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Filed  
Margaret Mary McVeigh, P.J.Ch.

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Filed  
McVeigh, P.J.Ch.

By: Erin M. Greene (#014512010)  
Deputy Attorney General  
Consumer Fraud Prosecution Section  
[REDACTED]

JOHN J. HOFFMAN, Acting Attorney General of the State of New Jersey, and STEVE C. LEE, Acting Director of the New Jersey Division of Consumer Affairs,

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION, PASSAIC COUNTY  
DOCKET NO.: PAS-C-67-14

Plaintiffs,

Civil Action

v.

BERGEN AUTO ENTERPRISES, L.L.C., d/b/a WAYNE MAZDA and d/b/a WAYNE AUTO MALL HYUNDAI; JANE and JOHN DOES 1-10, individually and as owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of BERGEN AUTO ENTERPRISES, L.L.C., d/b/a WAYNE MAZDA and d/b/a WAYNE AUTO MALL HYUNDAI; and XYZ CORPORATIONS 1-10,

**FINAL CONSENT JUDGMENT**

Defendants.

The Parties to this Action and Final Consent Judgment ("Parties") are plaintiffs John J. Hoffman, Acting Attorney General of the State of New Jersey ("Attorney General"), and Steve C. Lee, Acting Director of the New Jersey Division of Consumer Affairs ("Director"),

(collectively, “Plaintiffs”), and Bergen Auto Enterprises, L.L.C. d/b/a Wayne Mazda and d/b/a Wayne Auto Mall Hyundai (“Defendant”). As evidenced by their signatures below, the Parties do consent to the entry of this Final Consent Judgment (“Consent Judgment”) and its provisions without trial or adjudication of any issue of fact or law, and without an admission of any liability or wrongdoing of any kind. The Parties consent to the entry of this Consent Judgment to avoid the expenses and uncertainty associated with further investigation and/or litigation.

### **PRELIMINARY STATEMENT**

On July 30, 2014, Plaintiffs commenced this Action, alleging that Defendant violated the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. (“CFA”), and the Regulations Governing Motor Vehicle Advertising Practices, N.J.A.C. 13:45A-1.1. et seq. (“Motor Vehicle Advertising Regulations”), by, among other things: (1) failing to disclose the prior condition and/or prior use of Used Motor Vehicles; (2) failing to disclose that Used Motor Vehicles offered for Sale were previously damaged and were subjected to substantial repair and body work; and (3) misrepresenting that certain Motor Vehicles Advertised and/or offered for Sale were available for purchase when those Motor Vehicles had previously been sold or leased. Defendant has denied the allegations.

The Court has reviewed the terms of the Consent Judgment and based upon the Parties’ agreement and for good cause shown:

**IT IS HEREBY ORDERED, ADJUDGED AND AGREED AS FOLLOWS:**

#### **1. JURISDICTION**

1.1 The Parties admit jurisdiction of this Court over the subject matter and over the Parties for the purpose of entering into this Consent Judgment. The Court retains jurisdiction for the purpose of enabling the Parties to apply to this Court at any time for such further orders and

relief as may be necessary for the construction, modification, enforcement, execution or satisfaction of this Consent Judgment.

## 2. VENUE

2.1 Pursuant to N.J.S.A. 56:8-8, venue as to all matters between the Parties hereto relating to or arising out of this Consent Judgment shall lie exclusively in the Superior Court of New Jersey, Chancery Division, Passaic County.

## 3. EFFECTIVE DATE

3.1 This Consent Judgment shall be effective on the date that it is entered with the Court (“Effective Date”).

## 4. DEFINITIONS

As used in this Consent Judgment, the following words or terms shall have the following meanings, which meanings shall apply whenever the words and terms appear in the Consent Judgment:

4.1 “Action” refers to the action entitled John J. Hoffman, Acting Attorney General of the State of New Jersey, and Steve C. Lee, Acting Director of the New Jersey Division of Consumer Affairs v. Bergen Auto Enterprises, L.L.C., d/b/a Wayne Mazda and d/b/a Wayne Auto Mall Hyundai, Superior Court of New Jersey, Chancery Division, Passaic County, Docket No.: PAS-C-67-14, and all pleadings and proceedings related thereto, including the Complaint, filed July 30, 2014.

4.2 “Advertisement” shall be defined in accordance with N.J.S.A. 56:8-1(a), for purposes of the CFA and Includes the Websites. “Advertisement” shall be defined in accordance with N.J.A.C. 13:45A-26A.3, for purposes of the Motor Vehicle Advertising Regulations, and

Includes the Websites. These definitions apply to other forms of the word “Advertisement” Including, without limitation, “Advertise” and “Advertised.”

4.3 “Attorney General” shall refer to the Attorney General of the State of New Jersey and the Office of Attorney General of the State of New Jersey.

4.4 “Clearly and Conspicuously” shall mean a statement that, regardless of the medium in which it is made, is presented in such size, color, contrast, duration, location and audibility, compared to the other information with which it is presented, that it is readily apparent and understandable and in language and terms used in accordance with their common or ordinary usage and meaning. If such statement modifies, explains or clarifies other information with which it is presented, it must be presented in proximity to the information it modifies, explains or clarifies and in a manner that is readily apparent and understandable.

4.5 “Consumer” shall refer to any Person who is offered Merchandise, defined in accordance with N.J.S.A. 56:8-1(c), for Sale.

4.6 “Division” refers to the New Jersey Division of Consumer Affairs.

4.7 “Include” and “Including” shall be construed as broadly as possible and shall mean “without limitation.”

4.8 “Lease” shall be defined in accordance with N.J.A.C. 13:45A-26A-3.

4.9 “Motor Vehicle” shall be defined in accordance with N.J.A.C. 13:45A-26A-3.

4.10 “Person” shall be defined in accordance with N.J.S.A. 56:8-1(d).

4.11 “Sale” shall be defined in accordance with N.J.S.A. 56:8-1(e), for purposes of the CFA, and in accordance with N.J.A.C. 13:45A-26A.3, for purposes of the Motor Vehicle Advertising Regulations.

4.12 “Service” shall refer to Carfax or a similar Used Motor Vehicle history reporting service.

4.13 “State” shall refer to the State of New Jersey.

4.14 “Used Motor Vehicle” shall be defined in accordance with N.J.A.C. 13:45A-26F.2.

4.15 “Websites” shall mean the websites located at www.waynemazda.com and www.waynehundai.com, as well as any other websites maintained by or on behalf of Defendant, or which is used by Defendant for the Advertisement of Motor Vehicles.

## **5. BUSINESS PRACTICES AND INJUNCTIVE RELIEF**

5.1 Defendant shall not engage in any unfair or deceptive acts or practices in the conduct of its business in the State and shall comply with all applicable State and/or Federal laws, rules and regulations as now constituted or as may hereafter be amended, including the CFA and the Motor Vehicle Advertising Regulations.

5.2 Defendant shall not Advertise a Motor Vehicle for Sale or Lease as part of a plan or scheme not to sell or Lease the Motor Vehicle at the Advertised price, in accordance with N.J.S.A. 56:8-2.2, N.J.A.C. 13:45A-26A.4(a)1, and N.J.A.C. 13:45A-26A-10.

5.3 Defendant shall undertake a search of a Service to discern the prior use (i.e., rental) of a Used Motor Vehicle Advertised and/or offered for Sale and to determine whether such Used Motor Vehicle has been in an accident or otherwise sustained damage. Defendant shall disclose such information to Consumers prior to their purchase of the Used Motor Vehicle. Defendant will not be held accountable or responsible for the accuracy or for any deficiencies of the information provided by the Service, unless Defendant was aware, or should have been

aware, of the inaccuracies or deficiencies at the time the information was provided to Consumers.

5.4 In its Advertisement of a Used Motor Vehicle, Defendant shall Clearly and Conspicuously disclose the Used Motor Vehicle's prior use, when such prior use is known or should have been known by Defendant, unless previously and exclusively owned or leased by individuals for their personal use, in accordance with N.J.A.C. 13:45A-26A.5(b)(2).

5.5 In its Advertisement of a Used Motor Vehicle, Defendant shall Clearly and Conspicuously disclose whether a Used Motor Vehicle had been previously damaged and that substantial repair or body work has been performed on it when Defendant knows or should have known of such repair or body work, in accordance with N.J.A.C. 13:45A-26A.7(a)(7) and as detailed in Section 5.3.

5.6 If Defendant provides disclosure of prior use and/or prior damage to a Used Motor Vehicle via a Service, Defendant shall Clearly and Conspicuously identify the Service, along with a designation of "Free Vehicle History Report" within the description of the Used Motor Vehicle on the Websites.

5.7 In its Advertisement of Motor Vehicles, Defendant shall include the statement that "price(s) include(s) all costs to be paid by consumer, except for licensing costs, registration fees, and taxes," in accordance with N.J.A.C. 13:45A-26A.5(a)(2).

5.8 In its Advertisement of Motor Vehicles, Respondents shall Clearly and Conspicuously disclose next to a purported unconditional offer all disclaimers, qualifiers or limitations that in fact limit, condition, or negate such offer, as required by N.J.A.C. 13:45A-26A.7(a)(4).

5.9 In its Advertisement of Motor Vehicles, Respondents shall Clearly and Conspicuously disclose the applicable time period of any special offer, unless such offer is a manufacturer's program, in accordance with N.J.A.C. 13:45A-26A.7(a)(5).

5.10 Defendant shall not Advertise a Motor Vehicle for Sale or Lease without possessing title to the Motor Vehicle.

## 6. SETTLEMENT PAYMENT

6.1 The Parties have agreed to a settlement of the Action in the amount of One Hundred Thirty-Five Thousand and 00/100 Dollars (\$135,000.00) to Plaintiffs ("Settlement Payment").

6.2 The Settlement Payment comprises One Hundred Nine-Thousand, Five Hundred Ninety-Five and 46/100 Dollars (\$109,595.46) in civil penalties, pursuant to N.J.S.A. 56:8-13; Six Thousand, Seven Hundred Fifty-Seven and 54/100 Dollars (\$6,757.54) as reimbursement of the Plaintiffs' investigative costs, pursuant to N.J.S.A. 56:8-11; and Eighteen Thousand, Six Hundred Forty-Seven and 00/100 Dollars (\$18,647.00) as reimbursement of the Plaintiffs' attorneys' fees, pursuant to N.J.S.A. 56:8-19.

6.3 The Settlement Payment shall be paid as follows:

a. On or before the Effective Date, Respondent shall pay to the Division the sum of Fifty Thousand and 00/100 Dollars (\$50,000.00). Thereafter, Respondent shall make the following payments:

- (1) Twenty Thousand and 00/100 Dollars (\$20,000.00) on or before October 1, 2015;
- (2) Twenty Thousand and 00/100 Dollars (\$20,000.00) on or before February 1, 2016; and
- (3) Forty-Five Thousand and 00/100 Dollars (\$45,000.00) on or before June 1, 2016.

6.4 Defendant shall make the Settlement Payment by certified check, cashier's check, money order, credit card or wire transfer made payable to "New Jersey Division of Consumer Affairs" and forwarded to:

Erin M. Greene, Deputy Attorney General  
State of New Jersey  
Office of the Attorney General  
Department of Law and Public Safety  
Division of Law  
Consumer Fraud Prosecution Section  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

6.5 Upon making the Settlement Payment, Defendant shall immediately be fully divested of any interest in, or ownership of, the monies paid and all interest in the monies, and any subsequent interest or income derived therefrom, shall inure entirely to the benefit of the Plaintiffs pursuant to the terms herein.

## **7. SUSPENDED CIVIL PENALTY**

7.1 For a period of one (1) year from the Effective Date, an additional sum of Fifty Thousand and 00/100 Dollars (\$50,000.00) in civil penalties, pursuant to N.J.S.A. 56:8-13, shall be suspended subject to the conditions set forth in Section 7.2 ("Suspended Penalty").

7.2 The Suspended Penalty shall automatically be vacated at the end of the one (1) year period, provided:

- a. Defendant complies in all material respects with the restraints and conditions set forth in Section 5;
- b. Defendant does not engage in any acts or practices in violation of the CFA and/or the Advertising Regulations; and
- c. Defendant makes the Settlement Payment in the manner required under Sections 6.1 and 6.2.

7.3 In the event Defendant fails to comply with Section 7.2, Plaintiffs shall provide

Defendant with written notice of default or noncompliance (“Notice of Default or Noncompliance”) seeking payment of the Suspended Penalty as well as any unpaid portion of the Settlement Payment. In any such of Notice Default or of Noncompliance, however, Plaintiffs shall provide Defendant with the specific details of Defendant’s alleged default or noncompliance, as well as any supporting documents, and shall afford Defendant a twenty (20) day period from receipt of the Notice of Default or Noncompliance within which to cure any such default or noncompliance (Cure Period”).

7.4 In the event of Defendant’s failure to cure any such default or noncompliance and within twenty (20) days of the expiration of the Cure Period, the Parties shall engage in good faith discussions to resolve Defendant’s alleged default or noncompliance and to avoid the need for Plaintiffs to file a Notice of Motion or Order to Show Cause to have a judgment entered against Defendant for the entire Suspended Penalty as well as any unpaid portion of the Settlement Payment. In the event the Parties do not resolve Defendant’s alleged default or noncompliance through such good faith discussions, Plaintiffs may move on Notice of Motion or Order to Show Cause to have a judgment entered against Defendant for the entire Suspended Penalty as well as any unpaid portion of the Settlement Payment. Defendant shall have the right to submit opposition to any Motion or Order to Show Cause application filed by Plaintiffs and to contest same on any return date.

7.5 Upon entry by the Court of any such judgment, Plaintiffs shall then arrange for entry of such judgment upon the Statewide docket.

## **8. DISMISSAL OF ACTION**

8.1 The entry of this Consent Judgment constitutes a dismissal with prejudice of the Action.

## 9. GENERAL PROVISIONS

9.1 This Consent Judgment is entered into by the Parties as their own free and voluntary act and with full knowledge and understanding of the obligations and duties imposed by this Consent Judgment.

9.2 This Consent Judgment shall be governed by, and construed and enforced in accordance with, the laws of the State.

9.3 The Parties have negotiated, jointly drafted and fully reviewed the terms of this Consent Judgment and the rule that uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction or interpretation of this Consent Judgment.

9.4 This Consent Judgment contains the entire agreement among the Parties. Except as otherwise provided herein, this Consent Judgment shall be modified only by a written instrument signed by or on behalf of the Division and Defendant.

9.5 Except as otherwise explicitly provided in this Consent Judgment, nothing herein shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State.

9.6 If any portion of this Consent Judgment is held invalid or unenforceable by operation of law, the remaining terms of this Consent Judgment shall not be affected.

9.7 This Consent Judgment shall be binding upon Defendant as well as its owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, successors and assigns, and any person through which it may now or hereafter act, as well as any Persons who have authority to control or who, in fact, control and direct its business.

9.8 This Consent Judgment shall be binding upon the Parties and their successors in interest. In no event shall assignment of any right, power or authority under this Consent Judgment be used to avoid compliance with this Consent Judgment.

9.9 This Consent Judgment is entered into by the Parties for settlement purposes only. Neither the fact of, nor any provision contained in this Consent Judgment shall be construed as: (a) an approval, sanction or authorization by the Attorney General, the Division or any other governmental unit of the State of any act or practice of the Defendant; or (b) an admission by Defendant that any of its acts or practices described in or prohibited by this Consent Judgment are unfair or deceptive or violate the CFA and/or the Motor Vehicle Advertising Regulations. Neither the existence of, nor the terms of this Consent Judgment shall be deemed to constitute evidence or precedent of any kind except in: (a) an action or proceeding by one of the Parties to enforce, rescind or otherwise implement or affirm any or all of the terms herein; or (b) an action or proceeding involving a Released Claim (as defined in Section 10) to support a defense of res judicata, collateral estoppel, release or other theory of claim preclusion, issue preclusion or similar defense.

9.10 The Parties represent and warrant that their signatories to this Consent Judgment have authority to act for and bind the respective Parties.

9.11 Unless otherwise prohibited by law, any signatures by the Parties required for entry of this Consent Judgment may be executed in counterparts, each of which shall be deemed an original, but all of which shall together be one and the same Consent Judgment.

## **10. RELEASE**

10.1 In consideration of the injunctive relief, payments, undertakings, mutual promises, and obligations provided for in this Consent Judgment and conditioned on Defendant

making the Settlement Payment in the manner specified in Section 6, Plaintiffs hereby agree to release Defendant from any and all civil claims or Consumer related administrative claims, to the extent permitted by State law, which Plaintiffs could have brought prior to the Effective Date against Defendant for violations of the CFA and/or the Motor Vehicle Advertising Regulations as alleged in the Action, as well as matters specifically addressed in Section 5 of this Consent Judgment (“Released Claims”).

10.2 Notwithstanding any term of this Consent Judgment, the following do not comprise Released Claims: (a) private rights of action (b) actions to enforce this Consent Judgment; and (c) any claims against Defendant by any other agency or subdivision of the State.

#### **11. PENALTIES FOR FAILURE TO COMPLY**

11.1 The Attorney General (or designated representative) shall have the authority to enforce the injunctive provisions of this Consent Judgment or to seek sanctions for violations hereof or both.

11.2 The Parties agree that any future violations by Defendant of the injunctive provisions of this Consent Judgment, the CFA and/or the Motor Vehicle Advertising Regulations shall constitute a second and succeeding violation pursuant to N.J.S.A. 56:8-13, and that Defendant may be liable for enhanced civil penalties.

#### **12. COMPLIANCE WITH ALL LAWS**

12.1 Except as provided in this Consent Judgment, no provision herein shall be construed as:

- (a) Relieving Defendant of its obligation to comply with all State and Federal laws, regulations or rules, as now constituted or as hereafter may be amended, or as granting permission to engage in any acts or practices prohibited by such laws, regulations or rules; or

- (b) Limiting or expanding any right the Plaintiffs may otherwise have to obtain information, documents or testimony from Defendant pursuant to any State or Federal law, regulation or rule, as now constituted or as hereafter may be amended, or limiting or expanding any right Defendant may otherwise have pursuant to any State or Federal law, regulation or rule, to oppose any process employed by the Plaintiffs to obtain such information, documents or testimony.

**13. NOTICES UNDER THIS CONSENT ORDER**

13.1 Except as otherwise provided herein, any notices or other documents required to be sent to the Plaintiffs or Defendant pursuant to this Consent Judgment shall be sent by United States mail, Certified Mail Return Receipt Requested, or other nationally recognized courier service that provides for tracking services and identification of the Person signing for the documents. The notices and/or documents shall be sent to the following addresses:

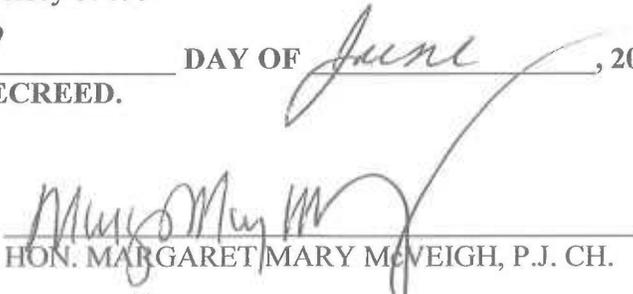
For Plaintiffs:

Erin M. Greene, Deputy Attorney General  
State of New Jersey  
Office of the Attorney General  
Department of Law and Public Safety  
Division of Law  
Consumer Fraud Prosecution Section  
124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101

For Defendant:

Kevin DiPiano, President  
Bergen Auto Enterprises, L.L.C. d/b/a Wayne Mazda  
and d/b/a Wayne Hyundai  
1244 Route 23 North  
Wayne, New Jersey 07470

IT IS ON THE 9 DAY OF June, 2015, SO  
ORDERED, ADJUDGED AND DECREED.

  
\_\_\_\_\_  
HON. MARGARET MARY McVEIGH, P.J. CH.

JOINTLY APPROVED AND SUBMITTED FOR ENTRY:

FOR PLAINTIFFS:

JOHN J. HOFFMAN  
ACTING ATTORNEY GENERAL OF NEW JERSEY

By:  Dated: June 8, 2015  
Erin M. Greene  
Deputy Attorney General  
Consumer Fraud Prosecution Section

124 Halsey Street - 5<sup>th</sup> Floor  
P.O. Box 45029  
Newark, New Jersey 07101  


FOR DEFENDANT:

CHIESA SHAHINIAN & GIANTOMASI, PC

By:  Dated: 6-3, 2015  
Jeffrey S. Chiesa, Esq.  
Matthew E. Beck, Esq.

One Boland Drive  
West Orange, New Jersey 07052  
Telephone: (973) 325-1500

BERGEN AUTO ENTERPRISES, L.L.C., d/b/a WAYNE MAZDA  
and d/b/a WAYNE AUTO MALL HYUNDAI

By:  Dated: 5-14, 2015  
Kevin DiPiano, President

1244 Route 23 North  
Wayne, New Jersey 07470  
Telephone: (888) 449-1108