



February 29, 2016

Federal Trade Commission
Office of the Secretary
Room CC-5610 (Annex D)
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: General Motors LLC—Consent Agreement, File No. 152-3101; Jim Koons Management Company—Consent Agreement, File No. 152-3104; and Lithia Motors, Inc.—Consent Agreement, File No. 152-3102

To Whom It May Concern:

The American Association for Justice (AAJ), formerly known as the Association of Trial Lawyers of America (ATLA), hereby submits comments in response to the Federal Trade Commission (FTC) proposed consent agreements with General Motors, Jim Koons Management, and Lithia Motors.¹

AAJ, with members in United States, Canada and abroad, works to preserve the constitutional right to trial by jury and access to justice when people are injured by the negligence or misconduct of others. AAJ members represent many individuals who have been harmed as a result of faulty vehicles. As such, we find it critically important for FTC to fully evaluate the impact that the provisions of this consent agreement will have on the safety of consumers. As currently drafted, however, the consent agreement fails to do so. And, while strong federal oversight is essential to ensure that products are safe, regulatory action can, and should, work in tandem with state tort remedies, which are the only remedies available to consumers when they are harmed by a violation of regulations. Therefore, we urge FTC to withdraw from this agreement and take appropriate action.

The decision to buy a car is not one that consumers take lightly; oftentimes it is one of the largest purchases someone makes. Brand new cars, however, can be too costly or impractical for many buyers, and as such, used vehicles are a better option. Yet, consumers are often at a distinct disadvantage when purchasing a used vehicle because they do not have access to the same information as the dealer. Similarly, used vehicles are particularly prone to problems and

¹ See 81 FR 5752, 81 FR 5751, 81 FR 5754

have complex parts, making it extremely difficult to spot potential issues, even for consumers who have done their research. Therefore, when dealing with used vehicles, transparency, truthfulness and robust disclosure requirements are of utmost importance.

Disclosure alone, however, has proven time and time again to be an ineffective way to ensure safety. This is especially true of vehicles that are “certified” because of the way that they are advertised and perceived. In fact, recent nationwide polling found that when a car is advertised by a dealer as having passed a 125-point inspection, 92% of respondents would expect it to be safe, 89% believed a dealer should repair any safety defects before being allowed to sell it to a consumer and 87% would expect that such a car would not have any safety defects.² With this in mind, the proposed consent orders clearly miss the mark: they essentially create safe harbors under the guise of a safety fix. It allows for respondents to continue to label vehicles as “certified,” or subject to a “rigorous 172-point inspection,” even if the vehicles are subject to open safety recalls.³ While this alone will be confusing to consumers (e.g. saying that something is “certified” while still subject to an open safety recall) the disclosure requirements proposed by FTC are also problematic as a matter of policy and precedent.

FTC proposes that as long as the disclosure is clear and conspicuous and says that the vehicle “may” be subject to safety recalls, the respondent will meet the requirements.⁴ But using the term “may” implies that a vehicle could, or just as likely, could not have a safety defect subject to an open recall. Similarly, the requirement that the respondents must disclose how consumers can determine whether an individual used motor vehicle has been subject to a recall for safety issues that has not been repaired, is also inadequate and inappropriately puts the burden on the consumer. It is unfair to require car buyers to take extra time and incur extra expense for a vehicle that has been marketed as having passed detailed inspections, a certification that consumers may have paid a premium for. It further fails to consider that many pre-owned vehicles cannot be repaired due to a shortage of parts or qualified mechanics.

Undoubtedly, the consent orders will in no way help consumers distinguish between which vehicles are safe and which are not, allowing deceptive practices to continue. This is inconsistent with the purpose of the FTC Act and every state’s Unfair and Deceptive Practices Act. This action could therefore preempt state actions seeking to hold dealers fully accountable,⁵ and create inconsistencies with state common law and state statutory remedies like express or implied warranty of merchantability, negligence, and fraud. As a result, this consent order may leave individual consumers without remedies, even in cases where they are seriously or fatally injured because of a defect in the vehicle.

In conclusion, the FTC should not allow for dealers to sell vehicles they claim to be “certified” for safety which are subject to open recalls for safety issues and have not been

² Public Policy Polling. *Available at:* http://carconsumers.org/pdf/National_certified_usedcar_safety_recall_poll_results_2016.pdf.

³ *See e.g.* 81 FR at 5754.

⁴ *See e.g.* In the Matter of General Motors, LLC, Agreement Containing Consent Order. *Available at:* <https://www.ftc.gov/system/files/documents/cases/160128generalmotorsorder.pdf>.

⁵ *See e.g.* 9 V.S.A. § 2453 (requiring rules and regulations under the UDPA statute to “not be inconsistent with the rules, regulations, and decisions of the Federal Trade Commission.”)

repaired. Anything less will continue to be an unfair and deceptive act that jeopardizes safety not only for the drivers of the vehicles, but for the general public. If you have any questions or comments, please contact Zoë Oreck, AAJ's Assistant Regulatory Counsel, at (202) 944-2869.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry A. Tawwater". The signature is somewhat stylized and includes a comma at the end.

Larry A. Tawwater
President
American Association for Justice