

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. 23-030

KINGS NISSAN INC. and KINGS AUTO
GROUP LLC

Respondents.

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 Kings Nissan Inc. and Kings Auto Group LLC (“Respondents”) 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 Respondents, whether acting through its respective directors, officers, employees, representatives, agents, affiliates, or subsidiaries (collectively, the “Parties”).

OAG’s FINDINGS

Background

1. Kings Nissan Inc. is a licensed dealer for Nissan vehicles, located at 2758 Coney Island Avenue, Brooklyn NY 11235.

2. Kings Nissan Inc. is owned by Kings Auto Group LLC (“KAG”), headquartered by 305 East Sunrise Highway, Lindenhurst, NY 11757. At all relevant times, Kings Nissan Inc. was under the control of KAG.

3. Respondents operate Kings Nissan Inc. 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.

4. Respondents offer consumers the option of leasing a Nissan vehicle instead of purchasing it outright. To do so, the consumer executes a lease agreement with the 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 Respondents during the period in question, the third-party financing company it used for car leases was almost always Nissan Infiniti LT LLC (“NILT”), a subsidiary of NMAC.¹ This investigation solely concerned vehicles leased through NMAC.

6. When the lease term was up, and assuming they had made all the lease payments as promised, consumers are obliged to return to a Nissan dealership and exercise one of three options. First, they can simply return the car to the dealership upon payment of a final “disposition fee” to NMAC. In this situation, NMAC owns the car, and usually sells the car to

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.

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 of 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. Kings 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

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

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

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

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

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

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

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.”

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. The remainder of section 15 of the SignatureLease sets out the entirety of the charges they 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 plus 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. Each of the additional fees described in the SignatureLease has a well-understood and well-defined meaning in New York State, in particular.

18. 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.

19. Cars are subject to sales tax; for the Kings Nissan dealership, located as it is in New York City, this sales tax rate was usually 8.875% (sometimes less, if the consumer lived in a lower-tax jurisdiction).

20. 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 wants special or

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.

distinctive plates, the dealer may charge not more than \$5 for assisting the consumer in obtaining these plates pursuant to that same regulation.

21. 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 Respondents (\$10 for a safety inspection, \$27 for an emissions inspection).

22. 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.

23. 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 vehicle 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.

24. 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 no more than \$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).

25. Respondents knew that the charges they could impose were limited in this way; indeed, they agreed not to charge any more in clause 4.1 of the Retailer Agreement KAG and Kings 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. Respondents] 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.**

26. NMAC's SignatureLease Dealer Reference Guide, issued as early as 2016 and then sent to dealerships again every single following year, was even more blunt about the impermissibility of additional fees (language repeated verbatim, every year, from 2016 to 2023):

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.

27. This language in the Retailer Agreement and Dealer Reference Guide underscored that any vehicle leased with the SignatureLease could be purchased 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

28. 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.

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

30. 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 Respondents' legal obligation to honor the terms of the lease agreement and not to take advantage of their increase in bargaining power.

In Hundreds of Lease Purchase Deals, Respondents Charge Additional Unlawful Fees and Hide Them in the Deal Paperwork

31. 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. The deal jackets for all lease purchases made by Respondents' consumer between February 2020 and August 2022 demonstrate that consumers were repeatedly charged illegal fees that were not disclosed in the lease agreement. 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 Respondents during the pandemic. The differences were often significant.

32. "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]). 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.

33. For most customers, Respondents issued two invoices: one typed invoice, received by the consumer, and one handwritten invoice, concealed from the consumer but contained in the internal deal jacket. The invoices did not agree with one another in their details, and neither invoice accurately stated the true components of the final amount the consumer paid.

34. Here is an example of a typed Respondents' invoice; this one was issued for purchase of a 2021 Nissan Altima (in the interests of consumer privacy, the name, contact details, and signature of the consumer(s) in question are redacted):

VEHICLE INVOICE						KINGS NISSAN, Inc. 2758 Coney Island Avenue BROOKLYN, NEW YORK 11235 718-934-3900		U 000313 *	
NISSAN		DEAL # 36469		CUST # 138221		SERVICE • 934-3900		SOLD TO: [REDACTED]	
SALESMAN [REDACTED]		ADDRESS: [REDACTED]		DATE 10/30/2021		H#: [REDACTED]			
MAKE	MODEL	NEW OR USED	VIN	YEAR	KEY NO.	STOCK # 4304			
NISSAN	ALTIMA	USED	[REDACTED]	2021		PRICE OF VEHICLE 33962		36662.08	
INSURANCE COVERAGE INCLUDES:									
☐ FIRE AND THEFT ☐ COLLISION - AMT. DEDUCT. ☐ PUBLIC LIABILITY - AMT. ☐ PROPERTY DAMAGE - AMT.						1185			
OPTIONAL EQUIPMENT AND ACCESSORIES						3480		PRICE	
GROUP DESCRIPTION						3286			
* "THE DEALER APPLICATION PROCESSING FEE IS NOT A NEW YORK STATE OR DEPARTMENT OF MOTOR VEHICLES FEE. UNLESS A LIEN IS BEING RECORDED OR THE DEALER ISSUED NUMBER PLATES, YOU MAY AVOID THIS FEE BY SUBMITTING YOUR OWN APPLICATION FOR REGISTRATION AND/OR CERTIFICATE OF TITLE TO ANY MOTOR VEHICLE ISSUING OFFICE."						175.00			
USED VEHICLE CERTIFICATE OF ADEQUACY									
"IF THIS MOTOR VEHICLE IS CLASSIFIED AS A USED MOTOR VEHICLE, SELLER 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."									
IMPORTANT NOTICE TO USED CAR BUYER									
(a) STATE LAW REQUIRES THAT SELLERS OF SECOND HAND CARS CERTIFY IN WRITING TO THE BUYER THAT EACH CAR IS IN SAFE CONDITION AT THE TIME OF SALE. (b) THIS CERTIFICATION IS A GUARANTEE THAT THE CAR IS IN SAFE CONDITION AT THE TIME OF SALE. (c) BUYER HAS A RIGHT TO REQUEST THE DEALER TO REPAIR OR TO PAY IN FULL FOR REPAIRS OR ANY UNSAFE CONDITION IN THE CAR WHICH DOES NOT COMPLY WITH THIS CERTIFICATION. (d) THIS BUSINESS IS LICENSED BY THE DEPARTMENT OF CONSUMER AFFAIRS, 42 BROADWAY, NEW YORK, NEW YORK 10004. COMPLAINT PHONE: 311 NYC • DCA LIC# 671140 & 0895008									
SALES TAX 8.875%						3562.61			
LICENSE AND TITLE						50.00			
TOTAL CASH PRICE						40443.69			
SERVICE CONTRACT						3480.00			
FINANCING INSURANCE						14229.56		N/A	
TOTAL TIME PRICE						58159.25			
SETTLEMENT: 10.30.21									
DEPOSIT						2000.00			
CASH ON DELIVERY						N/A			
TRADE-IN						N/A			
LESS LIEN						N/A			
TYPE									
VIN									
PAYMENTS 75 MOS. @ 748.79						56159.25			
ALLY FINANCIAL						41929.69			
TOTAL						58159.25			

35. On its face, this invoice appears to comport with the law. The price of the vehicle is stated to be \$36,662.08, and adding the price of an extended service contract of \$3,480 and financing charge of \$14,229.56, plus sales tax of \$3,562.61, and dealer registration fee of \$175 (this deal being done after the August 2021 increase), and license and title fee of \$50, one obtains the specified sum of \$58,159.25, which is the amount ultimately charged and paid (taking together \$2,000 in a down payment and \$41,929.69 financed).

36. But \$36,662.08 was never the vehicle's actual price as specified by the SignatureLease. In fact, the vehicle's true net payoff amount—according to the NMAC printout included in the deal jacket itself—was \$33,887.08, or \$2,275 less than the amount stated on this first invoice, as can be seen in the database extract below (this being an early buyout, the consumer was properly charged for the remaining rental payments, explaining the gap between the listed residual and net payoff value):

Vehicle Information		Payment Information	View Payoff Document
VIN	[REDACTED]	Product	Lease
	79	Net Payoff Amount	\$33,887.08
Year	2021	Good Until Date	11/01/2021
Make	Nissan	Months Left	32
Model	Altima	Next Payment Date	11/02/2021
Lien Holder	NMAC/IFS	Monthly Payment	\$477.00
Account Number	25008784567	Gross Payoff	\$33,887.08
		Residual Value	\$19,580.40
Customer Information		Early Termination	
Borrower		Early Termination	Not Applicable
First Name	[REDACTED]	Quote	e
Last Name	[REDACTED]	Good Until Date	11-01-21
Address	[REDACTED]	Loyalty Applied Quote	Not Applicable
City	[REDACTED]		e
State	NY	Good Until Date	11-01-21
Zip Code	[REDACTED]		

37. In other words, this consumer was overcharged more than \$2,000, an overcharge hidden in a discrepant vehicle price on the principal invoice.

38. Confusion abounded in Respondent's consumer deal jackets. The typed invoice (with copious handwritten annotations of unclear significance) was complemented by a second handwritten invoice that was even less clear:

NISSAN		KINGS NISSAN, INC		09568	
2758 Coney Island Ave. BROOKLYN, NY 11235 Phone 718 • 934-3300 Fax 718 • 934-5285		(36439) NISSAN			
E-MAIL		PLEASE ENTER MY ORDER FOR THE FOLLOWING		STOCK NO.	
☐ NEW ☐ USED OR ☐ DEMO ☐ LEASE		YEAR 2021 MAKE Nissan MODEL ALTIMA TYPE Platinum			
VIN NO.		COLOR Black		PLATINUM	
MILEAGE 14,083		UNIT PRICE OF VEHICLE		\$33,887.08	
DEALER INSTALLED EQUIPMENT AND SERVICES		SUB-TOTAL		995.00	
Subject to Bank approval lien 1		TRADE ALLOWANCE		595.00	
2000 P. Towards Ke		SUB-TOTAL			
ANTI THEFT WINDOW ETCHING (BASIC PLAN)		% SALES TAX		\$ 175.00	
DESTINATION deal.		NEW PLATES ☐ REG ☐ AND N.Y.S. INSPECTION			
SUB-TOTAL		TOTAL COST			
TRADE ALLOWANCE		DEPOSIT ☐ CASH ☐ CERTIFIED CK. ☐ CREDIT CARD			
SUB-TOTAL		REBATE ASSIGNED TO DEALER			
% SALES TAX		TRADE PAYOFF			
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 *\$175.00.**		CERTIFIED CHECK OR CASH ON DELIVERY			
NEW PLATES ☐ REG ☐ AND N.Y.S. INSPECTION		THE AMOUNT INDICATED ON THIS SALES CONTRACT OR LEASE AGREEMENT FOR REGISTRATION AND TITLE FEES IS AN ESTIMATE. IN SOME INSTANCES, IT MAY EXCEED THE ACTUAL FEES DUE TO THE COMMISSIONER OF MOTOR VEHICLES. THE DEALER WILL AUTOMATICALLY, AND WITHIN SIXTY DAYS OF SECURING SUCH FEES, REFUND ANY AMOUNT OVERPAID FOR SUCH FEES.		DATE: 10/28/21	
TOTAL COST		CUSTOMER'S INITIALS:			
DEPOSIT ☐ CASH ☐ CERTIFIED CK. ☐ CREDIT CARD		IMPORTANT NOTICE TO USED CAR BUYER			
REBATE ASSIGNED TO DEALER		(a) STATE LAW REQUIRES THAT SELLERS OF SECONDHAND CARS CERTIFY IN WRITING TO THE BUYER THAT EACH CAR IS IN SAFE CONDITION AT THE TIME OF SALE.			
TRADE PAYOFF		(b) THIS CERTIFICATION IS A GUARANTEE THAT THE CAR IS IN SAFE CONDITION AT THE TIME OF SALE.			
CERTIFIED CHECK OR CASH ON DELIVERY		(c) BUYER HAS A RIGHT TO REQUEST THE DEALER TO REPAIR OR TO PAY IN FULL FOR REPAIRS OF ANY UNSAFE CONDITION IN THE CAR WHICH DOES NOT COMPLY WITH THIS CERTIFICATION.			
THE AMOUNT INDICATED ON THIS SALES CONTRACT OR LEASE AGREEMENT FOR REGISTRATION AND TITLE FEES IS AN ESTIMATE. IN SOME INSTANCES, IT MAY EXCEED THE ACTUAL FEES DUE TO THE COMMISSIONER OF MOTOR VEHICLES. THE DEALER WILL AUTOMATICALLY, AND WITHIN SIXTY DAYS OF SECURING SUCH FEES, REFUND ANY AMOUNT OVERPAID FOR SUCH FEES.		(d) THIS BUSINESS IS LICENSED BY THE DEPARTMENT OF CONSUMER AFFAIRS, 42 BROADWAY, NEW YORK, NEW YORK 10004. COMPLAINT PHONE: 311 NYC • DCA LIC. #671140			
CUSTOMER'S INITIALS:		ACCEPTED BY:		SIGNATURE	
DATE: 10/28/21					
I agree that this Contract includes all of the terms and conditions on both the face and the reverse side hereof. This Contract is not binding unless signed by you or your authorized manager. New plates will not be obtained until vehicle is paid for in full.					
This car must be paid in full and delivered by date _____ to qualify for any special incentives.					
I acknowledge that by my signature on this Contract that I have read its terms and conditions and that I have received a completed copy of this Contract. Refund checks will be mailed out within 30 days.					
I certify that I am of legal age to execute binding contract in this state.					
X _____					
SS# _____					
SEE OTHER SIDE FOR ADDITIONAL TERMS NYS • DLR. LIC. NO. 7015016					

39. This invoice begins with the correct figure: \$33,887.08 is the gross payoff sum reflecting the Vehicle Purchase Price per NMAC’s own calculations. But it, like the typed invoice it contradicts, omits the one fee respondents were entitled to include—the \$300 Vehicle Purchase Fee—and replaces them with two additional unlawful fees simply described as “Dealer” for \$995 and “Prep” for \$595.

40. Neither of these fees can be accounted for as expenses associated with the lease (as noted above, NMAC itself clearly stated the lease payoff number as thousands of dollars less than what Respondents quoted), or as charges associated with add-on products; as the first invoice indicates, the consumer(s) paid for add-ons separately, spending \$3,480 for a service contract and \$14,229 as a financing charge.⁴ The unlawful fees either appeared without explanation or were simply tucked away into the final figures.

41. Although the particulars varied from customer to customer, this example illustrates how Respondents ordinarily operated with respect to lease buyouts following the onset of the pandemic.

42. One consumer who filed a complaint summarized Respondents’ practices in a nutshell: “At the end of my lease I came to the dealership to buy out my car at the Residual Value Upon arrival to the dealer [i.e. Respondents] I was told that due to COVID all they do is lease buyouts and there is an additional fee I must pay. Since I had no choice I purchased the car, however they did not charge that additional cost as a separate fee item, but inflated the

⁴ OAG makes no findings as to the propriety of these charges, their disclosure, or the means or methods by which they were procured or sold; these matters are outside the scope of this investigation.

purchase price of the car. Since the Lease agreement is a binding document, I do not believe they had the right to inflate the car price.” This consumer is right: they did not.

43. More than 60% of the lease buy-outs Respondents processed during the pandemic period were afflicted with similar discrepancies: in each, the typed invoice accurately reflected the fees Respondents was permitted to charge, excluding the \$300 Lease Buyout Fee but not the correct base vehicle price; in each, the lease buyout fee and additional unlawful charges were rolled into the base vehicle price; in none were these actions disclosed plainly to the consumer.

44. Even if all of Respondents’ unlawful fees had been disclosed, Respondents still were misrepresenting that consumers would pay one price for the vehicle in the SignatureLease when, in fact, Respondents charged them a higher one.

Respondents’ Conduct Violated Applicable Statutes and Regulations

45. 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]); 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”)].

46. By repeatedly charging lease purchase consumers more than the price guaranteed by the SignatureLease, Respondents rendered the SignatureLease's disclosures defective and materially misleading, in violation of Regulation M and the MVRLA.

47. 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 or fabricating fees, Respondents 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).

48. 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

49. WHEREAS, Respondents neither admit nor deny the OAG's Findings, paragraphs 1-48 above, but have agreed to this Assurance in settlement of the violations described above and to avoid the time, expense, and distraction of litigation;

50. 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

51. 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.) and incorporated into a final consolidated total with all other charges.
 - c. “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. The inclusion of more than one price figure on an invoice without clear reference to what that price figure represents is by definition not clear and conspicuous.
 - d. 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;

- e. The “Determined Purchase Option Price” with respect to the purchase of any leased vehicle is the net payoff price as defined by NMAC on the day of the lease purchase or the repurchase price paid by Respondents to NMAC during the process of completing a lease buyout, whichever is lower;
- f. “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 Respondents’ Business Practices

52. *General Injunction.* Respondents 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.

53. *Specific Commitment to Refrain from Unlawful Lease Buyout Practices.*
Respondents shall not charge any amount for the purchase of a leased vehicle in excess of the Total Allowed Charge, regardless of whether or not it was the original leasing dealership. For the avoidance of doubt, Respondents *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.

54. *Reform to Respondents' Invoicing Procedures.* For all purchases of leased vehicles processed following the effective date of this Assurance, Respondents' 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);
- 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 charged to the consumer for 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;
- e. The appropriate quantity of sales taxes;
- f. If the vehicle is being purchased pursuant to a retail installment or financing contract, the relevant financing charges;
- g. If the vehicle is being purchased pursuant to a retail installment or financing contract, and the dealer or the bank charges any additional fees expressly permitted by that contract, the amount of each such fee clearly and conspicuously identified as such;
- 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. A total sum that accurately states the entire amount to be charged, inclusive of all of the above items and all after-sale products, before the application of rebates or down payments;
- k. All other disclosures and other items required by local, state, or federal law to be included on the invoice;

55. The invoice issued to the consumer must be identical to the invoice kept in the deal file and the Respondents may not alter the invoice in the deal file or any other management system at any time.

56. Respondents must issue each consumer purchasing a leased vehicle with a statement drawn from NMAC's systems, or the lease holder if not NMAC, stating clearly and conspicuously the residual value of the vehicle, the net payoff amount, and the entire language set forth in the lease pertaining to the purchase of leased vehicles as well as all parts of the lease referenced in that lease language.

57. Respondents 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. Respondents will furnish to the OAG an exemplar lease vehicle purchase invoice compliant with paragraph 54 within 10 business days following the execution of this Assurance. Respondents will respond to any concerns the OAG raises concerning the exemplars within 10 days of Respondents' receipt of those concerns.

59. Respondents must 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.

60. *Dealership Obligations Retained Even Upon Transfer of Ownership.* Respondents may not sell or transfer ownership of the Kings Nissan dealership operated by Respondents or KAG (broadly defined) or substantially all of the assets of said dealership without securing from the purchasing party agreement to the terms set forth in this Assurance and providing notice of the sale and transfer to the OAG.

61. *Revisions to Lease Arrangements Imposed by NMAC.* If NMAC, or any franchisor of whom Respondents are a franchisee, proposes to impose obligations on Respondents inconsistent with the terms of this Assurance, Respondents must give notice to the OAG, within five 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

62. Respondents shall pay to the State of New York the amount of **\$584,560.86** ("the Total Payment") on the following payment schedule:

- a. \$97,426.81 on July 1, 2023
- b. \$97,426.81 on August 1, 2023
- c. \$97,426.81 on September 1, 2023
- d. \$97,426.81 on October 1, 2023
- e. \$97,426.81 on November 1, 2023
- f. \$97,426.81 on December 1, 2023

63. Of the Total Payment, \$147,000 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 said balance shall revert to Respondents.

64. Respondents shall pay this amount by wire transfer or check payable to the State of New York. 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.

65. If Respondents fail to pay the Total Payment, or any part thereof, on or before the dates set out in the payment schedule set out above, Respondents agree that a court of competent jurisdiction may direct the entry of a money judgment against Respondents and in favor of the People of the State of New York for any unpaid portion thereof, and the OAG shall undertake execution thereof. Respondents agree 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

66. *Periodic Compliance Auditing:* One year to the day after the execution of this Assurance, Respondents 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 Respondents. Within 10 business days of this communication from the OAG, Respondents shall furnish the entire deal file associated with the sale of each vehicle denoted by the VINs

selected by the OAG. This process (“compliance audit”) shall be repeated the same day each year for the following two years. Each compliance audit shall only cover the purchases or re-evaluation requests processed since the date of the last compliance audit report.

67. Respondents agree to cooperate with OAG in monitoring and auditing compliance with this Assurance. Respondents agree 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

68. Respondents expressly agree and acknowledge that a default in the performance of any obligation under paragraphs 52-67 is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 50, 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).

69. 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 79, the Respondents expressly agree and acknowledge:

- 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 Respondents 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 Respondents irrevocably and unconditionally waives any objection based upon personal jurisdiction, inconvenient forum, or venue.

70. If a court of competent jurisdiction determines that the Respondents have violated the Assurance, the Respondents 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.

71. To the extent not already provided under this Assurance, the Respondents 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

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

73. All terms and conditions of this Assurance shall continue in full force and effect on any successor, assignee, or transferee of the Respondents. Respondents shall cause this Assurance to be adopted in any such transfer agreement. No party may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of OAG.

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

75. Any failure by the Attorney General to insist upon the strict performance by Respondents 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

76. All notices, reports, requests, and other communications pursuant to this Assurance must reference Assurance No. 23-030, 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:

77. If to the Respondents, to:

Kings Auto Group LLC
Attn: Enrico Trantino, Executive Manager
305 East Sunrise Highway
Lindenhurst, NY 11757
Telephone:
Email address: rtrantino@kingsinfiniti.com

or in that person's absence, to the person holding the title of Executive Manager, Kings Auto Group LLC.

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.

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

Representations and Warranties

79. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by the Respondents and their counsel and OAG's own factual investigation as set forth in its Findings, paragraphs 1-48 above. The Respondents represent and warrant that neither they nor their counsel has made any material representations to the OAG that are inaccurate or misleading. If any material representations by Respondents or their counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

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

81. The Respondents represent and warrant, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized. Respondents 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 Respondents' (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

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

83. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that the Respondents violate the Assurance after its effective date.

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

85. In the event that 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.

86. Respondents acknowledge that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

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

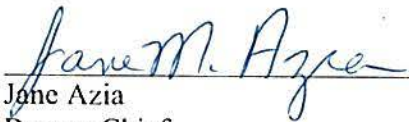
88. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

89. 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.

90. 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:

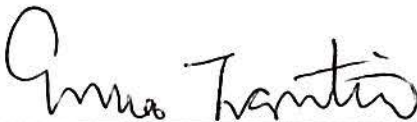
LETITIA JAMES
Attorney General of the State of New York
28 Liberty Street
New York, NY 10005

By: 
Jane Azia
Bureau Chief

KINGS AUTO GROUP LLC
305 East Sunrise Highway
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Enrico Trantino
Executive Manager

KINGS NISSAN INC.
2758 Coney Island Ave.
Brooklyn, NY 11235


Enrico Trantino
Executive Manager