

United States Senate

WASHINGTON, DC 20510

November 4, 2016

The Honorable Edith Ramirez
Chairwoman
Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Dear Chairwoman Ramirez:

As detailed in the Federal Trade Commission's (FTC or "the Commission") recent complaint against nine Los Angeles-area auto dealers – the Commission's first action against a dealer for "yo-yo" financing tactics – consumers can face a barrage of unfair or deceptive advertising, sales, and financing practices when purchasing or leasing a vehicle.¹ The FTC charged the defendants in this particular case with creating phony online reviews, packing misleading add-ons, and misrepresenting financing terms. While we commend the FTC's most recent step in its efforts to protect consumers in the auto marketplace, we write to urge the Commission to continue aggressively pursuing enforcement actions over other unscrupulous dealers and to additionally use its rulemaking authority to proactively curb the wide range of abusive conduct currently taking place.

As you know, the FTC has broad authority under Section 5 of the FTC Act over unfair or deceptive acts or practices. In the Dodd-Frank Act of 2010, Congress determined the need to proactively protect consumers in auto lending and specifically recognized the Commission as the primary agency to do just that, granting the FTC exclusive authority to promulgate rules governing the sale, servicing, and leasing of motor vehicles.² The Consumer Financial Protection Bureau, also created under Dodd-Frank Act, has already published guidance to address discrimination in indirect auto financing.³ The FTC can and should address through rulemaking the unfair or illegal practices rife in the auto dealer industry.

Thus far, the FTC has rightfully exercised its authority by taking action against deception and fraud in auto sales, financing, and leasing.⁴ Additionally, the Commission has conducted

¹ Fed. Trade Comm'n v. Universal City Nissan et al., No. 2:16-cv-07329 (C.D. Cal. filed Sept. 29, 2016) (*available at* <https://www.ftc.gov/system/files/documents/cases/160929sagecmpt.pdf>).

² 12 U.S.C. § 5519(d).

³ Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act, C.F.P.B. Bull. 2013-02 (Mar. 21, 2013), http://files.consumerfinance.gov/f/201303_cfpb_march_Auto-Finance-Bulletin.pdf.

⁴ See, e.g., Press Release, Fed. Trade Comm'n, FTC, Multiple Law Enforcement Partners Announce Crackdown on Deception, Fraud in Auto Sales, Financing and Leasing (March 26, 2015) (*available at* <https://www.ftc.gov/news-events/press-releases/2015/03/ftc-multiple-law-enforcement-partners-announce-crackdown>); Press Release, Fed. Trade Comm'n, FTC Announces Sweep Against 10 Auto Dealers (Jan. 9, 2014) (*available at* <https://www.ftc.gov/news-events/press-releases/2014/01/ftc-announces-sweep-against-10-auto-dealers>).

roundtables,⁵ sought public comments,⁶ and begun a consumer survey to examine consumer protection issues in auto lending.⁷ However, it has not yet issued any rules that would protect consumers and allow the Commission to more easily enforce its Section 5 authority over deceptive auto lending practices or terms.

FTC's most recent action demonstrates that some auto dealers take advantage of vulnerable consumers—specifically targeting non-English speakers and those with poor credit—with a variety of predatory and discriminatory lending practices. Through a rulemaking, the FTC could clarify practices that constitute a violation of Section 5—thus more directly preventing this harmful behavior. In comments submitted to the FTC in 2012, consumer advocates made a number of recommendations, including that the FTC issue rules determining that yo-yo scams—in which consumers drive a car off the lot believing that financing is secured, when, in fact, it is not—are an unfair and deceptive practice.⁸ Such proactive rulemaking could have helped to protect consumers from becoming victims of the auto dealers' yo-yo sales tactic in the first place, with respect to the most recent FTC action.

The auto lending industry is rife with anti-consumer practices, and the FTC ought to use its authority to address auto dealers directly by promulgating clear rules and bringing additional enforcement actions where appropriate. This includes clarifying restrictions on the advertising of misleading and deceptive loan terms, the packing of loans with a laundry list of add-ons, discriminatory dealer markups on interest rates, selling traded-in vehicles before paying off liens, and mandatory arbitration clauses.⁹

We support the steps the Commission has taken to date to protect consumers from the abusive practices they face when trying to finance or obtain a lease for a vehicle. At the same time, we believe more must be done. For those who depend on their car to get to work, to access health care for themselves, an aging parent, or sick child, and to conduct other aspects of daily life, a vehicle can be a family's most important and one of its biggest purchases. We must ensure that bad actors are not allowed to continue taking advantage of their customers.

Sincerely,

⁵ Notice by the Fed. Trade Comm'n, 76 Fed. Reg. 14014-14017, Public Roundtables: Protecting Consumers in the Sale and Leasing of Motor Vehicles (March 15, 2011) (*available at* <https://www.federalregister.gov/articles/2011/03/15/2011-5873/public-roundtables-protecting-consumers-in-the-sale-and-leasing-of-motor-vehicles#p-24>).

⁶ Press Release, Fed. Trade Comm'n, FTC Continues to Seek Public Input on Consumer Issues in Motor Vehicle Sales, Financing and Leasing (Feb. 21, 2012) (*available at* <https://www.ftc.gov/news-events/press-releases/2012/02/ftc-continues-seek-public-input-consumer-issues-motor-vehicle>).

⁷ Notice by the Fed. Trade Comm'n, 81 Fed. Reg. 780-783, Agency Information Collection Activities; Proposed Collection: Comment Request (Jan. 7, 2016) (*available at* <https://www.federalregister.gov/articles/2016/01/07/2016-00033/agency-information-collection-activities-proposed-collection-comment-request>).

⁸ Comment to the Fed. Trade Comm'n, Center For Responsible Lending et al. (Feb. 1, 2012) (*available at* https://www.ftc.gov/sites/default/files/documents/public_comments/public-roundtables-protecting-consumers-sale-and-leasing-motor-vehicles-project-no.p104811-00071/00071-82645.pdf).

⁹ N.Y. TIMES Editorial Board, *Putting an End to Abusive Car Loans*, N.Y. TIMES, Jun. 13, 2015, <http://www.nytimes.com/2015/06/14/opinion/sunday/putting-an-end-to-abusive-car-loans.html>.



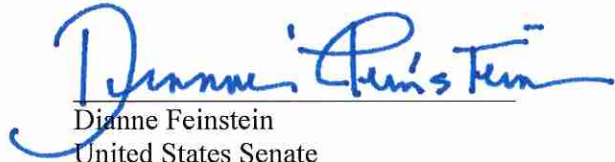
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United States Senate



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United States Senate



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United States Senate



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