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12 Attorneys for Petitioner

13 **ARIZONA SUPERIOR COURT**

14 **COUNTY OF PIMA**

15 In the Matter of:

16 No. _____

17 **ASSURANCE OF DISCONTINUANCE**

18 D.W. Phillips, L.L.C. dba Arizona
19 Honda,

20 Respondent.

21 The Attorney General of the State of Arizona and Respondent, D.W. Phillips,
22 L.L.C. dba Arizona Honda [hereinafter "Arizona Honda"], agree to the entry of the
23 following Assurance of Discontinuance pursuant to Arizona Revised Statutes
24 ("A.R.S.") § 44-1530, a provision of the Arizona Consumer Fraud Act, A.R.S. § 44-
25 1521, *et seq.*

26 1. Arizona Honda is a limited liability company.

27 2. Arizona Honda is a sales dealership that sells ATVs, motorcycles,
28 scooters, watercraft equipment, generators, lawnmowers, and other power equipment.

3. The Arizona Attorney General has conducted an investigation, pursuant
to A.R.S. § 44-1521, *et seq.*, into Arizona Honda's practices, specifically Arizona

1 Honda's conduct when securing financing for consumer's purchases.

2 **I. DEFINITION**

3 "CLEAR AND CONSPICUOUS" OR "CLEARLY AND CONSPICUOUSLY" MEANS (A) IN A WRITTEN
4 STATEMENT OR COMMUNICATION, MATERIAL THAT IS PRESENTED IN SUCH A FONT, SIZE, COLOR,
5 LOCATION, WORD CHOICE, AND CONTRAST AGAINST THE BACKGROUND IN WHICH IT APPEARS,
6 COMPARED TO THE OTHER MATTER WITH WHICH IT IS PRESENTED, SO THAT IT IS READILY
7 UNDERSTANDABLE, NOTICEABLE, AND READABLE, OR (B) IN AN ORAL STATEMENT OR
8 COMMUNICATION, MATERIAL THAT IS PRESENTED IN SUCH SPEECH AND WORD CHOICE SO THAT
9 IT IS READILY AUDIBLE, NOTICEABLE, AND CLEAR. IF THE STATEMENT OR COMMUNICATION
10 MODIFIES, EXPLAINS, OR CLARIFIES OTHER INFORMATION WITH WHICH IT IS PRESENTED, IT
11 MUST BE PRESENTED SO THAT IT IS IN CLOSE PROXIMITY TO THE OTHER INFORMATION SO THAT
12 IT IS EASILY NOTICEABLE AND READILY UNDERSTANDABLE AND IT MUST NOT BE OBSCURED IN
13 ANY MANNER. A STATEMENT MAY NOT CONTRADICT ANY OTHER INFORMATION WHICH IS
14 PRESENTED.

15 **II. BACKGROUND**

16 The Attorney General has reason to believe and therefore alleges the following:

- 17 1. The Attorney General's inquiry showed that Arizona Honda employees assist
18 consumers with the process of securing financing for their Arizona Honda
19 purchases.
- 20 2. Arizona Honda employees assist consumers with the process of securing GE
21 Money Bank's Financing and Honda cards, which are both credit cards that have
22 revolving accounts.
- 23 3. GE Money Bank supplied Arizona Honda with "Sales Slips" to record purchases
24 made on Financing and Honda cards. The "Sales Slip" says that the cards
25 "cannot be used for down payments."
- 26 4. Per the "Sales Slips" in Arizona Honda's customer's files, consumers routinely use
27 their Financing and Honda cards to purchase "accessories."
28

- 1 5. When a consumer purchases accessories from Arizona Honda, a "Pick Ticket" or
2 "Parts Quote" is placed in the customer's file.
- 3 6. Between January, 2005, and August, 2006, several consumers used a Financing
4 or Honda card to purchase "accessories" from Arizona Honda, but did not have a
5 "Pick Ticket" or "Parts Quote" in their Arizona Honda file.
- 6 7. Some of these consumers had "Sales Deal Deposit" forms in their files that reflect
7 a "Payment Amount" identical to the "Amount To Be Financed" on the Financing or
8 Honda card "Sales Slip" in their Arizona Honda file. Others had Retail Installment
9 Contract and Security Agreements for lenders other than GE Money Bank that
10 reflected "Cash Downpayment" and "Total Downpayment" amounts identical to the
11 "Amount To Be Financed" on the Financing or Honda card "Sales Slip" in their
12 Arizona Honda file.
- 13 8. These amounts are identical because Arizona Honda employees were using the
14 Financing and Honda cards to finance consumers' down payments on their
15 Arizona Honda purchases.
- 16 9. Arizona Honda's employees did not tell consumers that this practice violated GE
17 Money Bank's policy and that the consumer may not have otherwise qualified for
18 financing.
- 19 10. Arizona Honda's Sales Representatives, Finance Managers, and Sales
20 Coordinator were aware of this practice.
- 21 11. The Attorney General alleges that the acts, practices and omissions described
22 above constitute violations of A.R.S. § 44-1522(A).

23 **III. AGREEMENT**

24 Without admitting any violations of the Consumer Fraud Act, Arizona Honda agrees to
25 the following:

- 26 1. Arizona Honda will abide by the provisions of the Consumer Fraud Act, A.R.S. §
27 44-1521 *et seq.* as it is currently written or amended in the future.

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- 1 2. Arizona Honda will abide by GE Money Bank's policies, and the policies of any
2 other financial institution with which Arizona Honda conducts business, as they
3 relate to the sale and financing of merchandise.
- 4 3. Arizona Honda will clearly and conspicuously disclose the fact that GE Money
5 Bank's policy forbids the use of a Financing or Honda card for down payments.
- 6 4. Arizona Honda is prohibited from stating on a "Sales Slip" that a consumer has
7 purchased accessories if the consumer has not purchased accessories.
- 8 5. Arizona Honda is prohibited from listing credit card purchases as cash on delivery or
9 a cash down payment on documents intended for securing financing for the
10 purchase of Arizona Honda merchandise.
- 11 6. For a period of two years, Arizona Honda will provide the Arizona Attorney
12 General's Office with a copy of written complaints and inquiries regarding any
13 matter related in whole or in part to financing, including, but not limited to the
14 practices set out in paragraphs Numbers 2 through 5 above, other than worker
15 compensation complaints, that it receives from consumers and other agencies.
16 Arizona Honda will deliver these complaints and inquiries within ten days of its
17 receipt of same.

18 **IV. PAYMENT**

19 Arizona Honda shall pay the Arizona Attorney General \$19,500 (nineteen thousand,
20 five hundred dollars) in costs and attorneys' fees in the following manner:

- 21 a. Arizona Honda will deliver \$9,500 (nine thousand five hundred dollars) to the
22 Attorney General along with the signed Assurance.
- 23 b. Arizona Honda will deliver \$5,000 (five thousand dollars) one month from the
24 date the Court approves this Assurance.
- 25 c. Arizona Honda will deliver the remaining \$5,000 (five thousand dollars) two
26 months from the date the Court approves this Assurance.

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1 The payments will be used in the sole discretion of the Attorney General for consumer
2 fraud education and for the investigative and enforcement operation of the consumer
3 protection division as set out in A.R.S. § 44-1531.01(c). This payment shall be made
4 in checks payable to the Attorney General's Office and delivered to Taren Ellis,
5 Assistant Attorney General.

6 **V. GENERAL PROVISIONS**

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8 1. This Assurance of Discontinuance shall not be considered an admission of a
9 violation for any purpose. A violation of this assurance within six years of the filing
10 date shall constitute prima facie proof of a violation of the provisions of the
11 Consumer Fraud Act. A.R.S. § 44-1530.

12 2. This Assurance does not constitute an approval by the States of any of Arizona
13 Honda's products, practices, or past conduct, and Arizona Honda will not make any
14 representation to the contrary.

15 DATED this ____ day of _____, 2008.

16 TERRY GODDARD
17 Attorney General

18 By: _____
19 TAREN M. ELLIS
20 Assistant Attorney General
21 Consumer Protection & Advocacy Section

22 The undersigned has the authority to consent and sign on behalf of Arizona Honda.

23 Signed this _____ day of _____ 2008.

24 Arizona Honda, L.L.C.

25
26 By: _____

27 Title: _____

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1 APPROVED AS TO FORM AND CONTENT:

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4 Matt Muehlebach
5 Attorney for Respondent

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