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16 UNITED STATES DISTRICT COURT

17 FOR THE DISTRICT OF ARIZONA

18 Federal Trade Commission, and
19 State of Arizona, *ex rel.* Kristin K. Mayes,
20 Attorney General,

21 Plaintiffs,

22 v.

23 Coulter Motor Company, LLC, a limited
liability company, also d/b/a as Coulter
24 Tempe, LP, also d/b/a as Coulter Cadillac
Tempe, also d/b/a as Tempe Buick GMC,
25 and

26 Gregory Depaola, an individual,

27 Defendants.
28

Case No. _____

**COMPLAINT FOR PERMANENT
INJUNCTION, MONETARY
JUDGMENT, CIVIL PENALTY
JUDGMENT, AND OTHER RELIEF**

1 Plaintiffs, the Federal Trade Commission (“FTC” or “Commission”) and the State
2 of Arizona, *ex rel.* Kristin K. Mayes, Attorney General, for their Complaint allege:

3 1. The FTC brings this action for Defendants’ violations of Sections 5(a) of
4 the FTC Act, 15 U.S.C. § 45(a), and the Equal Credit Opportunity Act (“ECOA”), 15
5 U.S.C. §§1691-1691f. For these violations, the FTC seeks relief, including a permanent
6 injunction, monetary relief, and other relief, pursuant to Sections 13(b), and 19 of the
7 FTC Act, and ECOA and its implementing Regulation B, 12 C.F.R. § 202.

8 2. The State of Arizona, *ex rel.* Kristin K. Mayes, Attorney General, brings
9 this action pursuant to the Arizona Consumer Fraud Act (“ACFA”), Arizona Revised
10 Statutes (“A.R.S.”) §§ 44-1521 to 44-1534, to obtain permanent injunctions, civil
11 penalties, restitution, and other equitable relief, and reimbursement of costs and
12 attorneys’ fees for Defendants’ acts or practices.

13 **SUMMARY OF THE CASE**

14 3. Defendants lure consumers into their automobile dealerships with low
15 advertised prices for new and used vehicles. Defendants’ actual prices often are
16 thousands of dollars higher than advertised, due to a surprise “market adjustment” on the
17 vehicle and other bogus fees and charges. In many instances, Defendants charge
18 consumers for add-on items (“add-ons”) the consumers have not authorized, Defendants
19 tell consumers that such add-ons are required, or charge consumers twice for the same
20 add-ons. Defendants also charge higher interest rates and greater add-on costs to Latino
21 consumers as compared to non-Latino White consumers.

22 **JURISDICTION AND VENUE**

23 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331,
24 1337(a), 1345, and 1355.

25 5. This Court has supplemental jurisdiction over the State of Arizona’s claims
26 pursuant to 28 U.S.C. § 1367.

27 6. Venue is proper in this District under 28 U.S.C. §§ 1391(b)(2), (c)(1),
28 (c)(2), 1395(a), and 15 U.S.C. § 53(b).

1 **PLAINTIFFS**

2 7. The FTC is an independent agency of the United States Government
3 created by the FTC Act, which authorizes the FTC to commence this district court civil
4 action by its own attorneys. 15 U.S.C. §§ 41–58. The FTC enforces Section 5(a) of the
5 FTC Act, 15 U.S.C. § 45(a), which prohibits unfair or deceptive acts or practices in or
6 affecting commerce. The FTC also enforces the ECOA, 15 U.S.C. §§ 1691-1691f,
7 which, *inter alia*, prohibits discrimination on the basis of race, color, or national origin in
8 credit transactions.

9 8. The State of Arizona is authorized to bring this action pursuant to the
10 ACFA, A.R.S. §§ 44-1521 to 44-1534, to obtain injunctive relief to permanently enjoin
11 and prevent the unlawful acts and practices alleged in this Complaint, and to obtain other
12 relief, including restitution, disgorgement of profits, gains, gross receipts, or other
13 benefits, civil penalties, and costs and attorneys’ fees.

14 **DEFENDANTS**

15 9. Defendant Coulter Motor Company, LLC (“Coulter”), also doing business
16 as Coulter Tempe, LP, Coulter Cadillac Tempe, and Tempe Buick GMC, is an Arizona
17 corporation with its principal place of business at 7780 S Autoplex Loop, Tempe,
18 Arizona 85284. Coulter operates the Coulter Cadillac Tempe and Tempe Buick GMC
19 motor vehicle dealerships. Coulter transacts or has transacted business in this District
20 and throughout the United States. At all times relevant to this Complaint, acting alone or
21 in concert with others, Coulter has advertised, marketed, distributed, or sold automobiles
22 to consumers throughout the United States.

23 10. Defendant Gregory Depaola was the General Manager of both Coulter
24 Tempe dealerships. At all times relevant to this Complaint, acting alone or in concert
25 with others, he has formulated, directed, controlled, had the authority to control, or
26 participated in the acts and practices of Coulter, including the acts and practices
27 described in this Complaint. As General Manager, he had control and responsibility
28 over day-to-day operations at the Coulter Cadillac Tempe and Tempe Buick GMC

1 dealerships, including the implementation of financing and sales policies and the sale of
2 add-ons. Defendant Depaola also received complaints from consumers about the alleged
3 practices in the complaint, as well as updates from employees at Defendants’ dealerships
4 regarding persistent bait-and-switch advertising tactics and hidden add-on charges.
5 Defendant Depaola, in connection with the matters alleged herein, transacts or has
6 transacted business in this District.

7 **COMMERCE**

8 11. At all times relevant to this Complaint, Defendants have maintained a
9 substantial course of trade in or affecting commerce, as “commerce” is defined in
10 Section 4 of the FTC Act, 15 U.S.C. § 44.

11 **DEFENDANTS’ BUSINESS ACTIVITIES**

12 12. Defendants lure consumers to their dealerships with advertisements of low
13 but illusory vehicle prices and then tack on charges for unauthorized and unwanted add-
14 ons. This is especially true when it comes to Latino consumers, who Defendants
15 discriminatorily charge more in financing costs and for add-ons than similarly situated
16 non-Latino White consumers.

17 ***Defendants’ Advertisements Misrepresent Vehicle Prices***

18 13. Defendants’ advertisements on both their own websites
19 (www.coultertempe.com and www.coultercadillactempe.com) and third-party websites
20 prominently display new and used vehicles available for purchase or lease. In these
21 advertisements, Defendants expressly and prominently display a specific make and
22 model vehicle and the price at which it is available, which Defendants prominently refer
23 to as the “Coulter Price.”

1 14. On their websites, Defendants list the “Coulter Price” of a vehicle,
 2 sometimes comparing it to a higher Manufacturer Suggested Retail Price (“MSRP”).
 3 For example, some of Defendants’ advertisements have displayed the MSRP with a line
 4 through it, and discounts called “Coulter Cash” or “Purchase Allowance,” which purport
 5 to lower the price from the MSRP by thousands of dollars to the so-called “Coulter
 6 Price.” Such advertisements also affirmatively state the “Coulter Savings” amount
 7 resulting from these discounts. An example is pictured below:

The advertisement features a silver Buick SUV parked in front of the Coulter Tempe dealership. The dealership name and address are listed: Coulter Tempe, 7780 S AUTOPLEX LOOP, TEMPE, AZ 85284. To the right of the car is a table titled 'Current Offers' that breaks down the pricing.

Current Offers	
MSRP	\$29,925
Coulter Cash ¹	- \$4,000
Coulter Price	\$25,925
Purchase Allowance ²	- \$250
Take Retail Delivery By 04-03-2023	
Coulter Price	\$25,675
Coulter Savings	\$4,250
AVAILABLE SPECIALS	
90 Day Payment Deferral For Well-Qualified Buyers When Financed w/ GM Financial ³	4.15% FOR 60MO
TAKE RETAIL DELIVERY BY 04-03-2023	
Click here for more offer information	

18 15. Defendants also place advertisements on third-party websites that tout
 19 prices typically below or at the MSRP for new vehicles, or “below market” for used
 20 vehicles. An example is pictured below, showing a price of \$24,656, nearly five
 21 thousand dollars below the MSRP:

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The image shows a screenshot of a car advertisement. At the top is a photograph of a silver Buick Encore SUV parked in front of a dealership building with 'COULTER' and 'BUICK' signs. Below the photo are two circular icons: an information icon (i) and a heart icon. The text below the icons reads: 'New 2022 Buick Encore Preferred A...', '\$24,646', 'MSRP \$29,245', 'Tempe, AZ (2 mi)', and a blue hyperlink '(480) 771-9620'. To the right of the phone number is a blue button labeled 'Request Info'. At the bottom of the ad, it says 'Authorized Buick Dealer'.

15 16. Based on Defendants’ ads, many consumers believe that Defendants will
16 sell or lease them a vehicle for the advertised price. But Defendants misrepresent the
17 price of their vehicles. In numerous instances, Defendants charge consumers hundreds
18 or thousands of dollars more than the advertised price, including for a previously
19 unmentioned and contrived “market adjustment,” purportedly for preinstalled add-ons,
20 and miscellaneous fees.

21 17. In many instances, consumers only learn of the true prices, if at all, after
22 spending considerable time visiting one of Defendants’ dealerships and beginning the
23 purchase process. Defendants’ advertisements on third-party websites do not mention
24 the additional charges. And Defendants obscure any reference to these charges on their
25 websites at the bottom of the page, only visible if consumers scroll, or behind small gray
26 hyperlinks appended to its advertisements. Even if a consumer were to find this
27 information, it does not indicate whether the listed charges are part of, or in addition to,
28 the advertised price.

1 18. As Defendants are well aware, many consumers report being misled about
2 the advertised price of the vehicle. For example, after test-driving a vehicle at Tempe
3 Buick GMC, one consumer emailed the dealer asking why the vehicle they wanted to
4 buy was not available for the advertised price on Coulter’s website (which was
5 consistent with the “out the door” price quoted to the consumer during the test drive),
6 and instead included thousands of dollars in additional dealer charges and add-ons.
7 Another consumer complained that Defendants increased the price of the vehicle about
8 \$4,000 over MSRP, claiming there was a market shortage, and a \$5,000 add-on charge
9 that the dealership refused to remove.

10 19. Another consumer reached out to a Coulter dealership asking why the price
11 Defendants advertised online and displayed on the window of a vehicle was \$8,000 less
12 than the price quoted to the consumer at the dealership. A Coulter sales manager
13 admitted: “If we don’t advertise the lowest price on line [*sic*] people blow past your add
14 [*sic*]... We held back as long as we could and tried doing it differently but with the
15 manufactures [*sic*] breathing down our necks and customers coming in at the advertised
16 price and offering 3,000 less than the advertised price something had to give.”

17 ***Defendants’ Unfair and Deceptive Add-on Practices***

18 20. In addition to misrepresenting the price of vehicles, Defendants further
19 inflate the ultimate cost of the vehicles to consumers by deceptively and unfairly tacking
20 on charges for add-ons. These add-ons include items such as theft protection, paint
21 coating, window tint, Vehicle Identification Number (“VIN”) etching, or nitrogen tires,
22 which in the aggregate can cost several hundred dollars to several thousand dollars,
23 substantially increasing the cost of a vehicle. In many instances, Defendants charge
24 consumers for add-ons they have not agreed to purchase, falsely claim that add-ons are
25 required, and charge consumers twice for the same add-on.

26 21. Consumers often do not agree to purchase the add-ons Defendants charge
27 them for. After spending hours selecting a vehicle, negotiating the price, discussing
28 financing terms, and reviewing complex documents, many consumers are not even

1 aware of the add-on charges, which Defendants often bury in a mountain of paperwork
2 and roll into the financing for the vehicle, and appear in many deals. VIN etching, for
3 example, appears in over 81% of Defendants' deals. One tactic Defendants use is
4 getting a consumer to agree to a monthly payment that exceeds what they need to pay
5 under the contract to purchase a vehicle, and then "packing" the payment with unwanted
6 add-ons to make up the difference between the inflated offer and the lower payment. In
7 other instances, Defendants charge consumers twice for certain add-ons: for example,
8 charging consumers \$299 for VIN etching, in addition to a \$696 charge for the Coulter
9 Value Package, which includes VIN etching. And in others, Defendants' representatives
10 falsely tell consumers the add-ons are included in the price of the vehicle.

11 22. If consumers notice and ask about the add-on charges, Defendants often
12 falsely claim they are required. According to consumers, Defendants' sales
13 representatives have told them, for example, that Lojack theft protection and the Coulter
14 Value Package are required to purchase a vehicle. But add-ons are not required to
15 purchase, lease, or obtain financing for a vehicle. Neither the finance companies nor the
16 third-party add-on providers require that add-ons be sold. And Defendants charge some
17 consumers for these add-ons, but not others, demonstrating that the add-ons are not
18 required.

19 23. According to a survey of Coulter customers, 92% of them were charged for
20 an add-on without authorization or because they thought it was required.

21 24. Many consumers do not notice the add-on charges at all. Some consumers
22 notice them after they complete the transaction and leave the dealership. For example,
23 one consumer reported discovering after the purchase that the contract included a charge
24 for a warranty that Defendants never discussed with the consumer.

25 25. When consumers have contacted Defendants to ask what the charges are
26 for or complain about the charges, Defendants further mislead them. For example, after
27 a vehicle purchase, one consumer asked Defendants for a breakdown of the charges in
28 his contract, which consisted of charges for tint, nitrogen tires, VIN etching, and the

1 Coulter Value Package. He received only a response from Coulter management that the
2 Coulter Value Package charge was “labeled in error” as it should have been called the
3 “Coulter Prep Fee” that they charge “on all used cars when they go through the shop.”
4 The consumer responded that the Coulter Value Package “line item, as written, leads
5 [me] to believe I would be getting something in return. In this case, the Coulter Value
6 Package, which at this point seems to have zero value.”

7 26. Other consumers report that they discovered additional charges after
8 leaving the dealership, despite having told Defendants they did not want the add-ons.
9 For example, Defendants charged one consumer a higher interest rate than they agreed
10 to, as well as for several add-ons (Lojack, window tint, and VIN etching) the consumer
11 declined.

12 *Defendants’ Discriminatory Financing Practices*

13 27. Defendants arrange financing through third-party financing entities for
14 consumers to purchase or lease vehicles and to pay for add-ons. But Defendants arrange
15 financing with higher interest rate markups and costlier add-ons for Latino consumers
16 than for non-Latino White consumers. Worse, Defendants charge Latino consumers
17 more for add-ons they almost never knew about or authorized in the first place. On
18 average, Latino consumers who shop at Coulter pay nearly \$1200 more in interest and
19 add-on charges than their non-Latino White counterparts.

20 28. Each financing entity gives Defendants a specific “buy rate,” a risk-based
21 finance charge that reflects the interest rate at which the entity will finance a retail
22 installment contract from the dealer. Some financing entities permit Defendants to add a
23 finance charge to the buy rate called a “markup.” Unlike the buy rate, the markup is not
24 based on the underwriting risk or credit characteristics of the applicant, but instead is
25 pure profit for Defendants. Moreover, Defendants compensate employees with a
26 percentage of the markup, incentivizing them to add markup to consumers’ financing.
27 Defendants communicate to the consumer only the final total contract rate, which equals
28 the buy rate plus the markup.

1 (b) consumers have authorized charges in their vehicle sales or lease
2 contracts, including for add-ons, total cost, and financing; or
3 (c) consumers will not be charged for add-ons.

4 41. In truth and in fact, in numerous instances in which Defendants make the
5 representations set forth in Paragraph 40:

6 (a) consumers are not required to pay particular fees or purchase add-ons;
7 (b) consumers have not authorized the charges in their vehicle sales or
8 lease contracts; or
9 (c) consumers are charged for add-ons.

10 42. Therefore, Defendants' representations as set forth in Paragraph 40 are
11 false or misleading and constitute deceptive acts or practices in violation of Section 5(a)
12 of the FTC Act, 15 U.S.C. § 45(a).

13 **COUNT III**

14 **Unfairly Charging Consumers Without Consent**

15 **(By Plaintiff FTC Against All Defendants)**

16 43. In numerous instances, Defendants charge consumers without obtaining
17 their express, informed consent.

18 44. Defendants' actions cause or are likely to cause substantial injury to
19 consumers that consumers cannot reasonably avoid themselves and that is not
20 outweighed by countervailing benefits to consumers or competition.

21 45. Therefore, Defendants' acts or practices as set forth in Paragraph 43
22 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C.
23 § 45(a), (n).

24 **COUNT IV**

25 **Unfair Discrimination**

26 **(By Plaintiff FTC Against All Defendants)**

27 46. In numerous instances, Defendants impose higher costs on Latino
28 consumers than on similarly situated non-Latino White consumers.

1 47. Defendants' actions cause or are likely to cause substantial injury to
2 consumers that consumers cannot reasonably avoid themselves and that is not
3 outweighed by countervailing benefits to consumers or competition.

4 48. Therefore, Defendants' acts or practices as set forth in Paragraph 46
5 constitute unfair acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C.
6 § 45(a), (n).

7 **VIOLATIONS OF ARIZONA LAW**

8 **COUNT V**

9 **Violations of the Arizona Consumer Fraud Act, A.R.S. §§ 44-1521 to 44-1534**

10 **(By Plaintiff State of Arizona Against All Defendants)**

11 49. The State realleges all prior allegations of this Complaint as though fully
12 set forth herein.

13 50. The conduct described in the preceding paragraphs of this Complaint
14 constitutes deception, deceptive or unfair acts or practices, fraud, false pretenses, false
15 promises, misrepresentations, or concealment, suppression or omission of material facts
16 with intent that others rely on such concealment, suppression or omission, in connection
17 with the sale or advertisement of merchandise in violation of A.R.S. §§44-1521 to
18 44-1534, including:

- 19 a. Defendants engaged in deceptive and unfair acts and practices by refusing
20 to sell vehicles at the price they advertised;
- 21 b. Defendants engaged in deceptive and unfair acts and practices by
22 concealing, suppressing, or omitting the material fact of the true purchase
23 price of vehicles, and did so with the intent that other rely on such
24 concealments, suppressions, or omissions;
- 25 c. Defendants engaged in deceptive and unfair acts and practices by falsely
26 stating that certain add-on accessories were mandatory;
- 27 d. Defendants engaged in deceptive and unfair acts and practices by
28 concealing, suppressing, or omitting the material fact that the purchase of

1 certain add-on accessories was not required to purchase a vehicle, and
2 Defendants did so with the intent that others rely on such concealments,
3 suppressions, or omissions;

4 e. Defendants engaged in unfair acts and practices by charging consumers for
5 add-ons without obtaining their express, informed consent; and

6 f. Defendants engaged in unfair acts and practices by imposing higher costs
7 on Latino consumers than on similarly situated non-Latino White
8 consumers.

9 51. While engaging in the acts and practices alleged in this Complaint,
10 Defendants knew or should have known that their conduct was of the nature prohibited
11 by A.R.S. § 44-1522, subjecting them to enforcement and penalties as provided in
12 A.R.S. §44-1531(A).

13 52. With respect to all unfair acts and practices described above, these acts and
14 practices caused or were likely to cause substantial injuries to consumers that were not
15 reasonably avoidable by consumers and were not outweighed by countervailing benefits
16 to consumers or to competition.

17 **VIOLATIONS OF THE EQUAL CREDIT OPPORTUNITY ACT AND**
18 **REGULATION B**

19 53. Section 701(a)(1) of the ECOA, 15 U.S.C. § 1691(a)(1), and Section
20 202.4(a) of Regulation B, 12 C.F.R. § 202.4(a), prohibit a creditor from discriminating
21 against an applicant with respect to any aspect of a credit transaction on the basis of race,
22 color, religion, national origin, sex, marital status, or age (provided the applicant has the
23 capacity to contract); because all or part of the applicant's income derives from any
24 public assistance program; or because the applicant has in good faith exercised any right
25 under the Consumer Credit Protection Act, 15 U.S.C. Ch. 41.

26 54. Defendants are creditors as defined in Section 702(e) of the ECOA, 15
27 U.S.C. § 1691a(e), and Section 202.2(l) of Regulation B, 12 C.F.R. § 202.2(l).

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