

IN ARBITRATION

RICHARD LEMONDS,)	
)	
Claimant,)	
)	
v.)	Claim No.: 213764
)	
BENING AUTOMOTIVE GROUP, LLC)	
D/B/A BENING MAZDA,)	
)	
Respondent.)	

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("Settlement Agreement") is entered into between Richard Lemonds, individually ("Claimant"), and on behalf of the Settlement Class ("Class Representative"), as defined below, and Bening Automotive Group, LLC, d/b/a Bening Mazda, 460 Siemers Drive, Cape Girardeau, Missouri ("Dealer").

WHEREAS, Claimant is an individual who purchased or leased an automobile from Dealer and paid a fee known as an administration fee; and

WHEREAS, in the above-styled proceeding, Claimant alleges that Dealer has violated §301.558(5), RSMo (the "Statute") by charging a fee while failing to make the disclosure required by the Statute; and Claimant further alleges that the Dealer's practices surrounding the charging of said fee violates the Missouri Merchandising Practices Act, §407.010 *et seq.*, RSMo; and

WHEREAS, Dealer denies each of the allegations in the lawsuit and asserts that it has complied with all laws and has not, in fact, violated the Statute; and

WHEREAS, the parties agree to the following definition of the Settlement Class: All persons with a Missouri postal address who purchased a vehicle from Bening Mazda between January 10, 2014 to November 7, 2019 who were charged an "administration fee" greater than \$0.00 on the Bill of Sale and where the Bill of Sale, retail installment contract, and preliminary worksheet did not disclose that the fee is not an official fee required by law and may result in a profit to the dealer. The Settlement Class excludes (i) Dealer and its officers, directors, shareholders, partners, and owners; (ii) the Arbitrator presiding over any motion to approve this Settlement Agreement; and (iii) those persons who timely and validly request exclusion from the Settlement Class; and

WHEREAS, Claimant maintains that the fee in its entirety is properly assessed as damages; and

WHEREAS, the Arbitrator has not yet resolved the issues of liability and damages in the above-styled matter and each party believes it would have a meritorious argument depending on

the Arbitrator's determination of those issues, and both parties recognize a risk if this matter proceeds; and

WHEREAS, Claimant/Class Representative and Dealer desire to avoid further expenses of arbitration and to settle and voluntarily compromise any and all claims or causes of action between them that have arisen or that may arise in the future which in any way relate to Claims or the facts alleged in Claimant's Complaint, both individually and on behalf of the Class; and

WHEREAS, Claimant/Class Representative and Dealer stipulate and agree that the proposed Settlement Class, as defined herein, is properly certifiable, solely for the purposes of settlement, under Missouri Supreme Court Rule 52.08 as a subsection (b)(3) class, in that the elements of 52.08(a)(1-4) are satisfied, and common issues of law and fact predominate over individual questions with regard to the issues related to approval of this Settlement Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and conditions herein contained, and with the intention of being legally bound thereby, the parties hereto do covenant and agree as follows:

I. DEFINITIONS:

For purposes of this Settlement Agreement, the following terms are defined as follows:

- A. **"Arbitrator"** shall mean the Honorable Robert S. Cohen, the arbitrator appointed pursuant to the rules of the United States Arbitration and Mediation to whom presentation of this Settlement Agreement for review and approval will be made.
- B. **"Arbitration"** refers to the above-captioned proceeding now pending before the Arbitrator.
- C. **"Automobile" or "Vehicle"** shall mean any vehicle sold or leased by Dealer at retail, including, without limitation, cars, trucks, light trucks, vans, and SUVs.
- D. **"Card Use Period"** shall mean a period of twelve (12) months from the time the Gift Card Voucher is issued.
- E. **"Claimant" and Class Representative mean Richard Lemonds; and "Participating Claimant"** refers to a Settlement Class Member who has submitted a valid claim to the Claims Administrator.
- F. **"Claim Number"** refers to the unique number each Class Member will receive upon the initial notice, which can be used for submission of claims under the Settlement Agreement.
- G. **"Claims"** shall mean all known claims by persons with a Missouri postal address who purchased a vehicle from Bening Mazda between January 10, 2014 to November 7, 2019 who were charged an "administration fee" greater than \$0.00 on

the Bill of Sale and where the Bill of Sale, retail installment contract, and preliminary worksheet did not disclose that the fee is not an official fee required by law and may result in a profit to the dealer.

- H. **"Claims Administration"** shall mean the processing of Claims received for Settlement Class Members.
- I. **"Costs of Claims Administration"** shall mean all actual costs associated with or arising from Claims Administration; as more fully described (below), this shall include without limitation, (1) postal and copying charges for mailing out the Class Notice (defined below); (2) cost of handling claims and distributing Gift Card Vouchers; and (3) fees paid to the Claims Administrator.
- J. **"Class Counsel"** shall mean Bryan E. Brody and Alexander J. Cornwell of Brody & Cornwell, 7730 Carondelet, Ste. 135, St. Louis, Missouri 63105.
- K. **"Class Notice"** which shall be in substantially the same forms as **Exhibit B** ("Class Settlement Notice"), shall mean the Arbitrator-approved forms of notice made available to the Settlement Class Members regarding (i) Certification of the Class, (ii) preliminary approval of the Settlement, (iii) scheduling of the Final Approval Hearing, (iv) the opportunity to submit a claim by submitting a Claim Form.
- L. **"Customer"** refers to a person¹ who is a Class Member.
- M. **"Dealer"** refers to Bening Automotive Group, LLC d/b/a Bening Mazda, 460 Siemers Drive, Cape Girardeau, Missouri.
- N. **"Dealer's Counsel"** refers to Johnny K. Richardson, Brydon, Swearengen & England, P.C., 312 East Capitol Avenue, Jefferson City, MO 65102.
- O. **"Effective Date"** shall mean the date on which the Final Approval Order is entered by the Arbitrator.
- P. **"Face Value"** refers to the face value(s) of an individual Gift Card Voucher distributed under this Settlement.
- Q. **"Fee"** refers to certain fees charged by Dealer in motor vehicle sales, lease, or financing transactions, denominated by the name "administration fee," or by use of similar terminology.

¹ In transactions where multiple persons were listed as purchasers for a particular vehicle purchase transaction, all named purchasers on that transaction will be treated as a single "customer" for purpose of the Settlement, such that only one Gift Card Voucher will be provided to that group of purchasers with regard to a particular transaction.

- R. **"Final Approval Hearing"** shall mean the hearing at which the Arbitrator will consider and finally decide whether to enter the Final Approval order.
- S. **"Final Approval Order"** shall mean an order from the Arbitrator approving (1) this Settlement Agreement; (2) payment of the Class Counsel Fees and Expenses; (3) dismissal of the Claimant's individual Participating Class Members and Claims with prejudice; and (4) such other final rulings as are contemplated by this Settlement Agreement.
- T. **"Gift Card Voucher"** shall mean a certificate or voucher that can be used the same as cash at Dealer's dealership (Bening Mazda, 460 Siemers Drive, Cape Girardeau, Missouri) for the purchase or lease of a new or used automobile, or for service, including repair parts and labor.

Gift Card Vouchers may be stacked and used together, up to a maximum of five (5). Gift Card Vouchers shall be non-transferable. Any unused balance on a Gift Card Voucher after its original use can be applied to future purchases from Dealer provided the purchase occurs within the Card Use Period. No cash back will be given for any unused portion.

Each Gift Card Voucher shall set forth the deadline by which the Gift Card Voucher must be redeemed, and shall state the name and address of the issuing Dealer with whom the Voucher is redeemable. To be used, gift card vouchers must be presented to Dealer, and the issuing Dealer shall not be obligated to replace any Gift Card Voucher that is lost, missing, or stolen after it has been mailed to the Customer. If the Customer elects to use the Gift Card Voucher for a good in combination with service and/or the purchase or lease of a vehicle, the rates and charges for those good and services and/or the purchase or lease of a vehicle shall be at the customary rate charged by Dealer and there shall be no mark ups or increases in costs because the purchase is being made with a Gift Card Voucher.

Gift Card Vouchers may be used without other restriction.

- U. **"Merchandising Practices Act"** or **"MMPA"** means §407.010 *et seq.*, RSMo.
- V. **"Objection Date"** shall mean the date agreed upon by the Parties or otherwise ordered by the Arbitrator by which Class Members must object to the Settlement Agreement's terms or provisions and to submit any required statements, proof, or other materials and/or argument in support thereof. This date shall be 30 days from the first bulk mailing of the initial notice of this Settlement by the Claims Administrator.
- W. **"Opt-Out Deadline"** shall mean the date agreed upon by the Parties or otherwise ordered by the Arbitrator by which any Class Members who wish to be excluded from the Settlement must mail their Opt-Out Notice with the postmark date used for determining timeliness with this deadline. This date shall be 30 days from the

first bulk mailing of the initial notice of this Settlement by the Claims Administrator.

- X. **"Opt-Out List"** shall mean a written list prepared by Dealer's Counsel of all Class Members who submit timely Opt-Out Notices.
- Y. **"Opt-Out Notice" or "Opt-Out"** shall mean any request by any Class Member for exclusion from the Settlement.
- Z. **"Paid Claims"** shall mean the Claims made by Settlement Class Members that were valid and for which Gift Card Vouchers were issued.
- AA. **"Parties"** shall mean Claimant/Class Representative and Dealer.
- BB. **"Person"** shall mean an individual, corporation, partnership, limited partnership, limited liability company or partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity, and their respective spouses, heirs, predecessors, successors, representatives, or assignees.
- CC. **"Preliminary Approval Order"** shall mean the order of the Arbitrator preliminarily approving this Settlement Agreement, in substantially the same form as Exhibit A.
- DD. **"Rejected Claims"** shall mean any Claim that is deficient and/or is otherwise deemed or found to be not eligible.
- EE. **"Settlement"** shall mean the agreement by the Parties to resolve the above-styled case, the terms of which have been memorialized and provided for in this Settlement Agreement.
- FF. **"Settlement Agreement"** shall mean this Settlement Agreement and all the exhibits attached hereto.
- GG. **"Settlement Class"** refers to all persons with a Missouri postal address who purchased a vehicle from Bening Mazda between January 10, 2014 to November 7, 2019 who were charged an "administration fee" greater than \$0.00 on the Bill of Sale and where the Bill of Sale, retail installment contract, and preliminary worksheet did not disclose that the fee is not an official fee required by law and may result in a profit to the dealer; and. The Settlement Class excludes (i) Dealer and its officers, directors, shareholders, partners, and owners; (ii) the Arbitrator presiding over any motion to approve this Settlement Agreement; and (iii) those persons who timely and validly request exclusion from the Settlement Class.
- HH. **"Settlement Class Member" or "Class Member"** refers to an individual Customer within the "Settlement Class."

II. "Settlement Payout" refers to the payout provided by Dealer to Claimant, the Settlement Class Members, and Class Counsel as part of the consideration of this Settlement Agreement, as further defined in Section III.A. of this Settlement Agreement.

JJ. "Settling Parties" shall mean the Claimant/Class Representative and Dealer in the above-styled case.

KK. "Statute" means §301.558(5), RSMo.

LL. "Total Face Value" refers to the total Face Value of the Gift Card Vouchers to be made available to the Settlement Class.

II. REQUIRED EVENTS:

A. After execution of this Settlement Agreement by all Parties:

1. Class Counsel and Dealer's Counsel shall take all necessary steps to obtain entry of the Preliminary Approval Order and the Final Approval Order.
2. The Parties shall jointly move for entry of a Preliminary Approval Order in substantially the same form as Exhibit A, which by its terms shall, inter alia:
 - a. Preliminarily approve the terms of the Settlement Agreement for purposes of issuing the Class Notice;
 - b. Certify the proposed Settlement Class, including making any findings necessary to support the certification of said Settlement Class;
 - c. Approve the contents of the Class Notice; and,
 - d. Schedule a Final Approval Hearing to consider the fairness, reasonableness, and adequacy of the proposed Settlement and the applications for an award of Class Counsel Fees and Expenses, and to consider whether the Arbitrator should issue a final Approval Order.
3. The Parties shall use their best efforts, consistent with the terms of this Settlement Agreement, to obtain a Final Approval Order.
4. In the event that the Arbitrator fails to issue the Preliminary Approval Order or fails to issue the Final Approval Order, the Parties agree to use their best efforts, consistent with this Settlement Agreement, to cure any defect(s) identified by the Arbitrator. If said defects cannot be cured in order to secure preliminary and/or final approval by the Arbitrator, then the Settlement Agreement is void and all parties are restored to their former positions pre-settlement.

5. The Parties acknowledge that approval, consummation, and implementation of the Settlement set forth in this Settlement Agreement are essential. The Parties shall cooperate with each other in good faith to carry out the purposes of and effectuate this Settlement Agreement, shall promptly perform their respective obligations hereunder, and shall promptly take any and all actions and execute and deliver any and all additional documents and all other materials and/or information reasonably necessary or appropriate to carry out the terms of this Settlement Agreement and the transactions contemplated hereby.

III. CONSIDERATION:

- A. **Settlement Payout.** The Parties have agreed to settle this matter for a potential Settlement Payout in excess of \$108,490, exclusive of attorneys' fees.
 - (1) Class Counsel will receive payment of attorneys' fees, costs, and expenses for a total of \$25,000, subject to Arbitrator approval. The attorneys' fees are to be paid in two, equal payments. The first payment will occur within five (5) days after the Arbitrator enters his Final Approval Order, and the second payment will occur one (1) year after the first payment.
 - (2) In addition to the Gift Card Voucher, Claimant will receive payment of \$1,500 in resolution of all of Claimant's claims against Dealer, to occur within five (5) days after the Arbitrator enters its Final Approval Order.
 - (3) Costs of claims administration shall be paid by Dealer, as part of the Settlement Payout.
- B. **Composition of the Settlement Class and Valuation of Gift Card Vouchers.** The amount of the fee charged to class members was either \$89.95 or \$199.00. The total number of Customers within the Settlement Class is estimated to be approximately 463, 397 of whom were charged \$199.00, and 66 of whom were charged \$89.95. The Settlement Payout to Participating Claimants shall be in the form of Gift Card Vouchers issued on behalf of Dealer to all class members who do not opt out and who submit a claim form. All un-redeemed and all un-claimed Gift Card Vouchers at the end of the Card Use Period shall be null and void. Each gift card voucher for customers charged \$89.95 shall be in the amount of \$140.00; and each gift card voucher for customers charged \$199.00 shall be in the amount of \$250.00.
- C. **Distribution of Gift Card Vouchers.**

All distribution of the Gift Card Vouchers shall be performed by the Dealer, who shall mail the Gift Card Vouchers to the Participating Claimants no later than 30 days after final approval of the settlement.

IV. CLAIMS ADMINISTRATION EXPENSES AND ATTORNEYS' FEES:

A. All of the Costs of Claims Administration, including, but not limited to, postal and copying charges, shall be paid by Dealer.

B. Subject to Arbitrator approval, Class Counsel should receive attorneys' fees, costs and litigation expenses in the total amount of \$25,000 to be paid as part of the Settlement Payout, subject to the payments described herein.

V. CLAIMS ADMINISTRATION:

A. Upon the Arbitrator issuing his Final Approval Order, Gift Card Vouchers will be mailed to the Settlement Class at the same address to which the initial notice was mailed, with the exception of those addresses from which the initial notice was returned as undeliverable.

B. **Claims Submission and Verification.** Dealer will maintain a list of Gift Card Vouchers by Customer Name and Number and will track redemption of the Gift Card Vouchers. The records relating to Gift Card Voucher redemption will be kept for at least two years after the Arbitrator enters his Final Approval Order.

VI. NOTIFICATION TO CLASS MEMBERS:

Dealer shall be responsible, subject to the Arbitrator approving the same, for the following notice program.

A. **Initial Notice.** The initial notice shall be in the form of a postcard or letter mailed by Dealer to the Settlement Class, in the forms attached hereto as Exhibit B, or as otherwise approved by the Arbitrator. Class notice shall be mailed to the last known mailing addresses of Class Members maintained by Dealer. Said mailing shall occur within forty-five (45) days of the initial approval of this Settlement by the Arbitrator, or within such other time as the Arbitrator may order. All costs of preparing, mailing, and publishing Class Notice shall be paid as part of the Settlement Payout. The parties may make minor changes to the Notice approved by the Arbitrator without further Arbitrator approval.

The initial notice will provide each class member with a unique Claim Number that will be used for tracking claims under the Settlement. The initial notice will also inform potential class members of the information they need to submit in order to file a claim, to opt-out of the Settlement or to file an objection to the Settlement.

B. **Mailing Address.** Opt out forms and other correspondence related to the Settlement shall be sent to Dealer's Counsel: Johnny K. Richardson, Brydon, Swearingen & England, P.C., 312 East Capitol Avenue, Jefferson City, MO 65102.

C. **Reporting by Class Counsel and Dealer's Counsel.** No later than ten (10) business days prior to the Final Approval Hearing, Class Counsel and Dealer's Counsel shall provide an affidavit to the Arbitrator attesting that notice as set forth above in Paragraph VI.A was

disseminated in a manner consistent with the terms of this Settlement Agreement and in a manner that satisfies Due Process. Dealer's Counsel will also report to the Arbitrator the number of initial notices returned as undeliverable.

VII. REQUESTS FOR EXCLUSIONS BY CLASS MEMBERS:

A. The provisions of this section shall apply to any Opt-Out Notice. Any Settlement Class Member may submit an Opt-Out Notice by mailing or delivering such notice in writing to Dealer's Counsel. Any Opt-Out Notice must be postmarked no later than the Opt-Out Deadline set forth above.

B. Any Opt-Out Notice shall state the name, address and telephone number of the person requesting exclusion, as well as the same information required to verify a participating claimant. The Opt-Out Notice must also contain a clear statement communicating that such person elects to be excluded from the Settlement, does not wish to participate in the Settlement or receive any portion of the Settlement Payout, and elects to be excluded from any judgment entered pursuant to this Settlement.

C. Any Settlement Class Member who submits a timely Opt-Out Notice may not file an objection to the Settlement and shall be deemed to have waived any rights or benefits under this Settlement Agreement.

D. Dealer's Counsel shall report the names appearing on the Opt-Out List and in the Opt-Out Notices to the Arbitrator no less than ten (10) business days prior to the Final Approval Hearing.

VIII. OBJECTIONS BY SETTLEMENT CLASS MEMBERS:

A. Each Settlement Class Member wishing to object to the Settlement shall submit a timely written notice of his objection. Such notice shall state: (1) the objector's full name, address, telephone number and e-mail address, (ii) information identifying the objector as a Settlement Class Member, such as (a) proof (e.g., an invoice showing the payment of the Fee) or (b) an affidavit setting forth, in as much detail as the objector can reasonably provide, (1) the fact of paying the Fee and the dealership to whom it was paid, and (2) documentation supporting the objector's allegation of damage if the objector is making such an allegation; (iii) a written statement of all grounds for the objection accompanied by any legal support for the objection; (iv) the identity of all counsel representing the objector; (v) the identity of all counsel representing the objector who will appear at the Final Approval Hearing; (vi) a list of all persons who will be called to testify at the Final Approval Hearing in support of the objection; (vii) a statement confirming whether the objector intends to testify at the Final Approval Hearing; and (viii) the objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such authorization). To be timely, written notice of an objection in appropriate form must be filed with the Arbitrator no later than thirty (30) days after the bulk mailing of the initial Class Notice and served therewith upon both of the following: Class Counsel and counsel for Dealer.

B. The agreed-upon procedures and requirements for filing objections in connection with the Final Approval Hearing are intended to ensure the efficient administration of justice and the orderly presentation of any Settlement Class Member's objections to the Settlement Agreement, in accordance with such Class member's due process rights. The Preliminary Approval Order and Class Notice shall require all Settlement Class Members who have any objections to file such objection with the Arbitrator, and to serve by mail or hand delivery such objection upon Class Counsel and Dealer's Counsel at the addresses set forth in the Class Notice, no later than the Objection Date. The Preliminary Approval Order shall further provide that objectors who fail to properly or timely file their objections with the Arbitrator, along with the required information and documentation set forth above, or to serve them as provided above, shall not be heard during the Final Approval hearing, nor shall their objections be considered by the Arbitrator.

IX. RELEASE, DISMISSAL OF LITIGATION, AND JURISDICTION OF ARBITRATOR:

A. By this Settlement Agreement, Dealer, its affiliated companies, corporations, partnerships, limited liability companies and limited partnerships and its successors, assigns, officers, agents, attorneys, representatives, employees and insurers are released from any and all claims or causes of action that were, could have been, or should have been asserted against Dealer for the charging of the Fee at issue, by any Class Member who has not timely and properly opted out of the Settlement Agreement and the facts, conduct, omissions, transactions, occurrences or matters that were or could have been alleged in the Complaint, including, but not limited to violation of §301.558(5), RSMo, any merchandising practice violation, whether by statute, common law or in equity as relating to the Fee, any claims for negligence, negligence *per se*, and money had and received, unauthorized practice of law and unauthorized business of law.

The parties also agree and understand that, as a condition of the Settlement, if approved by the Arbitrator, that Claimant and all Settlement Class Members (save those class members who opt out) are waiving any and all claims for (1) punitive damages under Chapter 407, RSMo; (2) prejudgment interest; (3) any request for relief regarding the Fee or any other fees charged by Dealer. As a condition of this Settlement, Claimant/Class Representative agrees not to seek any injunctive relief against Dealer with regard to the charging of Fees by Dealer. The parties further agree that no provision of this Settlement shall be construed to preclude Dealer from charging any fees to its customers that may be authorized under §301.558, RSMO.

B. The claims or causes of action that were or could have been asserted and could form the basis for an issue on appeal by either party are hereby released.

C. The release contained herein does not affect the rights of Class Members who timely and properly opt out of the Settlement Agreement.

D. The administration and consummation of the Settlement as embodied in this Settlement Agreement shall be under the authority of the Arbitrator. The Arbitrator shall retain jurisdiction to protect, preserve, and implement the Settlement Agreement, including, but not limited to, the release contained herein. The Arbitrator expressly retains jurisdiction in order to

enter such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement Agreement, including, but not limited to, orders enjoining Class Members from prosecuting claims that are released pursuant to the Settlement Agreement.

E. Upon issuance of the Final Approval Order: (i) the Settlement Agreement shall be the exclusive remedy for any and all released claims of Class Members; (ii) Dealer, its affiliated companies and their successors, assigns, officers, agents, attorneys, representatives, employees and insurers shall not be subject to liability or expense of any kind to any Class Members except as set forth herein; and (iii) Class Members shall be permanently barred from initiating, asserting, or prosecuting any and all released claims against Dealer, its affiliated companies and their successors, assigns, officers, agents, attorneys, representatives, employees and insurers in any federal or state court in the United States or any other tribunal for the charging of a Fee during the sale or lease of an Automobile.

F. Upon issuance of the Final Approval Order, the Claimant/Class Representative shall file a Voluntary Dismissal with prejudice, for all claims originally asserted in his Complaint.

X. REPRESENTATIONS, WARRANTIES, AND COVENANTS:

A. Class Counsel, who are signatories hereof, represent and warrant that they have the authority, on behalf of Claimant/Class Representative, to execute, deliver, and perform this Settlement Agreement and to consummate all of the transactions contemplated hereby. This Settlement Agreement has been duly and validly executed and delivered by Class Counsel and Claimant/Class Representative and constitutes their legal, valid, and binding obligation.

B. Dealer, through its undersigned representatives, represents and warrants that it has the authority to execute, deliver, and perform this Settlement Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance by Dealer of this Settlement Agreement and the consummation by it of the actions contemplated hereby have been duly authorized by all necessary corporate actions on the part of Dealer and constitute its legal, valid, and binding obligations.

C. The rights and obligations of Dealer in this agreement, including the releases and the obligations to honor the Gift Card Vouchers discussed herein, will be binding on, and will be of benefit to each of the Parties' successors, heirs and estates.

XI. ADDITIONAL ISSUES:

A. No Admission of Liability.

The parties agree that this Settlement is made to resolve a doubtful and disputed claim and that by entering into this Settlement, Dealer is not making any admission that any of the allegations raised in the Complaint are true. This Settlement Agreement, and the exhibits and related documents hereto, are not, and shall not at any time be construed or deemed to be, or to evidence any admission against or concession by Dealer with respect to any wrongdoing, fault, unlawful act

or omission of any kind whatsoever, regardless of whether or not this Settlement Agreement results in entry of a Final Approval Order as contemplated herein. This provision shall survive the expiration or voiding of the Settlement Agreement.

The parties agree that this Settlement is intended to encompass all claims or disputes regarding the charging of the fees described in the Complaint that Claimant/Class Representative and the Settlement Class Members could raise with regard to the charging of such fees, and that upon entry of the Arbitrator's Order granting Final Approval of the Settlement, Claimant/Class Representative and those Settlement Class Members who do not opt out of the Settlement shall be forever barred from raising any other claims against Dealer regarding such Fees.

B. Voiding Of Settlement Agreement If Settlement Not Approved. This Settlement Agreement is entered into only for purposes of settlement. In the event that the Final Approval Order is not entered, or if an appeal is taken therefrom and results in anything other than a complete affirmance of the Final Approval order, then this Settlement Agreement, including any releases or dismissals hereunder, is canceled, and no term or condition of this Settlement Agreement, or any draft thereof, or of the discussion, negotiation, documentation or other part or aspect of the Parties' settlement discussions shall have any effect, nor shall any such matter be admissible in evidence for any purpose, or used for any purposes whatsoever in the Arbitration and the Parties shall be restored to their prior rights positions as if the Settlement Agreement had not been entered into.

C. Headings and Subdivisions. The headings of the sections and paragraphs of this Settlement Agreement are included for convenience only and shall not be deemed to constitute part of this Settlement Agreement or to affect its construction.

D. Amendment of Agreement. This Settlement Agreement, including all exhibits attached hereto, may not be modified or amended except in writing signed by all of the Parties.

E. Execution in Counterparts. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

F. Applicable Law. This Settlement Agreement shall be governed by and construed in accordance with the substantive laws of the State of Missouri, without giving effect to any choice or conflict of law provision, or rule that would cause the application of the laws of any other jurisdiction.

G. Apportionment of Costs. Except as otherwise provided in this Settlement Agreement, each party to this Settlement Agreement shall bear his, her, or its own costs related to the litigation.

H. Extensions of Time. The Parties to this Settlement Agreement reserve the right, by agreement and subject to the Arbitrator's approval, to grant any reasonable extensions of time that might be necessary to carry out any of the provisions of this Settlement Agreement.

I. Required Notice. All applications for Arbitrator approval or Arbitrator orders required under this Settlement Agreement shall be made on notice to Claimant and Dealer.

J. Arms-Length Negotiation. The determination of the terms of, and the drafting of, this Settlement Agreement, including its exhibits, has been by mutual agreement after negotiation, with consideration by and participation of all Parties and their counsel. Since this Settlement Agreement was drafted with the participation of all Parties and their counsel, the presumption that ambiguities shall be construed against the drafter does not apply. Each of the Parties was represented by competent and effective counsel throughout the course of settlement negotiations and in the drafting and execution of this Settlement Agreement, and there was no disparity in bargaining power among the Parties to this Settlement Agreement.

K. Integrated Agreement. All of the Exhibits of this Settlement Agreement are material and integral parts hereof, and are fully incorporated herein by reference. This Settlement Agreement and the Exhibits hereto constitute the entire, fully integrated agreement among the Parties and cancel and supersede all prior written and unwritten agreements and understandings pertaining to the Settlement of the above-styled matter.

L. Rejected Claims. Any Rejected Claim may be accepted by Dealer, prior to instituting dispute resolution. The Parties agree that any disputes regarding the terms and conditions of this Settlement Agreement, the Parties' rights and obligations under this Settlement Agreement, and/or the manner in which any issue or dispute arising under this Settlement Agreement shall be decided by the Arbitrator.

M. Notice to Parties. All notices to the Parties or their counsel required by this Settlement Agreement shall be made in writing and communicated by fax or electronic mail and by United States Mail, first-class postage prepaid, to the following addresses:

ATTORNEYS FOR CLAIMANT/CLASS REPRESENTATIVE:

Bryan E. Brody
Alexander J. Cornwell
BRODY & CORNWELL
7730 Carondelet, Ste. 135
St. Louis, MO 63105
Telephone: (314) 932-1068
Facsimile: (314) 228-0338
Email: BBrody@brodyandcornwell.com
ACornwell@brodyandcornwell.com

ATTORNEYS FOR DEALER:

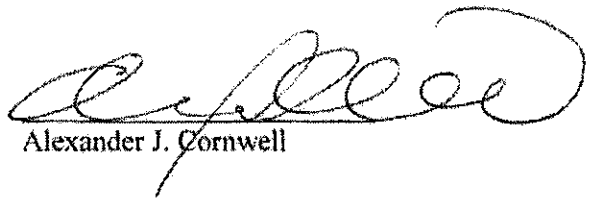
Johnny K. Richardson
BRYDON, SWEARENGEN & ENGLAND P.C.

312 East Capitol Avenue
P.O. Box 456
Jefferson City, Missouri 65102
Telephone: (573) 635-7166
Facsimile: (573) 634-7431
E-mail: johnnyr@brydonlaw.com

IN WITNESS WHEREOF, Claimant/Class Representative and Dealer and their respective counsel have executed this Settlement Agreement as of the date(s) indicated below.

Executed this 13th day of May, 2020.


Bryan E. Brody


Alexander J. Cornwell

Claimant/Class Representative:

DocuSigned by:

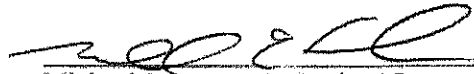
5/9/2020
Richard Lemonds

Executed this 19th day of May, 2020.



Johnny K. Richardson

Dealer:



Michael Schumer, Authorized Representative of
Bening Automotive Group, LLC