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Santa Fe County
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STATE OF NEW MEXICO
COUNTY OF STATE OF NEW MEXICO
FIRST JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO, ex rel.,
RAÚL TORREZ, Attorney General of New Mexico

Plaintiff/Petitioner,

v. Case. No. D-101-CV-2021-00667

INFINITY LOANS OF ALBUQUERQUE, NEW MEXICO, LLC, et al.,

Defendants.

CONSENT JUDGMENT

Plaintiff, State of New Mexico, the State (the "State"), by and through its Attorney General Raul Torrez, commenced a lawsuit against Charles Horton, among others, ("Horton") regarding potential successor liability and breach of fiduciary duty claims in the above-captioned case. The Parties stipulate that this Court may enter this Consent Judgment.

This Court has jurisdiction over the subject matter of this lawsuit and over all Parties (defined below). The terms of this Consent Judgment are governed by the laws of the New Mexico. Entry of this Consent Judgment reflects a negotiated agreement among the Parties. By entering into this Consent Judgment, the Parties have agreed to resolve the matters released as provided herein.

The Parties enter into this Consent Judgment without trial or adjudication of any contested issue of fact or law, and without finding or admission of wrongdoing or liability of any kind. Horton denies any wrongdoing or allegations in the Complaint, and no part of this Consent Judgment, including its statements and commitments, shall constitute evidence of any liability, fault, or wrongdoing by Horton. Horton is entering into this Consent Judgment solely for the purpose of concluding this matter, and nothing contained herein may be taken as or construed to be an admission or concession of any alleged violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing. This Consent Judgment shall not be construed or used as a waiver of any defense Horton may raise in any other proceeding.

Nothing in this Consent Judgment will be construed as an approval by the Attorney General, the Court, the State of New Mexico, or any agency thereof of Horton's past, present, or future conduct. Horton shall not represent or imply that the Attorney General, the Court, the State of New Mexico, or any agency thereof has approved or approves of any of Horton's actions or any of Horton's past, present, or future actions.

I. DEFINITIONS

1. As used herein:

   a. "**Attorney General**" means the Attorney General of the State of New Mexico or any of its duly designated representatives.

   b. "**Claims**" means any and all civil claims, demands, actions, suits, causes of action, damages, fines, penalties, proceedings and liabilities and monetary impositions of any nature, as well as costs, expenses, and attorneys' fees, whether known or unknown, suspected or unsuspected, accrued or unaccrued, whether legal, equitable, statutory, regulatory, or administrative actions that the Office of the Attorney General brought or could have brought related to the Underlying Fastbucks Case or the above-captioned case.

   c. **"Lawsuit"** means State of New Mexico v. Charles Horton, *et. al.*, Case No. D-101-CV-2021-00667.

   d. **"Net Wages and other income"** means Total Income less federal and state income taxes and social security.

e. "**Parties**" or "**Party**" means the State of New Mexico and Horton.

f. "**Substantial Assets**" means any asset in existence as of the date of executing the affidavit of assets Horton shall provide to the State, and which are in the aggregate purchase price value of $25,000, and which appear by preponderance of the evidence to have been hidden or concealed for the purpose of avoiding collection under this agreement.

g. "**Total Income**" is income as would be recorded on line 9 of a standard 1040 tax form or its equivalent) except that contributions to IRA's, Section 501(c)(18)(D) pension plans, and "other adjustments" (as defined on Schedule 1 Form 1040 24(z)) will not be included. Total Income, therefore, represents the following income items (lines 1z, 2b, 3b, 4b, 5b, 6b, 7, and 8 on 2022 Form 1040): all wages, tips, Medicaid waiver payments, taxable dependent care benefits, employer-provided adoption benefits, other income (as defined by 1040 Line 1(h), non-taxable combat pay election, capital gains or losses, and income as recorded on a Schedule 1 (1040 or its equivalent). Total Income would be modified by all adjustments to income as defined by Schedule 1, Part II except for: IRA deductions, contributions to Section 501(c)(18)(D) pension plans, and "other adjustments" ("other adjustments" being defined as it is for line 24(z) on the Schedule 1.).

h. "**Underlying Fastbucks Case**" means *State of New Mexico,* ex. rel., *Gary K. King, Attorney General v. Fastbucks.com, New Mexico, LLC, et. al.,* Case No. D-101-CV-2006-01917.

II. MONETARY PAYMENT

2. In consideration of the full and complete releases contemplated herein, Horton consents to make a payment of $664,000.00 ("Monetary Payment") to the State of New Mexico. Horton shall pay Monetary Payment as follows:

a. Horton shall pay $125,000 by May 8, 2023, and

b. The remainder of the Monetary Payment shall be paid by October 7, 2024.

3. The Monetary Payment shall be paid by wire transfer via wire instructions provided by the Attorney General to counsel for Horton.

4. In the event that Horton does not timely make any payment in paragraph 1 herein, the Office of the Attorney General will send Horton a notice of default and Horton shall have 10 calendar days to cure the default. In the event the default is not cured, the State shall be entitled to garnish, execute or otherwise collect, any assets anywhere including Florida, except for Horton's retirement accounts and real property located at 400 NW 24th Street, Wilton Manors, FL 33311-3855, limited to the balance remaining due on the Monetary Payment.

5. Horton additionally consents to a personal money judgment of $5,000,000 in favor of the State of New Mexico ("Money Judgment").

6. The State, through the Attorney General, shall be entitled to commence any collection efforts regarding the Money Judgment with the exception of the following:

a. The State shall not move to foreclose or otherwise encumber or obtain Horton's real property located in Florida at 400 NW 24th Street, Wilton Manors, FL 33311-3855.

b. The State shall not garnish or otherwise execute on or collect against Horton's Bank of America Account No.XXXXXXXX0394 until July 6, 2023, at which time the State can collect on any funds remaining.

c. The State shall not move to foreclose Horton's real property located at 3246 Moab Ln., Albuquerque, NM 87111 until April 7, 2025 (the "New Mexico Property") to allow Horton time to sell the New Mexico Property;

d. Horton's 401k and other retirement accounts;

e. Any assets Horton held in Florida as of April 6, 2023;

f. Any assets Horton obtains in the future and holds in Florida that Horton obtains with future earned money including his wages, proceeds, or assets (subject to subparagraph 6g below);

g. Any Total Income Horton earns in Florida under $65,000. In the event Horton's Total Income exceeds $65,000, the Attorney General may collect upon the excess of such amount in accordance with Florida law. It is understood and relied upon by all parties that at the time of execution of this agreement that the NMAG may collect 25% of Horton's total Net Wages and other income under Florida law, and the NMAG will accordingly not seek to collect over 25% of Horton's total Net Wages and other income. For the time in which he is self-employed, Horton may pay the collectable amount to the State. Alternatively, the

State can request a writ of garnishment from a court with jurisdiction and serve the writ of garnishment in accordance with Florida law. The Attorney General may collect wages as provided in this paragraph for ninety (90) days after Horton provides his end of year tax returns, even if the tax return is filed following an extension, and even if that date occurs after the date provided in paragraph 9 of this Consent Judgment Horton agrees the State may collect retroactively on any Net Wage or other income amounts it is entitled to under this section and which were not already paid voluntarily, or otherwise.

h. Sales proceeds of businesses held in Florida. Sale proceeds of businesses currently held in Florida are not counted in or included in "Total Income" for Subparagraph g.

7. If Horton liquidates assets and pays the entire liquidation amount to the State, the State shall not consider such liquidation a preferential, fraudulent or voidable transfer.

8. On or before April 26, 2023, Horton will provide an affidavit of assets he held or had an interest in to which he has access or knowledge of, based on a preponderance of the evidence standard, as of April 6, 2023 and shall provide documents to support the affidavit (i.e. tax returns, bank account statements, etc.).

9. The State shall not commence any new collection action after three (3) years of entry of this Consent Judgment. However, the State may conclude any collection actions that are pending as of that date. The State shall file a Release of Judgment after three (3) years of entry of this Consent Judgment or upon the conclusion of any then-pending collection actions resulting out of this Consent Judgment, whichever comes later.

10. If it is determined that any Substantial Assets were hidden in settlement negotiations (i.e. as in the affidavit and supporting documents), those hidden assets shall be automatically forfeited and

turned over to the State of New Mexico. Horton shall pay the cost of liquidating those assets in addition to the Money Payment.

11. To ensure compliance with the terms of this Consent Judgment, Horton will either:

(i) provide monthly paystubs (if not self-employed) or quarterly financial statements due on the following dates:

a. April 18, 2023- July 30, 2023 due on August 7, 2023;

b. August 1, 2023-November 30, 2023 due on December 7, 2023;

c. December 1, 2023-March 31, 2024 due on April 7, 2024;

d. April 1, 2024-July 31, 2024 due on August 7, 2024;

e. August 1, 2024-November 30, 2024 due on December 7, 2024;

f. December 1, 2024-March 31, 2025 due on April 7, 2025;

g. April 1, 2025-July 31, 2025 due on August 7, 2025;

h. August 1, 2025-November 30, 2025 due on December 7, 2025;

i. December 1, 2026-April 18, 2026 due on May 1, 2026; or

(ii) In lieu of providing quarterly statements, Horton may instead provide end of year tax returns to the State and voluntarily make payments of an amount equal to 25% of the Net wages or other income Horton earns over $65,000 each year listed in this Paragraph. Pursuant to Section 6(g) above, the Attorney General may collect Net Wages and other income as provided in this paragraph for up to ninety (90) days after Horton provides his end of year tax return, even if the tax return is filed following an extension, and even if that date occurs after the date provided in paragraph 9 of this Consent Judgment. Horton agrees the State may collect retroactively on any

Net Wages and other income amounts it is entitled to under this section and which were not already voluntarily, or otherwise, paid.

Horton will provide his annual tax returns, or extension requests, within 15 days of filing. Failure to timely provide a quarterly affidavit or tax return, without asking the Attorney General for an extension and the extension being granted, shall be a breach of this Consent Judgment. If no extension has been requested and granted, the State shall send a notice of such breach as provided herein and Horton shall have ten (10) calendar days to cure such default. The State shall not have to provide the additional ten days to cure in instances where an extension has been requested and granted. In the event of an uncured default on the original or extended deadline(s), Horton shall pay an additional $5,000 per breach.

NOTICE

12. All affidavits, supporting documentation, or notices required to be provided to a Party shall be sent in written form electronically as follows, unless a Party gives notice of a change to the other Party:

a. For Horton:

400 NW 24th Street
Wilton Manors, FL 33311

b. For New Mexico:

State of New Mexico
c/o Jacqueline Ortiz and Serena Wheaton
jortiz@nmag.gov
swheaton@nmag.gov

III. RELEASE

13. Notwithstanding any term of this Consent Judgment and the successful completion of all tasks required by this Consent Judgment, the Attorney General hereby releases, discharges and relinquishes any and all claims against Horton, whether formally asserted or not in this Lawsuit or the

Underlying Fastbucks Lawsuit, known or unknown, fixed or contingent, foreseen or unforeseen, asserted or alleged or which were or could have been asserted or alleged, past, present or future for damages, costs, attorneys' fees and expenses of any kind whatsoever, whether existing at law, equity, statute, contract or otherwise, including without limitation, demands, actions, causes of action, suits, judgments, debts, obligations, rights, liabilities, losses, costs and expenses of any kind, character or nature whatsoever, whether contractual or extra-contractual in tort or otherwise, claims for punitive or exemplary damages of any kind or type (including any and all "bad faith," breach of duty of good faith and fair dealing, unfair claims handling, unfair trade practices, unfair insurance claim practices, breach of fiduciary duty, any duty or investigate, indemnify or settle, or any other alleged wrongdoing or breach of duty), or other legal, administrative, statutory or equitable relief, arising out of or related to the matters, allegations, facts, circumstances in this case or the FastBucks Lawsuit between Horton and the Attorney General. The releases in this paragraph are intended to have the broadest possible effect. The Consent Judgment does not release claims by private individuals for damages for any alleged personal injuries or other claims arising out of or related to the matters in this case, or criminal liability on the part of either Party. Should the Attorney General bring any criminal claims or charges against Horton arising from the allegations and/or facts pled in the Underlying Fastbucks Case or this Lawsuit, Horton's obligations under this Consent Judgment shall be null and void, including but not limited those obligations regarding the Monetary Payment and Monetary Judgment and the Attorney General shall cease any and all collection efforts. All releases of Horton and obligations of the Attorney General's Office shall remain in effect, including those set forth in Paragraph 13. The State shall retain any and all funds paid or collected at the time the Consent Judgment might be voided under this subsection.

14. <u>Successors</u>: This Consent Judgment is binding on, and inures to the benefit of, the Parties' successors and assigns. There are no third-party beneficiaries to this Consent Judgment.

15. Negotiated Judgment: The Parties are entering into this Consent Judgment for the purpose of compromising and to avoid the time, expense, burden, and uncertainty associated with continuing litigation. It is expressly agreed that this Consent Judgment is not admissible in any proceeding (except in a dispute between the State and Horton regarding each party's compliance with the Consent Judgment), and it is also expressly agreed and understood that nothing contained in this Consent Judgment may be taken as or construed to be an admission or concession of any liability, wrongdoing, or violation of any source of law, or of any other matter of fact or law. This Consent Judgment is not intended to be used or admissible in any unrelated administrative, civil, or criminal proceeding. Horton does not waive any defenses it may raise elsewhere in other litigation or matters.

16. Private Action: This Consent Judgment shall not confer any rights upon, and is not enforceable by, any persons or entities besides the State. Nothing in this sentence shall preclude the State from employing the services of a collection agency or other counsel for the purpose of pursuing collection of payments due under this Consent Judgment.

17. This Consent Judgment shall not be construed or used as a waiver or any limitation of any defense otherwise available to Horton in any pending or future legal, regulatory, or administrative action or proceeding, or Horton's right to defend himself from, or make any arguments in, any other suit.

18. Each Party shall bear its own attorneys' fees and costs arising out of, related to, or in connection with entry of this Consent Judgment.

19. If any provision of this Consent Judgment shall, for any reason, be held illegal, invalid, or unenforceable, in whole or in part, such illegality, invalidity, or unenforceability shall not affect any other provision or clause of this Consent Judgment and this Consent Judgment shall be construed and enforced as if such illegal, invalid, or unenforceable provision, in whole or in part, had not been contained herein.

20. This Consent Judgment represents the entire agreement between the Parties, and there are

no representations, agreements, arrangements, or understandings, oral or written, between the Parties relating to the subject matter of this Consent Judgment that are not fully expressed herein or attached hereto. The Parties agree that Horton has no obligations as arising out the allegations of the Lawsuit or the Underlying Fastbucks Case to the Attorney General beyond those set forth in this Consent Judgment, in any action undertaken by the Parties, no prior versions of this Consent Judgment and no prior versions of any of its terms that were not entered by the Court in this Consent Judgment may be introduced for any purpose whatsoever, unless the meaning and intent of certain terms are disputed.

21. The Court retains jurisdiction over this Consent Judgment and the Parties with respect to this Consent Judgment.

22. This Consent Judgment does not limit the rights of any private party to pursue any private remedies allowed by law; provided that this Consent Judgment is not intended to create any private right of action by other parties.

23. This Consent Judgment may be executed by the Parties in counterparts and be delivered by facsimile or electronic transmission, or a copy thereof, such constituting an original counterpart hereof, all of which together will constitute one and the same document.

5-15-2023

Honorable Matthew J. Wilson
District Court Judge

Prepared and Submitted by:

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New Mexico Attorney General

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(Signed by Mr. Charles Horton on attached page)
By: ______________________
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