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

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

12 Plaintiff,

13 vs.

14 SUN VALLEY TOWING, LLC;
15 KUNSELMAN INDUSTRIES, LLC;
TIMOTHY WAYNE KUNSELMAN and
16 ROSEMARY R. KUNSELMAN, husband and
wife,

17 Defendants.
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Case No. CV2012-007203

**CONSENT JUDGMENT AS TO
DEFENDANTS TIMOTHY WAYNE
KUNSELMAN AND ROSEMARY R.
KUNSELMAN**

(Assigned to the Honorable
George H. Foster, Jr.)

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20 The State of Arizona, having filed a complaint alleging violations of the Arizona
21 Consumer Fraud Act, A.R.S. § 44-1521, *et seq.*; Defendants Timothy Wayne Kunselman and
22 Rosemary R. Kunselman (collectively "Kunselman Defendants") having been served with
23 the Complaint and Summons; having been fully advised of the right to a trial in this matter
24 and, having waived the same; admit that this Court has jurisdiction over the subject matter
25 and the parties for purposes of entry of this Consent Judgment and acknowledge that this
26 Court retains jurisdiction for the purpose of enforcing this Consent Judgment.

1 **I. PARTIES**

2 1. Plaintiff is the State of Arizona, *ex rel.* Thomas C. Home, the Attorney General
3 of Arizona, who is authorized to bring this action under the Consumer Fraud Act, A.R.S. §
4 44-1521, *et seq.*

5 2. Defendant Timothy Wayne Kunselman was a manager of Defendant Sun
6 Valley Towing, LLC and a co-owner of the registered trade name "Sun Valley Towing" at
7 all times relevant to the Complaint and this Consent Judgment.

8 3. Defendant Rosemary R. Kunselman was a member of Defendant Kunselman
9 Industries, LLC and a co-owner of the registered trade name "Sun Valley Towing" at all
10 times relevant to the Complaint and this Consent Judgment.

11 4. Defendant Rosemary R. Kunselman is and was, at all relevant times, the wife
12 of Defendant Timothy Wayne Kunselman. Defendants Timothy Wayne Kunselman and
13 Rosemary R. Kunselman acted on behalf of their marital community at all times relevant to
14 the Complaint and this Consent Judgment.

15 **II. FINDINGS OF FACT**

16 5. At all times relevant to the Complaint and this Consent Judgment, Kunselman
17 Defendants provided, through Sun Valley Towing, LLC and Kunselman Industries, LLC,
18 automotive repair, towing, sales, service and related goods and services within Arizona.

19 6. On January 12, 2012 Kunselman Defendants, through Sun Valley Towing,
20 LLC and Kunselman Industries, LLC, and Defendant Timothy W. Kunselman, individually,
21 committed a deceptive act by charging \$340.00 to replace a fuel pump, which repair was
22 unnecessary and not performed.

23 7. Kunselman Defendants, through Sun Valley Towing, LLC and Kunselman
24 Industries, LLC, and Defendant Timothy W. Kunselman, individually, in the course of
25 operating an automotive repair, sales and towing business, performed shoddy automotive
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1 repair work, did not repair vehicles as promised or by the promised readiness date, evaded
2 customers seeking updates on their vehicles' repairs, did not make promised refunds, failed
3 to honor warranties, received and kept payment for work not performed, kept customers
4 vehicles for weeks and months without completing promised repairs and failed to pay as
5 promised for labor and materials provided by others.

6 **III. CONCLUSIONS OF LAW**

7 8. As alleged above, in the conduct of their business, Kunselman Defendants,
8 through Sun Valley Towing, LLC and Kunselman Industries, LLC, and Defendant Timothy
9 W. Kunselman, individually, used deception, deceptive acts or practices, fraud, false
10 pretense, false promise, misrepresentation or concealment, suppression or omission of
11 material facts with intent that others rely upon such concealment, suppression or omission,
12 in connection with the sale or advertisement of merchandise, in violation of the Arizona
13 Consumer Fraud Act, §§ 44-1521 *et seq.*

14 9. At all times relevant to the Complaint and Consent Judgment, Kunselman
15 Defendants, through Sun Valley Towing, LLC and Kunselman Industries, LLC, and
16 Defendant Timothy W. Kunselman, individually, acted willfully, in violation of A.R.S.
17 § 44-1531.

18 **IV. ORDER**

19 9. The "Effective Date" of this Consent Judgment means the date it is signed by
20 the Court.

21 10. Pursuant to A.R.S. § 44-1528(A), the Kunselman Defendants are permanently
22 enjoined from engaging in, directly or indirectly, the trade or occupation of towing, vehicle
23 repair, vehicle sales and vehicle service in the State of Arizona.

24 11. Pursuant to A.R.S. § 44-1528(A), the Kunselman Defendants are permanently
25 enjoined from engaging in a trade or occupation requiring registration as a tow truck
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1 company with the Arizona Department of Public Safety or a tow truck permit issued by the
2 Arizona Department of Public Safety as set forth in A.R.S. § 28-1108, as it is currently
3 written or as amended in the future.

4 12. Pursuant to A.R.S. § 44-1528(A), the Kunselman Defendants shall comply
5 with the Arizona Consumer Fraud Act, A.R.S. § 44-1521, *et seq.* as it is currently written, or
6 as amended in the future.

7 13. Pursuant to A.R.S. § 44-1528(A)(2), the State is awarded judgment against the
8 Kunselman Defendants, in the amount of **\$67,580.59**, with interest thereon at 4.25 percent
9 (or the statutory rate if different) per annum until paid, as restitution. This restitution
10 judgment shall be joint and several with the Court's Judgment of October 12, 2012 against
11 Defendants Sun Valley Towing, LLC and Kunselman Industries, LLC, for restitution in the
12 same amount.

13 14. Pursuant to A.R.S. § 44-1531, the State is awarded judgment against the
14 Kunselman Defendants, in the amount of **\$610,000.00**, with interest thereon at 4.25 percent
15 (or the statutory rate, if different) per annum until paid, as civil penalties. This civil penalties
16 judgment shall be joint and several with the Court's Judgment of October 12, 2012 against
17 Defendants Sun Valley Towing, LLC and Kunselman Industries, LLC, for civil penalties in
18 the same amount.

19 15. Pursuant to A.R.S. § 44-1534, the State is awarded judgment against the
20 Kunselman Defendants in the amount of **\$9,001.50**, with interest thereon at 4.25 percent (or
21 the statutory rate, if different) per annum until paid, as attorney's fees and costs. This costs
22 and attorney's fees judgment shall be joint and several with the Court's Judgment of October
23 12, 2012 against Defendants Sun Valley Towing, LLC and Kunselman Industries, LLC, for
24 costs and attorney's fees in the same amount.

25 16. The State shall allocate payments received pursuant to this Judgment and the
26 Court's Judgment of October 12, 2012 against Defendants Sun Valley Towing, LLC and

1 Kunselman Industries, LLC, first to restitution, then to attorney's fees and costs, and then to
2 civil penalties until the total judgment amount of \$686,582.09 (plus any interest thereon) is
3 reached.

4 17. Any amounts received for restitution that cannot be distributed within six
5 months of the receipt of payment shall revert to the Consumer Protection – Consumer Fraud
6 Revolving Fund, established pursuant to A.R.S. § 44-1531.01.

7 18. Jurisdiction is retained by this Court for the purpose of enabling any of the
8 parties to this proceeding to apply to this Court for any other such further orders and
9 directions as may be necessary and appropriate for the enforcement of, or compliance with,
10 this Judgment, and to grant such other relief as the Court may deem necessary and just.

11 19. The Kunselman Defendants shall bear Plaintiff's reasonable costs, including
12 reasonable attorneys' fees, in any successful action to enforce any provisions of this Consent
13 Judgment.

14 **IV. GENERAL TERMS**

15 20. Defendants shall not represent or imply that the Attorney General, the State of
16 Arizona, or any agency thereof has approved any of their actions in Arizona or has approved
17 any of their past, present or future business practices in Arizona.

18 21. Nothing in this Consent Judgment restricts any person or entity from pursuing
19 a private action or asserting any available right or remedy against Defendants.

20 22. This Court retains jurisdiction of this matter for the purposes of entertaining
21 an application by Plaintiff, State of Arizona, for the enforcement of this judgment.

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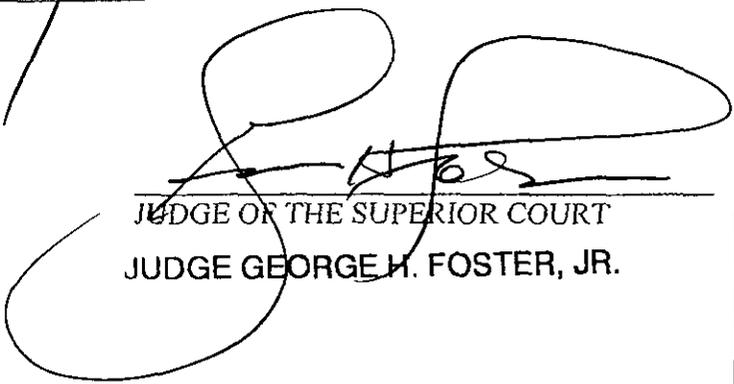
1 vacate may petition this Court therefore. The Court will modify or vacate this Consent
2 Judgment upon a showing of good cause.

3 24. This Consent Judgment is entered as a result of a compromise and settlement
4 agreement between the parties. Only the parties to this action may seek enforcement of this
5 Consent Judgment. Nothing herein is intended to create a private right of action by other
6 persons.

7 25. The State acknowledges by its execution hereof that this Consent Judgment
8 constitutes a complete settlement of its allegations against Defendants and it agrees it shall
9 not institute any additional civil action against any Defendants based on their alleged
10 violations of the Arizona Consumer Fraud Act, as described in the State's Complaint.

11 26. Notwithstanding the foregoing, the State may institute an action or
12 proceeding to enforce the terms and provisions of this Consent Judgment or to take action
13 based on future conduct by Defendants.

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15 DATED this 29th day of May, 2013.

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20 JUDGE OF THE SUPERIOR COURT
21 JUDGE GEORGE H. FOSTER, JR.
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CONSENT TO JUDGMENT

1. Defendants state that no promise of any kind or nature whatsoever was made to them to induce them to enter into this Consent Judgment and that they have entered into the Consent Judgment voluntarily and not as the result of fraud, undue influence, duress, or any other known cause to set aside this Consent Judgment.

2. Defendants have fully read and understood this Consent Judgment, understand the legal consequences involved in signing it, assert that this is the entire agreement of the parties, and that there are no other representations or agreements not stated in writing herein and no force, threats, or coercion of any kind have been used to obtain their signatures.

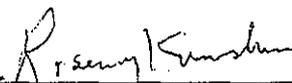
3. Defendants acknowledge that the State of Arizona's acceptance of this Consent Judgment is solely for the purpose of settling this litigation and, except as expressly provided therein, does not preclude the Attorney General, or any other agency or officer of this State, or subdivision thereof, from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

INDIVIDUAL DEFENDANTS



Timothy W. Kunselman

Dated: 5-3-2013



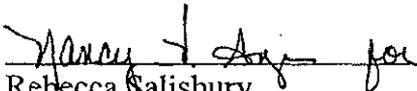
Rosemary R. Kunselman

Dated: 5-3-2013

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APPROVED AS TO FORM AND CONTENT

THOMAS C. HORNE, Attorney General


Rebecca Salisbury
Assistant Attorney General
State of Arizona

#3220746