



Federal Trade Commission
Mr. Donald S. Clark
Office of the Secretary
Room H-113 (Annex T)
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Proposed Modifications to Used Car Buyers Guide
Used Motor Vehicle Trade Regulation Rule, 16 CFR 455

Dear Secretary Clark:

The East Bay Community Law Center is one of the largest legal aid providers for low-income individuals in the San Francisco Bay Area. Our office on the border of Oakland and Berkeley (we are affiliated with the UC Berkeley Law School) maintains a broad consumer protection practice and regularly sees individuals who buy used cars from dealerships based on fraudulent misrepresentations or misleading or false information. The Used Motor Vehicle Trade Regulation Rule (the "Rule") is a crucial tool protecting these individuals from fraudulent and wrongful business practices. However, neither the Rule as it currently stands nor the FTC's proposed changes serve as well as they could the FTC's goal of providing accurate and reliable information to car buyers.

When our clients purchase a car, it is often because public transportation is insufficient or unreliable, and they need a vehicle to get to work or bring their kids to school. A 2011 report analyzing 371 transit providers in the nation's 100 largest metropolitan areas confirmed this experience throughout the country.¹ The report concluded that 75% of low- and middle-skilled jobs are largely inaccessible via public transportation.² For low-income workers in suburban areas, even fewer jobs are accessible by public transit.³ Although low-income workers have little if any disposable income to spend on a car, they may need to make the purchase as a necessity of life.

Because these workers do not have the funds to purchase a new car, they must rely on used car

¹ Adie Tomer, et al., *Missed Opportunity: Transit and Jobs in Metropolitan America*, Brookings Institution, May 12, 2011. Available at: <http://www.brookings.edu/research/reports/2011/05/12-jobs-and-transit>.

² *Id.* at 1.

³ *Id.* at 1 (only 22% of jobs can be accessed in 90 minutes via public transit)



sellers. Unfortunately, low-income consumers are often taken advantage of in these transactions because they may be unsophisticated, do not speak English well, or have little time or money available for extensive independent research. For example, a Carfax report costs forty dollars, and users must have internet access and a credit or debit card to purchase and view it.⁴ On average, a pre-purchase inspection by an independent mechanic will cost \$100 to \$200 per vehicle.⁵ Low-income consumers may decide to pay more to buy a car at the dealership, rather than buying from private sellers, because they believe the dealer, as a repeat player and member of the community, will provide truthful and accurate information about the car's age, condition, and value. If and when this information turns out to have been false or misleading, consumers reasonably expect a refund.

Statutes and case law reinforce these reasonable expectations. The Uniform Commercial Code, for example, requires "good faith" in all transactions,⁶ defined as "honesty in fact in the conduct or transaction concerned."⁷ This provision both reflects and reinforces consumers' expectations that dealers will fully disclose all known defects, warranties, and vehicle history. Many courts have also recognized these reasonable expectations through, for example, the implied warranty of merchantability doctrine.⁸

The FTC has a crucial role in regulating these transactions, in line with consumer expectations. Yet the proposed Rule allows dealers to hide this information or mislead the consumer who reasonably believes that an honest transaction means full disclosure of all known relevant facts. The proposed Rule does not require dealers to reveal known defects,⁹ to disclose known unexpired third-party warranties,¹⁰ to provide NMVTIS reports or other known and easily accessible vehicle history, to require the provision of Spanish-language buyer's guides, or to

⁴ Carfax, *Order Carfax Reports Now!*, (March 11, 2013)

https://secure.carfax.com/creditCard.cfx?partner=GCT_D&affiliateId=0.

⁵ J.D. Power and Associates, *Used Car Pre-Purchase Inspection*, (March 11, 2013),

<http://autos.jdpower.com/content/buying-tip/b4WXout/used-car-pre-purchase-inspection.htm>

⁶ U.C.C. § 1-203 ("Obligation of Good Faith").

⁷ U.C.C. § 1-201. ("General Definitions").

⁸ See generally: *Testo v Russ Dunmire Oldsmobile, Inc.*, 554 P2d 349, 353 (Wash. App. Ct. Dist. 2 1976) (citing cases holding that, unless excluded or modified, an implied warranty of merchantability extends to the sale of a used car); *Doll v. Ford Motor Co.*, 814 F. Supp. 2d 526, 544 (D. Md. 2011) (stating that consumers "ordinarily" expect that a vehicle will be adequate for transportation in a "safe manner").

⁹ See FTC Used Motor Vehicle Trade Regulation Rule, 77 Fed. Reg. 74756, 74758-59 (proposed Dec. 17, 2012) (to be codified at 16 CFR pt 455).

¹⁰ See *id.* at 74753.



allow a consumer to bring a claim for fraud based on oral statements about the vehicle.¹¹

We therefore urge the FTC to change the proposed Rule to accomplish the following:

1. Require dealers to make a diligent search for existing warranties and to prominently disclose known existing warranties in the Buyers' Guide.
2. Require dealerships to provide consumers with vehicle history reports.
3. Impose penalties on dealers using the internet to sell cars who violate the rule.
4. Require dealers who advertise in Spanish to provide a Spanish-language buyer's guide.
5. Make the second sentence below the as-is warranty box consistent with a consumer's ability to bring a claim for fraud.

1. The Rule should require dealers to make a diligent search for existing warranties and to prominently disclose known existing warranties in the Buyers' Guide.

The proposed Rule permits (but does not require) dealers to tell clients whether there are applicable unexpired manufacturers warranties on the Buyer's Guide in the space allotted.¹² Industry dealers argue that it would be infeasible to disclose warranties because they cannot obtain accurate information about what warranties might still apply.¹³ This is not a reason to excuse dealers from at least making their best efforts to provide consumers this valuable information. Dealers should be required to make a diligent search for existing warranties and provide consumers all known information on warranties. Contrary to the industry's arguments, dealers will not be subjected to unfair or extreme liability if they are only required to disclose known information found after a reasonable search.

Many dealers sell their own warranty packages, which can represent a significant source of profit for them. It is this conflict of interest that creates a disincentive for the dealer to search for existing warranties. The balance of resources between dealers and purchasers makes clear which party should bear the burden of locating existing warranties. It is extremely difficult for low-income consumers, in particular, to search for warranty information on their own, especially when many lack internet access. Over 100 million Americans do not have home access to the internet, mostly because they cannot afford it.¹⁴ Even with access, online research for warranties

¹¹ See *id.* at 74754.

¹² See *id.* at 74753.

¹³ See *id.* at 74753.

¹⁴ Amy Chozik, *Comcast Internet Essentials Brings Access to Low Income Homes*, New York Times, (January 20, 2013) http://www.nytimes.com/2013/01/21/business/media/comcast-internet-essentials-brings-access-to-low-income-homes.html?pagewanted=all&_r=0.



is nearly impossible if the consumer does not speak or read English. Only by requiring dealers to search for warranties can the Commission be confident that dealers will make diligent efforts to inform consumers.

We also agree with the FTC that the current warning about warranties could confuse consumers and cause them to believe that no warranties exist.¹⁵ In reality, the lack of warranty information could mean that the dealer has not searched for any warranties or that s/he has searched but found no information. We disagree with the FTC's proposal to simply remove the "No Information" box, however.¹⁶

Instead, the Rule should require dealers to make a reasonable search for, and disclose, any existing warranties. This warranty information should be prominently displayed on the front of the Buyer's Guide—not, as proposed, on the back of the Guide,¹⁷ where few consumers are likely to look. The box should also clarify that, although the dealer has made a reasonable search, warranties may exist even if they are not listed there.

Our proposed language reads, **"Dealer has looked in all available databases, but has found no existing manufacturer's warranties applicable to this vehicle. However, warranties may apply even if they are not listed here."** In this way, dealers are held accountable to search for possible warranties so the buyer can make an informed choice about whether to buy the dealer's warranty or how much to pay for the car.

2. Dealerships should be required to provide consumers with vehicle history reports.

The Proposed Rule does not – but should – require that dealers seek information about the history of the car, including its known defects, and disclose such information to the potential buyer. Although the FTC admits the expansion of the availability of vehicle history reports through sites like the Department of Justice's NMVTIS and private websites like CARFAX,¹⁸ it fails to require dealers to disclose this information to sellers because of potential legal liability that sellers could face based on the accuracy of the information in the reports.¹⁹ While the car dealers contend that these reports can be sometimes inaccurate or contain incomplete

¹⁵ The language on the current warranty states: "NO INFORMATION PROVIDED: The Dealer provides no information about the other warranties that may apply." *See* FTC Used Motor Vehicle Trade Regulation Rule at 74753.

¹⁶ *See id.* at 74753.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*



information,²⁰ a search of one of these reports could also glean important information about the vehicle in question that dealers are required to disclose under state vehicle codes. For example, a report from NMVTIS or CARFAX would likely reveal whether a “brand” has been placed on the car in question by the state Department of Motor Vehicles – indicating, for example, that the car

is a “salvage” vehicle. In a number of states, including California, dealers are required to disclose that a car’s title has been branded.²¹

The Commission is rightly interested in providing consumers with vital information about the safety and mechanical condition of the automobiles they purchase. At least some of this information is contained in NMVTIS and CARFAX reports, and dealerships have the resources and the expertise to provide and interpret these reports to consumers. Though the Commission proposes an addition to the Buyer’s Guide that would point consumers toward existing resources for vehicle histories to research on their own, this information may still not be accessible to many consumers. All of our clients at the East Bay Community Law Center are low-income individuals,²² and the vast majority has extremely limited access to computers and/or little knowledge of the regulatory regime surrounding car sales. These clients also cannot afford to buy new cars that have factory warranties and new, reliable systems. To mitigate the potential market failures that could arise as a result of dealers withholding information from consumers who lack resources and information, we propose that the FTC require dealers to investigate and disclose vehicle histories to consumers.

3. The FTC should impose penalties on dealers who use the internet to sell cars but do not follow the Used Car Rule.

The Used Car Rule does not apply to auto sales between private individuals. Our experience suggests, however, that online car sale venues now make it possible for individuals or businesses to pose as private sellers while actually selling a sufficiently high volume of vehicles to bring them under the Rule’s definition of “dealer.” For example, it appears that increasingly dealers are posing as individual sellers on sites like Craigslist, selling multiple vehicles and avoiding the responsibilities of dealers as outlined in the FTC Rule.²³ These individuals, often called “curbstoners,” buy up low-end or salvage vehicles and “flip” them for sale after performing

²⁰ *Id.*

²¹ See California Vehicle Code § 11515(e) (Total Loss Salvage Vehicles)

²² All clients at East Bay Community Law Center have incomes less than 200% of the federal poverty level and are residents of Alameda County, California.

²³ See Department of Motor Vehicles. DMV Targets Unlicensed Car Dealers Posing As Private Sellers. September 17, 2011. http://www.dmv.ca.gov/pubs/newsrel/newsrel11/2011_28.htm



minimal repairs and without disclosing the vehicle history to the customer.²⁴ In a brief scan of the first page of the San Francisco Bay Area Cars/Trucks page on Craigslist on March 8, 2013, for example, eleven cars were listed for sale by the same seller (i.e., all eleven sellers have the same phone number).²⁵ Under the Used Car Rule, the posters of these multiple advertisements should be considered dealers, and thus responsible under FTC regulations for providing certain information to the purchaser of the vehicle. The FTC should clarify that these practices are per se violations of the Used Car Rule.²⁶

4. The Rule should require that dealers who advertise in Spanish must provide a Spanish-language buyer's guide.

Many of our Spanish language clients do not receive Spanish-language buyer's guides when they purchase a used car from a dealer. The FTC guidelines provide that both Spanish and English Used Car Buyers Guides should be displayed when a substantial number of sales are conducted in both languages.²⁷ However, the experiences of clients we see indicate to us that the guidelines are rarely followed. In light of this shortcoming, EBCLC advocates changing 16 CFR § 455.5 from a suggestion into an enforceable rule. The current language states dealers "may display"²⁸ both English and Spanish Used Car Buyers Guide. We strongly advise revising the language to "must display." This revision would serve to hold dealers accountable when they solicit Spanish-speaking consumers and conduct substantial sales in Spanish.

Accordingly, we agree with the Commission's proposal that a Spanish Language Sentence be added to the English version of the Used Car Buyers Guide. This addition will serve to rectify the failure of many to provide a Spanish version of the Used Car Buyers Guide prior to discussing a vehicle with a Spanish version of the Used Car Buyers Guide.²⁹ We propose that

²⁴ *Id.*

²⁵ See Exhibit A.

²⁶ The Commission should also prioritize enforcement sweeps against these practices in order to provide consumers redress. See Section 19 of the FTC Act, 15 U.S.C. Sec. 57b, <http://www.ftc.gov/ogc/brfovrw.shtm>. Although the California DMV, for example, has taken some steps to try to curb the practice, those actions can result at most in the issue of citation against the sellers, not compensation for consumers. See DMV Targets Unlicensed Car Dealers, *supra*, http://www.dmv.ca.gov/pubs/newsrel/newsrel11/2011_28.htm.

²⁷ 16 CFR § 455.5 (C), 53 FR 17660, FTC Staff compliance guidelines (May 17, 1988), "From a practical standpoint, dealers must post both the English and Spanish versions of the Buyers Guide when a substantial number of sales are made in both languages."

²⁸ The current language reads, "You may display on a vehicle both an English language window form and a Spanish translation of that form." 16 CFR § 455.5.

²⁹ 53 FR 17660, Illustration 3.10 states, "To ensure compliance with the Rule, it is a good idea to post both versions of the Buyers Guide if you expect that a sale could be conducted in either Spanish or



the Spanish language sentence be displayed in a prominent way to draw significant attention from Spanish speakers.

We would also propose a version of the Spanish Language sentence that we believe would be more effective in protecting Spanish Language car buyers than the sentence contained in the proposed Rule. The FTC currently suggests the following statement: “If you are unable to read this document in English, ask your salesperson for a copy in Spanish.”³⁰ That statement does not accurately reflect the responsibilities of the dealer. The suggestion to ask your salesperson appears to be an informal suggestion rather than a requirement. We believe a more authoritative sentence which accurately reflects the law would be more effective: **“If you cannot read English, the dealer is required by law to provide you with a Spanish Language Buyers Guide.”**³¹

5. The second sentence below the as-is warranty box should be changed because it is inconsistent with a consumer’s ability to bring a claim for fraud.

One sentence in the proposed Rule seems particularly problematic: *“The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.”* Although this statement is presumably intended to protect car buyers by encouraging them to ask for all representations in writing, the negative repercussions of the statement far outweigh any protective value to the consumer. The plain language of the sentence implies that a sales representative may say anything about the vehicle without any liability. This inaccurate implication is inconsistent with a consumer’s ability to bring an action for fraud, based on an oral misrepresentation of a material fact.³²

Contrary to the current Buyers Guide language, a claim for fraud does not depend on the fact that the representation is in writing.³³ Indeed, we have been unable to locate any authority that would

English. A Spanish Language Buyers Guide **must** be posted on a used vehicle before you begin to discuss, in Spanish, that vehicle with a customer.”

³⁰ The Spanish translation of the FTC statement is, “[s]i usted no puede leer este documento en inglés, pídale al concesionario una copia en español.” 77 FR at 74761.

³¹ In Spanish: “Si Usted no puede leer esta guía en inglés, la ley requiere que el vendedor le provee a Usted una Guía del Comprador en español.”

³² *Grabinski v. Blue Springs Ford Sales, Inc.*, 136 F.3d 565 (8th Cir. 1998).

³³ See, e.g., *King v. O’Rielly Motor Co.*, 494 P.2d 718, 721 (Ariz. Ct. App. 1972) [representation that car was “like new,” when it had been wrecked on the dealer’s premises, supported action for fraud]; *Snodgrass v. Ford Motor Co.*, 2001 U.S. Dist. LEXIS 18999 at *26-*27 (D.N.J. Aug. 31, 2001) [once buyer asked manufacturer directly about the safety of the ignition switch, false response that there were no reported ignition switch problems presented triable issue of fraud]; *Sales v. Kecoughtan Hous. Co.*,



support the current Buyers Guide's language suggesting that a false statement must be in writing to be actionable.³⁴

Changing the “no responsibility” language would be most important in cases where the statement at issue is a factual oral misrepresentation. For example, a dealer claims to have fixed a brake problem when it has only disconnected the warning light,³⁵ or when a dealer claims that a vehicle has never been in a wreck when it has been in a major accident.³⁶ In these common cases, editing the proposed language would serve three key purposes. First, the new language would inform consumers of their right to bring a claim for fraud. Second, the change would provide legal clarity to triers of fact who may be confused by the current language, which implies that fraudulent oral representations are not actionable. Third, the proposed change would deter salespeople from making fraudulent oral representations about the vehicle at issue.

Any claim that auto-dealers are not similarly protected from fraudulent misrepresentations is incorrect. Consumers are held liable for fraud when they trade in a vehicle and conceal significant hidden damage.³⁷ Auto auction firms are held liable for fraud when they fail to disclose to a dealer the true selling price of a vehicle.³⁸ Furthermore, courts provide consumers protection from fraudulent oral statements in other contexts. For example, home buyers are protected from fraudulent oral misrepresentations made by sellers.³⁹ Accordingly, to make auto dealers liable for fraudulent statements would be simply to hold them to the same legal standard that is required of others with whom they do business.

We recommend that the FTC either change the current language or strike the language in its entirety. The current language might usefully be changed from “The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle” to “Ask for all representations about the vehicle in writing.” This language would be more consistent with the law, while also continuing to encourage the buyer to get all statements about the vehicle in written form. Striking the sentence in its entirety would also be far more useful to consumers than leaving it in its present form.

Ltd., 690 S.E. 2d 91 (Va. 2010) [statement by landlord to tenant that apartment was “safe for habitation” is sufficient basis to support constructive fraud claim].

³⁴ Student researchers have searched Westlaw, Lexis Nexis and the National Consumer Law Center manuals.

³⁵ *Tague v. Molitor Motor Co.*, 487 N.E.2d 436 (Ill. App. Ct. 1985);

³⁶ *City Dodge, Inc. v. Gardner*, 208 S.E.2d 794 (Ga. 1974).

³⁷ *Cadillac Co. v. Aron*, 371 S.W.2d 651, 653 (Mo. Ct. App. 1963).

³⁸ *Condon Auto Sales & Serv. v. Siouland Auto Action*, 715 N.W. 2d 769 (Iowa Ct. App. 2006).

³⁹ *Rosas v. Hatz*, 147 S.W.3d 560, 565-566 (Tex. App. 2004); *Alires v. Mcgehee*, 85 P.3d 1191, 1196 (Kan. 2004).



Conclusion

In sum, we believe the FTC can offer stronger protections to consumers we serve by making five critical changes to the Used Car Buyers Guide.

1. Require dealers to make a diligent search for existing warranties and to prominently disclose known existing warranties in the Buyers' Guide.
2. Require dealerships to provide consumers with vehicle history reports.
3. Impose penalties on dealers using the internet to sell cars who violate the rule.
4. Require dealers who advertise in Spanish to provide a Spanish-language buyer's guide.
5. Make the second sentence below the as-is warranty box consistent with a consumer's ability to bring a claim for fraud.

We thank the Commission for its ongoing work in protecting consumers, and for providing us the opportunity to participate in revising this vital Rule.

Sincerely,

Elisa Della-Piana
Director, Neighborhood Justice Clinic
edellapiana@ebclc.org
(510) 269-6614

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Posted: 2013-03-08, 10:21AM PST

1985 Ford F 150 King Cab automatic - \$1500 (Bay Area)



1985 Ford F 150 King Cab automatic looks okay runs good new tires brakes kept up with 1500 or best offer

- Location: Bay Area
- it's NOT ok to contact this poster with services or other commercial interests

Posting ID: 3639302744

Posted: 2013-03-08, 10:21AM PST

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1995 Mercury Villager van automatic - \$1500 (Bay Area)

1995 Mercury Villager van automatic green color looks in runs good 1500 or best offer "1500" : no pics at this time

- Location: Bay Area
- it's NOT ok to contact this poster with services or other commercial interests

Posting ID: 3617401352

Posted: 2013-03-08, 10:21AM PST

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2000 Saturn 4dr - \$1200 (san franisco)

2000 Saturn 4 door automatic looks good runs okay needs batteries need to fix column 1200 each or best offer .

- Location: san francisco
- it's NOT ok to contact this poster with services or other commercial interests

Posting ID: 3656421316

Posted: 2013-03-08, 10:21AM PST

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
[Avoid scams, deal locally!](#) Do NOT wire funds (Western Union, Moneygram). Beware cashier checks, money orders, shipping, non-local buyers/sellers. [More info](#)

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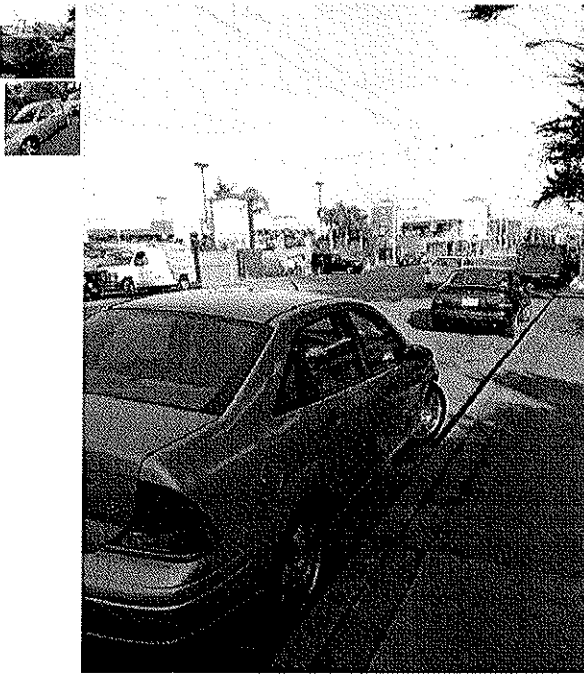
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2000 Ford Focus xs automatic - \$2400 (bay area)



2000 Ford Focus automatic 4 door looks in runs good 2400 best offer

- Location: bay area
- it's NOT ok to contact this poster with services or other commercial interests

Posting ID: 3647203804

Posted: 2013-03-08, 10:20AM PST

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Posted: 2013-03-08, 10:22AM PST

1995 Mazda mvp van automatic - \$1300 (bay area)

1995 mazda mvp van automatic look run good 1.300.00 b.obc

- Location: bay area
- it's NOT ok to contact this poster with services or other commercial interests

Posting ID: 3647190980

Posted: 2013-03-08, 10:22AM PST

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Posted: 2013-03-08, 10:22AM PST

1995 Mazda mvp van automatic - \$1300 (bay area)

1995 mazda mvp van automatic look run good 1.300.00 b.ob

- Location: bay area
- it's NOT ok to contact this poster with services or other commercial interests

Posting ID: 3647190980

Posted: 2013-03-08, 10:22AM PST

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Posted: 2013-03-08, 10:22AM PST

1992 Toyota Tercel automatic - \$1400 (San Francisco)

1993 Toyota Tercel automatic looks okay runs good must sell 1400 or best offer

no pics

- Location: San Francisco
- it's NOT ok to contact this poster with services or other commercial interests

Posting ID: 3656407548

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Posted: 2013-03-08, 10:22AM PST

2001 Ford Taurus 4 door - \$1200 (Bay Area)



2001 Ford Taurus automatic 4 door runs good 1200 best offer hi miles

- Location: Bay Area
- it's NOT ok to contact this poster with services or other commercial interests

Posting ID: 3656956560

Posted: 2013-03-08, 10:22AM PST

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Posted: 2013-03-08, 10:22AM PST

1988 Plymouth caravan automatic - \$1350 (San Francisco)

1988 Plymouth caravan automatic looks okay runs good 1350 or best offer

PS no pics

- Location: San Francisco
- it's NOT ok to contact this poster with services or other commercial interests

Posting ID: 3656403445

Posted: 2013-03-08, 10:22AM PST

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if the poster didn't include a phone number, email, or other contact info, craigslist can notify them via email.

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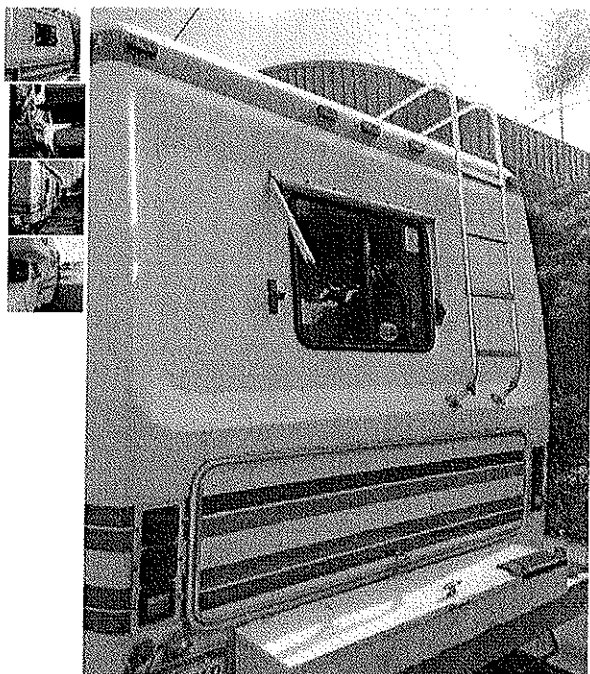
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Posted: 2013-03-08, 10:22AM PST

1979 Dodge Cobra motorhome Class C - \$2400 (San Francisco)



1979 Dodge Cobra motor home fully contained automatic 80,000 miles looks and runs good classy pictures don't do justice 2400 or best offer

- Location: San Francisco
- it's NOT ok to contact this poster with services or other commercial interests

Posting ID: 3656404924

Posted: 2013-03-08, 10:22AM PST

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[Avoid scams, deal locally!](#) Do NOT wire funds (Western Union, Moneygram). Beware cashier checks, money orders, shipping, non-local buyers/sellers. [More info](#)

No contact info?

if the poster didn't include a phone number, email, or other contact info, craigslist can notify them via email.

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