

United States Senate  
WASHINGTON, DC 20510

July 14, 2016

The Honorable Mark Rosekind  
Administrator  
National Highway Traffic Safety Administration  
1200 New Jersey Avenue, SE, West Building  
Washington, DC 20590

The Honorable Edith Ramirez  
Chairwoman  
Federal Trade Commission  
600 Pennsylvania Avenue, Northwest  
Washington, D.C. 20580

Dear Administrator Rosekind and Chairwoman Ramirez:

We write with serious safety concerns regarding the Federal Trade Commission's (FTC) recent proposed settlements with General Motors Company, Jim Koons Management, and Lithia Motors Inc, regarding their failure to adequately disclose unrepaired safety recalls when advertising their used car inspection programs. The proposed settlements would allow dealers to continue to advertise used cars as "safe," "repaired for safety issues," and having been rigorously and extensively inspected, including that they are certified—a term that connotes safety—even if those vehicles have unrepaired safety recalls. As such, in their current form, these proposed settlements would fail to address the wrongdoing at hand.

We understand that, at our behest, your two agencies have discussed these proposed settlements. Nevertheless, we remain concerned that this important public safety and public policy matter has not received the heightened scrutiny it deserves. Congress has long debated whether dealers should be allowed to sell used cars subject to open safety recalls. We firmly believe that the law should prohibit such sales, as it currently does for new cars with open safety recalls. These proposed settlements wade into this contentious public policy debate, and we believe they would establish an anti-consumer, anti-safety precedent with far-reaching policy implications. Accordingly, we urge you to work together, and in good faith, to leverage your respective agency's expertise and redraft the proposed settlements so they ensure that consumers receive meaningful information regarding the safety of their potential used vehicle purchases and that public safety is not compromised.

The National Highway Traffic Safety Administration (NHTSA) has publicly stated time and time again that all recalls are safety recalls that need to be fixed. In 2011, a spokeswoman for NHTSA said, “All safety recalls resulting from defects present an unreasonable risk to safety and we believe it is inappropriate to suggest that some defects are not risky enough to require repair.”<sup>1</sup> In a 2013 hearing, former Administrator David Strickland testified, “All NHTSA safety recalls address an unreasonable risk to safety and should not be ignored.”<sup>2</sup> In addition, NHTSA’s current FAQ on vehicle recalls explicitly states, “A recall is issued when a manufacturer or NHTSA determines that a vehicle, equipment, car seat, or tire creates an unreasonable safety risk or fails to meet minimum safety standards.”<sup>3</sup> There is no question that any vehicle with an outstanding recall is an unsafe vehicle.

In contrast to NHTSA’s longstanding position, the FTC’s proposed settlements would allow dealers to continue committing the same wrongdoing that was the impetus for the Commission’s actions. Car dealers would still be able to represent that a pre-owned vehicle is “safe,” has been “repaired for safety issues,” and has passed a “rigorous safety inspection” or to label a pre-owned car as being certified even when it is being sold with an unrepaired safety recall. A certified used vehicle with an unrepaired safety recall is inherently misleading. Perhaps more alarming, the proposed settlements would only require dealers to make a blanket statement that their rigorously inspected and certified used vehicles “may be subject to unrepaired recalls.” Consequently, this “disclosure” arguably amounts to nothing more than a legal disclaimer that could absolve dealers from their responsibilities and would likely do little, if anything, to meaningfully convey to consumers the existence of an open recall and dissuade them from purchasing such vehicles due to their safety risks.

The sale of any car with an unrepaired safety recall is a threat to public safety. We support the concerns raised in the comments recently filed by a number of consumer groups that no dealer should be able to advertise that a car is certified or any similar terminology connoting safety, if the car is subject to an outstanding recall.<sup>4</sup> Please report back by August 10, 2016 on how you intend to cooperate and work together to amend the proposed settlements and ensure that car dealers cannot mislead and deceive consumers about the safety of their prospective purchases.

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<sup>1</sup> Christopher Jenson, *Faced With Recalls, Rental Companies Sometimes Decide to Wait*, N.Y. TIMES WHEELS, Apr. 19, 2011, <http://wheels.blogs.nytimes.com/2011/04/19/faced-with-recalls-rental-companies-sometimes-decide-to-wait/>.

<sup>2</sup> *Hearing on S. 921, the “Raechel and Jacqueline Houck Safe Rental Car Act of 2013” Before the Subcomm. on Consumer Protection of the S. Comm. Commerce, Science, and Transp.*, 113<sup>th</sup> Cong. (2013) (statement of David Strickland, Adm’r, Nat’l Highway Traffic Safety Admin., available at [https://www.commerce.senate.gov/public/\\_cache/files/492dcbd0-de37-4ea6-9810-8b72d07bb4c0/F2BA003C793F45BA47EB84D6116C92BD.strickland.pdf](https://www.commerce.senate.gov/public/_cache/files/492dcbd0-de37-4ea6-9810-8b72d07bb4c0/F2BA003C793F45BA47EB84D6116C92BD.strickland.pdf)).

<sup>3</sup> Nat’l Highway Traffic Safety Admin., *Vehicle Recalls: Frequently Asked Questions*, SAFERCAR.GOV, <https://vinrel.safercar.gov/vin/faq.jsp> (last visited June 10, 2016).

<sup>4</sup> Letter from Consumer Groups to Federal Trade Commission (Feb. 29, 2016), available at [https://www.ftc.gov/system/files/documents/public\\_comments/2016/02/00011-100830.pdf](https://www.ftc.gov/system/files/documents/public_comments/2016/02/00011-100830.pdf).

Sincerely,



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RICHARD BLUMENTHAL  
United States Senate



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CHARLES E. SCHUMER  
United States Senate



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EDWARD J. MARKEY  
United States Senate



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BILL NELSON  
United States Senate



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RICHARD DURBIN  
United States Senate