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9 ARIZONA SUPERIOR COURT
10 COUNTY OF MARICOPA

11 **State of Arizona, ex rel. Terry**
12 **Goddard, Attorney General,**

13 Plaintiff,

14 vs.

15 **Tim's Buick, Pontiac, and GMC**
16 **Truck Inc., and Tim's Auto**
17 **Group, Inc.**

18 Defendants.

Case No. CV2009-013045

CONSENT JUDGMENT

(Assigned to the Honorable A. Craig Blakey II)

19 The State of Arizona, having filed a complaint alleging violations of the Arizona
20 Consumer Fraud Act, A.R.S. § 44-1521 *et seq.* and the Defendants, Tim's Buick, Pontiac, and
21 GMC Truck Inc., and Tim's Auto Group, Inc., having waived formal service of the Complaint
22 and Summons; having been fully advised of their right to a trial in this matter and, after
23 receiving the advice of counsel, having waived the same; admit that this Court has jurisdiction
24 over the subject matter and the parties for the purpose of entry of this Consent Judgment.
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1 **I. Parties**

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

5 2. Defendants are Tim's Buick, Pontiac, and GMC Truck Inc., and Tim's Auto
6 Group, Inc., Arizona corporations, hereinafter referred to as "Tim's Auto Group," located in
7 Prescott, Arizona. Defendants do or have done business as Tim's Buick, Pontiac, and GMC,
8 Tim's Hyundai, Tim's Isuzu, Tim's Subaru, Tim's Factory Outlet, Tim's Used Cars, Tim's
9 Hyundai, Tim's Scion, and Tim's Toyota.

10 **II. Definitions**

11 For purposes of this Consent Judgment, the following definitions shall apply:

12 3. "Advertise," "Advertising" and "Advertisement" means the publication,
13 dissemination, solicitation, and circulation of information promoting products and services via
14 computer networks, television, radio or print, or through direct mailing, visual and audio
15 displays, or through any other means.

16 4. "Clear and conspicuous" (including the terms "clearly" and "conspicuously")
17 means that the statement, representation, or term being conveyed is in close proximity to some
18 other statement, representation or term it clarifies, modifies, explains or to which it otherwise
19 relates; is readily noticeable; is reasonably understandable by the person(s) to whom it is
20 directed; and is not contradictory to any terms it purports to clarify, modify or explain.

21 5. "Effective Date" of this Consent Judgment means the date it is signed by the
22 Court.

23 **III. Application**

24 6. This Order applies to the locations and businesses included in Tim's Auto Group
25 and to its current and future principals, officers and directors, assigns and successors, managerial
26 or supervisory employees, and to any other employees or agents having responsibilities with
respect to the subject matter of this Order, but not in any individual capacity.

1 **IV. Injunction**

2 7. Tim's Auto Group shall comply with the Arizona Consumer Fraud Act, A.R.S.
3 § 44-1521, *et. seq.*, as it is currently written, or as it is amended in the future.

4 8. Tim's Auto Group shall comply with the Better Business Bureau's Auto
5 Advertising Guidelines for Arizona and the Attorney Generals' Arizona Auto Advertising
6 Guidelines.

7 9. Tim's Auto Group shall engage in truthful and non-misleading advertising. All
8 disclosures and disclaimers, including footnotes, must be clear and conspicuous and in close
9 proximity to the claims to which they apply. In all vehicle advertisements, if the offer does not
10 apply to a majority of the used or new vehicles available for sale at the dealership, Tim's Auto
11 Group shall specifically identify the number of vehicles to which the offer does apply, and, if
12 four (4) or fewer vehicles, identify the vehicle by stock number. Providing an "example"
13 vehicle is insufficient.

14 10. Tim's Auto Group shall not advertise or offer for sale any used vehicle using the
15 MSRP as a comparative price or reference price or advertise an amount or percentage discount
16 for a used vehicle based on MSRP.

17 11. Tim's Auto Group's advertisements shall not create the false appearance that a
18 consumer is receiving a check or negotiable instrument. This includes the use of a rectangular
19 shaped section in an advertisement containing any of the following: a light green background, a
20 "memo" line, the words "to the order of," "authorized signature," or "official signature," an
21 amount expressed in both words and numbers, and numbers or bar codes that give the
22 appearance of the numbers or bar codes used to automate check processing.

23 12. Tim's Auto Group shall not use advertisements that contain footnotes that are 1) not
24 on the same page as the offer clarified, 2) in smaller than 10 point font, or 3) contain multiple,
25 non-sequential reference symbols, such as "#, †, ^, *, π, **, ¥, +, ◇."
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1 13. The footnote reference number or symbol shall be the greater of a 14 point font or a
2 font size at least one third the font size of the claim that is footnoted. For example, this font size
3 requirement would apply to the asterisk in the statement "No Payments for 45 days*."

4 14. Tim's Auto Group shall not use advertisements that contain footnotes that confuse,
5 contradict, materially modify or unreasonably limit the material terms or availability of their
6 advertised statements.

7 15. Tim's Auto Group shall not use the following abbreviations or terms not generally
8 understood by the public: "beacon score," "WAC," "NADA LSB" and "Kelly LSB."

9 16. Tim's Auto Group may not imply that vehicles are specially obtained inventory for
10 an advertised sale, will be more heavily discounted or are of higher quality because they are
11 lease end turn-ins, corporate vehicles, previous daily rentals, prior bank assets, repossessed,
12 bank owned, bought at auction or fleet cars, unless Tim's Auto Group can document these
13 claims. The term "reprocessed" will not be used in any advertisement.

14 17. Tim's Auto Group shall not use terms in advertising that imply that the sale is an
15 event of urgent status, contains specially obtained inventory for the sale, or otherwise state that
16 Tim's Auto Group has a unique incentive to sell more cars or provide better prices than usual,
17 unless Tim's Auto Group can document these claims. Words such as "emergency" "public
18 notice" "official" or "liquidation" shall not be used.

19 18. Tim's Auto Group shall not use the name of the advertising companies, such as
20 "National Automotive Liquidators" or "Fleet Automotive Liquidators," in an advertisement for a
21 sales event, except to indicate that an advertising company is the source of the advertisement.

22 19. Tim's Auto Group shall not make offers of credit approval unless the material
23 conditions of the credit approval, such as minimum credit score or employment requirements,
24 are printed next to the offer and not in a footnote or paragraph at the bottom of the
25 advertisement.

26 20. Tim's Auto Group shall not state that "all credit applications will be accepted" or
words that imply that credit is available to all applicants.

1 21. Tim's Auto Group shall not state, directly or by implication, to consumers that they
2 have been specially selected for a discount, credit program, special deal or offer, unique access
3 to inventory or any other type of special discount or benefit not available to others unless
4 (a) they have been specially selected on the basis of specific criteria other than zip code or
5 geographic location (b) the criteria by which they have been selected is disclosed in the
6 advertisement (c) the deal is not available to the general public and (d) the specific terms and
7 conditions of the offer are fully, clearly and conspicuously disclosed and provided to consumers
8 in accordance with the disclosed terms.

9 22. Tim's Auto Group shall not use symbols, insignia or other designs that create the
10 false appearance an advertisement is from or endorsed by a governmental or public entity or
11 otherwise constitutes an "official" document, such as a certificate of title or certificate of
12 finance.

13 23. Tim's Auto Group's advertisements may not include an offer of a guaranteed
14 amount for a trade-in vehicle.

15 24. Tim's Auto Group shall not advertise that all vehicles must be sold unless all
16 vehicles will, in fact, be sold by the end of the sale, regardless of price.

17 25. Tim's Auto Group shall not advertise using the term "take over payments;" unless
18 the terms of the offer allow the purchaser to assume the prior owner's payment plan.

19 26. Tim's Auto Group shall not require the purchase of a vehicle to participate in any
20 game or contest of chance or skill offering a benefit or "prize" to the player.

21 27. If an advertised claim requires a 700 credit score or above to qualify, that condition
22 will be placed next to the offer and not in footnotes at the bottom of the advertisement. Tim's
23 Auto Group shall not use the term "beacon score" to mean credit score.

24 28. Tim's Auto Group shall adopt policies and procedures to implement the specific
25 provisions of this Consent Judgment and provide regular (at least annual) training to all relevant
26 staff.

1 **VI. General Terms**

2 34. The Parties have agreed to a voluntary compromise of disputed claims, and the
3 Parties have agreed on a basis for the settlement of these matters in dispute.

4 35. This Consent Judgment does not constitute an admission by Tim's Auto Group for
5 any purpose of any violation of any state law, rule or regulation nor does this Consent Judgment
6 constitute evidence of any liability of Tim's Auto Group. This Consent Judgment is made
7 without trial or adjudication of any issues of fact or law or finding of liability of any kind.

8 36. It has always been the policy of Tim's Auto Group to be honest and fair in its
9 business practices. Tim's Auto Group relied heavily on the expertise of third party marketing
10 groups to prepare most of the advertising at issue in this case. Tim's Auto Group now believes
11 that this reliance was misplaced and that but for this reliance, most or all of the disputes would
12 have been avoided. The Parties agree that, on a going forward basis, Tim's Auto Group is
13 responsible for compliance with its legal obligations whether it utilizes outside advertising
14 vendors or not.

15 37. Tim's Auto Group shall not represent or imply that the Attorney General, the State
16 of 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 38. The State acknowledges by its execution hereof that this Consent Judgment
19 constitutes a complete settlement of its allegations against Tim's Auto Group under the Arizona
20 Consumer Fraud Act. The State further agrees that it shall not institute any additional civil
21 action against Tim's Auto Group based upon Tim's Auto Group's advertising that the State
22 could have asserted or has asserted prior to the Effective Date of this Consent Judgment in its
23 own right, or in accordance with A.R.S. § 44-1528(A)(2), on behalf of any consumer.

24 39. Notwithstanding the foregoing, the State may institute an action or proceeding to
25 enforce the terms and provisions of this Consent Judgment or to take action based on future
26 conduct by Tim's Auto Group.

1 40. The Parties recognize that there may be future disagreements whether advertising
2 conduct not specifically identified and prohibited in this Agreement complies with the Arizona
3 Consumer Fraud Act. In the event of a dispute regarding the propriety of any such practices, if
4 Tim's Auto Group has disclosed the contents of the proposed advertisement to the Better
5 Business Bureau, and the Better Business Bureau, after review and prior to publication,
6 determined the advertisement was consistent with its standards, the Attorney General shall not
7 pursue the conduct as a violation of the Consent Judgment, unless the conduct recurs after
8 written notice is received by Tim's Auto Group.

9 41. Before initiating any proceeding to enforce this Consent Judgment the Attorney
10 General shall provide at least thirty (30) days written notice to Tim's Auto Group of its intent to
11 initiate such proceedings, and shall give Tim's Auto Group a reasonable opportunity to cure any
12 alleged violation.

13 42. In determining whether to enforce this Consent Judgment or to seek an order for
14 monetary penalties, civil contempt, or any other relief or sanction, the Attorney General shall
15 give good faith consideration to (1) the facts and circumstances which caused the alleged
16 violation to occur and (2) the extent to which Tim's Auto Group has taken corrective action
17 designed to cause the claimed violation to be cured and to prevent future occurrences.

18 43. If the Court finds that Tim's Auto Group has violated the terms of this Consent
19 Judgment, in addition to any other penalties and remedies provided by law, the full amount of
20 the \$175,000.00 civil penalty less any amount previously paid, shall become immediately due
21 and owing. Interest on any unpaid balance shall accrue at the statutory rate.

22 44. This Consent Judgment is entered as a result of a compromise and settlement
23 agreement between the parties. Only the parties to this action may seek enforcement of this
24 Consent Judgment. Nothing herein is intended to create or limit a private right of action by
25 other persons. There are no intended third-party beneficiaries of this Consent Judgment.

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1 **VII. Retention of Jurisdiction and Enforcement**

2 45. This Court retains jurisdiction of this matter for the purposes of entertaining an
3 application by Plaintiff, State of Arizona, for the enforcement of this judgment.

4 46. Defendant shall bear Plaintiff's reasonable costs, including reasonable attorneys'
5 fees, in any successful action to enforce any of the provisions of this Consent Decree.

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7 DATED this 21 day of May, 2009

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11 Judge of the Superior Court
12 A. CRAIG BLAKEY, II
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CONSENT TO JUDGMENT

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1. Tim's Auto Group states that no promise of any kind or nature not contained in this Consent Judgment was made to induce them to enter into this Consent Judgment and that they have entered into the Consent Judgment voluntarily.

2. Tim's Auto Group has fully read and understood this Consent Judgment, understands the legal consequences involved in signing it, asserts 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 its signature.

3. Tim's Auto Group acknowledges that the State of Arizona's acceptance of this Consent Judgment is solely for the purpose of settling this litigation and does not preclude the Attorney General or any other agency or officer of this State or subdivision thereof; from institution other civil or criminal proceedings as may be appropriate now or in the future, other than the limitations expressed in paragraph 36.

4. Tim's Auto Group represents and warrants that the person signing below on its behalf is duly appointed and authorized to do so.

Dated: 4-7-09

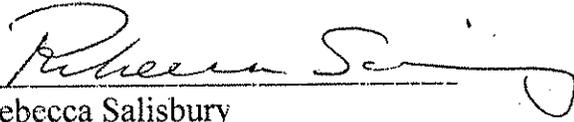
Tim Courx / Tim Courx
Tim's Buick, Pontiac, and GMC Truck Inc.,
and Tim's Auto Group, Inc.

By: Tim
Its: PRES

APPROVED AS TO FORM AND CONTENT

TERRY GODDARD, Attorney General

FARHANG & MEDCOFF, PLLC



Rebecca Salisbury
Assistant Attorney General
Attorney for State of Arizona



Lawrence Palles
Attorney for Tim's Pontiac, GMC
Truck and Toyota, Inc.
and Tim's Auto Group, Inc.

PHX CLU 2008-0541/Doc. 430693