

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.:

CLASS ACTION COMPLAINT

Plaintiff, Nadine Mazard (“Plaintiff”), by and through her undersigned counsel, on behalf of herself and all others similarly situated, submits the following class action complaint against Defendant BTLS, Inc. d/b/a Balise Toyota (“Balise Toyota”), and based upon personal knowledge as to her own acts and circumstances and based upon information and belief as to all other matters, alleges as follows.

I. INTRODUCTION

1. This case seeks compensation for Balise Toyota’s systematic mispricing of goods and services received by its service customers.

2. In September of 2013 Plaintiff, a customer of Balise Toyota in West Springfield, Massachusetts, determined that amounts listed on signage and pricing literature at the Balise Toyota service department was not the same amount she was charged. When comparing her receipts with amounts displayed on pricing signage and literature, she became aware that she had been overcharged at least twice.

3. The Massachusetts Attorney General has declared, through regulations, that mispricing is an unfair or deceptive business practice in violation of G.L. c. 93A.

4. Balise Toyota's pricing practices include conduct specifically declared to be unfair and deceptive acts or practices in Massachusetts Attorney General administrative regulations, and are therefore per se violations of G.L. c. 93A.

5. Plaintiff, on behalf of herself and the Class, seeks under c. 93A, § 2, disgorgement of the profits or other benefits received by Balise Toyota as a result of the practices described herein in violation of 940 CMR 3.13(1)(f) and/or statutory damages under c. 93A, § 9(3). Plaintiff brings this action as a class action on behalf of herself and a class comprised of all customers who were overcharged at Balise Toyota during the period from November 20, 2010 through the present.

6. On behalf of the class, Plaintiff seeks an injunction requiring Balise Toyota to cease all mispricing, as well as treble damages, attorney's fees and costs.

II. THE PARTIES

7. Plaintiff Nadine Mazard is an individual domiciled in Amherst, Hampshire County, Massachusetts.

8. Plaintiff was a repeat customer of Balise until September, 2013.

9. Defendant BTLS, Inc. is organized as a corporation under the laws of Massachusetts, with a principal place of business at 122 Doty Circle, West Springfield, Massachusetts.

10. BTLS, Inc. does business as the Balise Toyota car dealership located at 1399 Riverdale Street, West Springfield, Massachusetts.

III. JURISDICTION AND VENUE

11. This Court has jurisdiction over this matter pursuant to G.L. c. 212, §§ 3 and 4.

12. This Court has personal jurisdiction over Defendant pursuant to G.L. c. 223A, § 3(a) because Defendant: regularly transacts and has transacted business in the Commonwealth of Massachusetts by maintaining retail store locations in Massachusetts and selling products to Massachusetts customers; Defendant solicits business within the Commonwealth of Massachusetts; and the acts or conduct that are the subject matter of this action arose from the Defendant's transaction of business in Massachusetts.

13. Venue is proper in the Business Litigation Session ("BLS"), pursuant to Superior Court Administrative Directive No. 09-1.

IV. FACTUAL ALLEGATIONS

14. Massachusetts law forbids mispricing.

940 CMR 3.13(1)(f):

Correct Pricing. It is an unfair or deceptive act or practice . . . to charge a consumer an incorrect price for any item offered for sale. The "correct price" is the lowest of: the advertised price in any circular, newspaper, magazine, television or radio commercial, or in any other medium, or any published correction thereof; the price indicated on any store sign. *See* 940 CMR 3.13(1)(f).

15. On May 1, 2013, the Plaintiff was billed and paid \$82.65 for "Service A," with a synthetic oil change. The advertised price of "Service A" is \$45.00, with "Synthetic oil 7.25/quart." Assuming the price of five quarts of oil synthetic at this rate is \$36.25, adding that number to "Service A," without an offset for standard oil price, the result would be \$81.25. Yet, the Plaintiff was charged \$82.65, (an overcharge of at least \$1.40).

16. On November 30, 2012, the Plaintiff was billed and paid \$89.95 for a four wheel

alignment -- instead of the advertised price of \$89.00 (overcharge of 95¢). Within the May 1, 2013 invoice, the oil is itemized as “List: 7.04, Net: 5.29, Total: \$26.45.” This accounting is misleading and deceptive. If the fee of \$26.45 represents the cost of synthetic oil over and above the fee for standard oil, the charges should be \$45.00 for “Service A,” plus \$26.45 for synthetic oil, resulting in a total charge of \$71.45 -- not \$81.25 or \$82.65 the amount Plaintiff actually paid. This results in an overcharge of as much as \$11.20. *See id.*

17. Balise Toyota’s pricing practices include conduct specifically declared to be unfair and deceptive acts or practices in Massachusetts Attorney General administrative regulations, and are therefore per se violations of G.L. c. 93A, which states: “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” *See* G.L. c. 93A §2(a). “The attorney general may make rules and regulations interpreting the provisions of subsection 2(a) of this chapter.” *See* G.L. c. 93A, §2(c).

18. Balise Toyota’s conduct, as described herein, was willfully and knowingly in violation of c. 93A, § 2.

V. CLASS ACTION ALLEGATIONS

19. Plaintiff brings this action on behalf of herself and as a class action, pursuant to the provisions of Rules 23(a) and (b) of the Massachusetts Rules of Civil Procedure and G.L., c. 93A, § 9(2) on behalf of a class defined as:

“All customers who were overcharged at Balise Toyota from November 20, 2010 through the present” (the “Class”).

20. Excluded from the Class are Defendant and its subsidiaries and affiliates; governmental entities; and the judge to whom this case is assigned and any family members thereof. Plaintiff reserves the right to modify or amend the Class definition as appropriate.

21. Certification of Plaintiff’s claims for class-wide treatment is appropriate because

Plaintiff can prove the elements of his claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

22. Numerosity – Mass. R. Civ. P. 23(a)(1). The Class is so numerous that individual joinder of all Class members is impracticable. Plaintiff is informed and believes that there are thousands of Class members. The precise number of Class members and their addresses are unknown to Plaintiff, but may be ascertained from Balise Toyota’s books and records. Class members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods, which may include U.S. mail, electronic mail, Internet postings, and/or published notice.

23. Commonality and Predominance – Mass. R. Civ. P. 23(a)(2) and 23(b). This action involves common questions of law and fact, which predominate over any questions affecting only individual Class members. All Class members were subject to the same mispricing. Furthermore, common questions of law and fact, include, but are not limited to:

- a. Whether Balise Toyota’s conduct as alleged herein violates Massachusetts law, including the provisions of 940 CMR 3.13(1)(f);
- b. Whether Balise Toyota’s conduct as alleged herein constitutes unfair and deceptive acts or practices in violation of c. 93A, § 2;
- c. Whether Balise Toyota’s violation of c. 93A, § 2 was willful and knowing;
- d. Whether Balise Toyota has been unjustly enriched as a result of the conduct complained of herein; and
- e. Whether Plaintiff and the other members of the Class are entitled to equitable relief, including but not limited to injunctive or declaratory relief.

24. Typicality – Mass. R. Civ. P. 23(a)(3). Plaintiff’s claims are typical of the claims of the other members of the Class because, among other things, all Class members were similarly injured through the uniform misconduct described herein and all Class members have the same

claim, *i.e.*, that Balise Toyota's mispricing violated and violates 940 CMR 3.13(1)(f).

25. Adequacy of Representation – Mass. R. Civ. P. 23(a)(4) and c. 93A, § 9(2).

Plaintiff is an adequate Class representative because her interests do not conflict with the interests of the other members of the Class she seeks to represent; she has retained counsel competent and experienced in class action litigation, and Plaintiff intends to prosecute this action vigorously. The Class's interests will be fairly and adequately protected by Plaintiff and her counsel.

26. Similarly Situated and Injured Persons -- c. 93A, § 9(2). The proposed Class consists of customers who have suffered the same injury as the Plaintiff and who, for the reasons stated above, are similarly situated to each other and to the Plaintiff.

27. Superiority – Mass. R. Civ. P. 23(b). A class action is superior to any other available methods for fairly and efficiently adjudicating this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and the other members of the Class are relatively small compared to the burden and expense that would be required to individually litigate their claims against Defendant, so it would be impracticable for Class members to individually seek redress for Balise Toyota's wrongful conduct. Even if the Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

VI. CAUSES OF ACTION

COUNT ONE

UNFAIR AND DECEPTIVE BUSINESS PRACTICES, G. L. c. 93A, §§ 2 and 9

28. Plaintiff realleges and incorporates the allegations in the preceding paragraphs as if set forth at length here.

29. At all relevant times, Balise Toyota was engaged in commerce for purposes of G. L. c. 93A.

30. G. L. c. 93A, § 2 provides that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” G. L. c. 93A, § 9 permits any consumer injured by a violation of c. 93A, § 2 to bring a civil action, including a class action, for damages and injunctive relief.

31. By misleading consumers about its prices in violation of 940 CMR 3.13(1)(f), Balise Toyota engaged in unfair and deceptive acts or practices in violation of c. 93A, § 2.

32. Plaintiff and Class members were injured by Balise Toyota’s conduct as alleged herein by paying amounts in excess of prices represented to Plaintiff and Class members.

33. Plaintiff and Class members suffered damages, including financial losses and the profit or other economic benefit that Balise Toyota obtained from the misappropriation of Plaintiffs’ and Class members’ money.

34. Balise Toyota’s unfair and deceptive acts or practices, as alleged herein, were and are willful and knowing violations of c. 93A, § 2, within the meaning of c. 93A, § 9(3).

35. On November 22, 2013, Plaintiff made a demand for relief, in writing, to Balise Toyota, as required by G. L. c. 93A, § 9(3). The demand letter explained in detail the nature of the unfair and deceptive acts or practices, the injuries suffered by Plaintiff and the Class, as well as demanding compensation for those injuries and other relief.

36. Based on the foregoing, Plaintiff and the other members of the Class are entitled to all remedies available pursuant to c. 93A, §9, including, but not limited to actual damages, statutory damages (to the extent that they are greater than actual damages), double or treble damages, disgorgement of Balise Toyota's profits derived from its unlawful activities, injunctive relief, attorneys' fees and other reasonable costs.

COUNT TWO
UNJUST ENRICHMENT

37. Plaintiff realleges and incorporates the allegations in the preceding paragraphs as if set forth at length here.

38. Plaintiff and the other Class members conferred a benefit upon Balise Toyota, in the excess payment they provided to Balise Toyota when concluding transactions at Balise Toyota.

39. Plaintiff's and Class members' overpayments provided to Balise Toyota without consideration were commercially valuable, and Balise Toyota misappropriated these funds for its own improper purposes.

40. Balise Toyota had an appreciation or knowledge of the commercial value of overcharges made to paid Plaintiff and the other members of the Class.

41. Balise Toyota's acceptance or retention of these benefits is inequitable under the circumstances outlined above and entitles Plaintiff and Class members to restitution or such other compensation as is appropriate in the circumstances.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the other members of the Class, respectfully requests that the Court order the following relief:

A. An Order certifying the Class as requested herein;

- B. Actual damages or statutory damages in the sum of \$25 per violation, whichever is greater;
- C. Double or treble damages, as afforded by law;
- D. An Order enjoining Balise Toyota from continuing to engage in the unfair and deceptive acts or practices alleged;
- E. Reasonable attorneys' fees and costs to Plaintiff and the Class; and
- F. Such other and further relief as may be just and proper.

VII. JURY DEMAND

Plaintiff and the class demand a trial by jury of all claims in this Complaint so triable.

Respectfully submitted,

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Dated: May 29, 2014