



UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

Office of the Chair

**Statement of Chair Lina M. Khan
Joined by Commissioner Rebecca Kelly Slaughter
In the Matter of Napleton Automotive Group
Commission File No. 2023195**

March 31, 2022

For many consumers, buying a car is one of the largest purchases they will make.¹ Too often, it is also one of the most frustrating. Researching, shopping, testing, and negotiating can wear down the time and resources of even the savviest shopper. And at the end of a draining process, auto dealers often overload consumers with confusing “add-ons,” mark-ups, and a stack of opaque financing documents. These add-on products—such as guaranteed asset protection (GAP), VIN etchings, extended warranties, and anti-rust coatings—are a major money-maker for dealers.² But in many instances, consumers drive off the lot paying too much for add-ons they did not want or need.

The FTC plays a critical role in protecting consumers from unscrupulous auto sales practices and is charged with enforcing key laws and regulations applicable to the motor vehicle marketplace, including those that cover sales, financing, and leasing.³ The Commission takes action to make sure that consumers get accurate pricing and financing information. The Commission is also committed to ensuring that consumers do not face discriminatory treatment or pricing when buying or leasing a car.

Napleton’s Alleged Unlawful Practices

Today’s announcement of an enforcement action and resolution against eight Napleton car dealerships is an important step forward in our efforts to better protect all consumers shopping for a car. As alleged in the FTC complaint—joined by our partner, the State of

¹ See, e.g., Jenn Jones, *Average Car Payment | Loan Statistics 2022*, LENDINGTREE (Mar. 8, 2022), <https://www.lendingtree.com/auto/debt-statistics/#:~:text=Auto%20loan%20debt%20is%20the.new%20auto%20loans%20each%20month> (“Auto loan debt is the third-largest debt category behind mortgages and student loans. Overall, Americans owe \$1.46 trillion in auto loan debt, accounting for 9.4% of American consumer debt.”); Ryan Kelly et al., *Rising car prices means more auto loan debt*, CONSUMER FIN. PROTECTION BUREAU (Feb. 24, 2022), <https://www.consumerfinance.gov/about-us/blog/rising-car-prices-means-more-auto-loan-debt/> (“Auto loans are already the third largest consumer credit market in the United States at over \$1.4 trillion outstanding, double the amount from 10 years ago and expected to grow further.”).

² See, e.g., Mish Schneider, *Car Dealers Make More Profit on Loans than Selling Cars*, MISH TALK (Oct. 2, 2019), <https://mishtalk.com/economics/car-dealers-make-more-profit-on-loans-than-selling-cars>; *How Car Dealerships Really Make Money*, REALCARTIPS, <http://www.realcartips.com/newcars/135-how-car-dealers-really-make-money.shtml> (last visited Mar. 30, 2022) (“Most dealers don’t make the bulk of their profits on the sale of a new car. The big profit usually comes through arranging car loans, selling add-ons, and making money on your trade-in.”).

³ These laws include the Federal Trade Commission Act, 15 U.S.C. §§ 41-58; Truth in Lending Act, 15 U.S.C. §§ 1601-1667f (Regulation Z, 12 C.F.R. Parts 226 and 1026); Consumer Leasing Act, 15 U.S.C. §§ 1667-1667f (Regulation M, 12 C.F.R. Parts 213 and 1013); and the Used Car Rule, 16 C.F.R. Part 445.

Illinois—Napleton routinely charged consumers for add-on products and services such as service contracts, GAP insurance, or paint protection.⁴ These charges ranged from a hundred dollars to well over a thousand, substantially increasing the cost of a car. The FTC’s complaint states that in many instances, Napleton tacked on these add-on charges either without consumer consent or after misrepresenting to consumers that the charges were mandatory.⁵

The complaint charges that these practices disproportionately impacted Black consumers. According to the complaint, Napleton charged Black consumers more often for add-ons, and Black consumers paid approximately \$99 more on average than non-Latino White borrowers for similar add-ons.⁶ The complaint also alleges that Black consumers faced disproportionately higher interest rate markups when shopping at Napleton. As set forth in the complaint, Napleton allowed its employees to mark up interest rates and tack on charges for add-on products at their discretion, resulting in Black consumers paying more than similarly situated non-Latino White consumers. As discussed in the complaint, Napleton charged Black borrowers, on average, \$190 more in interest.

Relief for Consumers and Prevention of Future Misconduct

FTC staff secured a comprehensive resolution to address Napleton’s alleged law violations, remediate injured consumers, and prevent future misconduct. The proposed order directs Napleton to pay a \$10 million judgment, the highest sum the FTC has ever obtained against an auto dealer. Notably, the vast majority of the \$10 million will be returned to Napleton customers. The order also requires Napleton to take affirmative steps to change its practices, including: instituting a fair lending program; hiring a fair lending officer; training employees on fair lending; requiring non-discriminatory reasons for charging fees and interest rate markups; disciplining employees who engage in discriminatory conduct or violate the fair lending program; and reporting fair lending complaints to the Commission.⁷

Strengthening ECOA Enforcement

Today’s action makes use of several important FTC regulatory tools with bipartisan support. One of these tools, the Equal Credit Opportunity Act (ECOA), prohibits a creditor from discriminating against an applicant with respect to any aspect of a credit transaction on the basis of race, color, religion, national origin, sex, marital status, age, or source of income.⁸ The FTC’s complaint states that Napleton’s imposing higher costs on Black applicants constitutes discrimination in violation of ECOA. We are committed to aggressively pursuing ECOA violations within our jurisdiction.

⁴ Compl. for Permanent Injunction, Monetary Relief, and Other Relief ¶¶ 25-28, *Fed. Trade Commission and People of the State of Illinois et. al.*, Case No. ___ (N.D. Ill. 2022).

⁵ *Id.* ¶ 33.

⁶ *Id.* ¶¶ 43-50.

⁷ Stipulated Order for Permanent Injunction, Monetary Relief, and Other Relief, *Fed. Trade Commission and People of the State of Illinois et. al.*, Case No. ___ (N.D. Ill. 2022).

⁸ 15 U.S.C. §§ 1691-1691f.

Applying Unfairness to Discriminatory Practices

The conduct alleged in our complaint under the ECOA count presents clear disparate harms to consumers who are not in a position to avoid (or even notice) it. In light of this, we would have also supported a count alleging a violation of the FTC Act's prohibition on unfair acts or practices. Although discriminatory practices may appear to be inherently unfair, use of the Commission's unfairness authority to evaluate and address such practices is limited. Accordingly, we take this as an opportunity to offer how the Commission should evaluate under its unfairness authority any discrimination that is found to be based on disparate treatment or have a disparate impact.

First, discrimination based on protected status is a substantial injury to consumers. Discrimination based on disparate treatment or impact has wide-reaching and long-term effects that research from a variety of disciplines continues to uncover and quantify.⁹ Based on the allegations in this matter, Black consumers suffered monetary harms due to disproportionately higher interest rate markups and unwanted charges. The complaint also documents additional costs and harms associated with Napleton's unlawful conduct, such as travel costs to and from the dealership and lost economic opportunities for Black consumers.

Second, injuries stemming from disparate treatment or impact are unavoidable because affected consumers cannot change their status or otherwise influence the unfair practices. Our complaint alleges that Black consumers were charged, on average, more for markups and add-ons than similarly situated non-Latino White consumers. The complaint also highlights instances where consumers attempted to dispute these charges to no avail and were unable to purchase vehicles at advertised prices.¹⁰

Finally, injuries stemming from disparate treatment or impact are not outweighed by countervailing benefits to consumers or competition. In some contexts, discrimination can produce undue benefits for other groups in society, such as prices that are lower than those that would be offered under a less discriminatory policy or practice. As alleged in this matter, Napleton's discriminatory practices resulted in higher and unfair charges for Black consumers,

⁹ Lisa D. Cook, *Racism Impoverishes the Whole Economy*, N.Y. TIMES (Nov. 18, 2020), <https://www.nytimes.com/2020/11/18/business/racism-impoverishes-the-whole-economy.html> (arguing that racial bias creates a discriminatory drag on the economy that reduces economic opportunities, innovation and economic output); Arline T. Geronimus et al., "*Weathering*" and Age Patterns of Allostatic Load Scores Among Blacks and Whites in the United States, 96 AM. J. PUB. H. 826-827 (2006) (finding that repeated or cumulative socioeconomic disadvantage and other racial adversities can lead to negative health consequences); Bruce S. McEwen & Eliot Stellar, Stress and the individual. Mechanisms leading to disease, 153 J. ARCHIVES INTERNAL MED. 2093-2101 (1993) (finding that stressful life events, like discrimination, can cause chronic stress to the body that have long-term consequences); CLOSING THE RACIAL INEQUALITY GAPS: THE ECONOMIC COST OF BLACK INEQUALITY IN THE U.S., CITI GPS, at 3 (Sept. 2020), https://ir.citi.com/NvIUkHPilz14Hwd3oxqZBLMn1_XPqo5FrxsZD0x6hhil84ZxaxEuJUWmak51UHvYk75VKeH CMI%3D (finding that discriminatory practices across a range of sectors including access to loans, costs the U.S. economy more than \$16 trillion over the last two decades).

¹⁰ Compl. ¶¶ 33-35.

costing them money and likely exacerbating racial wealth inequalities. We do not believe that any potential price reductions produced by the discrimination and enjoyed by other auto purchasers should constitute a “countervailing benefit” under the statute. More generally, this matter highlights an important issue, regarding what constitutes a “countervailing benefit.” Any purported benefit that can be achieved without engaging in the conduct causing substantial injury is not countervailing, and does not overcome the costs associated with discrimination.¹¹ We stand ready to remind companies of this principle, and other key principles that apply in unfairness law.

We encourage the Commission to use our existing enforcement tools to protect consumers to the fullest. Given the panoply of harms that Americans suffer in the marketplace, zealous advocacy on behalf of consumers is essential for fulfilling our mission.

¹¹ *FTC v. Amazon.com, Inc.*, 2016 WL 10654030, at *10 (W.D. Wash. July 22, 2016) (“First, even accepting as true the notion that consumers prefer a seamless and efficient experience, the ‘benefit’ of ensuring a streamlined experience is not incompatible with the practice of affirmatively seeking a customer’s authorized consent to a charge.”).