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April 3, 2017

To: Honorable Members, California State Legislature
Re: AB 380 (Dababneh): Electronic Motor Vehicle Sales Transactions: OPPOSE

I am an attorney in private practice. For thirty years, I have represented California consumers in “Lemon Law” and other auto related cases, with my practice in the last fifteen years focusing mainly on dealer fraud and deceptive practices by both new and used car dealers. Recently, I was retained in two cases involving “e-signing,” where dealers engaged in numerous violations of California consumer protection laws.

To defraud these consumers, the dealers utilized “e-contracting.” California’s Uniform Electronic Transaction Act (UETA) currently excludes e-contracting in auto sales and leasing. Those exclusions provide important protections for all consumers, but especially to those who are low-income and not proficient in English.

My two current clients were harmed when they were required to “e-sign” retail installment sales contracts and other purchase documents, including, ironically, a form signed electronically to obtain their “consent” to e-sign other documents.

In both cases, my clients experienced a similar pattern and practice of fraudulent and/or deceptive conduct:

- * They were not provided a printout of the contract to review in its entirety before agreeing to sign;
- * They were required to sign the contract electronically, on a computer screen, without being able to see what they were signing;
- * They later learned that the terms of the contract were different from what was represented to them. The contracts included unwanted items or excessive amounts for such items, such as service contracts, GAP insurance, and “surface protection” products, without the consumers’ consent.
- * A Spanish-speaking client was required to “e-sign” the Retail Installment Sales Contract in English only.

Existing law requires that consumers be provided with a completed, written document that includes all of the terms of the contract in a single document, before agreeing to the terms and signing the document. This is intended to ensure that consumers are not presented with the transactions in a piecemeal fashion, and are able to review and

consider the document in its entirety prior to signing it. If, as here, the transaction is conducted on a computer screen, the entire, completed document may not be visible at any point prior to signing. This is inherently unfair to the consumer, as a single clause may affect the entire contract, such as an arbitration clause, which could deny the car buyer the ability to sue in court if they are defrauded or otherwise harmed.

AB 380 purports to protect consumers by requiring them to “opt-in” to use electronic contracting, but that assumes that they understand the legal consequences of their consent. This is unrealistic, as many consumers assume that car dealers, who are in a superior position as to knowledge of the industry, are simply “keeping up with technology” and that electronic signing is more convenient and easier for the consumer.

In fact, with the “opt-in” provision, AB 380 would make it easier for car dealers to deceive consumers by causing them to surrender their rights to even basic protections such as federal “Truth-In-Lending” disclosures, which are required to be disclosed “up front,” in a printed form that allows the consumer to take the information with them and check other options before signing purchase documents. This is not possible when the disclosures are on a computer screen, which is under the dealer’s exclusive control during the transaction. Even with a printed contract, it is often difficult for consumers to review and understand the terms of a Retail Installment Sales Contract. E-signing makes that process even more difficult.

Finally, AB 380 would make it prohibitively expensive for most consumers to prove what was disclosed or not disclosed to them. Instead of a paper document, there would be an electronic document solely in the possession of the dealer, which is “signed” by clicking on a computer screen or signing with an e-signature, making it difficult or impossible to prove that the buyer actually consented. The difficulty and expense of obtaining the computerized records would prevent millions of California car buyers, particularly vulnerable low-income consumers, from getting out of fraudulent car sales. It may not be possible to access the records at all, if the case ends up in the arbitration system, where discovery may not be granted.

In summary, AB 380 would roll back valuable and necessary consumer protections that California car buyers deserve and that are an example for the rest of the country. Thus, I urge that you vote NO on AB 380. Please do not hesitate to contact me should you wish more information on the cases mentioned in this letter.

Thank you.

Very truly yours,

Denise V. Foley