

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. 24-002

BARON NISSAN INC.

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 Baron LLC (“Baron”) 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 Baron, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the “Parties”).

OAG’s FINDINGS

Background

1. Baron Nissan Inc. (“Baron”) is a licensed dealer for Nissan vehicles, with its principal place of business at 235 Glen Cove Road, Greenvale NY 11548.
2. Baron operates pursuant to longstanding contractual agreements with Nissan of North America Inc. (“NNA”) and Nissan Motor Assurance Company (“NMAC”), which operates still other companies that arrange for financing for car leasing.

3. Baron 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 Baron 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

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 would either sell the car to the dealership from which the car was leased, or sell the car to the dealership where the car was returned, to sell on as an ordinary used car, or dispose of the car in some other fashion. 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

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.

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. Baron 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. Among other things, 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

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.”

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 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. 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.”

14. 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 was 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.

15. In other words, NMAC was the keeper of the accurate Purchase Option Price at all times, and this price could be determined by Baron with inquiry to the electronic communications platform linking NMAC and the dealership.

16. 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.

17. 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.

18. Cars are subject to sales tax; for Baron, located in Nassau County, the applicable sales tax rate was most often 8.625%.

19. If dealers handle car registration, certificates of title, and associated paperwork for the consumer, 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

20. 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 Baron (\$10 for a safety inspection, \$27 for an emissions inspection).

21. 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.

22. 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.

23. In sum, then, the SignatureLease allows the consumer to buy their vehicle (setting aside any other products they might buy at the same time) for the total of the residual value, the remaining lease payments, sales tax, and no more than between \$438 to \$527 in additional fees

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.

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).

24. Clause 4.1 of the Retailer Agreement Baron signed with NMAC, 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. Baron] 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.**

25. NMAC's Signature Lease Dealer Reference Guide, issued in May 2016, provided (at 17):

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.

26. Substantially identical language to the above appeared in the Dealer Reference Guide issued every subsequent year, up to and including 2023.

In Some Situations, Baron Charges Additional Unlawful Hidden Fees

27. 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. Baron’s deal jackets for lease purchases furnished to the OAG between January 2020 and May 2022 demonstrate that 208 consumers of the 455 who tried to buy out their leased vehicle at Baron—45% of the total—were charged illegal fees that were not disclosed in the lease agreement.

28. 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 Baron during the pandemic. These overcharges were as high as \$7,000 for an \$18,000 vehicle; the average overcharge was \$987.33.

29. “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.

30. It is a deceptive practice for any dealer, at the time of a sale of a motor vehicle, to give a customer 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. And it is a deceptive and unlawful practice to combine multiple after-sale products into a single line item on an invoice.

31. Yet Baron provided inaccurate and misleading invoices to hundreds of its customers, overcharging many of them in the process.

32. For example, here is the Vehicle Purchase Receipt setting out NMAC's determination of the Purchase Option Price for a certain consumer (name withheld for privacy):

Date: 01/04/2022

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: 01/04/2022	VIN: 1N4BL4DW9KN313288
Seller: NILT	Description: 2019 Nissan Altima 2.5SV
Purchase Type: Lessee Purchase (Net payoff includes applicable credit and / or security deposit)	Color: STORM BLUE CHRO
Payment Method: Check out on manheim.com	Inspection Complete? N
Purchase Price: \$17,294	Frame Damage? N/A
Buyer Fee: \$75	Grounding Mileage: 1,729
Relist Fee: \$0	Inspection Mileage: N/A
Total Purchase Amount: \$17,369	Odometer Problem? N
	Pick up location: 235 GLEN COVE RD
	City, State, Zip Code: GREENVALE, NY, 11548
	Phone Number: (516) 621-2300

BUYER DETAILS	LESSEE DETAILS
Buyer Name: Brian Chabrier	Lessee Name: [REDACTED]
Dealership Name: BARON NISSAN, INC.	Account Number: [REDACTED]
Street Address: 235 GLEN COVE RD	Signed Odometer Statement Received? Y
City, State, Zip Code: GREENVALE, NY, 11548	Vehicle Sold to Original Lessee? Y
Phone Number: (516) 621-2300	

33. This Vehicle Purchase Receipt indicates that the vehicle's true price was \$17,294; the \$75 buyer fee being NMAC's share of the \$300 purchase option price.

34. Here is the invoice for that lessee's lease buyout:

BARON NISSAN INC.
235 Glen Cove Rd.
GREENVALE, NEW YORK 11548
(516) 821-2300

ADDRESS

YEAR	MAKE	MODEL	VEHICLE IDENT OR SERIAL NO
1988	FORD	FORD	
ALL WARRANTIES ON THIS VEHICLE ARE THE SOLE RESPONSIBILITY OF THE SELLER. THE SELLER HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, EITHER EXPRESSED 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 THE VEHICLE. THIS DISCLAIMER BY THE SELLER IN NO WAY AFFECTS THE TERMS OF THE MANUFACTURER'S WARRANTY.			
GROUP	DESCRIPTION	PRICE	
NEW CAR - FACTORY INSTALLED			
MILES:	1,729		
PLATE:			
"If this motor vehicle is classified as a used motor vehicle DEALER NAMED ABOVE certifies that the entire vehicle is in condition and repair to render under normal use, satisfactory and adequate service upon the public highway at the time of delivery." DEALER FACILITY NO. 7035172			
DEALER'S OPTIONAL FEE FOR PROCESSING APPLICATION FOR REGISTRATION AND/OR CERTIFICATE OF TITLE, AND FOR SECURING SPECIAL OR DISTINCTIVE PLATES (IF APPLICABLE). THIS IS NOT A DMV FEE. \$375.00 (THE OPTIONAL FEE FOR REGISTRATION OF TITLE AND SPECIAL PROCESSING FEE IS 1% MAXIMUM AND SPECIAL PLATE PROCESSING FEE IS \$20.00 MAXIMUM ARE NOT NEW YORK STATE OR DEPARTMENT OF MOTOR VEHICLES FEES. UNLESS A USER HAS PREVIOUSLY REGISTERED OR TITLE OR FOR A SPECIAL OR DISTINCTIVE PLATE, YOU MAY SUBMIT YOUR OWN APPLICATION FOR REGISTRATION AND/OR CERTIFICATE OF TITLE OR FOR A SPECIAL OR DISTINCTIVE PLATE TO ANY MOTOR VEHICLE ISSUING OFFICE. THE AMOUNT INDICATED ON THE SALES CONTRACT OR LEASE AGREEMENT FOR REGISTRATION AND TITLE FEES IS AN ESTIMATE. IN SOME INSTANCES IT MAY EXCEED THE ACTUAL FEES DUE. THE COMMISSIONER OF MOTOR VEHICLES, THE DEALER WILL AUTOMATICALLY AND WITHIN 60 DAYS OF SECURING SUCH REGISTRATION AND TITLE REFUND ANY AMOUNT OVERPAID FOR SUCH FEES.			
Signature: X USED CAR TRADED			
YEAR	MAKE	MODEL	VEHICLE IDENT OR SERIAL NO
1988	FORD	FORD	
BODY	NAME OF FINANCIAL CO		

DATE		PRODUCE NO		STOCK NO	
		59981			
QUANTITY	100 120 200	SALES TAX (RECEIPT)		C 8 8 5 4	
	DESCRIPTION	COST	RET	ACC NO	DATE
	NISSAN SENTRA		C	400	
	NISSAN 300 SX		C	401	
	NISSAN 300 ZX		C	403	
	NISSAN 240 SX CONV		C	404	
	NISSAN MAXIMA		C	405	
	NISSAN 240 SX		C	406	
	NISSAN ALTIMA		C	407	
	ARISAN 2WD TRUCK		C	408	
	NISSAN 4WD TRUCK		C	409	
	NISSAN PATHFINDER		C	412	
	NISSAN DURIST		C	413	10-835
			C		
	U CAR RETAG		C	440	
	INVOICE		C	442	
			C		
	LICENSE FEE		C	305	
		CAR DEAL NO.			
SALES TAX		324		1,593.90	
INSPECTION FEE		805		60.00	
TDOC FEE		805		11.00	
		TOTAL CASH PRICE			
FINANCING					
INSURANCE					
		TOTAL TIME PRICE			
DEPOSIT		304		28,200.00	
CASH ON DELIVERY		210			
RATE		2210		44.00	
USED CAR ALLOWANCE				11.00	
MONTHS		DOLLARS		PER MONTH	
1		21,500.00		11.00	
		TOTAL			
LEASER'S		303		11.00	
FINANCE CONTRACTS NEW & USED		205		22,350.00	
DISCOUNTS AND CHALLENGES					
		631			
NYS ACTIVE FIRE MANAGEMENT AND					
FIRE PROTECT 30.00 PER NEW FIRE		323			
RECOGNITION, USED CARS					
COST OF SALES - USED CARS					
VALUE OF TRADE		STOCK NO		1237	

The salient figures are reproduced below for better readability:

OFFER	NISSAN PATHFINDER		C 412	19,639.50	
	NISSAN QUEST		C 413		
			C		
	U CAR RETAIL		C 440		N/A
	WHLSE		C 442		
			C		
	LICENSE FEE		C 305		N/A
	 CAR DEAL NO.				
	SALES TAX		324	1,693.90	
	INSPECTION FEE		805	60.00	
CASH	DOC FEE		805		N/A
	TOTAL CASH PRICE			21,393.41	
	FINANCING				
	INSURANCE				N/A
	TOTAL TIME PRICE			21,393.41	
	DEPOSIT		304		
	CASH ON DELIVERY		210		N/A
	REBATE		2210		N/A
	USED CAR ALLOWANCE				N/A
	PAYMENTS				N/A
SETTLEMENT	MONTHS	DOLLARS	PER MONTH		
	1	21,393.41			
	TOTAL				
	LIEN PAYOFF		303		N/A
	FINANCE CONTRACTS NEW - 2	USED 1	205	21,393.41	
	DISCOUNTS AND OVERALLOWANCES				

35. Despite the actual Purchase Option Price of the vehicle being \$17,294, the invoice states without explanation that the purchase option price was in fact \$19,639.50, or **\$2,345.50** more than the proper price.

36. The invoice also omits any mention of a fee Baron *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.

Baron's Conduct Violated Applicable Statutes and Regulations

37. 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”]).

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

39. 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, Baron 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).

40. By repeatedly failing to state the correct registration and title fees on the invoice, or a good-faith estimation of the same, instead deceptively inserting these fees directly into the

total without disclosure, Baron violated General Business Law § 396-qq as well as sections 349 and 350 of the General Business Law.

41. 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

42. WHEREAS, Baron neither admits nor denies the OAG's Findings, paragraphs 1-41 above, but have agreed to this Assurance in settlement of the violations described above and to avoid the time, expense, and distraction of litigation;

43. 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 Parties:

RELIEF

Definitions

44. 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.).
- c. “Amount(s) overcharged,” solely for purposes of this Assurance of Discontinuance, means any amount of money paid to Baron or any persons under the control of Baron by consumers during their exercise of the purchase option in a SignatureLease 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 Baron to NMAC during the process of completing a lease buyout, whichever is higher;

- 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, 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 Baron’s Business Practices

45. *General Injunction.* Baron 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.

46. *Specific Commitment to Refrain from Unlawful Lease Buyout Practices.* Baron 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.

47. *Reform to Baron’s Invoicing Procedures.* For all purchases of leased vehicles processed following the effective date of this Assurance, Baron’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;
- 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.

48. The invoice issued to the consumer complying with the provisions of paragraph 47 must be identical to the invoice kept in the deal file.

49. In addition to any other documentation, Baron 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. This statement must include the residual value of the vehicle as stated on the lease, the dealer's buyout price, and, either on the lease holder statement or another piece of paper, a statement informing the consumer that the dealer must allow the consumer to purchase the car for no more than the Total Allowed Charge (listing the different components making up the Total Allowed Charge).

50. Baron must not issue any other invoice to a consumer purchasing a leased vehicle other than the invoice required by paragraph 47, above, except for invoices associated with after-sale products further itemizing the price associated with elements of such products.

51. Baron must furnish to the OAG an exemplar lease vehicle purchase invoice compliant with paragraph 47 within 30 business days following the execution of this Assurance. Baron will respond to any concerns the OAG raises concerning the exemplars within 10 days of Baron's receipt of those concerns.

52. Baron 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.

53. *Dealership Obligations Retained Even Upon Transfer of Ownership.* Baron may not sell or transfer ownership of the dealership operated by Baron, its owners or its agents

(broadly defined), or substantially all of the assets of said dealership, without providing notice of the sale and transfer to the OAG.

54. *Revisions to Lease Arrangements Imposed by NMAC.* If NMAC, or any franchisor of whom Baron is a franchisee, proposes to impose obligations on Baron inconsistent with the terms of this Assurance, Baron must give notice to the OAG within 30 business days of the proposed obligations. Such notice must include copies of the pertinent communications from NMAC or the franchisor, as well as contact information for NMAC or the franchisor's counsel or other representative.

Restitution and Penalty

55. Baron shall pay to the State of New York the amount of \$264,176.88 ("the Total Payment") on the following payment schedule:

- a. February 29, 2024: \$34,109.48
- b. March 31, 2024: \$34,109.48
- c. April 30, 2024: \$34,109.48
- d. May 31, 2024: \$34,109.48
- e. June 30, 2024: \$34,109.48
- f. July 31, 2024: \$34,109.48
- g. August 31, 2024: \$29,760.00
- h. September 30, 2024: \$29,760.00

56. Of the Total Payment, \$59,520 shall be deemed a civil penalty pursuant to General Business Law §§ 350-c and 350-d. The OAG shall apply the balance to restitution or remediation regarding the conduct alleged in the Findings above, and/or to the costs of this

investigation and proceeding, at the discretion of the Attorney General, except that no part of the said balance shall revert to Baron.

57. Baron shall pay this amount by wire transfer or company check. 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.

58. If Baron fails to pay the Total Payment, or any part thereof, on or before the dates in the payment schedule set out above, and further fails to pay the Total Payment or any part thereof within five days of receiving a notice of default from the OAG, Baron agrees that a court of competent jurisdiction may direct the entry of a money judgment against Baron and in favor of the People of the State of New York for any unpaid portion thereof, and the OAG shall undertake execution thereof. Baron agrees that time is of the essence in the making of the Total Payment on the dates set out on the payment schedule above.

Reporting and Record-Keeping

59. *Periodic Compliance Auditing:* One year after the execution of this Assurance, Baron 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 Baron. Within 10 business days of this communication from the OAG, Baron shall furnish the relevant parts of the deal jacket associated with the sale of each vehicle denoted by the VINs selected by the OAG.

60. Baron agrees to cooperate with OAG in monitoring and auditing compliance with this Assurance. Baron 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

61. Baron expressly agrees and acknowledges that a default in the performance of any obligation under paragraphs 45-60 is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 43, *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 52, pursuant to Executive Law § 63(15).

62. 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 72, the Baron 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 Baron 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 Baron irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.

63. If a court of competent jurisdiction determines that Baron has violated the Assurance, Baron 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.

64. To the extent not already provided under this Assurance, Baron 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

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

66. All terms and conditions of this Assurance shall continue in full force and effect and inure to the benefit of the parties to this Assurance and their successors, assignees, or transferees. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of OAG.

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

68. Any failure by the Attorney General to insist upon the strict performance by Baron 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

69. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 24-002, 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:

70. If to Baron, to:

Russell Shanks
Cyruli Shanks & Zizmor LLP
420 Lexington Ave.
Suite 2320
New York, NY 10170
Telephone: 212-661-6800 ext 223
Email address: rshanks@cszlaw.com

With a copy to:

Jory Baron
Baron Nissan Inc.
235 Glen Cove Road
Greenvale, NY 11548
Telephone: 576-614-3652
Email address: jorybaron@gmail.com

or in that person's absence, to the person holding the title of General Manager of Baron Nissan Inc.

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.

71. Within 30 days of a change in the address of OAG or Baron, the party whose address has changed shall provide the other with written notice of the change.

Representations and Warranties

72. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by the Baron and their counsel and OAG's own factual investigation as set forth in its Findings, paragraphs 1-41 above. Baron 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 Baron or their counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

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

74. Baron 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. Baron 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 Baron'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

75. Nothing in this Agreement shall relieve Baron of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

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

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

78. 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.

79. Baron acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

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

81. 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.

82. 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.

83. 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

BARON NISSAN INC.
235 Glen Cove Rd.
Greenvale, NY 11548

R. Baron

Ron Baron
President and Owner