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8
 9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
 10 **IN AND FOR THE COUNTY OF MARICOPA**

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

13 Plaintiff,

14 v.

15 LAWLESS DENIM & CO. LLC, an Arizona
 limited liability company; LD & CO. LLC, an
 16 Arizona limited liability company; and
 17 JAMES ROMAN ACEVEDO, a single man,
 in his individual capacity as managing
 18 member of the limited liability companies;

19 Defendants.

Case No: CV2016-007888

STIPULATED CONSENT JUDGMENT

Assigned to: The Honorable Kerstin LeMaire

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 21 Plaintiff State of Arizona, *ex rel.* Mark Brnovich, Attorney General, filed a Civil
 22 Complaint in this action on June 1, 2016 (“the Complaint”) alleging violations of the Arizona
 23 Consumer Fraud Act, Ariz. Rev. Stat. (“A.R.S.”) §§ 44-1521 to 44-1534 (“the Consumer Fraud
 24 Act”), against Defendants Lawless Denim & Co. LLC, LD & CO. LLC, and James Roman
 25 Acevedo (collectively “Defendants”). Having waived their right to service and to a trial in this
 26

1 matter, Defendants admit that this Court has jurisdiction over the parties and subject matter to
2 enter this Consent Judgment (“Judgment”). Defendants consent and stipulate to entry of the
3 Judgment, including the findings of fact and conclusions of law, to compromise and settle the
4 claims asserted in the Complaint against them. Accordingly, this Court enters the Judgment
5 against the Defendants.

6 **PARTIES AND JURISDICTION**

7 1. Plaintiff is the State of Arizona, *ex rel.* Mark Brnovich, the Attorney General
8 (“the State”).

9 2. Defendant Lawless Denim & Co. LLC (“Lawless Denim”) is an Arizona limited
10 liability company doing business in Arizona since May 2013.

11 3. Defendant LD & Co. LLC (“LD & Co.”) is an Arizona limited liability company
12 doing business in Arizona since August 2014.

13 4. Defendant James Roman Acevedo is the managing member of Lawless Denim and
14 LD & Co. As such, Defendant Acevedo managed, directed, controlled, and acted on behalf of
15 Defendants Lawless Denim and LD & Co. At all times relevant to the Judgment, Defendant
16 Acevedo resided in Maricopa County, Arizona.

17 5. This Court has jurisdiction over the Complaint and the parties to enter the
18 Judgment and any future orders as necessary to enforce the Judgment or the Arizona Consumer
19 Fraud Act.

20 6. Venue is proper in Maricopa County, Arizona.

21 **FINDINGS OF FACT**

22 7. Defendant Acevedo formed Defendants Lawless Denim and LD & Co. to
23 manufacture and sell custom denim and leather merchandise, including garments and
24 accessories such as belts and wallets.

25 8. Defendants advertised products and services on the internet, including company
26 websites, social media websites, and crowdsourced fundraising websites such as Kickstarter.

1 9. For a period of time between 2013 and 2014, Defendant Lawless operated a retail
2 store in the downtown Phoenix Cityscape development. Consumers were fitted for garments
3 and ordered and purchased merchandise at the retail store.

4 10. After the retail store closed, Defendants rebranded as LD & Co. and prepared to
5 continue business through a website where consumers could order merchandise and submit
6 orders for custom garments accompanied by personal measurements consumers took
7 themselves.

8 11. Defendant LD & Co. launched its website on November 1, 2014. Defendants
9 accepted and received prepayment for over 3,500 respective consumer orders within thirty (30)
10 days of launching.

11 12. Defendants ceased taking orders after June 2015.

12 13. From at least May 2014 through June 2015, Defendants accepted thousands of
13 orders from consumers for denim and leather merchandise. During this time, Defendants
14 likewise accepted over three hundred thousand dollars (\$300,000) of credit card prepayments for
15 ordered merchandise (“Prepayments”).

16 14. At various times, Defendants represented to consumers, through their websites,
17 advertisements, or direct communications with consumers, that orders would be fulfilled
18 between four and eight weeks of an order’s placement.

19 15. Although many orders were fulfilled, Defendants did not and could not provide
20 ordered merchandise for hundreds of consumer orders.

21 16. Defendants repeatedly requested consumers’ patience as Defendants worked to
22 fulfill orders. Many consumers accepted the delay in light of Defendants’ requests.

23 17. Many consumers waited between six and twelve months before attempting to
24 cancel their order or request a refund.

25 18. Defendants promised consumers that refunds or merchandise exchanges would be
26 available for unfulfilled orders or inadequately fulfilled orders. Yet when customers requested a

1 refund, Defendants sole method of issuing a refund required consumers to dispute charges with
2 the consumers' credit card companies.

3 19. Defendants' merchant account that processed Prepayments required that a
4 contested charge occur 120 days after the order was placed. Defendants knew that contesting a
5 charge more than 120 days after the order was placed could result in a consumer being unable to
6 obtain a refund.

7 20. Many consumers were unsuccessful in contesting credit card charges because
8 more than 120 days had passed between placing the order and contesting the charge.

9 21. Many consumers, despite communicating a desire to be refunded or to exchange
10 merchandise, did not receive a refund or the opportunity to exchange merchandise.

11 22. Defendants promised that consumers who received merchandise that did not
12 conform to what the consumer ordered could exchange such merchandise for merchandise that
13 conformed to what the consumer originally ordered.

14 23. Some consumers, despite communicating a desire to exchange merchandise on
15 this basis, never received merchandise that conformed to the original order.

16 24. Defendants lost business records that allowed them to track what specific
17 consumers ordered, how much was paid, whether merchandise was produced and delivered, or
18 whether the consumer received a refund.

19 25. Defendants have failed to recover this information and cannot provide refunds to
20 consumers without assistance.

21 26. Although some consumers received a Prepayment refund, many consumers'
22 refund demands and complaints remain unfulfilled and unresolved. As of October 2015,
23 approximately nine hundred (900) consumer orders remained unfulfilled.

24 27. Several hundred orders remain unfulfilled as of the entry of this Consent
25 Judgment.

26

1 **CONCLUSIONS OF LAW**

2 28. Defendants' acts and practices described in the paragraphs set forth above
3 resulted in violations of the Arizona Consumer Fraud Act, A.R.S. §§ 44-1521, *et seq.*

4 29. Defendants violated the Arizona Consumer Fraud Act by:

- 5 a. Accepting prepayment for merchandise that was never delivered;
6 b. Promising refunds to consumers but never providing refunds;
7 c. Representing that orders would be fulfilled within a certain time, when
8 orders could not be fulfilled within that time; and
9 d. Representing that merchandise could be exchanged and that inadequately
10 fulfilled orders would be corrected but never adequately exchanging or
11 correcting merchandise accordingly.

12 30. The acts and practices listed in ¶ 29 constitute acts, use or employment by
13 Defendants of deception, deceptive acts or practices, fraud, false pretense, false promise,
14 misrepresentation, or concealment, suppression or omission of material facts with intent that
15 others rely on such concealment, suppression, or omission, in connection with the sale or
16 advertisement of merchandise.

17 31. In all actions set forth above, Defendants acted willfully, as defined by A.R.S. §
18 44-1531(B), because Defendants knew or should have known that the acts and practices noted
19 above violated the Arizona Consumer Fraud Act. Under the Arizona Consumer Fraud Act,
20 such willful violations entitle the State to injunctive relief; an award of restitution;
21 disgorgement of profits, gains, gross receipts, or other benefits; civil penalties; attorneys' fees
22 and costs; investigative expenses; and any other relief necessary to remedy the consequences
23 of Defendants' unlawful acts and practices.

24 **ORDER**

25 32. Defendants and their members, officers, agents, servants, and employees, if any,
26 and those persons in active concert or participation with them, in connection with the

1 advertisement or sale of any merchandise, are permanently enjoined from engaging in any and
2 all deceptive or unfair acts or practices, fraud, false pretense, false promises,
3 misrepresentations, or concealment, suppression or omission of material fact in violation of
4 the Arizona Consumer Fraud Act, A.R.S. § 44-1522, *et seq.*, as it is currently written, or as it is
5 amended in the future.

6 33. As a result of Defendants' unlawful acts and practices, Defendants are jointly and
7 severally liable to pay the State fifty thousand dollars (\$50,000) in restitution; one hundred and
8 eighty-five thousand dollars (\$185,000) in civil penalties; and fifteen thousand dollars (\$15,000)
9 in attorneys' fees and investigative costs, for a total Judgment award to the State in the amount
10 of two hundred and fifty thousand dollars (\$250,000). Interest shall accrue on the Judgment
11 award at the rate of five percent (5%) per annum from the date the Court enters the Judgment.

12 34. The State agrees to suspend the Judgment imposed by ¶ 33 subject to the
13 provisions listed below. The State's agreement to suspend the terms of ¶ 33 is expressly
14 premised on the truthfulness, accuracy, and completeness of the financial statements and related
15 documents submitted by Defendants to the State—specifically the Statement of Corporate
16 Financial Condition dated March 17, 2016 and the Statement of Personal Financial Condition
17 with accompanying documents dated April 25, 2016.

- 18 a. Defendants must pay as consumer restitution ten thousand dollars (\$10,000)
19 to the State of Arizona for consumers who have not received (1) a
20 chargeback, purchased merchandise, or a requested refund for purchased
21 merchandise; and (2) filed a complaint against Defendants with the Arizona
22 Attorney General or the Better Business Bureau between May 2014 and
23 within ninety days (90) of the Judgment's entry. The Attorney General will
24 deposit restitution payments into an interest bearing account within the
25 Consumer Restitution Subaccount of the Consumer Remediation Revolving
26 Fund, pursuant to A.R.S. § 44-1531.02, and distribute funds to eligible

1 consumers. If any portion of the restitution cannot be distributed to eligible
2 consumers, or exceeds the amount of restitution required by eligible
3 consumers, such portion shall be deposited into the Consumer Protection –
4 Consumer Fraud Revolving Fund and used for the purposes set forth in
5 A.R.S. § 44-1531.01.

6 b. If the Attorney General receives additional complaints after the Judgment’s
7 entry that cannot be satisfied in full by the ten thousand dollars (\$10,000) in
8 restitution paid by Defendants, the Attorney General’s Office shall verify
9 that the consumer complainants purchased merchandise from Defendants
10 and have not received ordered merchandise or a refund. After the ninety
11 (90) day period referenced in ¶ 34(a) ends, the Attorney General will notify
12 Defendants of how much additional restitution must be paid to provide full
13 restitution for consumer complaints. Defendants must provide additional
14 restitution, above and beyond that specified in ¶ 34(a), of up to ten
15 thousand dollars (\$10,000) in accordance with the payment structure noted
16 below. Any additional restitution paid under this paragraph will be
17 deposited in an interest bearing account within the Consumer Restitution
18 Subaccount of the Consumer Remediation Revolving Fund, pursuant to
19 A.R.S. § 44-1531.02, and distributed to eligible consumers. If the
20 restitution amount paid by Defendants is not sufficient to fully restore
21 eligible consumers, restitution shall be distributed to eligible consumers on
22 a pro rata basis.

23 c. Defendants must pay two thousand dollars (\$2,000) to the State of Arizona
24 for attorneys’ fees and investigative costs. Said payment shall be deposited
25 by the Attorney General’s Office into the Consumer Protection – Consumer
26 Fraud Revolving Fund in accordance with A.R.S. § 44-1531.01 and used

1 for the purposes set forth in the statute.

2 d. Within sixty (60) days of the Judgment's entry, Defendants must make a
3 payment of four thousand dollars (\$4,000) and thereafter make monthly
4 payments of one thousand dollars (\$1,000), due on the first day of the each
5 month until the balance of restitution and attorneys' fees established in ¶
6 34(a)-(c) is paid. Payments must be made payable to the Office of the
7 Arizona Attorney General. The State will use the initial monies paid by
8 Defendants to pay restitution claims until that balance is satisfied or
9 distributed as provided in ¶ 34(b), and subsequent payments then shall be
10 applied to attorneys' fees and investigative costs.

11 35. The suspension of the Judgment terms in ¶ 33 will be lifted as to Defendants if,
12 upon motion by the State, the Court finds that Defendants failed to disclose any material asset,
13 misstated the value of any asset, or made any other material misstatement or omission in the
14 financial representations noted in ¶ 34.

15 36. Failure to make a timely payment according to the conditions set forth in ¶ 34(d)
16 above constitutes a default of Defendants' payment obligation. Such a default will cause the
17 suspension of the Judgment terms imposed by ¶ 33 to be lifted, and the Judgment terms of ¶ 33
18 shall be immediately due, including interest and costs of collection, less any amount previously
19 paid, pursuant to this Judgment.

20 37. Defendants must not participate, directly or indirectly, in any activity, or form a
21 separate corporation or entity for the purpose of engaging in acts or practices in whole or in part
22 within the State of Arizona that is prohibited by this Judgment or for any other purpose that
23 would otherwise circumvent any part of this Judgment. The suspension of the Judgment terms
24 in ¶ 33 will be lifted as to Defendants if, upon motion by the State, the Court finds that
25 Defendants have violated the terms of this paragraph.

26 38. If the suspended terms listed in ¶ 33 are lifted for any reason, any restitution paid

1 will be deposited into an interest bearing account within the Consumer Restitution Subaccount
2 of the Consumer Remediation Revolving Fund, pursuant to A.R.S. § 44-1531.02, and distributed
3 to eligible consumers. Eligible consumers will be the same as those described in ¶34(a). If any
4 portion of the restitution cannot be distributed to eligible consumers, or exceeds the amount of
5 restitution required by eligible consumers, such portion shall be deposited into the Consumer
6 Protection – Consumer Fraud Revolving Fund and used for the purposes set forth in A.R.S. §
7 44-1531.01.

8 39. If the suspended terms listed in ¶ 33 are lifted for any reason, payment for civil
9 penalties and attorneys’ fees shall be deposited by the Attorney General’s Office into the
10 Consumer Protection – Consumer Fraud Revolving Fund in accordance with A.R.S. § 44-
11 1531.01 and used for the purposes set forth in the statute.

12 40. The Judgment is effective on the date it is entered by the Court.

13 41. The Judgment applies to Defendants and any successor entity or entities, whether
14 by acquisition, merger or otherwise; those entities’ current or future officers, directors,
15 managerial or supervisory employees; and to any other employees or agents having
16 responsibilities with respect to the subject matter of the Judgment.

17 42. Defendants must not represent or imply that the Attorney General, the State, or
18 any agency has approved any of their actions or has approved any of their present or future
19 actions or practices. Defendants are enjoined from representing anything to the contrary.

20 43. Nothing in this Judgment affects, restricts, limits, alters, waives, or creates any
21 private right of action that a consumer may hold against Defendants.

22 44. Notwithstanding any other provision, the State may institute an action or
23 proceeding to enforce the Judgment or to take action based on Defendants’ future conduct.

24 45. This Court retains jurisdiction over this matter for the purpose of considering, if
25 necessary, an application by the State to enforce the Judgment.

26 46. Defendants agree that the facts set forth in the Judgment’s Findings of Fact are

1 sufficient for a court to take as true without further proof in any bankruptcy case or subsequent
2 civil litigation pursued by the State to enforce its rights to any payment or money judgment
3 owed pursuant to this Order, including but not limited to a nondischargeability complaint in any
4 bankruptcy case.

5 47. If any portion of the Judgment is held invalid by operation of law, the remaining
6 terms shall not be affected and shall remain in full force and effect.

7 48. The Court has determined that no further matters remain pending, and that the
8 Judgment is entered pursuant to Arizona Rule of Civil Procedure 54(c).

9
10 DATED this _____ day of _____, 2016.

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13 _____
14 Judge of the Superior Court
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1 CONSENT TO JUDGMENT

2 1. Defendants state that they received no promise of any kind or nature whatsoever
3 to induce them to enter into this Consent Judgment, and they voluntarily enter into this
4 Consent Judgment.

5 2. Defendants have fully read and understand this Consent Judgment, understand
6 the legal consequences of signing it, affirm that this is the entire agreement of the parties,
7 affirm that other representations or agreements do not exist outside the writing of this Consent
8 Judgment, and affirm that no force, threats, or coercion of any kind have been used to obtain
9 their agreement and signature.

10 3. Defendants understand that accepting this Consent Judgment is solely for the
11 purpose of settling this litigation and does not preclude the State, or any other agency or
12 officer, or subdivision of this State from instituting other civil or criminal proceedings as may
13 be appropriate for any acts unrelated to this litigation or committed after the entry of this
14 Consent Judgment.

15 DATED this 23 day of may, 2016.

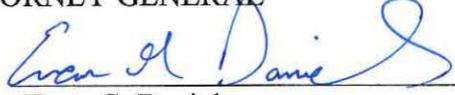
16
17 By: 
18 Lawless Deplin & Co. LLC
19 James Roman Acevedo, Manager

20 By: 
21 LD & CO. LLC
22 James Roman Acevedo, Manager

23 By: 
24 Defendant James Roman Acevedo

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

26 MARK BRNOVICH
ATTORNEY GENERAL

By: 
Evan G. Daniels
Assistant Attorney General

eSignature Page 1 of 1

Filing ID: 7472179 Case Number: CV2016-007888
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Granted as Submitted



/S/ Kerstin LeMaire Date: 6/6/2016
Judicial Officer of Superior Court

ENDORSEMENT PAGE

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SIGNATURE DATE: 6/6/2016

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