry of the Consent Judgment, and Defendants owe
14 the costs of collection. (*Id.* at 9 ¶ 5).

15 From August 11, 2014 to March 16, 2015, Defendants made six payments of \$1,500, none of
16 which were timely. (*See* Ex. 9 ¶ 6 (Declaration of Stephanie Paine, Statistical Project Specialist at
17 Arizona Attorney General's Office)). As of November 2015, under the terms of the payment plan,
18 Defendants should have paid the State at least \$25,500. (*Id.* ¶ 8). Nevertheless, Defendants have only
19 paid \$9,000 and have defaulted on the payment terms set forth in the Consent Judgment. (*Id.* ¶¶ 6, 9).
20 As of November 2015, Defendants owe \$97,631, the entire remaining amount of the judgment, plus
21 interest. (*Id.* ¶ 9). Defendants have violated the Order by failing to timely pay the State under the
22 terms of the Consent Judgment.

23 **IV. Conclusion and Request for Relief**

24 Despite two prior enforcement actions by the State, Defendants have refused to comply with
25 the law and this Court's Order. For the reasons stated above, the Court should enter the following
26 orders:

