

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
BUSINESS LITIGATION SESSION

NADINE MAZARD, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

BTLS, INC. d/b/a BALISE TOYOTA

Defendant.

C.A. No.: SUCV2014-01726-BLS2

CLASS ACTION STIPULATION OF SETTLEMENT

The undersigned parties (collectively, the “Parties,” and each separately a “Party”) to the above-captioned action (the “Action”), by and through their attorneys, have entered into the following Stipulation of Settlement (this “Settlement Agreement”), subject to the approval of this Court.

RECITALS

WHEREAS:

A. On November 20, 2013, plaintiff Nadine Mazard (“Mazard”) sent defendant BTLS, Inc. d/b/a Balise Toyota (“Balise Toyota”)¹ a written demand for relief pursuant to Massachusetts General Laws, Chapter 93A, §9(3) (the “Demand Letter”), claiming that Balise Toyota engaged in unfair and deceptive advertising of service prices at its dealership and service

¹ Said Demand Letter was served on Balise Motor Sales Group, Inc. The parties acknowledge that the proper defendant in this action is BTLS, Inc. d/b/a Balise Toyota. Balise Toyota expressly affirms and warrants that BTLS, Inc. is the corporate entity that owns, operates and controls the Balise Toyota dealership at the West Springfield Location. BTLS, Inc. does not own, operate or control any other dealership or any other business entity that is directly or indirectly affiliated with Balise Motor Sales Group, Inc.

center located at 1399 Riverdale Street, West Springfield, Massachusetts (the “West Springfield Location”);

B. Balise Toyota, by timely written response dated January 17, 2014, denied liability but expressed a desire to attempt in good faith to reach a negotiated resolution of the Parties’ dispute;

C. During negotiations, Balise Toyota warranted and affirmed that 4,269 customers (3,973 customers from Massachusetts or unknown states and 296 non-Massachusetts customers) were affected by the conduct alleged by Mazard in the Demand Letter, and that there were 6,720 total Overcharge Transactions (as defined below) that occurred at the West Springfield Location. Balise Toyota further represented that the unlawful conduct alleged by Mazard in the Demand Letter did not commence until October 31, 2011 when signage was changed at the West Springfield Location, and that this signage was removed by December 1, 2013. Balise Toyota expressly reaffirms these statements as being true and accurate, and acknowledges that the terms of this Agreement were based on these affirmative representations.

D. On May 29, 2014, Mazard filed a Class Action Complaint (the “Complaint”) in the Action against Balise Toyota on behalf of herself and all others similarly situated alleging that Balise Toyota systematically mispriced goods and services received by its customers at the West Springfield Location in violation of Massachusetts General Laws Chapter 93A and Massachusetts Attorney General’s Pricing Regulation 940 CMR 3.13(1)(f).

E. Mazard and Balise Toyota have engaged in extensive and thorough negotiations that have culminated in an agreement to settle and resolve the claims advanced by Mazard in the Complaint, as detailed below.

NOW, THEREFORE, the Parties, through their respective attorneys, subject to approval of the Court pursuant to G. L. c. 93A and Rule 23(c) of the Massachusetts Rules of Civil Procedure, do hereby stipulate and agree as follows:

DEFINITIONS

Definitions: As used in this Settlement Agreement, the following terms will have the following meanings:

- (a) “Action” has the meaning set forth in the introductory paragraph of this Settlement Agreement.
- (b) “Balise Toyota” has the meaning set forth in paragraph A of the Recitals above.
- (c) “Class” means all Balise Toyota service customers falling within the Class definition to be determined by the Court as set forth in paragraph 1 of this Settlement Agreement.
- (d) “Class Counsel” means Preston W. Leonard of Leonard Law Office, P.C. and Joshua N. Garick of Law Offices of Joshua N. Garick, P.C.
- (e) “Class Counsel Fees” means the amount awarded to Class Counsel in the Order and Final Judgment in payment of their attorneys’ fees as provided in paragraphs 8 and 10 of this Settlement Agreement.
- (f) “Class Member” means a member of the Class.
- (g) “Class Representative Award” means any amount awarded to Plaintiff in the Order and Final Judgment pursuant to paragraphs 9 and 10 of this Settlement Agreement.
- (h) “Complaint” has the meaning set forth in paragraph D of the Recitals above.

- (i) “Coupon” means a voucher redeemable for a Fifteen Dollar (\$15.00) discount on any service or product sold by Balise Toyota at the West Springfield Location. A person presenting a Coupon will not be entitled to receive any residual cash or credit in the event that the coupon is redeemed for a product or service that costs less than \$15.00. Coupons are transferrable and may be combined with other Coupons on a single purchase. Coupons must be redeemed at the West Springfield Location within one (1) year of mailing by the Settlement Administrator. One (1) Coupon will be distributed to each Class Member for each Overcharge Transaction for which the Class Member engaged.
- (j) “Coupon Distribution Amount” means the total value of all coupons redeemed during the Redemption Period, as defined in this Settlement Agreement.
- (k) “Coupon List” has the meaning set forth in paragraph 12 of this Settlement Agreement.
- (l) “Effective Date” has the meaning set forth in paragraph 20 of this Settlement Agreement.
- (m) “Final,” with respect to the Order and Final Judgment, means: (i) if no appeal is filed, the expiration date of the time for filing or noticing of any appeal from the Court’s Order and Final Judgment approving the Settlement Agreement substantially in the form of Exhibit A to this Settlement Agreement; or (ii) the date of final dismissal of any appeal from the Order and Final Judgment, or the final dismissal of any proceeding on certiorari to review the Order and Final Judgment; or (iii) the date of final affirmance of an appeal of the Order and Final Judgment, the expiration of the time to file a petition for a writ of certiorari, or the

denial of a writ of certiorari to review the Order and Final Judgment, and, if certiorari is granted, the date of final affirmance of the Order and Final Judgment following review pursuant to that grant.

- (n) “Mazard” has the meaning set forth in paragraph A of the Recitals above.
- (o) “Net Class Settlement Amount” has the meaning set forth in paragraph 11 of this Settlement Agreement.
- (p) “Notice List” has the meaning set forth in paragraph 12 of this Settlement Agreement.
- (q) “Order and Final Judgment” means the proposed order to be entered approving the Settlement substantially in the form attached hereto as Exhibit A.
- (r) “Order for Notice and Hearing” means the proposed order establishing the settlement approval hearing date and directing notice thereof to the Class, substantially in the form attached hereto as Exhibit B.
- (s) “Overcharge Transaction” means an auto service or parts sale transaction at the West Springfield Location in which a customer was charged a price higher than the advertised price, entitling the customer to one Coupon per transaction under this Settlement Agreement.
- (t) “Parties” has the meaning set forth in the introductory paragraph of this Settlement Agreement.
- (u) “Party” has the meaning set forth in the introductory paragraph of this Settlement Agreement.

- (v) “Redemption Period” means the one (1) year period after the date of Coupon mailing by the Settlement Administrator within which Coupons may be redeemed.
- (w) “Released Parties” means Balise Toyota and its past and present shareholders, principals, parent corporations, affiliates, subsidiaries, predecessors and successors, and each of their past and present officers, directors, owners, shareholders, principals, members, partners, employees, agents, attorneys, insurers and assigns of any of the foregoing, and all persons acting for them, past or present.
- (x) “Settled Claims” means any and all claims in law or in equity and any and all claims, demands, actions, causes of action, obligations, damages, liabilities, loss, restitution, fines, costs, penalties or expenses including attorneys’ fees of any kind or nature whatsoever, past or present, ascertained or unascertained, whether or not known, suspected or claimed from the beginning of time through and including the Effective Date arising out of or in any way related to the claims that have been or could have been asserted in the Action by the Class Members or any of them against any of the Released Parties arising out of or in any way relating to Overcharge Transactions at the West Springfield Location.
- (y) “Settlement” means the mutually agreed upon undertakings, terms and conditions contemplated by this Settlement Agreement.
- (z) “Settlement Administration Costs” means costs associated with (i) the delivery of Settlement Notice to the Class; (ii) the calculation and distribution of Coupons to Class Members, and (iii) the calculation of the *cy pres* distribution. These notice

and administration costs include the reasonable costs and expenses associated with identifying Class Members and effecting mailing of notice to the Class, and the administration of the Settlement, including without limitation, the actual costs of printing and mailing the notice, communication with Class Members, administrative expenses incurred, and fees charged by the Settlement Administrator in connection with delivering the Settlement Notice, processing the Class Members' allocations and distributing the proceeds from the Net Class Settlement Amount to Class Members. Settlement Administration Costs will not include any costs, fees or expenses incurred by Mazard, Class Members, the Class or Class Counsel.

- (aa) "Settlement Administrator" means Boston Financial Data Services, Inc.
- (bb) "Settlement Agreement" means this document and all attached Exhibits.
- (cc) "Settlement Consideration" means the Total Class Settlement Amount and the Settlement Administration Costs.
- (dd) "Settlement Notice" means the Notice of Proposed Settlement of Class Action, Settlement Fairness Hearing and Right to Appear, which is to be sent to Class Members substantially in the form attached hereto as Exhibit C.
- (ee) "Total Class Settlement Amount" has the meaning set forth in paragraph 2 of this Settlement Agreement.
- (ff) "West Springfield Location" has the meaning set forth in paragraph A of the Recitals above.

THE CLASS DEFINITION AND TOTAL CLASS SETTLEMENT AMOUNT

1. **Determination of Class Definition:** The Complaint asserts claims on behalf of a putative class that includes customers who are not citizens of the Commonwealth of Massachusetts. The Parties continue to dispute in good faith whether it is constitutionally permissible for the Court to certify a non-opt-out class pursuant to G.L. c. 93A, § 9(2) and Mass. R. Civ. P. 23 with respect to the claims of individuals who are not citizens of Massachusetts. Accordingly, the Parties will present this issue to the Court for resolution in connection with the motion for preliminary settlement approval described in paragraph 18 below, in order to determine which customers of Balise will receive notice of the proposed Settlement and be bound by the Settlement if it is approved by the Court. Based on the Court's determination of that issue, the term "Class" will be defined as follows:

- (a) If the Court determines that it is permissible to certify a non-opt-out class pursuant to G.L. c. 93A, § 9(2) and Mass. R. Civ. P. 23 with respect to the claims of individuals who are not citizens of Massachusetts, the term "Class" will be defined to mean:

All customers who were overcharged at Balise Toyota in West Springfield, Massachusetts from October 31, 2011 through December 1, 2013 (the "Class").

- (b) If the Court determines that it is not permissible to certify a non-opt-out class pursuant to G.L. c. 93A, § 9(2) and Mass. R. Civ. P. 23 with respect to the claims of individuals who are not citizens of Massachusetts, the term "Class" will be defined to mean

All citizens of Massachusetts who were overcharged at Balise Toyota in West Springfield, Massachusetts from October 31, 2011 through December 1, 2013 (the "Class").

2. **Determination of Total Class Settlement Amount:**

- (a) If the Court determines pursuant to paragraph 1 above that it is permissible to certify a non-opt-out class pursuant to G.L. c. 93A, § 9(2) and Mass. R. Civ. P. 23 with respect to the claims of individuals who are not citizens of Massachusetts, the term “Total Class Settlement Amount” will equal \$87,500, from which will be paid: (i) all Coupon distributions to be made to Class Members pursuant to this Settlement Agreement; (ii) any *cy pres* distribution to be made pursuant to this Settlement Agreement; and (iii) Class Counsel Fees and the Class Representative Award that is approved by the Court.
- (b) If the Court determines that it is not permissible to certify a non-opt-out class pursuant to G.L. c. 93A, § 9(2) and Mass. R. Civ. P. 23 with respect to the claims of individuals who are not citizens of Massachusetts the “Total Class Settlement Amount” will equal \$80,000, from which will be paid: (i) all Coupon distributions to be made to Class Members pursuant to this Settlement Agreement; (ii) any *cy pres* distribution to be made pursuant to this Settlement Agreement; and (iii) Class Counsel Fees and the Class Representative Award that is approved by the Court.

SETTLEMENT CONSIDERATION

3. **Settlement Consideration:** In consideration for the Settlement of the Action on the terms and conditions set forth in this Settlement Agreement, Balise Toyota agrees to pay the Settlement Consideration. No part of the Settlement Consideration constitutes (i) a fine or penalty under any law or (ii) a payment to settle any actual or potential liability for a fine or penalty under any law. In addition to the payment of the Settlement Consideration, Balise Toyota agrees to immediately cease the practice of charging customers any amounts that differ

from the advertised sales prices, whether said advertised price was disclosed in written literature, on signage or otherwise at the West Springfield Location until such time as there is a court ruling, statute, or other judicial, legislative or regulatory development that Balise Toyota believes in good faith to permit such practice.

4. **Balise's Payment Obligations To The Class and Class Counsel:** The Total Class Settlement Amount constitutes the sole and entire obligation of Balise Toyota to make any payments to or for the benefit of the Class and/or Class Counsel in connection with the Settlement.

ADMINISTRATION OF THE SETTLEMENT

5. **The Settlement Administrator:** The Settlement Administrator will administer the Settlement subject to the jurisdiction of the Court. Balise Toyota will pay all Settlement Administration Costs and produce information with respect to the identification of Class Members from Balise Toyota's records. Balise Toyota and its counsel will allow Class Counsel access to all information regarding the administration of the Settlement.

6. **Delivery Of Settlement Notice To The Class:** The Settlement Administrator will cause the Notice to be delivered to the Class Members when and as required under the Order for Notice and Hearing.

7. **Supervision Of Settlement Administrator:** Counsel for Balise Toyota will be responsible for supervising the administration of the Settlement, including the delivery of the Notice and disbursement of the Net Class Settlement Amount, subject to review and consent by Class Counsel.

CLASS COUNSEL FEES AND EXPENSES AND CLASS REPRESENTATIVE AWARDS

8. Application For Class Counsel Fees:

- (a) At least seven (7) days prior to the Fairness Hearing, Class Counsel will apply to the Court for an award of Class Counsel Fees consisting of a fee award of one-third (i.e., 33.33%) of the Total Class Settlement Amount. Balise Toyota will not interfere with, object to, or negatively comment upon Class Counsel's fee request.
- (b) The Order and Final Judgment will specify the total amount, if any, to be awarded to Class Counsel for Class Counsel Fees. Balise Toyota agrees not to seek appellate review of the award of Class Counsel Fees specified in the Order and Final Judgment so long as the amount so awarded is less than or equal to the request for Class Counsel Fees set forth in sub-paragraph (a) of this paragraph 8.

9. **Application For Class Representative Award:** Class Counsel will apply to the Court for a Class Representative Award of Three Thousand Five Hundred Dollars (\$3,500) for Nadine Mazard, the class representative Plaintiff herein. Balise Toyota will not interfere with, object to, or negatively comment upon Class Counsel's application for such award. The Order and Final Judgment will specify the total amount, if any, to be awarded to Mazard as Class Representative. Balise Toyota agrees not to seek appellate review of the Class Representative Award specified for Mazard in the Order and Final Judgment so long as the amount so awarded to Mazard is less than or equal to Three Thousand Five Hundred Dollars (\$3,500).

10. **Payment of Class Counsel Fees and Class Representative Awards:** Balise Toyota will pay any amounts approved by the Court as Class Counsel Fees and as the Class Representative Award to Class Counsel within ten (10) business days of the Effective Date. To the extent that the Order and Final Judgment or any subsequent appeals thereof award Class

Counsel Fees or Class Representative Award in amounts that are less than the requests of Class Counsel set forth in paragraphs 8 and 9 of this Settlement Agreement, neither the Class, nor Balise Toyota, nor any of the Released Parties will have any obligation or liability to compensate Class Counsel or Mazard for the amount by which the amount(s) requested in this Settlement Agreement exceed the amount(s) awarded by the Court.

DISPOSITION OF NET CLASS SETTLEMENT AMOUNT

11. **The Net Class Settlement Amount:** The “Net Class Settlement Amount” will equal the Total Class Settlement Amount minus (i) the Court-awarded Class Counsel Fees and (ii) any Court-awarded Class Representative Award. Balise Toyota will not be obligated to pay or disburse any portion of the Net Class Settlement Amount prior to the time specified in paragraph 13 of this Settlement Agreement.

12. **Determination of Class Membership and Addresses:** No later than five (5) business days prior to the deadline for delivery of the Settlement Notice set forth in the Order for Notice and Hearing, Balise Toyota will provide to the Settlement Administrator and Class Counsel a list (the “Notice List”) containing the names, addresses and number of Overcharge Transactions for all Class Members. The Settlement Administrator will review the Notice List and correct the Class Members’ addresses utilizing National Change of Address (NCOA) procedures prior to the mailing. The Settlement Administrator will update the Notice List with these new addresses prior to mailing the Notice to Class Members. All Notice mailings returned from the post office will be recorded on the Settlement Administrator’s system. If a forwarding address has been provided by the postal service, the Settlement Administrator will update the Class Member’s address on its system, repackage the Notice mailing, and forward the Notice to the new address. If a new address is not provided, the item will be stored and the data submitted

for advanced address research. If an updated address is received, the address will be recorded to the Settlement Administrator's system and a new Notice mailing will be sent to that address. The final corrected Class Member information list derived from the processes set forth in this paragraph 12 (the "Coupon List") will be used to deliver Coupons to Class Members in the event that the Settlement becomes Final.

13. **Coupon Distribution:** No later than thirty (30) days after the Effective Date, the Settlement Administrator will deliver to each Class Member on the Coupon List, at the address indicated on the Coupon List, one Coupon for each Overcharge Transaction. The Settlement Administrator or Balise Toyota will ensure that each Coupon is numbered sequentially to track reimbursements and to prevent unauthorized duplication.

14. **Coupon Redemption and *Cy Pres* Distribution:** Coupons may be redeemed up to one (1) year after the date of delivery by the Settlement Administrator (the "Redemption Period"). Balise Toyota will collect and retain all redeemed Coupons and will record the total value of all Coupons redeemed during the Redemption Period (the "Coupon Distribution Amount"). No later than thirty (30) days after the conclusion of the Redemption Period, Balise will pay, as a *cy pres* distribution, an amount equal to the difference between the Net Class Settlement Amount and the Coupon Distribution Amount to Spectrum in Motion Dance Theater Ensemble, Inc. – a 501(c)(3) charitable organization in the greater Springfield/Hartford area that provides youth outreach services and access to the arts to members of inner city communities. Class Counsel will be provided with copies of the redeemed coupons no later than thirty (30) days after the conclusion of the Redemption Period.

RELEASE AND COMPROMISE OF DISPUTED CLAIMS

15. **Release of Settled Claims:** Once the Order and Final Judgment Settlement contemplated by this Settlement Agreement becomes Final, Mazard and Class Members, on behalf of themselves and their past or present respective successors, heirs, legatees, assignees, and all persons acting for them, past or present, will then fully and forever release and discharge the Released Parties of and from each and every Settled Claim, and do release and forever discharge, and will forever be enjoined from prosecuting, any Settled Claims against any of the Released Parties.

16. **Scope of Settlement:** The obligations incurred pursuant to this Settlement Agreement will be in full and final disposition of the Action and any and all Settled Claims as against all Released Parties.

17. **Effect of Settlement As To Class Members' Claims:**

- (a) On the Effective Date, this Settlement will be deemed final and conclusive against all Class Members. Whether or not a Class Member receives, redeems or otherwise negotiates a Coupon for a share of the Net Class Settlement Amount, if any, each Class Member will be bound by all of the terms of this Settlement Agreement and the Settlement, including the terms of the Order and Final Judgment to be entered in the Action and the releases provided for herein.
- (b) The failure of any Class Member to claim or obtain any relief made available under this Settlement Agreement will not affect the validity, scope, or enforcement of the releases herein, and all Class Members will remain bound by said releases whether or not they receive, redeem or otherwise negotiate a Coupon for a share of the Net Class Settlement Amount, if any.

- (c) As part and parcel of this Settlement Agreement, all Class Members will be permanently barred and enjoined from filing, commencing, prosecuting, intervening in, participating in as class members or otherwise, or receiving any benefits or other relief from any other lawsuit in any state, territorial or federal court, or any arbitration or administrative or regulatory or other proceeding in any jurisdiction, which asserts claims based on or in any way related to the Settled Claims, and the Court will retain exclusive continuing jurisdiction to enforce said injunction.
- (d) Mazard and all Class Members hereby expressly agree that all provisions of this paragraph 17 together and separately constitute essential terms of this Settlement Agreement.

OBTAINING JUDICIAL APPROVAL OF THE SETTLEMENT

18. **Motion For Preliminary Approval:** Promptly after this Settlement Agreement has been fully executed, Class Counsel will apply to the Court for entry of an Order for Notice and Hearing, substantially in the form annexed to this Settlement Agreement as Exhibit B. Counsel for Balise Toyota will file a limited opposition, only to the extent the Parties seek a judicial determination as to whether the Class should include customers who are not citizens of the Commonwealth of Massachusetts as set forth in paragraph 1 above.

19. **Terms Of Order And Final Judgment:** If the Settlement contemplated by this Settlement Agreement is approved by the Court, counsel for the Parties will request that the Court enter an Order and Final Judgment substantially in the form annexed hereto as Exhibit A.

CONDITIONS FOR FINAL SETTLEMENT

20. **Effective Date:** The “Effective Date” of Settlement will be the date on which the last of all of the following will have occurred:

- (a) The Court has approved the Settlement following notice to the Class, as prescribed by G.L. c. 93A, § 9(2) and Rule 23(c) of the Massachusetts Rules of Civil Procedure;
- (b) The time within which any Party may exercise its termination rights under paragraph 21 of this Settlement Agreement has expired; and
- (c) An Order and Final Judgment, substantially in the form set forth in Exhibit A annexed hereto, has been entered by the Court has become Final.

21. **Termination Upon Rejection or Modification Of The Settlement:** Either Mazard or Balise Toyota may terminate the Settlement and this Settlement Agreement by providing written notice of their election to do so (“Termination Notice”) to all other Parties within ten (10) business days of the occurrence of any of the following:

- (a) The refusal of the Court to enter the Order for Notice and Hearing in any material respect;
- (b) The refusal of the Court to approve this Settlement Agreement or any material part of it (other than any adjustment to the Class Counsel Fees or Class Representative Awards that might be ordered in the discretion of the Court);
- (c) The refusal of the Court to enter the Order and Final Judgment in any material respect; or
- (d) The modification or reversal of the Order and Final Judgment in any material respect by any appellate court of competent jurisdiction (other than any

adjustment to Class Counsel Fees or Class Representative Award that might be ordered in the discretion of the Court).

This paragraph does not apply to the decision of the Court concerning whether the Class should include customers who are not Citizens of the Commonwealth of Massachusetts. The Parties agree to be bound by the decision of the Court and do not have a right to terminate, reject or modify this Settlement Agreement based on the Court's decision on this sole contested issue.

22. **Effect Of Termination:** Except as otherwise provided herein, in the event the Settlement is terminated pursuant to paragraph 21 of this Settlement Agreement, then the Parties will be deemed to have reverted to their respective status in the Action immediately prior to the execution of this Settlement Agreement and, except as otherwise expressly provided, the Parties will proceed in all respects as if this Settlement Agreement and any related orders had not been entered. In such event, the Parties to this Settlement Agreement and their counsel will not use any information received, shared, or exchanged in connection with the negotiations relating to this Settlement Agreement.

MISCELLANEOUS PROVISIONS

23. **No Admission Of Wrongdoing:** This Settlement, whether or not consummated, and any proceedings taken pursuant to it:

- (a) Will not be offered or received against Balise Toyota as evidence of or construed as or deemed to be evidence of any presumption, concession, or admission by Balise Toyota with respect to the truth of any fact alleged by Mazard or the validity of any claim that has been or could have been asserted in the Action or in any litigation, or the deficiency of any defense that has been or could have been

asserted in the Action in any litigation, or of any liability, negligence, fault, or wrongdoing of Balise Toyota;

- (b) Will not be offered or received against Balise Toyota as evidence of a presumption, concession or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by Balise Toyota;
- (c) Will not be offered or received against Balise Toyota as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing, or in any way referred to for any other reason as against Balise, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement; provided, however, that if this Settlement is approved by the Court, Balise Toyota may refer to it to effectuate the liability protection granted them hereunder;
- (d) Will not be offered or received against Balise Toyota as evidence of a presumption, concession or admission that the Class is appropriately certified for trial;
- (e) Will not be construed against Balise Toyota as an admission or concession that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial; and
- (f) Will not be construed as or received in evidence as an admission, concession or presumption against Mazard or any of the Class Members that any of their claims are without merit, or that any defense asserted by Balise Toyota has any merit, or

that damages recoverable under the Complaint would not have exceeded the Total Class Settlement Amount.

This Settlement Agreement will in no event be construed or deemed to be evidence of or an admission or concession on the part of Balise Toyota with respect to any claim or of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that Balise Toyota has asserted. The Parties to this Settlement Agreement recognize that the litigation has been filed by Mazard and defended by Balise Toyota in good faith and with adequate basis in fact under Massachusetts Rule of Civil Procedure 11, that the litigation is being voluntarily settled after advice of counsel, and that the terms of the Settlement are fair, adequate and reasonable. This Settlement Agreement will not be construed or deemed to be a concession by any Plaintiff of any infirmity in the claims asserted in the Action.

24. **Exhibits Incorporated By Reference:** All of the exhibits attached to this Settlement Agreement are hereby incorporated by reference as though fully set forth herein.

25. **Authorization:** Each Party represents and warrants that execution and delivery of this Settlement Agreement have been duly authorized by all necessary actions and that the execution and delivery of this Agreement constitutes a legal, valid and binding obligation of that Party. The persons signing this Settlement Agreement represent and warrant by their signatures that they have authority to sign the Settlement Agreement on behalf of the Party for whom they are signing.

26. **Parties Bound:** This Settlement Agreement will be binding upon and inure to the benefit of Balise Toyota and the Class Members and their respective present and former officers,

directors and employees, shareholders, any parent or subsidiary corporations of Balise Toyota and the Class Members, and their respective heirs, successors, assigns and transferees.

27. **Representation By Counsel:** Each Party has been represented in the negotiation of this Settlement Agreement by independent counsel and has had the Settlement Agreement fully explained by its own counsel and are aware that the Settlement set forth in the Settlement Agreement (i) provides for payment of Settlement Consideration to and on behalf of the Class only as set forth in paragraphs 3, 4 and 9-14 of this Settlement Agreement and (ii) will terminate any and all rights of Mazard and the Class Members to pursue the Settled Claims.

28. **Voluntary Acceptance:** This Settlement Agreement is made and entered into by each of the Parties of its own volition and each of the Parties warrants that this Settlement Agreement was made and entered into free of any duress, coercion, or undue influence from any source whatsoever.

29. **Jointly Drafted:** Each Party has participated in the drafting and negotiation of this Settlement Agreement. For all purposes, this Settlement Agreement will be deemed to have been drafted jointly by the Parties. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Settlement Agreement against the party that drafted it has no application and is expressly waived. The provisions of this Settlement Agreement will be interpreted in a reasonable manner so as to effectuate the intent of the Parties, and no rule of strict construction will be applied against any Party to this Agreement.

30. **Entire Agreement; Amendments; Construction With Other Agreements:** This Settlement Agreement constitutes the only existing and binding agreement between the Parties concerning the Settlement and supersedes any prior oral or written agreements

concerning the Settlement. The Parties acknowledge that there are no other warranties, promises, assurances or representations of any kind, express or implied, upon which the Parties have relied in entering into this Settlement Agreement, unless expressly set forth herein. Notwithstanding the previous sentence, the Parties acknowledge that they have both relied on the affirmative representations made by Balise Toyota concerning the timing of the change and/or the removal of any signage or literature, the number of Overcharge Transactions that took place at the West Springfield Location, the amount of any resulting overcharge, and the amount of Class Members/customers that were affected by these Overcharge Transactions in calculating damages and the terms of this Settlement Agreement. These representations were initially made in Balise Toyota's response to the Plaintiff's 93A Demand Letter and have been reaffirmed in this Settlement Agreement. This Settlement Agreement, including the provisions of this paragraph 30, may not be modified, amended or altered in any way except by written agreement signed by each of the Parties.

31. **Counterparts:** This Settlement Agreement may be executed in any number of counterparts, all of which taken together will constitute one and the same instrument. Any of the Parties may execute this Settlement Agreement by signing any such counterpart.

32. **Effect of Headings:** The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

33. **Settlement Subject To Judicial Supervision and Approval:** The administration and consummation of the Settlement as embodied in this Settlement Agreement will be under the authority of the Court and the Court will retain jurisdiction for the purpose of entering orders

providing for awards of Class Counsel Fees and Expenses, Class Representative Awards to Mazard and enforcing the terms of this Settlement Agreement.

34. **Non-Waiver:** The waiver by one Party of any breach of this Settlement Agreement by any other Party will not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement.

35. **Governing Law:** The construction, interpretation, operation, effect and validity of this Settlement Agreement, and all documents necessary to effectuate it, will be governed by the internal laws of the Commonwealth of Massachusetts without regard to conflicts of laws, except to the extent that federal law requires that federal law governs.

36. **Cooperation:** Counsel for the Parties agree to cooperate fully with one another in seeking Court approval of the Order for Notice and Hearing, the Settlement Agreement and the Settlement, and to agree upon and execute all such other documentation as promptly as may reasonably be required to obtain Final approval of the Settlement.

Stipulated and agreed to this 12th day of June 2014.

NADINE MAZARD:

BTLS, INC. d/b/a BALISE TOYOTA:

By: _____
Nadine Mazard

By:  _____

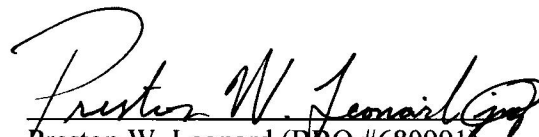
Date: _____

Printed Name: Steven M. Mits

Date: 6.12.14


Counsel for Nadine Mazard and the Class,

Counsel for BTLS, Inc. d/b/a Balise Toyota,

By:  _____
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**Mintz, Levin, Cohn, Ferris,
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 _____
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Date: 6/13/14

Date: 6/13/14

NADINE MAZARD:

By:


Nadine Mazard

Date:

June 12, 2014

BTLS, INC. d/b/a BALISE TOYOTA:

By:

Printed Name:

Date:

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