

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

---

NATIONAL AUTOMOBILE DEALERS ASSOCIATION;  
TEXAS AUTOMOBILE DEALERS ASSOCIATION,  
*Petitioners,*

v.

FEDERAL TRADE COMMISSION,  
*Respondent.*

---

**On Petition for Review of a Final Trade Regulation  
Rule of the Federal Trade Commission**

---

**BRIEF FOR CALIFORNIA, ARIZONA, COLORADO, CONNECTICUT,  
DELAWARE, DISTRICT OF COLUMBIA, ILLINOIS, MAINE,  
MARYLAND, MASSACHUSETTS, MINNESOTA, NEVADA, NEW  
MEXICO, NEW JERSEY, NEW YORK, OREGON, PENNSYLVANIA,  
RHODE ISLAND, AND WASHINGTON AS *AMICI CURIAE* IN SUPPORT  
OF RESPONDENT**

---

ROB BONTA  
Attorney General of California  
NICKLAS AKERS  
Senior Assistant Attorney General  
MICHELE VAN GELDEREN  
Supervising Deputy Attorney General

\*HUNTER LANDERHOLM  
Deputy Attorney General  
CALIFORNIA DEPARTMENT OF JUSTICE  
1515 Clay Street, 20th Floor  
Oakland, CA 94612-0550  
(510) 879-0751  
Hunter.Landerholm@doj.ca.gov  
*Attorneys for Amicus Curiae  
State of California*

May 21, 2024

*Additional Counsel listed on Signature Page*

---

## TABLE OF CONTENTS

	<b>Page</b>
Introduction and Interests of <i>Amici Curiae</i> .....	1
Argument.....	2
I. Law enforcement and consumer experiences support the FTC’s conclusion that additional regulation is needed to stem significant deceptive practices in automotive sales.....	2
A. State enforcement actions confirm that dealerships continue to deceive consumers through unfair and deceptive bait-and- switch schemes and hidden-fees practices .....	3
B. The extensive record of consumer complaints documenting abuses in the auto sales industry further demonstrates the need for additional regulation .....	11
II. The CARS Rule is a reasonable way to address, and would greatly assist the States in thwarting, persistent consumer fraud in automotive sales.....	14
Conclusion .....	18

## TABLE OF AUTHORITIES

Page

### CASES

<i>Am. Fin. Servs. Ass’n v. FTC</i> , 767 F.2d 957, (D.C. Cir. 1985) .....	15
<i>Ass’n of Nat’l Advertisers, Inc. v. FTC</i> , 627 F.2d 1151 (D.C. Cir. 1979) .....	15
<i>Burlington Truck Lines v. United States</i> , 371 U.S. 156 (1962) .....	2
<i>Cel-Tech Commc’ns, Inc. v. L.A. Cellular Tel. Co.</i> , 973 P.2d 527 (Cal. 1999) .....	16
<i>Harry and Bryant Co. v. FTC</i> , 726 F.2d 993 (4th Cir. 1984) .....	15
<i>Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.</i> , 463 U.S. 29 (1983) .....	2
<i>Nat’l Petroleum Refiners Ass’n v. FTC</i> , 482 F.2d 672 (D.C. Cir. 1973) .....	15
<i>Smith v. Wells Fargo Bank, N.A.</i> , 135 Cal. App. 4th 1463 (Cal. Ct. App. 2005) .....	16
<i>Texas v. U.S. Env’tl. Prot. Agency</i> , 91 F.4th 280 (5th Cir. 2024) .....	3, 10

### STATUTES

California Business and Professions Code § 17200 .....	16
California Business and Professions Code § 17204 .....	16

### COURT RULES

Federal Rule of Appellate Procedure 29(a)(2) .....	1
--	---

### TREATISES

Nat’l Consumer Law Center, <i>Unfair and Deceptive Acts and Practices</i> (10th ed. 2021), <a href="http://www.nclc.org/library">www.nclc.org/library</a> .....	16
---	----

### REGULATIONS

Combating Auto Retail Scams Trade Regulation Rule, 89 Fed. Reg. 590 (Jan. 4, 2024) .....	1, 4, 11, 12, 14, 17
--	----------------------

### STATE ENFORCEMENT ACTION MATERIALS

Assurance of Discontinuance, <i>In re: Koons of Reisterstown Road, Inc.</i> (Md. Atty. Gen. Consumer Prot. Div. Apr. 19, 2022), <a href="https://bit.ly/3QyfDik">https://bit.ly/3QyfDik</a> .....	6, 8
---	------

**TABLE OF AUTHORITIES**  
(continued)

	<b>Page</b>
Assurance of Voluntary Compliance, <i>Pennsylvania v. Gerald Royer</i> , No. GD-22-006243 (Pa. Ct. Com. Pl. Allegheny May 26, 2022), <a href="https://dcr.alleghenycounty.us/Civil/LoginSearch.aspx">https://dcr.alleghenycounty.us/Civil/LoginSearch.aspx</a> .....	6
Assurance of Voluntary Compliance, <i>Pennsylvania v. Paxton Assocs., Inc.</i> , No. 2019 CV 2628 MD (Pa. Ct. Com. Pl. Dauphin Apr. 9, 2019), <a href="https://bit.ly/44Memdz">https://bit.ly/44Memdz</a> .....	8
Assurance of Voluntary Compliance, <i>State v. Metro Motors, Inc.</i> [and related actions], Nos. PC-2021-07141, PC-2022,01300, PC-2022-01301 (R.I. Super. Ct. Bristol Jul. 26, 2023), <a href="https://www.riag.ri.gov/media/4111/download">https://www.riag.ri.gov/media/4111/download</a> .....	6
Compl., <i>F.T.C. v. N. Am. Auto. Servs., Inc.</i> , No. 1:22-cv-01690 (N.D. Ill. Mar. 31, 2022), <a href="https://bit.ly/3UOzoof">https://bit.ly/3UOzoof</a> .....	7, 9
Compl., <i>Massachusetts v. Auto Number One, Inc.</i> , No. 15-0123B (Mass. Super. Ct. Suffolk Jan. 14, 2015), <a href="https://bit.ly/3UOdrG4">https://bit.ly/3UOdrG4</a> .....	6
Compl., <i>Minnesota v. Midwest Car Search, LLC</i> , No. 02-CV-24-2122 (Minn. Dist. Ct. Apr. 23, 2024), <a href="https://bit.ly/4b89PnQ">https://bit.ly/4b89PnQ</a> .....	9
Compl., <i>People v. Skokie Motor Sales, Inc.</i> , No. 2020 CH 05333 (Ill. Cir. Ct. Ch. Cook Aug. 11, 2020), <a href="https://bit.ly/4b17k6O">https://bit.ly/4b17k6O</a> [archived] .....	6
Final J. & Consent Decree, <i>People v. Skokie Motor Sales, Inc.</i> , No. 2020 CH 05333 (Ill. Cir. Ct. Ch. Cook Sept. 19, 2022) .....	6
Final J. & Permanent Inj., <i>People v. Paul Blanco’s Good Car Company Auto Group</i> , No. RG-19036081 (Cal. Super. Ct. Alameda Nov. 7, 2022), <a href="https://bit.ly/3WobVeW">https://bit.ly/3WobVeW</a> .....	4, 5, 7, 9
Press Release, Arizona Attorney General, <i>AG Brnovich Obtains Over \$400,000 in Restitution from Arizona Nissan Dealers</i> (Mar. 29, 2022), <a href="https://bit.ly/4bqpzIV">https://bit.ly/4bqpzIV</a> 6	
Press Release, Arizona Attorney General, <i>Attorney General Mayes Settles with Tucson-Based Auto Dealer Over Deceptive Advertising</i> (Mar. 18, 2024), <a href="https://bit.ly/4b3qau7">https://bit.ly/4b3qau7</a> .....	6
Press Release, Fed. Trade Comm’n, <i>FTC Takes Action Against Multistate Auto Dealer Napleton for Sneaking Illegal Junk Fees onto Bills and Discriminating Against Black Customers</i> (Apr. 1, 2022), <a href="https://bit.ly/3JODy9h">https://bit.ly/3JODy9h</a> .....	7, 9

**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page</b>
Press Release, Maryland Attorney General, <i>Attorney General Frosh Announces Settlement with Koons Kia</i> (Apr. 19, 2022), <a href="https://bit.ly/3Qyg3oU">https://bit.ly/3Qyg3oU</a> .....	6
Press Release, Massachusetts Attorney General, <i>Central Massachusetts Used Car Dealership Agrees to Nearly \$1 Million Settlement over Deceptive Sales Practices</i> , <a href="https://bit.ly/3QANLu1">https://bit.ly/3QANLu1</a> .....	8
Press Release, Massachusetts Attorney General, <i>South Shore Used Car Dealership to Cease Operations, Owner to Pay Restitution to Consumers for Selling Unsafe Motor Vehicles</i> (Dec. 7, 2016), <a href="https://bit.ly/3UOgCgO">https://bit.ly/3UOgCgO</a> [archived] .....	6
Press Release, New York Attorney General, <i>Attorney General James Secures Over \$1.9 Million from Nissan Dealers that Cheated New Yorkers</i> (Mar. 28, 2024), <a href="https://on.ny.gov/3JOMRGI">https://on.ny.gov/3JOMRGI</a> .....	5, 8
Press Release, Pennsylvania Attorney General, <i>Attorney General Josh Shapiro Announces Restitution for Faulkner Honda Dealership Consumers Who Were Sold Valueless Warranties</i> (Apr. 9, 2019), <a href="https://bit.ly/3WNw5zl">https://bit.ly/3WNw5zl</a> .....	8

## **INTRODUCTION AND INTERESTS OF *AMICI CURIAE***

The Attorneys General of California, Arizona, Colorado, Connecticut, Delaware, the District of Columbia, Illinois, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Mexico, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, and Washington (the “States”) submit this brief on behalf of their respective jurisdictions, where they serve as chief law enforcement officers. In that capacity, they receive, review, and process consumer complaints and prosecute violations of consumer protection laws across a wide variety of industries. The States have a long history of protecting consumers in the automotive sales industry through investigations, settlements, and enforcement litigation involving motor vehicle dealerships. They have an interest in strong, clear, administrable rules that safeguard consumers and law-abiding competitors from sharp business practices.

The States write in support of Respondent the Federal Trade Commission, in order to help the Court understand the need for the Combating Auto Retail Scams Trade Regulation Rule (“CARS Rule”). *See* Fed. R. App. P. 29(a)(2) (allowing states to “file an amicus brief without the consent of the parties or leave of court”); CARS Rule, 89 Fed. Reg. 590 (Jan. 4, 2024) (to be codified at 16 C.F.R. pt. 463). In the States’ view, existing law has proven inadequate to address certain specific, persistent unfair and deceptive practices in the automotive sales industry. Among these practices are two varieties of misconduct to which the CARS Rule is

principally addressed: bait-and-switch advertising schemes and deceptive fees and charges. The States’ experiences in these areas—informed by the high volume of consumer complaints they receive and the corresponding need for state enforcement actions—confirm that additional specific, targeted regulation is needed to supplement the more general dictates of existing law. The CARS Rule supplies that needed specificity and will prove instrumental in assisting ongoing state efforts to eliminate unfair and deceptive practices that victimize consumers and disadvantage honest businesses. The States therefore urge the Court to deny the petition and allow the CARS Rule to take effect.

## **ARGUMENT**

### **I. LAW ENFORCEMENT AND CONSUMER EXPERIENCES SUPPORT THE FTC’S CONCLUSION THAT ADDITIONAL REGULATION IS NEEDED TO STEM SIGNIFICANT DECEPTIVE PRACTICES IN AUTOMOTIVE SALES**

Administrative rulemaking withstands judicial review where an agency “examine[s] the relevant data and articulate[s] a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)). “[A] reviewing court does not substitute its judgment for that of the agency, and instead simply ensures that the agency has acted within a zone of

reasonableness.” *Texas v. U.S. Env’tl. Prot. Agency*, 91 F.4th 280, 291 (5th Cir. 2024) (internal quotation marks, citations, and brackets omitted).

In adopting the CARS Rule, the FTC met that standard. It considered the relevant aspects of the problem, and its explanation for taking action was plausibly connected to the evidence before it. Petitioners disagree, arguing that there is insufficient evidence of “widespread misconduct that justifies the Rule,” and that there is no “regulatory gap that needs to be filled by the Rule.” OB 26, 30 (emphasis omitted). But that has not been the States’ experience. Instead, the persistence of bait-and-switch advertising and deceptive fees is amply demonstrated by government enforcement actions that have failed to eliminate such practices, as well as records of consumer complaints submitted to state attorneys general and others, documenting consumers’ victimization by such practices. Because the FTC properly and reasonably credited evidence of ongoing, illegal conduct in adopting the final CARS Rule—which is aimed at addressing such conduct—the petition should be denied.

**A. State enforcement actions confirm that dealerships continue to deceive consumers through unfair and deceptive bait-and-switch schemes and hidden-fees practices**

The States’ direct experiences enforcing consumer protection laws support the FTC’s conclusion that existing auto sales laws are not adequately protecting consumers from bait-and-switch schemes and deceptive charges. A litany of



public court complaints, judgments, and settlements filed by state attorneys general—including those in the administrative record—show that these unfair and deceptive practices have persisted despite significant law enforcement efforts. Indeed, in justifying the final CARS Rule, the FTC pointed to several hundred state and federal automotive industry actions, many of which illustrate this ongoing problem. *See* CARS Rule, 89 Fed. Reg. at 598–99.<sup>1</sup> Here, the States highlight the relevant allegations and findings of a few cases brought by state law enforcement—including some cases that the FTC specifically cited in adopting the CARS Rule.

To start, the States have taken significant enforcement actions against bait-and-switch schemes like those prohibited by the CARS Rule. For example, in November 2022 (after the close of the comment period for the CARS Rule), as part of a settlement with the Paul Blanco’s dealership group, the California Attorney General obtained stipulated judicial findings that the dealership group engaged in two bait-and-switch schemes.<sup>2</sup> First, the dealership group admitted to publishing

---

<sup>1</sup> *See also* Record of 252 Enforcement Actions, Operation Ruse Control, Admin. Dkt. 43, [https://www.ftc.gov/system/files/attachments/press-releases/ftc-multiple-law-enforcement-partners-announce-crackdown-deception-fraud-auto-sales-financing/150326rusecontrolchart\\_2.pdf](https://www.ftc.gov/system/files/attachments/press-releases/ftc-multiple-law-enforcement-partners-announce-crackdown-deception-fraud-auto-sales-financing/150326rusecontrolchart_2.pdf) (last visited May 20, 2024).

<sup>2</sup> *See* Final J. & Permanent Inj. at 4–6, 8–9, *People v. Paul Blanco’s Good Car Company Auto Group*, No. RG-19036081 (Cal. Super. Ct. Alameda Nov. 7, 2022) [hereinafter *Paul Blanco’s Judgment*], <https://bit.ly/3WobVeW>.

650,000 television advertisements that misleadingly baited consumers with false promises, including: that specified low interest rates were available regardless of credit; that the dealership group would not mark-up consumers' interest rates; and that consumers could be approved for financing through the dealership group's website and call center.<sup>3</sup> Second, the dealership group confessed to airing at least another 1,500 advertisements that falsely promised senior citizens special interest rates and prices, or that they could obtain financing without undergoing a credit check, making a down payment, or proving their incomes.<sup>4</sup>

Other states have sought to curtail similar bait-and-switch schemes. For example, the New York Attorney General recently announced settlements with five Nissan dealerships, resolving allegations that they promised lease customers a purchase option at a set price, but in practice inflated that price or added fees that resulted in substantial overcharges.<sup>5</sup> Pennsylvania's Attorney General settled with a dealership that allegedly baited consumers with promises that financing was

---

<sup>3</sup> *See id.* at 5–6.

<sup>4</sup> *See id.* at 4–5.

<sup>5</sup> *See* Press Release, New York Attorney General, *Attorney General James Secures Over \$1.9 Million from Nissan Dealers that Cheated New Yorkers* (Mar. 28, 2024) [hereinafter *Nissan Press Release*], <https://on.ny.gov/3JOMRGI>.

available to all who applied.<sup>6</sup> The attorneys general of Arizona,<sup>7</sup> Illinois,<sup>8</sup> Maryland,<sup>9</sup> and Rhode Island<sup>10</sup> have settled allegations that dealerships advertised sale prices lower than the actually available prices. And Massachusetts likewise sued a dealership in part for alleged misrepresentations that the purchase price of its vehicles would be half the actual price or less.<sup>11</sup>

---

<sup>6</sup> See Assurance of Voluntary Compliance at 3, Ex. C, *Pennsylvania v. Gerald Royer*, No. GD-22-006243 (Pa. Ct. Com. Pl. Allegheny May 26, 2022), <https://dcr.alleghenycounty.us/Civil/LoginSearch.aspx> (scroll to “Case Search; enter “GD”, “22”, and “006243” in the three text boxes under “Enter Standard Case ID”; complete Security Check CAPTCHA; click “Search”; find “Assurance of Vol. Compliance” under “Docket Entries”; click link “Document 1”).

<sup>7</sup> See Press Release, Arizona Attorney General, *AG Brnovich Obtains Over \$400,000 in Restitution from Arizona Nissan Dealers* (Mar. 29, 2022), <https://bit.ly/4bqpzIV>; Press Release, Arizona Attorney General, *Attorney General Mayes Settles with Tucson-Based Auto Dealer Over Deceptive Advertising* (Mar. 18, 2024), <https://bit.ly/4b3qau7>.

<sup>8</sup> See Compl. ¶¶ 51–58, 67–77, 101–108, *People v. Skokie Motor Sales, Inc.*, No. 2020 CH 05333 (Ill. Cir. Ct. Ch. Cook Aug. 11, 2020), <https://bit.ly/4b17k6O> [archived]; Final J. & Consent Decree ¶¶ 16d–16e, 17–19, *People v. Skokie Motor Sales, Inc.*, No. 2020 CH 05333 (Ill. Cir. Ct. Ch. Cook Sept. 19, 2022).

<sup>9</sup> See Assurance of Discontinuance at 2, *In re: Koons of Reisterstown Road, Inc.* (Md. Atty. Gen. Consumer Prot. Div. Apr. 19, 2022) [hereinafter *Koons Assurance of Discontinuance*], <https://bit.ly/3QyfDik>; see also Press Release, Maryland Attorney General, *Attorney General Frosh Announces Settlement with Koons Kia* (Apr. 19, 2022), <https://bit.ly/3Qyg3oU>.

<sup>10</sup> See Assurance of Voluntary Compliance ¶¶ 12, 19, *State v. Metro Motors, Inc.* [and related actions], Nos. PC-2021-07141, PC-2022,01300, PC-2022-01301 (R.I. Super. Ct. Bristol Jul. 26, 2023), <https://www.riag.ri.gov/media/4111/download>.

<sup>11</sup> See Compl. at 8–9, ¶ 30, *Massachusetts v. Auto Number One, Inc.*, No. 15-0123B (Mass. Super. Ct. Suffolk Jan. 14, 2015), <https://bit.ly/3UOdrG4>; see also Press Release, Massachusetts Attorney General, *South Shore Used Car Dealership to Cease Operations, Owner to Pay Restitution to Consumers for Selling Unsafe Motor Vehicles* (Dec. 7, 2016), <https://bit.ly/3UOgCgO> [archived].

Beyond targeting such illegal bait-and-switch tactics, the States have also launched enforcement actions aimed at combating deceptive fees and charges—another focus of the CARS Rule. In California’s settlement with the Paul Blanco’s dealership group referenced above, for example, the defendant dealerships admitted to “routinely” selling add-on products—such as service contracts—either by concealing them altogether or by falsely and misleadingly characterizing them as mandatory, required by law, required by finance companies, or included in the price of the vehicle.<sup>12</sup> Likewise, the Illinois Attorney General, working jointly with the FTC, recently reached a \$10 million settlement to resolve allegations that dealerships in the Napleton Automotive Group charged consumers for add-on products either without obtaining consent or by misrepresenting those products as mandatory.<sup>13</sup>

Similar state enforcement actions concerning deceptive fees and charges abound. Maryland, for example, has taken enforcement action against a dealership accused of charging consumers additional freight fees that had already been

---

<sup>12</sup> See *Paul Blanco’s Judgment*, *supra* note 2, at 6–7.

<sup>13</sup> See Compl. 8–12, *F.T.C. v. N. Am. Auto. Servs., Inc.*, No. 1:22-cv-01690 (N.D. Ill. Mar. 31, 2022) [hereinafter *Napleton Compl.*], <https://bit.ly/3UOzoof>; see also Press Release, Fed. Trade Comm’n, *FTC Takes Action Against Multistate Auto Dealer Napleton for Sneaking Illegal Junk Fees onto Bills and Discriminating Against Black Customers* (Apr. 1, 2022) [hereinafter *Napleton Press Release*], <https://bit.ly/3JODy9h>.

included in the advertised price of the vehicle.<sup>14</sup> In 2019, the Massachusetts Attorney General settled allegations that a used car dealership sold service contracts to customers that did not cover the vehicles they were purchasing and added hidden charges when customers sought to trade in vehicles and pay off existing loans.<sup>15</sup> Pennsylvania settled a case involving similar allegations that a dealership’s “New Vehicle Coverage Warranty”—an add-on product distinct from the manufacturer’s warranty—“failed to provide any meaningful value relative to the consideration paid by the consumer.”<sup>16</sup> The recent New York settlement referenced above resolved allegations that the Nissan dealerships misrepresented illegal upcharges as government fees, converting \$37 and \$50 state fees to upcharges of \$300 and \$500, respectively.<sup>17</sup> And in another recently filed lawsuit, the Minnesota Attorney General alleged that the defendant dealership sold vehicle

---

<sup>14</sup> See *Koons Assurance of Discontinuance*, *supra* note 9 at 2, ¶¶ 6–8.

<sup>15</sup> See Press Release, Massachusetts Attorney General, *Central Massachusetts Used Car Dealership Agrees to Nearly \$1 Million Settlement over Deceptive Sales Practices*, <https://bit.ly/3QANLu1>.

<sup>16</sup> See Assurance of Voluntary Compliance at 2–4, *Pennsylvania v. Paxton Assocs., Inc.*, No. 2019 CV 2628 MD (Pa. Ct. Com. Pl. Dauphin Apr. 9, 2019), <https://bit.ly/44Memdz>; Press Release, Pennsylvania Attorney General, *Attorney General Josh Shapiro Announces Restitution for Faulkner Honda Dealership Consumers Who Were Sold Valueless Warranties* (Apr. 9, 2019), <https://bit.ly/3WNw5zl>.

<sup>17</sup> See *Nissan* Press Release, *supra* note 5.

service contracts in more than 99% of finance sales in recent years without properly disclosing those products' existence.<sup>18</sup>

The foregoing are just a few examples.<sup>19</sup> But these enforcement actions are indicative of the ongoing, widespread nature of unfair and deceptive practices in the auto sales industry. Notably, some of the dealership defendants described above were large organizations, consisting of multi-dealership groups. For example, California's settlement in the Paul Blanco's case resolved litigation against a dealership network that previously operated 11 retail locations, and that settlement resulted in findings of hundreds of thousands of instances of deceptive conduct.<sup>20</sup> Likewise, Illinois and the FTC reached the joint settlement referenced above with a total of 8 dealerships, and the allegations in that case (which were based on survey data) were that the defendants had charged 83% of their customers "for add-on products without authorization or as the result of deception."<sup>21</sup>

Although government intervention ultimately put a stop to the alleged—or in the

---

<sup>18</sup> See Compl. at 1–2, 24–27, *Minnesota v. Midwest Car Search, LLC*, No. 02-CV-24-2122 (Minn. Dist. Ct. Apr. 23, 2024), <https://bit.ly/4b89PnQ>.

<sup>19</sup> This Court should not infer that these examples cover the full scope of ongoing misconduct in the automotive sales industry. In the States' experience, the kinds of enforcement actions described in this brief involve intensive investigations and are often the product of years of enforcement work. As a result, although the States can pursue some bad actors, they are not able to pursue all of them. The examples provided in this brief nevertheless establish that there is ongoing, widespread noncompliance with existing regulations, which creates the need for more (and more specific) regulation—like the CARS Rule.

<sup>20</sup> See *Paul Blanco's Judgment*, *supra* note 2 at 3–9.

<sup>21</sup> See *Napleton Compl.*, *supra* note 13 at 8, ¶ 27; see also *Napleton Press Release*, *supra* note 13.

case of the California settlement, admitted—misconduct in these exemplar cases, the widespread occurrence of such misconduct at large dealership networks underscores the need for additional prophylactic regulation.

In the States’ view, the record of relevant law enforcement actions establishes that the CARS Rule falls within the “zone of reasonableness” that this Court must assess. *Texas*, 91 F.4th at 291 (internal quotation marks omitted). The administrative record contains—and the FTC evaluated—considerable information about state and federal law enforcement actions like those described above. For example, a group of 18 state attorneys general jointly submitted a comment letter that highlighted certain state enforcement actions<sup>22</sup> and emphasized the need for “more work to be done.”<sup>23</sup> And the rulemaking record is replete with additional evidence from state and federal enforcement actions. *See, e.g.*, Admin. Dkt. 6–139, 146–165 (complaints, orders, and other records of enforcement actions by the FTC and other law enforcement agencies). Moreover, in adopting the final CARS Rule, the FTC noted its record of pursuing more than 50 auto-industry enforcement

---

<sup>22</sup> The enforcement actions highlighted in the comment letter included several of the actions described in this brief, including: the *Massachusetts v. Auto Number One, Inc.* case (*supra* note 11); the *In re: Koons of Reisterstown Road, Inc. t/a Koons Kia* case (*supra* note 9); the *FTC v. N. Am. Auto. Servs., Inc.* case (*supra* note 13); and the *Pennsylvania v. Paxton Assocs., Inc.* case (*supra* note 16).

<sup>23</sup> Comments of 18 State Attorneys General – FTC Motor Vehicle Dealer Trade Regulation Rule 2 & n.4 (Sept. 12, 2022), Admin. Dkt. 145 [hereinafter State Attorneys General Comment], <https://www.regulations.gov/comment/FTC-2022-0046-8062>.

actions and 2 law enforcement sweeps, at least 23 Consumer Financial Protection Bureau enforcement actions, and hundreds of similar actions filed by state regulators and attorneys general. *See* CARS Rule, 89 Fed. Reg. at 598–99 & n.91.

Based on these and other enforcement actions, the FTC properly concluded that “recent Commission and partner actions indicate that misconduct has persisted despite prior law enforcement and other efforts, and despite the [Notice of Proposed Rulemaking’s] detailed description of chronic problems relating to bait-and-switch tactics and hidden add-on and other charges.” *Id.* at 600. Given this substantial record, the petition should be denied, and the CARS Rule should be allowed to take effect.

**B. The extensive record of consumer complaints documenting abuses in the auto sales industry further demonstrates the need for additional regulation**

In addition to the States’ enforcement experiences, consumers themselves have made voluminous reports of their experiences falling victim to the deceptive practices the CARS Rule is meant to address. These consumer complaints further support the conclusion that—contrary to petitioners’ claims—there remains a substantial “regulatory gap that needs to be filled by the [CARS] Rule.” OB 30 (emphasis omitted).

Several different sources have collected relevant consumer complaints. For example, state attorneys general often process such complaints, and as the



comment letter submitted by 18 state attorneys general reported, “[h]istorically, complaints regarding motor vehicle purchases have comprised a significant portion of the consumer complaints we receive.”<sup>24</sup> In 2021 alone, state attorneys general received: 3,036 relevant consumer complaints in Massachusetts; 1,581 consumer complaints in Illinois; 2,189 consumer complaints in Pennsylvania; 516 consumer complaints in Iowa; and 868 consumer complaints in Maryland.<sup>25</sup>

Consumer complaints collected by other sources parallel the States’ experiences. The FTC, for example, has collected and evaluated consumer complaints, and its analysis shows that “[i]n each of the past four years, the FTC received more than 100,000 complaints regarding motor vehicle sales, financing, service and warranties, and rentals and leasing.” CARS Rule, 89 Fed. Reg. at 594 & n.45. Similarly, a comment letter submitted by consumer groups noted that combined complaints to the Better Business Bureau about new and used auto dealerships have numbered in the tens of thousands annually, exceeding the number for any other industry in the nation from 2010 through 2019, and were the second highest of any industry in 2020 and 2021.<sup>26</sup> The sheer volume of these

---

<sup>24</sup> State Attorneys General Comment, *supra* note 23 at 1.

<sup>25</sup> *See id.* at 1 n.3.

<sup>26</sup> Comments of 12 Consumer Organizations 15 (Sept. 12, 2022), Admin. Dkt. 145, <https://www.regulations.gov/comment/FTC-2022-0046-7607> [hereinafter Consumer Organizations Comment].

complaints demonstrates that all is not well in consumer experiences of the automotive sales industry.

While not all of these complaints are directly related to the problems addressed by the CARS Rule, many of them are. As part of its comment letter concerning the proposed CARS Rule, Consumer Reports solicited consumer stories about recent car-buying experiences and appended 200 of those stories to its comment.<sup>27</sup> That appendix is brimming with accounts of bait-and-switch and hidden- or deceptive-fees practices.<sup>28</sup> As just one example, a consumer in Kansas reported that during a recent car search she “spent months talking to out of state dealers” about a specific vehicle with a “window sticker price” of \$32,400.<sup>29</sup> In the course of her search, she encountered numerous mandatory add-ons, including “floor mats [that] we didn’t want,” “unwanted splash guards, [a] junky useless tool box and junky first aid box,” a “destination charge” exceeding \$1,000 “no mat[t]er where you are,” “unwanted tinted glass,” and “locking lug nuts.”<sup>30</sup> But the consumer reported that “[t]he most outrageous thing was the market adjustment

---

<sup>27</sup> Consumer Reports Comment Letter 1 (Sept. 12, 2022), Admin. Dkt. 145 <https://www.regulations.gov/comment/FTC-2022-0046-7520> [hereinafter Consumer Reports Comment]; *see also* Consumer Organizations Comment, *supra* note 26 at 74–92.

<sup>28</sup> *See* Consumer Reports Comment, *supra* note 27 at 13–72.

<sup>29</sup> *Id.* at 19 (summarizing negative experiences of a consumer named Vickie).

<sup>30</sup> *Id.*

price,” which was an upcharge ranging from \$3,000 to \$7,000.<sup>31</sup> In the end, despite a months-long, multi-state vehicle search, the consumer was unable to escape upcharges. She ended up paying \$37,500—exceeding the sticker price by \$5,100—and reported “fighting calculated deception to even do this.”<sup>32</sup>

Additional consumer comments submitted directly to the FTC told a similar story, and the FTC considered those comments, quoting numerous excerpts in the analysis accompanying its final rule. *See* CARS Rule, 89 Fed. Reg. at 597–98, 610–11, 629–30, 637, 639–40, 643, 646, 651. Based on this extensive record, the FTC reasonably concluded that there is a substantial need for the CARS Rule, and thus the petition should be denied.

## **II. THE CARS RULE IS A REASONABLE WAY TO ADDRESS, AND WOULD GREATLY ASSIST THE STATES IN THWARTING, PERSISTENT CONSUMER FRAUD IN AUTOMOTIVE SALES**

Not only is the CARS Rule amply supported by the record, but the States also agree with the FTC that the Rule will meaningfully assist the States and others as they seek to address unfair and deceptive practices in the auto sales industry. Making use of specific rules to better define the contours of general ones is a well-established and effective means of regulation. Indeed, the FTC has long been empowered to create rules that “give greater specificity and clarity to the broad

---

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

standard of illegality . . . . which the agency is empowered to prevent.” *Nat’l Petroleum Refiners Ass’n v. FTC*, 482 F.2d 672, 673 (D.C. Cir. 1973); *see also id.* at 698. As other courts have recognized, this mode of rulemaking benefits both enforcement agencies and the regulated industry. Thus, “[t]hrough rulemaking, the [FTC] may allocate resources more efficiently, act with greater speed, and give specific notice to industries of the scope of section 5” of the FTC Act. *Ass’n of Nat’l Advertisers, Inc. v. FTC*, 627 F.2d 1151, 1166 (D.C. Cir. 1979).

The CARS Rule fits comfortably within the FTC’s long-recognized power. That is, the Rule creates common-sense regulations addressed squarely at particular varieties of fraud commonly occurring in the marketplace. Primarily, it translates a rule of general application—thou shalt not deceive—into targeted rules aimed at stamping out known, widespread deceptive practices. Courts have previously upheld other FTC rules that pursued similar aims; *i.e.*, specifically defining unfair or deceptive acts in contexts where the FTC had identified certain nefarious practices affecting particular industries. *See, e.g., Nat’l Petroleum Refiners Ass’n*, 482 F.2d at 674 (specifying a service-station practice as unfair or deceptive); *Am. Fin. Servs. Ass’n v. FTC*, 767 F.2d 957, 962–64 (D.C. Cir. 1985) (similar for consumer-credit industry practices); *Harry and Bryant Co. v. FTC*, 726 F.2d 993, 996–997 (4th Cir. 1984) (similar for funeral industry practices). Like the rules challenged in those cases, the CARS Rule serves the laudable goals of

specificity, clarity, and actionability, reasonably addressing identified problems affecting a consumer-facing industry. It should be allowed to take effect.

In the States' experience, specific regulations can be particularly effective as a supplement to general consumer-protection rules because violations tend to occur most often in areas in which less scrupulous industry participants can convince themselves that they are operating in a legal gray area. Whether or not that assessment is legally accurate—or even reasonable—once some market participants find a competitive advantage through noncompliance, honest competitors come under pressure to conform to the lowest common denominator. The clarity provided by added specificity can disrupt such races to the bottom—to the benefit not only of consumers but also of honest competitors.

In that sense, the CARS Rule offers an important and needed supplement to existing regulations and will aid the States in their efforts to ensure fair and honest dealing in the auto sales industry. Many states will be able to enforce the CARS Rule through state statutes that incorporate violations of other consumer laws.<sup>33</sup>

---

<sup>33</sup> For example, California's Unfair Competition Law, enforceable by the California Attorney General, prohibits "unlawful" acts or practices in addition to unfair and deceptive ones. Cal. Bus. & Prof. Code §§ 17200, 17204. The "unlawful prong" of the Unfair Competition Law "borrows" violations of other laws, including federal regulations, and makes them independently actionable. *See Cel-Tech Commc'ns, Inc. v. L.A. Cellular Tel. Co.*, 973 P.2d 527, 539–40 (Cal. 1999); *Smith v. Wells Fargo Bank, N.A.*, 135 Cal. App. 4th 1463, 1480–81 (Cal. Ct. App. 2005). And in many other states, practices made unlawful by specific regulations may be actionable by the state attorneys general as "unfair" practices under those states' unfair and deceptive acts or practices laws. *See* Nat'l Consumer Law Center, Unfair and Deceptive Acts and Practices §§ 3.2.7.1–3.2.7.6, 4.3.9 (10th ed. 2021), [www.nclc.org/library](http://www.nclc.org/library).

Moreover, the Rule’s specific prohibitions and disclosure requirements provide clearer guideposts to dealerships concerning their behavior, while also giving enforcement agencies specific, enforceable rules that will assist with deterring, detecting, and ultimately thwarting known deceptive practices. *See* CARS Rule, 89 Fed. Reg. at 694–95 (adding 16 C.F.R. §§ 463.3, 463.4, 463.5). Similarly, the CARS Rule’s recordkeeping provisions will materially assist law enforcement efforts to ensure compliance with the CARS Rule’s other provisions by preserving evidence of dealerships’ compliance record. *See id.* at 695 (adding 16 C.F.R. § 463.6). And all of these provisions will help eliminate any lingering doubts among auto-industry participants about whether specific practices are unfair or deceptive—and thus illegal.

Finally, the States note that although the CARS Rule will supplement and assist state enforcement efforts, it will not undermine or displace existing state laws that provide greater protection to consumers. Indeed, the Rule expressly provides that regulations that are *more* protective of consumers than the CARS Rule are unaffected by it. *See id.* (adding 16 C.F.R. § 463.9). The Rule thus offers the States an additional tool in their efforts to ensure fair and honest consumer marketplaces without supplanting the state legal authorities that have long formed the basis for those efforts.

## CONCLUSION

The petition should be denied, and the CARS Rule should be allowed to take effect.

Dated: May 21, 2024

Respectfully submitted,

ROB BONTA  
Attorney General of California  
NICKLAS AKERS  
Senior Assistant Attorney General  
MICHELE VAN GELDEREN  
Supervising Deputy Attorney General

*s/ Hunter Landerholm*  
\_\_\_\_\_  
HUNTER LANDERHOLM  
Deputy Attorney General  
*Attorneys for Amicus Curiae  
State of California*

(Counsel listing continues on next page)

## Additional Counsel

KRIS MAYES  
Attorney General  
State of Arizona  
2005 North Central Avenue  
Phoenix, AZ 85004

WILLIAM TONG  
Attorney General  
State of Connecticut  
165 Capitol Avenue  
Hartford, CT 06106

BRIAN L. SCHWALB  
Attorney General  
District of Columbia  
400 6th Street, NW, Suite 8100  
Washington, D.C. 20001

AARON M. FREY  
Attorney General  
State of Maine  
6 State House Station  
Augusta, Maine 04333

ANDREA JOY CAMPBELL  
Attorney General  
Commonwealth of Massachusetts  
One Ashburton Place  
Boston, MA 02108

AARON D. FORD  
Attorney General  
State of Nevada  
100 North Carson Street  
Carson City, NV 89701

PHILIP J. WEISER  
Attorney General  
State of Colorado  
1300 Broadway, 10th Floor  
Denver, CO 80203

KATHLEEN JENNINGS  
Attorney General  
State of Delaware  
820 N. French Street  
Wilmington, DE 19801

KWAME RAOUL  
Attorney General  
State of Illinois  
115 S. LaSalle Street  
Chicago, IL 60603

ANTHONY G. BROWN  
Attorney General  
State of Maryland  
200 St. Paul Place  
Baltimore, MD 21202

KEITH ELLISON  
Attorney General  
State of Minnesota  
445 Minnesota Street, Suite 1200  
Saint Paul, MN 55101

RAÚL TORREZ  
Attorney General  
State of New Mexico  
408 Galisteo Street  
Villagra Building  
Santa Fe, NM 87501



MATTHEW J. PLATKIN  
Attorney General  
State of New Jersey  
Richard J. Hughes Justice Complex  
25 Market Street  
Trenton, NJ 08625

ELLEN F. ROSENBLUM  
Attorney General  
State of Oregon  
1162 Court Street NE  
Salem, OR 97301

PETER F. NERONHA  
Attorney General  
State of Rhode Island  
150 South Main Street  
Providence, RI 02903

LETITIA JAMES  
Attorney General  
State of New York  
28 Liberty Street  
New York, NY 10005

MICHELLE A. HENRY  
Attorney General  
Commonwealth of Pennsylvania  
Strawberry Square  
Harrisburg, PA 17120

ROBERT W. FERGUSON  
Attorney General  
State of Washington  
P.O. Box 40100  
Olympia, WA 98504

## CERTIFICATE OF COMPLIANCE

1. This document complies with the type-volume limits of Fed. R. App. P. 32(a)(7)(B) and 29(a)(5) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), the document contains 4,102 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in size 14 Times New Roman font, except that the footnotes are size 12 Times New Roman font as permitted by Fifth Circuit Rule 32.1.

*s/ Hunter Landerholm*  
Attorney for *Amicus Curiae* the State of California  
May 21, 2024