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7 Attorneys for Plaintiff

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

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

10 STATE OF ARIZONA, *ex rel.* THOMAS C.
HORNE, Attorney General,

11 Plaintiff,

12 vs.

13 ECONO-LUBE N'TUNE, INC., a Delaware
14 corporation,

15 Defendant.
16

Case No.: CV2011-018783

CONSENT JUDGMENT

Assigned to the Hon.

17
18 Plaintiff, State of Arizona, ex rel. Thomas C. Horne, Attorney General, having filed a
19 complaint alleging violations of the Arizona Consumer Fraud Act, A.R.S. § 44-1521 *et seq.*,
20 and Defendant Econo-Lube N'Tune, Inc., having waived service of the Summons and
21 Complaint; having been fully advised of its right to a trial in this matter and, after receiving
22 advice of counsel, having waived the same; having admitted that this Court has jurisdiction
23 over the subject matter and the parties for purposes of entry of this Consent Judgment; and
24 having acknowledged that this Court retains jurisdiction for the purpose of enforcing this
25 Consent Judgment; the Court enters the following Consent Judgment:

26 //

1 Defendant ECONO-LUBE N'TUNE, INC. has agreed to a voluntary compromise of
2 disputed claims and the State of Arizona and Defendant ECONO-LUBE N'TUNE, INC. have
3 agreed on a basis for the settlement of these matters in dispute.

4 This Consent Judgment does not constitute an admission by Defendant ECONO-LUBE
5 N'TUNE, INC. or evidence of any liability for any violation of the Arizona Consumer Fraud
6 Act or of any other state or federal statute, rule, regulation or other applicable law. This
7 Consent Judgment is made without trial or adjudication of any issues of fact or law or finding
8 of liability of any kind.

9 **I. PARTIES**

10 1. Plaintiff is the State of Arizona, ex rel. Thomas C. Horne ("the State"), who is
11 authorized to bring this action under the Arizona Consumer Fraud Act, A.R.S. § 44-1521 *et*
12 *seq.*

13 2. Defendant ECONO-LUBE N'TUNE, INC. is a Delaware corporation engaged in
14 the business of automotive repair, and the owner at times relevant to this Consent Judgment of
15 the ECONO-LUBE N'TUNE & BRAKES, doing business as Meineke Car Care Center #4179
16 and Econo-Lube N'Tune #4179, located at 6829 N. 7th Street, Phoenix, Arizona.

17 **II. STATE'S ALLEGATIONS**

18 3. At all times relevant to this Consent Judgment, the managers and employees of
19 the ECONO-LUBE N'TUNE & BRAKES doing business as Meineke Car Care Center #4179
20 and Econo-Lube N'Tune #4179, located at 6829 N. 7th Street, Phoenix, Arizona were the
21 authorized agents of Defendant ECONO-LUBE N'TUNE, INC.

22 4. On July 13, 2011, the store manager of the ECONO-LUBE N'TUNE &
23 BRAKES doing business as Meineke Car Care Center #4179 and Econo-Lube N'Tune #4179,
24 located at 6829 N. 7th Street, Phoenix, Arizona, informed the State's undercover operator that a
25 coil within his compressor was bad and the air compressor needed to be replaced in the
26 operator's undercover vehicle.

1 5. Defendant's store manager's statement was deceptive because the store manager
2 knew that a coil within the compressor was not bad, the air compressor did not need to be
3 replaced and the air conditioning system could be fixed by replacing a nonfunctioning fuse.

4 6. On July 19, 2011, a technician of the ECONO-LUBE N'TUNE & BRAKES
5 doing business as Meineke Car Care Center #4179 and Econo-Lube N'Tune #4179, located at
6 6829 N. 7th Street, Phoenix, Arizona, informed the State's undercover operator that his
7 compressor was bad and the high line with an expansion valve needed to be replaced in the
8 operator's undercover vehicle. Defendant's technician informed the State's undercover
9 operator that they had checked the system again using a machine, had started up the vehicle
10 and there was power going to the compressor.

11 7. Defendant's technician's statement was deceptive because the technician did not
12 know if the compressor was bad, the high line with an expansion valve did not need to be
13 replaced, he had not checked the system again using a machine, had not started up the vehicle
14 and had not checked that power was going to the compressor.

15 8. Defendant's technician performed a further deceptive act by failing to inform the
16 State's undercover operator that they had discovered and replaced a nonfunctioning fuse, that
17 they had replaced the compressor unnecessarily, and by accepting full payment for an
18 unnecessary vehicle repair.

19 9. The acts and practices set forth in the foregoing Findings of Fact constitute
20 deceptive acts and practices in violation of the Arizona Consumer Fraud Act.

21 10. While engaging in the acts set forth in the Findings of Facts herein, Defendant
22 ECONO-LUBE N'TUNE, INC. knew or should have known that its conduct was of the nature
23 prohibited by A.R.S. § 44-1522.

24 **IV. DEFENDANT ECONO LUBE N' TUNE DISPUTES THE ALLEGATIONS**

25 11. Defendant ECONO-LUBE N'TUNE, INC. disputes the abovementioned
26 allegations.

1 12. This Consent Judgment and Defendant's agreement thereto shall not be considered
2 an admission of a violation of any law or rule for any purpose.

3 **IV. INJUNCTION**

4 13. Defendant ECONO-LUBE N'TUNE, INC. shall comply with the Arizona
5 Consumer Fraud Act, A.R.S. § 44-1521, *et. seq.*, as it is currently written, or as it is amended in
6 the future.

7 14. The injunctive relief ordered herein applies to Defendant ECONO-LUBE
8 N'TUNE, INC., its employees, agents, successors, members, officers and directors, assigns and
9 their successors, or any other person or business acting in concert with them, at their direction or
10 on their behalf.

11 15. Defendant ECONO LUBE N'TUNE, INC. will not further employ SCOTT
12 MICHAEL BRAGG or EDUARDO A. GASTELUM at a Meineke or Econo Lube N'Tune
13 location.

14 16. Defendant ECONO LUBE N'TUNE, INC. and its officers, agents, servants,
15 employees and attorneys and all persons in active concert or participation with them, directly
16 or indirectly, are enjoined from:

17 a. Willfully departing from or disregarding accepted trade standards for
18 goods and workmanlike repair;

19 b. Representing that a part, replacement, or repair service is needed when it
20 is not; and

21 c. Engaging in the repair or servicing of motor vehicles unless Defendants
22 maintain a program that is reasonably calculated to prevent misrepresentations and
23 unfair or deceptive practices in connection with the repair or servicing of a vehicle by
24 Defendants, their agents or employees. As part of such program, Defendants, at a
25 minimum, shall:

26 i. instruct their Agents not to engage in, and prohibit their Agents
from engaging in, the deceptive practices described in this Complaint; and

1 ii. provide all senior management employees, officers, directors,
2 Regional Managers, Center Managers and those who write or prepare repair
3 orders within Arizona with a copy of the injunctive relief obtained in this
4 case.

5 **V. PAYMENT**

6 17. Defendant ECONO LUBE N'TUNE, INC. shall pay to the Arizona Attorney
7 General the amount of \$30,000.00 in civil penalties due at the time of entry of this Judgment,
8 with interest thereon at ten percent (10%) per annum until paid, to be deposited into the
9 Consumer Fraud Revolving Fund pursuant to A.R.S. § 44-1531.01 and used for the purposes
10 set forth therein.

11 18. Defendants ECONO LUBE N'TUNE, INC. shall pay to the Arizona Attorney
12 General the amount of \$10,494.63 in attorneys' fees and costs due at the time of entry of this
13 Judgment, with interest thereon at ten percent (10%) per annum until paid, to be deposited into
14 the Consumer Fraud Revolving Fund pursuant to A.R.S. § 44-1531.01 and used for the
15 purposes set forth therein.

16 **VI. GENERAL TERMS**

17 19. The effective date of this Consent Judgment is the date it is signed by the Court.

18 20. The Parties have agreed to a voluntary compromise of disputed claims, and the
19 Parties have agreed on a basis for the settlement of these matters in dispute.

20 21. The State acknowledges by its execution hereof that this Consent Judgment
21 constitutes a complete settlement of its allegations against Defendant ECONO-LUBE
22 N'TUNE, INC. and it agrees that it shall not institute any additional civil action against
23 Defendant ECONO-LUBE N'TUNE, INC. that is based upon the conduct described in the
24 State's Complaint. Notwithstanding the foregoing, the State may institute an action or
25 proceeding to enforce the terms and provisions of this Consent Judgment or to take action
26 based on future conduct by the Defendant ECONO-LUBE N'TUNE, INC.

1 22. Defendant ECONO-LUBE N'TUNE, INC. shall not represent or imply that the
2 Attorney General, the State, or any agency thereof, has approved any of their actions or has
3 approved any of their present or future actions or practices, and Defendant ECONO-LUBE
4 N'TUNE, INC. is enjoined from representing anything to the contrary.

5 23. Econo-Lube shall not participate directly or indirectly in any activity to form a
6 separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance
7 or for any other purpose which would otherwise circumvent any part of this Assurance or the
8 spirit or purposes of this Assurance.

9 24. This Consent Judgment may be modified or vacated by order of this Court.
10 After providing at least thirty (30) days written notice and after making a good faith effort to
11 obtain concurrence of the other party for the requested order to modify or vacate, which
12 concurrence shall not be unreasonably withheld, the party seeking an order to modify or vacate
13 may petition the Court therefore. The Court will modify or vacate this Consent Judgment
14 upon a showing of good cause.

15 25. Before initiating any proceeding to enforce this Consent Judgment, the Attorney
16 General shall provide at least thirty (30) days written notice to Defendant of its intent to
17 initiate such proceedings, and shall give Defendant a reasonable opportunity to cure any
18 alleged violation. Whenever possible, the parties shall seek to resolve an alleged violation of
19 this consent Judgment by discussion. The Attorney General shall give good faith
20 consideration as to whether Defendant has taken corrective action designed to cause the
21 claimed violation to be cured and to prevent future occurrences.

22 26. This Court retains jurisdiction of this matter for the purpose of entertaining an
23 application by the State for the enforcement of this Consent Judgment.

24 27. This Consent Judgment is the result of a compromise and settlement agreement
25 between the Defendant ECONO-LUBE N'TUNE, INC. and Plaintiff. Only the parties to this
26 Consent Judgment may seek enforcement of this Consent Judgment. Nothing herein is
intended to create a private right of action by other parties.

1 28. This Consent Judgment shall not limit the rights of any private party to pursue
2 any remedies allowed by law.

3 29. Nothing herein prohibits the State from taking actions necessary to protect public
4 health and safety as provided by applicable law.

5 30. Any notices required to be sent to the State or to Defendant ECONO-LUBE
6 N'TUNE, INC., by this Assurance shall be sent by United States, certified mail, return receipt
7 requested, or other nationally recognized courier service that provides for tracking services and
8 identification of the person signing for the document. The documents shall be sent to the
9 following addresses:

10 **For the Arizona Attorney General:**
11 Office of the Attorney General
12 Consumer Protection and Advocacy Section
13 1275 West Washington Street
14 Phoenix, Arizona 85007
15 Phone: (602) 542-3702

16 **For Econo-Lube:**
17 c/o Snell & Wilmer
18 Attention: Dan Goldfine
19 One Arizona Center
20 Phoenix, AZ 85004
21 Phone: (602) 382-6282

22 31. If any portion of this Consent Judgment is held invalid by operation of law, the
23 remaining terms thereof shall not be affected and shall remain in full force and effect.

24 32. Pursuant to Rule 54(b) of the Arizona Rules of Civil procedure, the Court has
25 determined that there is no just reason for delay and hereby directs that this Judgment against
26 Defendants be entered forthwith.

DATED this _____th day of _____, 2011.

Judge of the Superior Court

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3 **CONSENT TO JUDGMENT**
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5 1. Defendant states that no promise of any kind or nature whatsoever was made to it to
6 induce it to enter into this Consent Judgment and that it has entered into the Consent Judgment
7 voluntarily and not as the result of fraud, undue influence, duress, or any other known cause to
8 set aside this Consent Judgment.

9 2. Defendant has fully read and understood this Consent Judgment, understands the legal
10 consequences involved in signing it, assert that this is the entire agreement of the parties, and
11 that there are no other representations or agreements not stated in writing herein and no force,
12 threats, or coercion of any kind have been used to obtain its approval.

13 3. Defendant acknowledges that the State of Arizona's acceptance of this Consent
14 Judgment is solely for the purpose of settling this litigation and, except as expressly provided
15 therein, does not preclude the Attorney General, or any other agency or officer of this State, or
16 subdivision thereof, from instituting other civil or criminal proceedings as may be appropriate
17 now or in the future.

18 4. The corporate Defendant represents and warrants that the person signing below on its
19 behalf is duly appointed and authorized to do so.

20 ECONO-LUBE N'TUNE INC.
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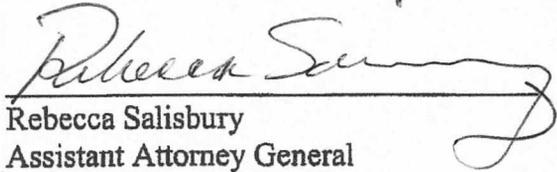
23 By: TED P. Pearce
24 v. P. + General Counsel
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Dated: Oct. 13, 2011

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APPROVED AS TO FORM AND CONTENT

THOMAS C. HORNE, Attorney General



Rebecca Salisbury
Assistant Attorney General
State of Arizona



Dan W. Goldfine
Snell & Wilmer LLP
Attorney for Econo-Lube N'Tune, Inc.

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