ATTORNEY GENERAL OF THE STATE OF NEW YORK
BUREAU OF CONSUMER FRAUDS AND PROTECTION

In the Matter of

Investigation by LETITIA JAMES,
Attorney General of the State of New York,
of

NISSAN 112 LTD.

Assurance No. 24-042

## ASSURANCE OF DISCONTINUANCE PURSUANT TO EXECUTIVE LAW § 63(15)

The Office of the Attorney General of the State of New York ("OAG") commenced an investigation into unlawful and deceptive charges for the purchase of leased vehicles by Nissan 112 Sales Corp ("Nissan 112") pursuant to General Business Law § 349, General Business Law § 350, Personal Property Law §§ 330-53, and Executive Law § 63(12). This Assurance of Discontinuance ("Assurance") contains the findings of the OAG's investigation and the relief agreed to by the OAG and Nissan 112, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the "Parties"). Nissan 112 neither admits nor denies the OAG's Findings or any violation of law with respect to the purchase of leased vehicles by Nissan 112. Nissan 112 has agreed to this Assurance in settlement of the OAG's investigation and to avoid the time, expense, and distraction of litigation. Further, this Assurance is not intended for use by any third party in any other proceeding nor shall be used as evidence of any wrongdoing or alleged wrongdoing by any third party.

## OAG's FINDINGS

***Background***

1. Nissan 112 Sales Corp. is a licensed dealer for Nissan vehicles, with its principal place of business at 730 Route 112, Patchogue New York 11772.

2. Nissan 112 operates pursuant to longstanding contractual agreements with Nissan of North America Inc. ("NNA") and its various subsidiaries, one of which is the Nissan Motor Assurance Company ("NMAC"), which operates still other companies that arrange for financing for car leasing.

3. Nissan 112 offers consumers the option of leasing a Nissan vehicle instead of purchasing it outright.

4. To lease a Nissan vehicle, the consumer executes a lease agreement with a Nissan dealer; the dealer then assigns the lease (and, by extension, the ultimate title to the car) to a third-party financing company; the consumer then makes its lease payments to that third party financing company until the lease term concludes.

5. For Nissan 112 during the period in question, the third-party financing company it used for car leases was almost always Nissan Infiniti LT LLC ("NILT"), a subsidiary of NMAC.[1] This investigation solely concerned vehicles leased through NMAC.

6. When the lease term was up, and assuming they had made all the lease payments as promised, consumers are obliged to return to a Nissan dealership and exercise one of three

[1] Although NILT is the legal assignee of the lease, NMAC administers the leases on NILT's behalf; for the sake of simplicity, both entities will be collectively called "NMAC." The Nissan Motor Acceptance Company is a successor to Nissan Motor Acceptance Corporation; although the transition from one legal form to another occurred during the period in question, it changed nothing relevant to the facts at issue here; any reference to "NMAC" should therefore be taken to refer to both enterprises.

options. First, they can simply return the car to the dealership upon payment of a final "disposition fee" to NMAC. In this situation, NMAC would own the car, and usually would sell the car to the dealership from which the car was leased, or the dealership where the car was returned, to sell on as an ordinary used car. Second, consumers can extend the lease, or lease a different vehicle, with further agreement from the dealer and NMAC. Third, if the lease so provides, consumers have the option to purchase the car outright. The OAG's investigation focused on this third option.

7. Because any vehicle leased through NMAC was owned by NMAC, it is not necessary for consumers who leased their vehicles from one dealer to purchase them through that same dealer (although many consumers understandably did so). Instead, NMAC obligated all its franchised dealers to process exercises of the purchase option, regardless of whether the dealer originated the lease.

***The SignatureLease Makes Specific Promises About the Price of a Purchased Leased Vehicle***

8. Nissan 112 used a standard lease form for its auto leases, the "SignatureLease." This same form was used by other Nissan dealers; all leases at issue in this investigation used the same form SignatureLease. The SignatureLease is the governing document setting out the terms of the lease, and is provided to every consumer after it is executed.

9. The SignatureLease set out the process by which the lessee could purchase the leased vehicle. At the time the vehicle was leased, the consumer signed a SignatureLease with the leasing dealership; the consumer and original leasing dealership were the counterparties to the SignatureLease contract. The dealership would then immediately assign (on the very lease

document itself) the lease and underlying title to the vehicle to NMAC.[2] When the time came to purchase the vehicle, this process would occur in reverse: pursuant to clause 28(2) of the SignatureLease, "[i]f the Lessee [i.e. the consumer] is purchasing the Vehicle, the Lease and the Vehicle are sold to a dealer, who will then sell the Vehicle to the Lessee." At the moment of the exercise of the purchase option (that is, the moment that title to the vehicle passed to the consumer), the parties to the Lease would be the consumer on the one hand and the *selling* dealership, even if different from the leasing dealership, on the other.

10. As relevant here, the SignatureLease contains two passages giving customers the right to purchase their leased vehicle.

11. The first passage, in section 6 of the SignatureLease, reads in relevant part "Purchase Option at End of Lease Term. You have an option to purchase the Vehicle at the end of the lease term for $[the residual value of the vehicle, discussed below], and a Purchase Option Fee of $300. See Section 15."

12. The second passage, in section 15 of the SignatureLease, reads as follows (emphasis and size differences in original):

> You have the option to purchase this Vehicle "AS IS" from the originating dealer, or other location we specify, in cash for the Purchase Option Price, *plus* any official fees and taxes, vehicle inspection costs required in connection with the purchase, and a Purchase Option Fee of **$300**, which fees, taxes and costs are not included in the Purchase Option Price agreed to in Section 6. If you

[2] The SignatureLease reads "Lessor accepts the terms of this Lease and Lessor assigns and transfers to Nissan-Infiniti LT ("NILT") all of Lessors' rights, title, and interest in and to this Vehicle and this lease including all amounts payable thereunder, pursuant to the terms of the applicable written Retailer Agreement between Lessor and Nissan Motor Acceptance Corporation ("NMAC"), the benefits of which have been assigned by NMAC to NILT for purposes of leases assigned to NILT. Any guaranty by Retailer is made notwithstanding the terms of the Retailer Agreement. By signing below, the Lessor accepts the terms and conditions of this Lease."

> purchase the Vehicle at the end of the lease term, the Purchase Option Price will be the Residual Value shown in Section 5.d). If you purchase the Vehicle before the end of the lease term, the Purchase Option Price will be the Adjusted Lease Balance disclosed in Section 14). In either case, you must also pay other amounts due under this Lease at the time of purchase.

13. Section 15 explains that if the vehicle is purchased at the end of the lease term, the consumer need only pay the residual value of the vehicle as the Purchase Option Price plus the $300 purchase option fee and certain additional sums described below. This makes logical sense, as a car's "residual value" is the value of the car at the end of the lease term after taking into account depreciation and lease payments (*see* Personal Property Law § 337[5][k] [requiring disclosure of residual value in any motor vehicle lease]).

14. The adjusted lease balance—which served as the Purchase Option Price if the car was purchased before the lease term was up—was defined in section 14 of the SignatureLease as "a charge in today's dollars for Base Monthly Payments not yet due and the Residual Value of the Vehicle." This too makes sense: if a consumer paid the residual price to purchase the vehicle at the end of the lease term (as section 6 explains), it was reasonable to expect that purchasing the vehicle before the end of the lease term would require making the remaining lease payments as well.

15. The elements of the Purchase Option Price were not only reported to the consumer on the face of the lease agreement; these important figures were also reported to NMAC. If the purchase option were exercised and it was necessary for the dealer to purchase the vehicle from NMAC to sell it to the consumer exercising the option, the dealer would only pay NMAC the Purchase Option Price plus $75 in a "buyer fee." That $75 reflected NMAC's cut of the $300 Purchase Option Fee; the dealer would retain $225 as its share of the fee.

16. In other words, NMAC was the keeper of the accurate Purchase Option Price at all times, and this price could be easily determined on any particular date by Nissan 112 with only a moment's inquiry to the electronic communications platform linking NMAC and the dealership.

17. The remainder of section 15 of the SignatureLease sets out the entirety of the charges consumers would be obligated to pay in order to purchase the vehicle:

a. The Purchase Option Price (being either the residual value if purchased at the lease term, or the residual value incorporating remaining lease payments if purchased beforehand); and,

b. any official fees and taxes; and,

c. vehicle inspection costs required in connection with the purchase; and,

d. the Purchase Option Fee of $300; and,

e. other amounts due under the lease at the time of purchase.

18. Each of the additional fees described in the SignatureLease has a well-understood and well-defined meaning in New York State, in particular.

19. New York law limits the "official fees and taxes" payable on any sale of a used car in the Vehicle and Traffic Law and General Business Law to the following: sales tax, vehicle inspection costs (if the vehicle requires inspection), title transfer fees, registration fees (if the car's registration must be renewed), and, if the dealer assists the consumer with obtaining title transfer or registration, a limited fee for providing this service.

20. Cars are subject to sales tax; for Nissan 112, located as it was in Nassau County, the applicable sales tax rate was 8.625%.

21. It is almost always the case that dealers handle car registration, certificates of title, and associated paperwork for the consumer; if they do, 15 NYCRR § 78.19 permitted the dealer to cover the expense of providing this service by charging a fee not to exceed $75 if the car was sold before August 18, 2021, or $175 after August 18, 2021.[3] If the consumer wanted special or distinctive plates, the dealer may charge not more than $5 for assisting the consumer in obtaining these plates pursuant to that same regulation.

22. The vehicle inspection costs imposed by New York's Department of Motor Vehicles range depending on the type of vehicle, but for passenger Nissan vehicles would be no more than $37 in the New York City metropolitan area serviced by Nissan 112 ($10 for a safety inspection, $27 for an emissions inspection).

23. As for the cost of certificates of title and registration, the dealer is required by General Business Law § 396-qq(2) to "either calculate the actual registration and/or certificate of title charges due, or make a good faith estimate in each transaction of such charges of the sales contract or lease agreement." According to the DMV, the title transfer fee is a flat $50.

24. If a consumer needs to renew or change their registration, the registration fee is readily calculable from the weight of the vehicle and ranges from $26 for the lightest Nissan vehicles to $122 for the heaviest Nissan passenger vehicle presently on the market. Entirely new registrations attract a DMV fee of $25 for standard license plates; for specialized plates, the new registration DMV fee is $60.

25. In sum, then, the SignatureLease allows the consumer to buy their vehicle for the total of the residual value, the remaining lease payments, sales tax, and no more than between

[3] The amendment made August 18, 2021 that increased this amount to $175 from $75 has been accounted for in determining the permissible charges before and after this date.

$438 to $527 in additional fees before August 18, 2021, and no more than $538 to $627 in additional fees after that date (inclusive, in both cases, of the $300 Purchase Option Fee).

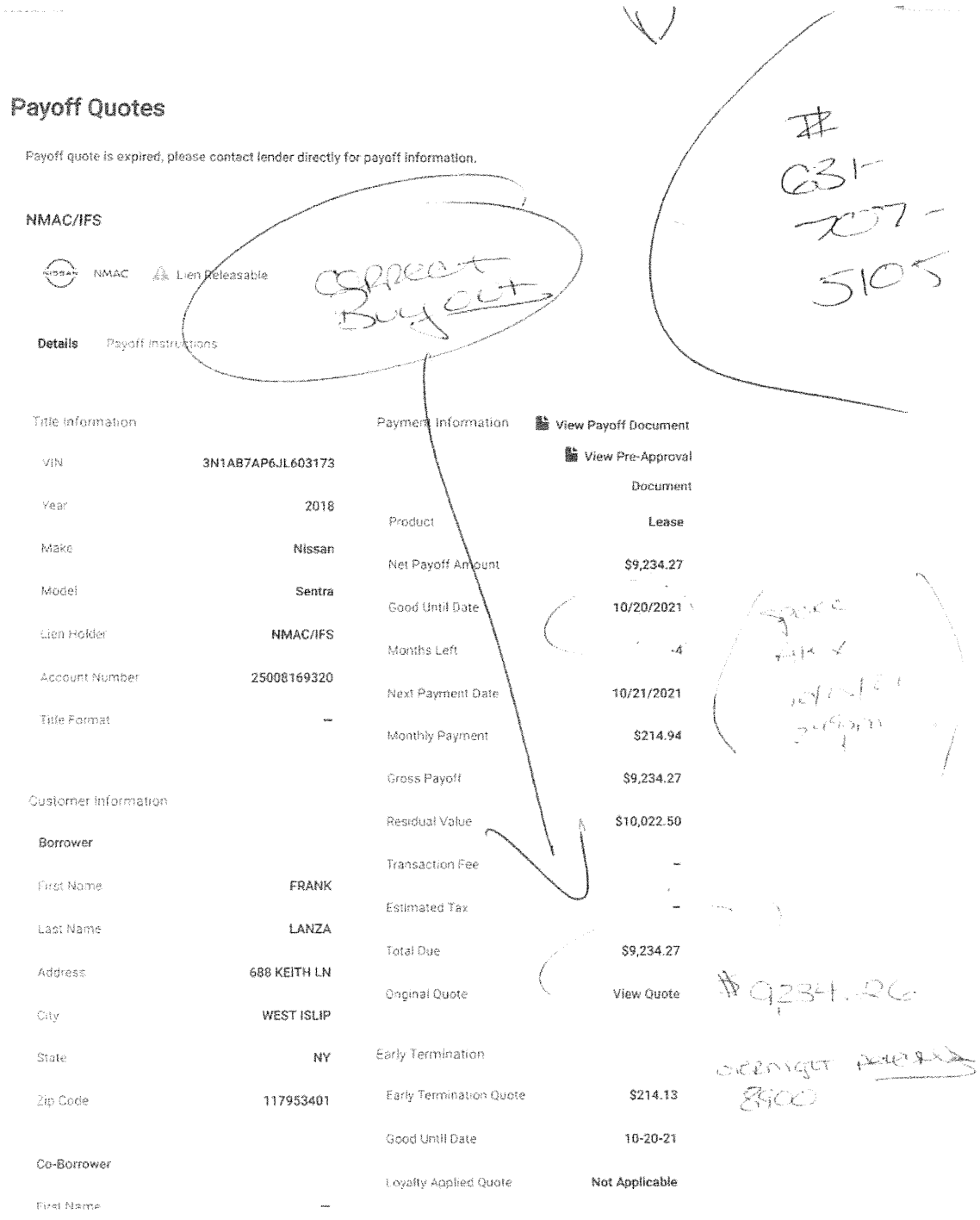
26. Nissan 112 knew that the charges they could impose were limited in this way; indeed, Nissan 112 agreed not to charge any more in clause 4.1 of the Retailer Agreement Nissan 112 signed with NMAC, which read in relevant part (emphasis added):

> If a Customer exercises an option to purchase the Vehicle under a Lease, upon NMAC's request the Retailer [i.e. Nissan 112] shall repurchase the Lease and the Vehicle. **The repurchase price to be paid by the Retailer to NMAC shall be the Purchase Option Price** disclosed in the Customer's Lease, and shall be paid to NMAC according to procedures that NMAC may from time to time announce through Retailer Bulletins, website applications or other means. Upon such repurchase, the Retailer shall promptly arrange to sell the Vehicle at the Purchase Option Price disclosed in the Customer's Lease, and settle its account with the Customer, including collection and remittance of applicable sales tax, title and registration fees to the appropriate governmental authority. **Retailer acknowledges and agrees that it cannot charge the Customer any fees in connection with the gross payoff other than what is disclosed in the Lease or required by state law.**

27. NMAC's SignatureLease Dealer Reference Guide, issued in May 2019, was even more blunt about the impermissibility of additional fees (at 27):

> You may only charge the Purchase Option Fee stated on the lease contract when the lease contract was signed. **You may not impose any other purchase option fees or charges. You may not charge a documentation fee as part of the lease purchase option**, unless you have entered into a new retail finance agreement with the customer to enable the customer to exercise the option. The documentation fee would thus be permitted under the terms of the new financing contract. **Official fees and taxes may only be imposed on the customer if required by law for the purchase transaction**. A purchase option fee may not be charged on leases that do not disclose a purchase option fee.

28. Indeed, Nissan 112 itself, in a telling handwritten annotation to a payoff quote document, underscored that it knew exactly what the correct buy out price was – the price quoted by NMAC.



## Payoff Quotes

Payoff quote is expired, please contact lender directly for payoff information.

**NMAC/IFS**

NMAC | Lien Releasable

**Details** | Payoff Instructions

Title Information

| | |
|---|---|
| VIN | 3N1AB7AP6JL603173 |
| Year | 2018 |
| Make | Nissan |
| Model | Sentra |
| Lien Holder | NMAC/IFS |
| Account Number | 25008169320 |
| Title Format | – |

Customer Information

**Borrower**

| | |
|---|---|
| First Name | FRANK |
| Last Name | LANZA |
| Address | 688 KEITH LN |
| City | WEST ISLIP |
| State | NY |
| Zip Code | 117953401 |

**Co-Borrower**

| | |
|---|---|
| First Name | – |

Payment Information | View Payoff Document | View Pre-Approval Document

| | |
|---|---|
| Product | Lease |
| Net Payoff Amount | $9,234.27 |
| Good Until Date | 10/20/2021 |
| Months Left | -4 |
| Next Payment Date | 10/21/2021 |
| Monthly Payment | $214.94 |
| Gross Payoff | $9,234.27 |
| Residual Value | $10,022.50 |
| Transaction Fee | – |
| Estimated Tax | – |
| Total Due | $9,234.27 |
| Original Quote | View Quote |

Early Termination

| | |
|---|---|
| Early Termination Quote | $214.13 |
| Good Until Date | 10-20-21 |
| Loyalty Applied Quote | Not Applicable |

29. This language in the Retailer Agreement and Dealer Reference Guide, and Nissan 112's own notes, underscored that a consumer who leased a vehicle with the SignatureLease could purchase that vehicle without any additional fees beyond those required by law and the $300 purchase option fee. It also emphasized that it would be clear on the face of NMAC paperwork whether the amount the consumer paid for the car would match what the dealer paid for the car: the true contractual Purchase Option Price as calculated by NMAC.

***Nissan 112 Enters into an Assurance of Discontinuance with the OAG***

30. In connection with the OAG's investigation of a credit repair service offered by Credit Forget It Inc. (or "CFI"), concluded in 2015, the OAG determined that Nissan 112 had engaged in a series of deceptive practices associated not only with the sales of credit repair and related services but with various other Nissan 112 business practice.

31. One such practice was Nissan 112's practice of "fail[ing] to itemize the cost of after-sale products in the retail installment contracts or leases in violation of Personal Property Law §§ 302(5), 337(5), as well as the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 et seq., Consumer Leasing Act, 15 U.S.C. § 1667 et seq. and Regulations Z, 12 C.F.R. § 226.18 and M, 12 C.F.R. § 213.4. As a result, these consumers could not determine how [Nissan 112] arrived at the final price for the vehicle or how much they were being charged for individual after-sale products. Upon return to the dealership, these consumers were not given adequate explanations for the additional charges" (Assurance of Discontinuance #15-215 between OAG and Nissan 112, at ¶ 9).

32. Nissan entered into an assurance of discontinuance with the OAG to resolve the investigation ("the 2015 AOD," a copy of which is attached to this AOD as Exhibit C).

33. In the 2015 AOD, Nissan 112 agreed that it, "its successors, employees, officers, directors, and assigns, [would be] hereby permanently enjoined from engaging in any of the following practices . . . (b) selling, or offering for sale, or providing to consumers any after-sale product or service unless, prior to such sale, [Nissan 112] disclose[s], clearly and conspicuously orally and in writing, a fair description of the after-sale product or services, the full price to be paid by the consumer for each such product or service and the fact that the product or service is optional and need not be purchased to obtain financing or the advertised price . . .
(f) Misrepresenting the price of the vehicle on a lease agreement by merging the price of After-sale products and services in the 'agreed upon value of the vehicle' or any term of similar import, or otherwise concealing the price of the vehicle from the consumer" (*id.* at ¶ 39 [underline in original]).

34. Nissan 112 also agreed, "pursuant to Executive Law § 63(15), that evidence of a violation of this assurance shall constitute *prima facie* proof of violation of the applicable law in any action or proceeding thereafter commenced by the Attorney General" (AOD ¶ 56).

***The COVID-19 Pandemic Results in Higher Prices for Used Cars***

35. As a result of shortages in semiconductor chips and shutdowns in new car production caused at least in part by the COVID-19 pandemic, demand for used cars spiked and supplies of used cars plummeted. As a result, the price of used cars increased and far more consumers began to invoke their contractual purchase rights at the conclusion of their lease than had previously.

36. As discussed above, whatever the circumstances behind the rise in purchase option invocations, Nissan 112 had only one lawful course open to them when a consumer turned to them to facilitate exercise of the purchase option: charge only the dollars-and-cents price set

forth in the SignatureLease for that option, even if economic circumstances made Nissan 112's compliance with those obligations more economically disadvantageous than Nissan 112 anticipated when the price was set.

37. Owing to NMAC's arrangement of its operations in New York, a dealer is an essential part of the lease purchase process. Failure to purchase a vehicle at or before the lease was up would lead the car automatically reverting to NMAC. With a ticking clock and no alternatives save other Nissan dealers (many of whom were doing precisely the same thing), consumers seeking to buy their leased vehicles lacked any true bargaining power. It was Nissan 112's legal obligation to honor the terms of the lease agreement and not to take advantage of their increase in bargaining power.

***In Hundreds of Lease Purchase Deals, Nissan 112 Charged Additional Unlawful Fees and Hide Them in the Deal Paperwork***

38. Both the price ultimately charged for lease purchases and the documentation of the components of that price are set forth in "deal jackets"— the dealer's copy of all of the collected paperwork for car sale furnished to a consumer. Nissan 112's deal jackets for lease purchases furnished to the OAG between January 2020 and May 2022 demonstrate that consumers were repeatedly charged illegal fees that were not disclosed in the lease agreement.

39. The deal jackets reflect both the amount of money consumers were supposed to be charged under the SignatureLease, and how much more they were in fact charged by Nissan 112 during the pandemic. The differences were often significant.

40. "On the sale of every vehicle, the retail dealer must issue to the purchaser, in addition to the certificate of sale (form MV-50 [required by the DMV]), a bill of sale or an

invoice" (15 NYCRR § 78.13[a]). That bill of sale or invoice must be accurate and complete, stating each specific charge being imposed on the consumer.

41. It is a deceptive practice for any dealer, at the time of a sale of a motor vehicle, to give a customer an invoice or bill of sale that does not list with specificity each of the fees that the consumer would be charged for the car and any add-on products the consumer chose to purchase at the same time such as an extended service contract. Similarly, it is a deceptive and unlawful practice to state the value of the vehicle on the invoice to be any figure other than the purchase option price as defined by the lease agreement.

42. It is also a deceptive and unlawful practice to combine multiple after-sale products into a single line item on an invoice and to combine, in an "other aftermarkets" line item or similar, both after-sale products and additional exemplary fees added by Nissan 112. Indeed, Nissan 112 expressly agreed in the 2015 AOD that, going forward, any representation of after-sale products that did not state in writing "a fair description of the After-Sale product or services [and] the full price to be paid by the consumer for each such product or service" would be a violation of, among other things, Article 22-A of the General Business Law outlawing deceptive trade practices (AOD ¶¶ 39[b], 56).

43. Yet Nissan 112 has repeatedly provided inaccurate and misleading invoices to their customers, overcharging hundreds of them in the process.

44. According to the consumer complaints reviewed by the OAG, the principal mechanism by which Nissan 112 deceived consumers was by inflating the "Other Aftermarkets" line item on various invoices. Examination of the sample of deal files produced by Nissan 112 confirms that, in clear violation of the AOD, Nissan 112 repeatedly failed to itemize after-sale products, issued "receipts" for these products that conspicuously omitted price terms, rolled

unstated charges into the ostensible vehicle price, and included multiple charges the propriety of which could not be discerned by anyone, let alone an unsophisticated consumer.

45. For example, in September 2021 Nissan 112 sold a 2019 Nissan Pathfinder to a consumer as a lease buyout. The Vehicle Purchase Receipt between NMAC and Nissan 112 set out the Purchase Option Price pursuant to the lease: $23,929. But Nissan 112 instead stated the charge as $24,004 on the invoice—$75 more. This additional fee was part of the Purchase Option Fee, which was never disclosed on the invoice. The remaining $225 of that fee was never identified.

46. Still more concerning, the invoice then went on to include three additional items: an "Other Aftermarkets" of $3,399, a "Maintenance" of $377, and an "Ext. Warranty" of $4,000. Only one of these line items—the extended warranty—was supported by a separate receipt and set out in a separate line item as the AOD required. Although Nissan 112 provided the customer with forms describing various other after sale products (a 24-Hour Roadside Assistance package, a Key/Remote Replacement Protection package, and what appears to be a redundant second warranty), not one of the "receipts" for these services included a price, despite space on each of these documents for a price to be displayed.

47. The failure to disclose the prices for each after-sale product made it difficult, if not impossible, for consumers to know how much they were being charged for "other aftermarket" products and how much were illegitimate fees. This is precisely the practice prohibited under the AOD that Nissan 112 nonetheless perpetuated.

48. Although the particulars varied from customer to customer, this example illustrates how Nissan 112 repeatedly operated with respect to lease buyouts following the onset of the pandemic. Nissan 112 reported 391 lease buyouts during the period January 2020 to

March 2022. Excluding the unlawful consolidated "other aftermarkets" line item, fully 86% of the leases reviewed from a random sample of this set overcharged consumers; the average overcharge was $703.

49. Even if all of Nissan 112's unlawful fees had been disclosed, Nissan 112 still was misrepresenting that consumers would pay one price for the vehicle in the SignatureLease when, in fact, Nissan 112 charged them a higher one.

***Nissan 112's Conduct Violated Applicable Statutes and Regulations***

50. Regulation M, issued by the Consumer Financial Protection Bureau, made applicable to motor vehicle leases by New York State law, require that a lease include "statement of whether or not the lessee has the option to purchase the leased property, and . . . the purchase price . . . or the method for determining the price and when the lessee may exercise this option," (12 CFR § 213.4[i][1]-[2]; *see also* 15 U.S.C. § 1667a[5] [portion of the Consumer Leasing Act of 1976 underlying this regulation, requiring disclosure of "whether or not the lessee has the option to purcahse the leased property and at what price and time"]; Personal Property Law § 337[5][a] [New York State Motor Vehicle Retail Leasing Act ("MVRLA") obliging retail lease agreements contain "[a]ll items required to be disclosed by the act of Congress entitled 'Consumer Leasing Act of 1976' and the regulations thereunder"]).

51. By repeatedly charging lease purchase consumers more than the price stated on the SignatureLease, Nissan 112 rendered the SignatureLease's disclosures defective and materially misleading, in violation of Regulation M and the MVRLA.

52. By misrepresenting the price at which consumers can purchase their leased vehicle at the end of the lease term, failing to honor the purchase price stated in the lease, and concealing fees and the accurate price information for each vehicle, Nissan 112 engaged in false

advertising in violation of Section 350 of the General Business Law, deceptive practices in violation of Section 349 of the General Business Law, and fraudulent and illegal conduct in violation of Executive Law § 63(12).

53. By failing to itemize after-sale products and services, in violation of AOD #15-215, Nissan 112 Corp. violated the AOD and by extension each of the preceding statutes.

54. By engaging in the aforementioned acts and practices, respondents have also engaged in repeated fraudulent and illegal conduct in further violation of Executive Law § 63(12).

## AGREEMENT

55. WHEREAS, Nissan 112 enters into this Assurance without admission or denial of any of the allegations or findings in paragraphs 1-54 above, but has agreed to this Assurance in settlement of the violations described above and to avoid the time, expense, and distraction of litigation;

56. WHEREAS, the OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest, such that the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations of General Business Law § 349, General Business Law § 350, Personal Property Law § 337, Executive Law § 63(12), 12 CFR § 213.4, and 15 U.S.C. § 1667 *et seq.* based on the conduct described above;

57. WHEREAS this Assurance is not intended for use by any third party in any other proceeding nor shall be used as evidence of any wrongdoing or alleged wrongdoing by any third party;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the OAG and Respondent, its successors, employees, officers, directors, and assigns:

## RELIEF

***Definitions***

58. For purposes of the paragraphs that follow, these terms shall have the following meanings:

a. "After-sale" product or service is any product or service for which the consumer is paying over and above the amount the consumer must pay to purchase a leased vehicle without any such products (i.e. the Total Allowed Charge). After-sale products include, but are not limited to, accessories, credit repair services, identity theft protection services, glass coatings, security services, warranties, maintenance coverage, tire and wheel protection, and insurance coverage;

b. An after-sale product or service is a "Fully Disclosed After-Sale Product" if the cost of that product or service was itemized, separately, on the invoice provided to the consumer with a description that accurately summarizes the product sold (e.g. "Extended Warranty," "Tire and Wheel Protection," etc.). An after-sale product or service is a "Partially Disclosed After-Sale Product" if the cost of that product or service was included in a single line item on the invoice purporting to summarize the cost of all after-sale products and services separate from the price of the vehicle (e.g. "Other Aftermarkets") and the consumer was provided a separate invoice clearly and conspicuously identifying the cost of each after-sale product so included. All other after-sale product or services sold to a consumer in the course of a lease buyout are "Improperly Disclosed After-Sale Products."

c. "Amount(s) overcharged" means any amount of money paid to Nissan 112 or any persons under the control of Nissan 112 by consumers during their exercise of the purchase option in a SignatureLease in excess of $100 more than the Total Allowed Charge. A consumer who paid an amount overcharged is an "overcharged consumer."

d. "Clearly and conspicuously" shall mean that the statement, representation, or term is so presented as to be readily apparent and understood by the person to whom it is being addressed. Factors to be considered for this purpose include, but are not limited to, language, font type and size, length, and color contrast.

e. The "dealer's buyout price" is the amount the dealer paid or will be obliged to pay NMAC to acquire the vehicle in the course of executing a lease purchase on behalf of a consumer;

f. The "Determined Purchase Option Price" with respect to the purchase of any leased vehicle is the gross payoff price as defined by NMAC on the day of the lease purchase or the repurchase price paid by Nissan 112 to NMAC during the process of completing a lease buyout, whichever is lower;

g. A "Refund Consumer" is an overcharged consumer who was overcharged more than $100 in the course of their lease vehicle purchase.

h. "Total Allowed Charge" means, with respect to the purchase of any leased vehicle, the sum of the Determined Purchase Option Price, the $300 Purchase Option Fee, the price of the Fully Disclosed After-Sale Products, the price of the Partially Disclosed After-Sale Products, those taxes and fees that the law of New York State, the United States, or another state or locality expressly ***require*** to be

paid in connection with the purchase and transfer of ownership of the vehicle to the consumer, and the fee permitted to be charged by 15 NYCRR § 78.19 if the dealership provides the services described in that regulation.

***Changes to Nissan 112's Business Practices***

59. *General Injunction.* Nissan 112 shall not engage, or attempt to engage, in conduct in violation of any applicable laws, including but not limited to General Business Law § 349, General Business Law § 350, Personal Property Law § 337, Executive Law § 63(12), 12 CFR § 213.4, and 15 U.S.C. § 1667 et seq.

60. *Specific Commitment to Refrain from Unlawful Lease Buyout Practices.* Nissan 112 shall not charge any amount for the purchase of a leased vehicle more than the Total Allowed Charge exclusive of the price of Partially Disclosed After-Sale Products, regardless of whether it was the original leasing dealership. In particular, Nissan 112 *may not* charge any fee for any service provided by the dealership that is or is represented to be necessary or relevant to the purchase of the vehicle itself over and above the Total Allowed Charge.[4]

61. *Specific Commitment to Itemize After-Sale Products*. Nissan 112 shall sell no after-sale product other than Fully Disclosed After-Sale products to any customer in any sale of any vehicle under any circumstances.

62. *Specific Commitment to Cease Misleading Labeling of Charges*. Nissan 112 shall list each charge on an invoice against a label that accurately describes the charge. It shall not

[4] For the avoidance of doubt, the $300 Purchase Option Fee that may be charged to a consumer may not be increased to account for the $75 Buyer Fee levied by NMAC or any other fee NMAC may elect to impose on the dealership, absent express provision for the same on the SignatureLease signed by the consumer.

label one charge using the label for another charge, or combine two separate charges into a single line item.

63. *Reform to Nissan 112's Invoicing Procedures*. For all purchases of leased vehicles processed following the effective date of this Assurance, Nissan 112's bill of sale or invoice, as required by 15 NYCRR § 78.13(a), must state, in addition to the information required by that regulation, the following information clearly and conspicuously:

a. The vehicle price, which must be the Determined Purchase Option Price;

b. The amount of the lease purchase fee stated in the original lease that must be paid by the consumer (i.e. under the SignatureLease discussed above, $300), which may be identified as "Lease Purchase Fee" or "Lease Buyout Fee" or words to that effect;

c. The amount of the dealer's optional DMV fee the dealer proposes to charge, inclusive of the disclaimer required by 15 NYCRR § 78.19;

d. The price of each after-sale product being sold alongside the vehicle, separately itemized for each such after-sale product and clearly and conspicuously identifying the after-sale product in question and its price;

e. The appropriate amount of sales taxes;

f. The appropriate amount of any other taxes, itemizing each tax separately;

g. If the vehicle is being purchased pursuant to a retail installment or financing contract, the amount of the relevant financing charges;

h. As applicable, the estimated title and registration fee amounts as required by General Business Law § 396-qq;

i. As applicable, the fee required to be charged by the New York Department of Motor Vehicles for safety and emissions inspections pursuant to Part 79 of the Regulations of the New York Commissioner of Motor Vehicles;

j. All other disclosures and other items required by local, state, or federal law to be included on the invoice;

k. A total sum that accurately states the entire amount to be charged, before the application of rebates or down payments.

64. The bill of sale or invoice, issued to the consumer complying with the provisions of paragraph 63 must be identical to the invoice kept in the deal file.

65. In addition to any other documentation, Nissan 112 must issue each consumer with a statement drawn from NMAC's systems, or the lease holder if not NMAC, stating clearly and conspicuously how the Determined Purchase Option Price was arrived at with reference to the original terms of the lease.

66. Nissan 112 must not issue any other invoice to a consumer purchasing a leased vehicle that contradicts or is inconsistent with the invoice required by paragraph 63, above.

67. Nissan 112 must furnish to the OAG an exemplar lease vehicle purchase invoice compliant with paragraph 63 within 10 business days following the execution of this Assurance. Nissan 112 will respond to any concerns the OAG raises concerning the exemplars within 10 days of Nissan 112's receipt of those concerns.

68. Nissan 112 will implement the relief described in this paragraph within 30 business days following the date of execution of this Assurance and continue to implement the relief permanently.

***Restitution***

69. Nissan 112 shall distribute **$39,390.96** (hereafter the "Restitution Amount") to Refund Consumers listed in the Final Restitution Spreadsheet agreed between Respondent and OAG, providing to each Refund Consumer the amounts specified therein in column labelled "OAG: RESTITUTION PER AOD", by regular mail to the addresses identified in the Final Restitution Spreadsheet, accompanied by the letter provided in Exhibit A. The envelope enclosing the letter and refund must contain the words "Attorney General of the State of New York" and "Nissan 112 Nissan Settlement."

70. Prior to each said mailing, Nissan 112 shall process the mailing address of each Refund Consumer through the National Change of Address database ("NCOA") and shall mail the checks to the most recent address. For mailings that are returned as addressee unknown, Nissan 112 shall process the address through another trace process, such as LexisNexis, and mail the check to another address, if one is identified. If another address is not identified, Nissan 112 shall call the consumer on their provided phone number and request a different address.

71. The check to each Refund Consumer shall be made payable to the Refund Consumer (the "Restitution Check"). In the event a Refund Consumer Letter is returned to Nissan 112, or the Nissan 112 cannot locate the Refund Consumer at the last known address, Nissan 112 shall make reasonable efforts, as described in paragraph 70 above, to obtain another address and re-send the Refund Consumer Letter to any new address identified by the Nissan 112. Restitution Checks for any Refund Consumer who cannot be located after pursuing all reasonable efforts or who fails to cash or deposit a Restitution Check from the Nissan 112 shall be treated as abandoned property in accordance with the New York Abandoned Property Law (or other applicable state law if the Refund Consumer is a resident of another state).

72. Any Refund Consumer who has not received and/or cashed a Restitution Check from the Nissan 112 (because the Refund Consumer's address could not be located or for other good cause) and who contacts OAG or Nissan 112 prior to the later of one year from the date on which payments are first mailed by the Nissan 112, shall be mailed a Restitution Check, together with the Refund Consumer Letter, within 20 days of notice from the Refund Consumer or OAG to the Nissan 112 of the Refund Consumer's entitlement to a refund.

73. For any Refund Consumer who should have been but was not sent a Restitution Check and who, within three years of execution of this Assurance, makes a request for a refund to Nissan 112 or OAG, Nissan 112 shall make a full payment to that Refund Consumer of the amount specified in Final Restitution Spreadsheet, as applicable.

***Penalty***

74. Pursuant to General Business Law § 350-d, Nissan 112 shall pay to the State of New York a penalty of **$250,000**. Such amount shall be due within five days after the date of this Assurance. Nissan 112 shall pay this amount by wire transfer, certified check, or bank check payable to the State of New York. The payment must reference Assurance No. 24-042.

75. The payment shall be delivered to the State of New York Office of the Attorney General, Bureau of Consumer Frauds and Protection, Attention: AAG Alec Webley, 28 Liberty Street, New York NY 10005.

***Reporting and Record-Keeping***

76. *Initial Restitution Report:* Within 150 days of the mailing of the Refund Consumer Letters, including the Refund Consumer Letters to overcharged Potential Refund Consumers, Nissan 112 shall provide a report (the "Restitution Report") to the OAG. The

Restitution Report shall consist of an annotation of the Final Restitution Spreadsheet, against each row of which the following additional information for each Refund Consumer shall appear: the address used for mailing purposes, the amount of the Restitution Check, the date the first Refund Consumer Letter was sent, whether the Refund Consumer Letter was returned, whether the Refund Consumer's Restitution Check was deposited, and the date of any additional attempt(s) to send the Refund Consumer Letter.

77. *Periodic Compliance Auditing*: Ninety (90) days after the execution of this Assurance, Nissan 112 shall provide to the OAG a list of the VINs of leased vehicles where the dealer facilitated the purchase of those vehicles within that time period (together "the compliance audit report"). The OAG shall select 10% of the VINs so reported and communicate its selection to the Nissan 112. Within 10 business days of this communication from the OAG, Nissan 112 shall furnish the relevant parts of the deal jacket associated with the sale of each vehicle denoted by the VINs selected by the OAG. This process ("compliance audit") shall be repeated on the one- and two-year anniversary of its first completion. Each compliance audit shall only cover the purchases or re-evaluation requests processed since the date of the last compliance audit report.

78. Nissan 112 agrees to cooperate with OAG in monitoring and auditing compliance with this Assurance. Nissan 112 agrees to maintain and preserve the entire deal file associated with a leased vehicle purchase for a minimum of six years after their creation, and to provide or make these documents available to OAG in electronic format upon receiving written request within 30 days of receiving such request.

## MISCELLANEOUS

***Subsequent Proceedings***

79. Nissan 112 expressly agrees and acknowledges that a default in the performance of any obligation under paragraphs 59-78 is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 56, supra, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the Assurance has been violated shall constitute prima facie proof of the statutory violations described in paragraph 59, pursuant to Executive Law § 63(15).

80. In any subsequent investigation, civil action, or proceeding by the OAG to enforce this Assurance, for violations of the Assurance, or if the Assurance is voided pursuant to paragraph 90, the Nissan 112 expressly agrees and acknowledges:

a. that any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance;

b. that the OAG may use statements, documents or other materials produced or provided by the Nissan 112 prior to or after the effective date of this Assurance;

c. that any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Nissan 112 irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.

81. If a court of competent jurisdiction determines that Nissan 112 has violated the Assurance, Nissan 112 shall pay to OAG the reasonable cost, if any, of obtaining such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

82. To the extent not already provided under this Assurance, Nissan 112 shall, upon request by OAG, provide all documentation and information necessary for OAG to verify compliance with this Assurance and to effectuate the terms of this Assurance.

83. This Assurance pertains exclusively to the matters expressly addressed herein and does not extend to any other potential claims, issues, or proceedings not specifically contemplated by this Assurance.

***Effects of Assurance***

84. Acceptance of this Assurance by OAG is not an approval or endorsement by OAG of any of Nissan 112's practices or procedures, and the Nissan 112 shall make no representation to the contrary.

85. This assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than the Attorney General, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the Attorney General.

86. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

87. Any failure by the Attorney General to insist upon the strict performance by Nissan 112 of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions hereof, and the Attorney General, notwithstanding that failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Assurance to be performed by the Respondent.

***Communications***

88. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 24-042, and shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery; express courier; or electronic mail at an address designated in writing by the recipient, and shall be addressed as follows:

If to Nissan 112, to General Manger; Al Williamson
730 Route 112, Patchogue New York 11772,
al.tantilloautogroup@aol.com

with a copy to

Robert F. Milman Esq.
Milman Labuda Law Group, PLLC
3000 Marcus Ave.
Lake Success, New York 11042
Suite 3w8
rob@mmmlaborlaw.com
If to the OAG, to:

New York State Office of the Attorney General
Bureau of Consumer Frauds and Protection
Attn: Alec Webley, Assistant Attorney General
28 Liberty Street
New York, NY 10005
Telephone: 212-416-8133
Email address: alec.webley@ag.ny.gov

or in that person's absence, to the person holding the title of Bureau Chief, Consumer Frauds and Protection Bureau at the same mailing address.

89. Within 10 days of a change in the address of OAG or Nissan 112, the party whose address has changed shall provide the other with written notice of the change.

***Representations and Warranties***

90. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by the Nissan 112 and their counsel and OAG's own factual investigation as set forth in its Findings, paragraphs 1-54 above. Nissan 112 represents and warrants that neither it nor its counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Nissan 112 or their counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

91. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Nissan 112 in agreeing to this Assurance.

92. Nissan 112 represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. Nissan 112 shall not take any action or make any statement denying, directly or indirectly, the propriety of this Assurance, or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects Nissan 112's (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a party.

***General Principles***

93. Nothing in this Agreement shall relieve Nissan 112 of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

94. Nothing contained herein shall be construed to limit the remedies available to the OAG if Nissan 112 violates the Assurance after its effective date.

95. This Assurance may not be amended except by an instrument in writing signed on behalf of the Parties to this Assurance.

96. If any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

97. Nissan 112 acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

98. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

99. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

100. This Assurance may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

101. The effective date of this Assurance shall be the date upon which it has been fully executed by all of the signatories hereto.

**IN WITNESS WHEREOF**, this Assurance is executed by the parties hereto on the dates set forth below:

LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

By: Jane M. Azia
Jane Azia
Bureau Chief

NISSAN 112 SALES CORP.
268 Jericho Turnpike
Syosset, NY 11791

Name of representative
Title

# EXHIBIT A

Refund Consumer Mailing (use mailing applicable to dealership)

(OVERLEAF)

State of New York
Office of the Attorney General

Letitia James
Attorney General

Jane M. Azia
Bureau Chief
Consumer Frauds and Protection Bureau

[DATE]

*By Regular Mail*

[Consumer Name]
[Consumer Address]

RE: Nissan 112 Settlement Payment

**Dear [Consumer name]:**

You are receiving this letter, along with the enclosed check, because of a settlement between my office and Nissan 112.

An investigation by my office revealed that, between 2020 and 2023, certain consumers who purchased their leased a vehicle through Nissan 112 were improperly overcharged during that purchase.

While you may not have been aware that you were charged more than you should have been to purchase your vehicle, Nissan 112's records indicate that you were overcharged in the amount stated in the attached check. You must cash or deposit this check **within six (6) months of the date of issue**.

I am pleased that my office was able to help you, along with many other New Yorkers, to obtain restitution through our settlement. Should you have any questions, please contact my office at 800-771-7755.

Sincerely,

[signature]

LETITIA JAMES

[Spanish transaction of Exhibit A to come]

# EXHIBIT B

Form of Draft Restitution Spreadsheet (in native form)