SYRACUSE UNIVERSITY

COLLEGE OF LAW
OFFICE OF CLINICAL LEGAL EDUCATION

March 30, 2012

Katherine Worthman
Carole Reynolds
Attorneys, Division of Financial Practices, Federal Trade Commission
600 Pennsylvania Avenue, NW.
Washington, DC 20580

RE: Motor Vehicle Roundtables— Comment, Project No. P104811
Automobile Financing Comments

Dear Ms. Worthman and Ms. Reynolds:

Thank you for the opportunity to comment on this important issue for American Consumers. The Syracuse University College of Law Securities Arbitration and Consumer Law Clinic provides free legal assistance to low-income residents of Central New York on issues related to investor and consumer protection. We represent several victims of illegal, unfair and deceptive yo-yo sales practices. Our cases involve a dealership's use of Spot Delivery Agreements. The Spot Delivery Agreement supposedly gave the dealership unilateral authority to cancel the Retail Installment Sales Agreement contract if they failed to sell it to a finance company. This was never explained to the purchasers and they believed that when they drove off the lot with the car it was theirs to keep.

Case 1:

Purchasers are Cuban immigrants in their mid-fifties, who had been living in the United States for less than five years. Neither purchaser could speak, read or write in English. In 2008, purchasers went to the dealership and a Spanish-speaking salesman working for the dealership persuaded the purchasers that they could afford a 2009 Sonata. On June 30, 2008, purchasers traded in their 2006 Elantra for the Sonata. All negotiations for the car were done in Spanish. The sales agreements were in English. The salesman rushed purchasers through the paperwork and did not explain to them what each paper said. The salesman was aware that purchasers could not read or write in English, but did not read the paperwork to purchasers nor did he translate the paperwork into Spanish. The salesman did not tell purchasers of the Spot Delivery Agreement or explain that the contract was contingent on Defendant selling the financing. When the dealership gave purchasers the keys to the new car, it led them to believe that the car was theirs to keep, as long as they made the monthly payments.

A month after receiving the car, purchasers had not received any notices of payment on the car, so they contacted the dealership. The salesman informed them that they would receive the paperwork sometime in September. In late August, purchasers stopped at the dealership at which

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time the salesman told them that financing on the car was not approved and they would have to sign more paperwork. The second contract had a higher interest rate than the first.

As of September 13, 2008, purchasers still had not received any notices of payment for the car, so they again spoke with the salesman, and he asked them to sign a third contract. The third contract, like the previous two, was prefilled with all the information and contained higher interest rates than either of the first two contracts. The salesman again rushed the purchasers through the signing process. Purchasers initially refused to sign this third contract but the salesman told them if they did not, the payment book would not arrive and they would lose their car, so they reluctantly signed. The salesman assured purchasers that they would receive their first bill in time to make the first payment by early October 2008.

As of early October 2008, purchasers still had not received any notices of payment. They went to the dealership again and the salesman told them to pay their installment in cash. As a result, purchasers brought in a cash payment of $500 to pay the dealership, but the dealership did not accept the payment. Rather, the general manager of the dealership informed them that they need to secure their own financing for $14,000. Confused, purchasers asked their English-speaking friend to meet with the dealership's financial manager. When the two met the financial manager informed the friend that she was working on solving the problem.

On or about November 12, 2008, the purchasers returned home to find that their only car had been seized from their residence. Purchasers did not receive any notice before the car was seized. The dealership did not return purchaser's trade-in or their down payment. Purchasers were forced to walk to work every day after the repossession.

Case 2:

Purchaser was a 61 year-old disabled Navy veteran, living on a fixed income with his Veterans Benefits as his only source of income. Purchaser saw television advertisements by car dealer promoting car payments as low as $150 to $170. On April 1, 2010, Purchaser went to the dealership interested in purchasing a used car. A salesman for the dealership persuaded purchaser that he could afford a new car for the same price as a used one. During negotiations the salesman told purchaser that monthly payments would be about $375. Purchaser objected and expressed that he did not want to enter into a deal with anything more than what was advertised. The salesman kept purchaser from leaving the dealership by promising that he could work out a better deal.

Purchaser traded in his 2000 Ford Windstar for a new 2010 Hyundai Elantra. The dealership rushed purchaser through the paperwork and did not ask him if he understood what was detailed in the paperwork. The dealership used a Spot Delivery Agreement and did not explain to purchaser that this meant that the contract was contingent on the dealership selling the financing. When the dealership gave purchaser the keys to the new car, it led purchaser to believe that the financing had been secured and the car was his to keep, so long as he made the monthly payments.

Purchaser never received any notice of payment for the car. Purchaser returned to the dealership to inquire about this issue a couple of months after he purchased the car. The dealership did not give purchaser a clear answer to his inquiries, except that he would be receiving something in the mail. For the next three months, purchaser made a money order each month in anticipation of receiving something in the mail detailing payment as he had been assured. In June 2010, the dealership repossessed the 2010 Elantra. Dealer gave no notice before seizing the car nor did purchaser receive any notice of the rejection of his credit. The dealership refused to return purchaser's trade in or his down payment.

The SACC sued this dealership on behalf of the buyers bringing claims under Truth in Lending Act, Equal Credit Opportunity Act, Uniform Commercial Code, New York's Deceptive Acts law and Motor Vehicle Retail Installment Act. The dealership's General Manager stated during his deposition that the dealership uses Spot Delivery Agreements in **every** car sale. He further claimed that the Spot Delivery Agreement was used to ensure that customers were being honest on their credit application. The lawsuits each settled with the purchaser receiving a settlement roughly equivalent to the value of their unreturned trade-in.

Our position is that the Spot Delivery Agreement violates both Retail Installment Contract and New York's requirement that the whole agreement be contained in one document. It makes the Truth in Lending Disclosures illusory. Most importantly, a spot delivery agreement violates the true nature of the contract; that the dealer is financing the deal and then seeks to renege or renegotiate the deal if it cannot sell the contract at a high enough profit. At no time does dealer explain the true implication of the spot delivery agreement or provide notices of the repossession and credit denial as required by the UCC and the ECOA. As a result, it is our position that the FTC should find that Spot Delivery Agreements are per se deceptive.

Sincerely,

Michelle Gallo
Student Attorney

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Supervising Attorney