

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

Assurance No. 24-066

ACTION NISSAN INC., d/b/a “Rockland
Nissan”

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 Action Nissan Inc., doing business as Rockland Nissan (“Rockland Nissan”) 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 Rockland Nissan, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the “Parties”).

Rockland Nissan neither admits nor denies the OAG’s Findings or any violation of law with respect to the purchase of leased vehicles by Rockland Nissan. Rockland Nissan 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. Action Nissan Inc., doing business as Rockland Nissan, is a licensed dealer for Nissan vehicles, with its principal place of business located at 608 Route 303, Baluvelt New York 10913.

2. Rockland Nissan 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. Rockland Nissan 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 Rockland Nissan 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.

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.

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 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. Rockland Nissan 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 consumers 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

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 Option Fee of **\$300**, which fees, taxes and costs are not included in the Purchase Option Price agreed to in Section 6. If you 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 Rockland Nissan 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 Rockland Nissan, 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 Rockland Nissan (\$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.

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.

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 \$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. Rockland Nissan knew that the charges they could impose were limited in this way; indeed, Rockland Nissan agreed not to charge any more in clause 4.1 of the Retailer Agreement Rockland Nissan 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. Rockland Nissan] 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. This language in the Retailer Agreement and Dealer Reference Guide underscored that a consumer who leased a vehicle with the SignatureLease could purchase that vehicle at the price NMAC set 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.

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

29. 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.

30. As discussed above, whatever the circumstances behind the rise in purchase option invocations, Rockland Nissan 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 Rockland Nissan's compliance with those obligations more economically disadvantageous than Rockland Nissan anticipated when the price was set.

31. 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 Rockland Nissan's legal obligation to honor the terms of the lease agreement and not to take advantage of their increase in bargaining power.

In Many Lease Purchase Deals, Rockland Nissan Charges Additional Unlawful Fees and Hides Them in the Deal Paperwork

32. 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 the collected paperwork for car sale furnished to a consumer. Rockland Nissan'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.

33. 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 Rockland Nissan during the pandemic. The differences were often significant.


34. "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 invoice must be accurate and complete, stating each specific charge being imposed on the consumer.

35. It is a deceptive practice for any dealer, at the time of a sale of a motor vehicle, to give a consumer an invoice 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.

36. Yet Rockland Nissan repeatedly provided inaccurate and misleading invoices to their customers, overcharging many of them in the process.

37. For example, below is a copy of the Vehicle Purchase Receipt applicable to the lease buyout of a 2019 Nissan Frontier at Rockland Nissan (that is, the receipt for the sale of the vehicle by NMAC to Rockland, for Rockland to then sell on to the consumer). The name and identifying details of the consumer have been redacted for privacy.

Date: 11/18/2021

 **VEHICLE PURCHASE RECEIPT**

Congratulations on your vehicle purchase! Please print this page for your reference and forward a copy to your accounts payable department to retain as a file copy.

PURCHASE DETAILS	VEHICLE DETAILS
Sales Date: 11/18/2021 Seller: NILT Purchase Type: Dealer Purchase (Gross payoff includes applicable credits) Payment Method: Check out on manheim.com Purchase Price: \$22,001 Buyer Fee: \$75 Relist Fee: \$0 Total Purchase Amount: \$22,076	VIN: [REDACTED] Description: 2019 Nissan Frontier SV Color: Magnetic Black Inspection Complete? N Frame Damage? N/A Grounding Mileage: 54,298 Inspection Mileage: N/A Odometer Problem? N Pick up location: 608 ROUTE 303 City, State, Zip Code: BLAUVELT, NY, 10913 Phone Number: (845) 358-6700

BUYER DETAILS	LESSEE DETAILS
Buyer Name: NICOLE DUNN Dealership Name: ROCKLAND NISSAN Street Address: 608 ROUTE 303 608 ROUTE 303 City, State, Zip Code: BLAUVELT, NY, 10913 Phone Number: (845) 323-5779	Lessee Name: [REDACTED] Account Number: [REDACTED] Signed Odometer Statement Received? Y Vehicle Sold to Original Lessee? N

38. Pursuant to clause 4.1 of the Retailer Agreement, the purchase price displayed on the Vehicle Purchase Receipt for this vehicle was the Purchase Option Price as NMAC calculated it on the day of the lease buyout, and that price was \$22,001.

39. But that figure is conspicuously absent from the invoice shared with the consumer—the invoice Rockland was legally obligated to ensure was complete and accurate. Here is that invoice:

Rockland Nissan 2nd Production 000408

ACTION NISSAN INC., DBA, ROCKLAND NISSAN
608 ROUTE 303
BLAUVELT NY 10913
DEALER ID:7063547

SOLD TO [REDACTED] CUST# INVOICE
[REDACTED] 100371
ADDRESS [REDACTED] 49757

SOURCE	INVOICE	STOCK NO.	KEY	DATE	YEAR	MAKE	MODEL	NEW OR USED	COLOR	
			I	1/18/21	2019	NISSAN	FRONTIER	USED		
SALESMAN NUMBER	3229		C	JOSE M GACERES	VI. OR SERIAL NO.					KEY NOS.
COST	KEY	ACCT NO.	SALE	KEY	DESCRIPTION					
	C	4	24970.13	-	NEW CAR RETAIL					
	C	4 1		-	NEW CAR FLEET					
	C	4 -		-	NEW TRUCK - RETAIL					
	C	4 3		-	NEW TRUCK - FLEET					
	C			-						
	C			-						
	C			-						
	C			-						
	C			-						
	C			-						
	C	2 3 1	3437.00	-	INVENTORY - NEW CARS					
	C	2 3 7		-	SERVICE CONTRACT - NEW TRUCKS					
	C	4 4 0		-	USED CARS - RETAIL					
	C	4 4 2		-	- WHOLESALE					
	C	4 4 5		-	USED TRUCKS - RETAIL					
	C	4 4 8	23407.13	-	SUB TOTAL - WHOLESALE					
248535	I				CAR DEAL NO.					
		3 2 4	2380.00	-	SALES TAX					
		8 0 5	50.00	-	LICENSE AND TITLE					
			175.00	-	CONVEYANCE					
			30940.11		TOTAL CASH PRICE					
			4330.19		FINANCING					
			N/A		INSURANCE					
			35278.50		TOTAL TIME PRICE					
		3 0 4	N/A	+	DEPOSIT					
		2 1 0	N/A	+	CASH ON DELIVERY					
			N/A	+						
			N/A	+	TRADE-IN ALLOWANCE					
					PAYMENTS					
			35278.50		MONTHS: 75 @ 470.50 PER MONTH					
			35278.50		TOTAL					
		3 0 3	N/A	-	PAY OFF BAL. USING FINANCE CO.					
				+						
		2 0 5	30940.11	+	CONTRACT IN TRANS.					
				+						
				+						
				+						
		6 4 0		-	COST OF SALES - USED CARS RETAIL					
		6 4 1		+	RECONDITIONING - USED CARS RETAIL					
	I	2 3 7	N/A	+	VALUE OF STOCK NO.					
	I		N/A	+	TRADE - IN(S)					

ANY WARRANTIES ON THE PRODUCTS SOLD HEREBY ARE THOSE MADE BY THE MANUFACTURER. THE SELLER HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY LIABILITY IN CONNECTION WITH THE SALE OF SAID VEHICLE.

GROUP DESCRIPTION PRICE

NOTHING PROMISED NOTHING OWED

NO COOLING OFF PERIOD IN NY STATE

IT IS UNDERSTOOD THAT THIS BILL OF SALE ENCOMPASSES THE ENTIRE AGREEMENT BETWEEN THE CUSTOMER AND ACTION NISSAN INC. DBA, ROCKLAND NISSAN.

FINANCE BANK: TD AUTO FINANCE LLC

TERM: 75

MILEAGE: 54298

DESCRIPTION OF TRADE-IN

YEAR	MAKE	MODEL	BODY COLOR

VI. OR SERIAL NO.

NV-50 #:

STATE INSPECTION #:

ROCKLAND
NISSAN
"GREAT PRICES & BEYOND"

608 ROUTE 303
BLAUVELT, NY 10913
(845) 358-6700
N.Y.S. FACILITY ID NO. 7063547



For ease of reading, an extract of the above image is presented below:

ACCT NO.	SALE	KEY	DESCRIPTION
4	24970.13	-	NEW CAR RETAIL
4 1 -		-	NEW CAR FLEET
4 - -		-	NEW TRUCK - RETAIL
4 3 -		-	NEW TRUCK - FLEET
		-	
		-	
		-	
		-	
		-	
2 3 1		-	INVENTORY - NEW CARS
2 3 7	3437.00	-	NEW TRUCKS
4 4 0		-	USED CARS - RETAIL
4 4 2		-	WHOLESALE
4 4 5		-	USED TRUCKS - RETAIL
4 4 8	23487.13	-	WHOLESALE
			CAR DEAL NO.
3 2 4	2380.50	-	SALES TAX
8 0 5	50.00	-	LICENSE AND TITLE
	175.00	-	CONVEYANCE
	30940.21		TOTAL CASH PRICE
	4338.29		FINANCING
	N/A		INSURANCE
	35278.50		TOTAL TIME PRICE
3 0 4	N/A	+	DEPOSIT
2 1 0	N/A	+	CASH ON DELIVERY
	N/A	+	
	N/A		TRADE-IN ALLOWANCE
			PAYMENTS
	35278.50		MONTHS DOLLARS
	35278.50		@ 470.58 PER MONTH
			TOTAL

40. Instead of presenting the Vehicle Price to be the Purchase Option Price of \$22,001 that appeared on the Vehicle Purchase Receipt between NMAC and Rockland, this invoice falsely asserted that the Vehicle Price was \$24,970.13, or fully **\$2,969.13 more** than Purchase Option Price. This discrepancy cannot be explained by the presence of after-sale products because, to its credit, Rockland had a practice of itemizing each after-sale product on the invoice.

Here, one such product was so itemized, a service plan for which Rockland charged \$3,437.⁴

And even if it could, it would be doubly deceptive to roll certain after-sale products into the vehicle price while having other after-sale products itemized.

41. Ironically, a fee omitted on this invoice was one Rockland *was* entitled to charge, namely the \$300 Purchase Option Fee. By omitting this fee, the invoice created the misleading impression that one or more of the other stated fees were in fact the Purchase Option Fee, or that the dealership was entitled to use the presence of the Purchase Option Fee to state a vehicle value on the invoice other than the correct value that appeared NMAC's systems.

42. Of the 688 lease buyouts Rockland reported for the period January 2020 to March 2022, fully 89% of the leases reviewed from a random sample of this set overcharged consumers; the average overcharge was \$467.

Rockland Nissan's Conduct Violated Applicable Statutes and Regulations

43. 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 purchase 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”)).

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

45. 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, Rockland Nissan 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).

46. 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

47. WHEREAS, Rockland Nissan neither admits nor denies the OAG’s Findings, paragraphs 1-46 above, but have agreed to this Assurance in settlement of the violations described above and to avoid the time, expense, and distraction of litigation;

48. 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;

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

RELIEF

Definitions

49. 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 (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,” solely for purposes of this Assurance of Discontinuance, means any amount of money paid to Rockland Nissan or any persons under the control of Rockland Nissan by consumers during their exercise of the purchase option in a Signature Lease more than the Special 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 Rockland Nissan to NMAC during the process of completing a lease buyout, whichever is higher;
- g. A “Potential Refund Consumer” is a consumer who purchased their leased vehicle from or via Rockland Nissan between September 30, 2022 and the date of this Assurance.

- h. A “Refund Consumer” is an overcharged consumer who was overcharged more than \$100 in the course of their lease vehicle purchase.
- i. “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, 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 Rockland Nissan’s Business Practices

50. *General Injunction.* Rockland Nissan 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.

51. *Specific Commitment to Refrain from Unlawful Lease Buyout Practices.* Rockland Nissan shall not charge any amount for the purchase of a leased vehicle more than the Total Allowed Charge regardless of whether it was the original leasing dealership. For the avoidance of doubt, Rockland Nissan *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.

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

53. *Specific Commitment to Cease Misleading Labeling of Charges.* Rockland Nissan shall list each charge on an invoice against a label that accurately describes the charge. It shall not label one charge using the label for another charge, or combine two separate charges into a single line item.

54. *Reform to Rockland Nissan's Invoicing Procedures.* For all purchases of leased vehicles processed following the effective date of this Assurance, Rockland Nissan'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 Signature Lease 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 amount of sales taxes;
- f. The 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.

55. The invoice issued to the consumer complying with the provisions of paragraph 54 must be identical to the invoice kept in the deal file.

56. In addition to any other documentation, Rockland Nissan 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.

57. Rockland Nissan must not issue any other invoice to a consumer purchasing a leased vehicle other than the invoice required by paragraph 54, above, except for invoices associated with after-sale products further itemizing the price associated with elements of such products.

58. Rockland Nissan must furnish to the OAG an exemplar lease vehicle purchase invoice compliant with paragraph 54 within 10 business days following the execution of this

Assurance. Rockland Nissan will respond to any concerns the OAG raises concerning the exemplars within 10 days of Rockland Nissan's receipt of those concerns.

59. Rockland Nissan 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

60. Rockland Nissan shall distribute **\$157,958.59** (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 (or, if the address field is blank, the Refund Consumer's last known address as it appears in Rockland Nissan's records), 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 "Rockland Nissan Settlement."

61. Prior to each said mailing, Rockland Nissan 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, Rockland Nissan 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, Rockland Nissan shall call the consumer on their provided phone number and request a different address.

62. *Determination of Additional Restitution to Potential Refund Consumers.* Within 60 days of the execution of this Assurance, Rockland Nissan shall complete a review of each of the deal files of each Potential Refund Consumer and determine any amounts overcharged to any Potential Refund Consumer and transmit to the OAG a spreadsheet summarizing the amount charged each Potential Refund Consumer, the Potential Refund Consumers were overcharged, the amounts overcharged, and how that sum was determined, alongside deal jackets comprising 10% of the population of Potential Refund Consumers Rockland Nissan determined were *not* overcharged and 10% of the population of Potential Refund Consumers Rockland Nissan determined *were* overcharged, chosen at random by the OAG (“Additional Refund Consumer Report” or “ARCR”).⁵

63. The OAG shall review the ARCR, comparing them to the random sampling of deal jackets. Upon approval of the ARCR by the OAG, those Potential Refund Consumers who the ARCR identifies as being overcharged shall be deemed Refund Consumers for all other purposes under this Assurance.

64. Within 30 days following the OAG’s approval of the ARCR, Rockland Nissan shall distribute to Refund Consumers identified in the approved ARCR a refund for the amount each Refund Consumer was overcharged in the same manner as for a Refund Consumer identified in the Final Restitution Spreadsheet. For the avoidance of doubt, this distribution shall be in addition to the Restitution Amount.

⁵ The random sampling method is as follows: Rockland Nissan will communicate the VINs corresponding to the vehicle purchases for each category of Potential Refund Consumers (those who were and were not overcharged). OAG shall select from those VINs the deal jackets to be produced in the relevant proportions.

65. Irrespective of the category of Refund Consumer to which a refund is sent, the envelope enclosing the letter and refund must contain the words “Attorney General of the State of New York” and “Nissan of Westbury Settlement.” Prior to each said mailing, Rockland Nissan 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, Rockland Nissan shall call the consumer on their last known telephone number and request a new address to which the check can be mailed. If an address is not forthcoming via such a phone call (or voicemail message and callback), Refund Consumer’s home address shall be processed through the NCOA and the check mailed to the most recent home address.

66. 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 Rockland Nissan, or the Rockland Nissan cannot locate the Refund Consumer at the last known address, Rockland Nissan shall make reasonable efforts to obtain another address and re-send the Refund Consumer Letter to any new address identified by the Rockland Nissan.

67. 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 Rockland Nissan 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).

68. Any Refund Consumer who has not received and/or cashed a Restitution Check from the Rockland Nissan (because the Refund Consumer's address could not be located or for other good cause) and who contacts OAG or Rockland Nissan prior to the later of one year from

the date on which payments are first mailed by the Rockland Nissan, shall be mailed a Restitution Check, together with the Refund Consumer Letter, within 30 days of notice from the Refund Consumer or OAG to Rockland Nissan of the Refund Consumer's entitlement to a refund.

69. 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 Rockland Nissan or OAG, Rockland Nissan shall make a full payment to that Refund Consumer of the amount specified in Final Restitution Spreadsheet, as applicable.

Penalty

70. Pursuant to General Business Law §§ 350-c and 350-d, Rockland Nissan shall pay to the State of New York a penalty of **\$47,920**. Such amount shall be due within five days after the date of this Assurance. Rockland Nissan 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. 24-066.

71. 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

72. Initial Restitution Report: Within 150 days of the mailing of the Restitution Checks and Refund Consumer Letters, Rockland Nissan 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.

73. Periodic Compliance Auditing: Ninety (90) days after the execution of this Assurance, Rockland Nissan 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 Rockland Nissan. Within 10 business days of this communication from the OAG, Rockland Nissan 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 180 and 270 days after the execution of this Assurance, followed by a compliance audit one year from the day of the execution of this Assurance, followed by a compliance audit on that same day each year for the next two years. Each compliance audit shall only cover the purchases or re-evaluation requests processed since the date of the last compliance audit report.

74. Rockland Nissan agrees to cooperate with OAG in monitoring and auditing compliance with this Assurance. Rockland Nissan 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

75. Rockland Nissan expressly agrees and acknowledges that a default in the performance of any obligation under paragraphs 50-74 is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 48, 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 50, pursuant to Executive Law § 63(15).

76. 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 86, the Rockland Nissan expressly agrees and acknowledges that any statute of limitations or other time-related defenses are tolled from and after the effective date of this Assurance; that the OAG may use statements, documents or other materials produced or provided by the Rockland Nissan prior to or after the effective date of this Assurance; and that any civil action or proceeding must be adjudicated by the courts of the State of New York, and that Rockland Nissan irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.

77. If a court of competent jurisdiction determines that Rockland Nissan has violated the Assurance, Rockland Nissan 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.

78. To the extent not already provided under this Assurance, Rockland Nissan 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.

Effects of Assurance

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

80. 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.

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

82. Any failure by the Attorney General to insist upon the strict performance by Rockland Nissan 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

83. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 24-066, 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:

84. If to Rockland Nissan, to Jonathan Stern, or in that person's absence, to the person holding the title of principal owner or general manager with a copy to:

Robert Milman, Esq.
Milman Labuda Law Group PLLC
3000 Marcus Ave, Suite 3W8
Lake Success, New York 11042
Telephone: 516-328-8899
Email address: 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.

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

Representations and Warranties

86. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by the Rockland Nissan and their counsel and OAG's own factual investigation as set forth in its Findings, paragraphs 1-46 above. Rockland Nissan 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 Rockland Nissan

or their counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

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

88. Rockland Nissan 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. Rockland Nissan 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 Rockland Nissan'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

89. Nothing in this Assurance shall relieve Rockland Nissan of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

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

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

92. 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.

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

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

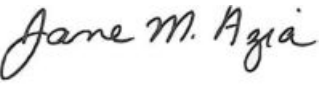
95. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

96. 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.

97. 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 Azia
Bureau Chief

Date: 11/26/2024

ACTION NISSAN INC.
200 Sunrise Highway
Amityville New York 11701

Jonathan Stern
Principal


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 Azia
Bureau Chief

ACTION NISSAN INC.
200 Sunrise Highway
Amityville New York 11701



Jonathan Stern
Principal

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: Rockland Nissan Settlement Payment

Dear [Consumer name]:

You are receiving this letter, along with the enclosed check, as a result of a settlement between my office and Rockland Nissan. (also known as “Action Nissan”).

An investigation by my office revealed that, between 2021 and 2023, certain consumers who purchased their leased a vehicle through Rockland Nissan were overcharged in the course of that purchase.

While you may not have been aware that you were due a refund as a result the purchase of your vehicle, Rockland Nissan’s records indicate that you are due the sums 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 1-800-771-7755.

Sincerely,

Letitia James
LETITIA JAMES



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: Rockland Nissan Pago de Liquidación

Estimado(a) [Nombre]:

Usted está recibiendo esta carta, con el cheque adjunto, como resultado de un acuerdo entre mi oficina y Rockland Nissan (también conocido como “Action Nissan Inc.”).

Una investigación realizada por mi oficina reveló que, entre 2020 y 2023, Rockland Nissan les cobró indebidamente de más a ciertos consumidores que compraron su vehículo arrendado a través de Rockland Nissan en el transcurso de esa compra.

Es posible que no supiera que se le cobró más de lo que debería haber cobrado por la compra de su vehículo, los registros de Rockland Nissan indican que se le cobró de más en la cantidad indicada en el cheque adjunto. Debe cobrar o depositar este cheque **dentro de los seis (6) meses siguientes a la fecha del cheque.**

Me complace que mi oficina haya podido ayudarlo(a), junto con muchos otros neoyorquinos, a obtener una restitución a través de nuestro acuerdo. Si tienes alguna pregunta, comuníquese 800-771-7755.

Sinceramente,

LETITIA JAMES