

Complaint

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IN THE MATTER OF
FORD MOTOR COMPANY, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT

Docket 9073. Complaint, Feb. 10, 1976 — Decision, March 29, 1979

This consent order, among other things, requires a Dearborn, Mich. manufacturer of motor vehicles, and the Ford Motor Credit Company to incorporate into specified documents a system for determining and accounting for all surpluses realized on repossessed vehicles resold by its dealers and to institute training programs designed to familiarize employees and dealers with their obligations in handling repossessions. Following such training, Ford is required to conduct a series of field audits to verify that dealers are calculating and paying surpluses correctly, and to submit timely compliance reports to the Commission. Additionally, respondents are required to inform dealers of their obligations to pay surpluses on past and future repossessions, and advise customers of their surplus and/or redemption rights, in the manner set forth in the order.

Appearances

For the Commission: *Bruce Carter, Barry Barnes, Dean A. Fournier and David R. Pender.*

For the respondents: *George V. Burbach*, Dearborn, Mich. for Ford Motor Credit Co., *David R. Larrouy*, Dearborn, Mich. for Ford Motor Co., *Michael Esler, Haessler, Stamer & Esler*, Portland, Ore. for Francis Ford, Inc. and *Carlton Harkrader* and *Thomas Brunner, Wald, Harkrader & Ross*, Washington, D.C. for Ford Motor Co. and Ford Motor Credit Co.

For the intervenor: *Glenn Mitchell, Stein, Mitchell & Mezines*, Washington, D.C.

COMPLAINT

The Federal Trade Commission, having reason to believe that Ford Motor Company, Ford Motor Credit Company and Francis Ford, Inc., corporations, have violated the provisions of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint.

PARAGRAPH 1. *Respondents.* Respondent Ford Motor Company ("Ford") is a Delaware corporation with its office and principal place of business at The American Road, Dearborn, Michigan.

Respondent Ford Motor Credit Company ("Ford Motor Credit") is a Delaware corporation with its office and principal place of business

at The American Road, Dearborn, Michigan. It is a wholly-owned subsidiary of Ford Motor Company.

Respondent Francis Ford, Inc. ("Francis Ford") is an Oregon corporation with its office and principal place of business at 509 S.E. Hawthorne Boulevard, Portland, Oregon.

Allegations stated below in the present tense include the past tense.

PAR. 2. *Respondents' Business.* Ford manufactures, distributes and sells motor vehicles, including automobiles and trucks. It also owns all or part of the voting stock of various retail dealers of its vehicles, whose business operations and policies it controls. It is responsible for the acts and practices of its wholly- or partially-owned dealers.

Wholly- or partially-owned as well as independent retail Ford dealers are referred to below as "Ford dealers."

Ford Motor Credit is a finance company which provides retail financing to customers of Ford dealers for their retail installment contract purchases of new and used motor vehicles. It also provides wholesale financing for inventories held by Ford dealers.

Francis Ford is a franchised Ford dealer selling new and used motor vehicles.

PAR. 3. *Commerce.* Each of respondents participates in some or all phases of the sale, distribution and repossession of motor vehicles, and in the transmission across state lines of contracts, monies, and other business papers related to the extension and enforcement of credit obligations. Respondents each maintain a substantial course of trade in motor vehicles and motor vehicle credit in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 4. *Retail Installment Contract Sales.* Francis Ford and most other Ford dealers arrange financing through Ford Motor Credit or other lenders for retail sales of motor vehicles to their customers. Most of the sales to be financed by Ford Motor Credit are executed on a printed "retail installment contract" form provided by Ford Motor Credit, naming the customer as buyer and the dealer as seller. This "retail installment contract" form indicates that the contract is to be assigned to Ford Motor Credit for value, that the buyer is to be indebted to the dealer or its assignee, and that the dealer or its assignee is to be a secured party holding security interest in the vehicle sold. In the event the buyer defaults, Ford Motor Credit and Francis Ford and other retail Ford dealers have also undertaken the obligation, by express or implied representations in their retail installment contracts, to account to the defaulting buyer for any surplus arising from the resale of repossessed collateral. This

obligation is reaffirmed after default in notices sent to defaulting buyers by Ford Motor Credit. These representations have the tendency and capacity to lead buyers to a reasonable expectation that Ford Motor Credit will refund any surplus.

PAR. 5. *Statutory Duty to Account for Surplus.* The respective rights and duties of the defaulting buyer and secured party after repossession are defined by state commercial law, derived by almost every state from Article Nine of the Uniform Commercial Code, and the retail installment contract. State law requires the secured party, after repossessing and/or disposing of the collateral, to account to the defaulting buyer for any surplus of proceeds from the sale or disposition in excess of the amount needed to satisfy all secured indebtedness, reasonable expenses of retaking, holding, preparing for sale, selling, and the like, and allowable legal costs and fees.

PAR. 6. *Post-Default Procedures Determined by Master Agreement.* In instances where Ford Motor Credit as secured party declares a default, it usually repossesses or causes repossession of the vehicle. The procedures followed by Ford Motor Credit and the dealer after repossession are determined by a master agreement embodied in the "Ford Motor Credit Company Retail Plan," between Ford Motor Credit and the dealer, as well as by the terms of the assignment of each retail installment contract to Ford Motor Credit. Additional terms are spelled out in Ford Motor Credit's legal guides and operations manuals. A majority of the agreements executed between Ford Motor Credit and Ford dealers in the United States are repurchase or similar agreements (hereinafter "repurchase" agreements).

PAR. 7. *Repurchase Transfer and Payoff.* Pursuant to the agreements described in Paragraph Six, Ford Motor Credit in most instances returns the repossessed vehicle to the repurchase dealer and receives from the dealer a payoff, consisting of the unpaid balance of the retail installment contract adjusted by applicable charges and credits. The dealer then resells the vehicle to a third party.

PAR. 8. *Joint Liability.* Under applicable state law, a dealer who receives a transfer of collateral from a secured party pursuant to a repurchase agreement has a duty to properly dispose of the collateral and to account to the defaulting buyer for any surplus. Ford Motor Credit also is obligated to ensure that a proper disposition of the collateral is made and that a proper accounting for any surplus is given to the defaulting buyer. Ford Motor Credit shares this obligation jointly with the dealer because (1) it continues to be the secured party and continues to be a fiduciary with respect

to the defaulting buyer's equity interest; (2) Ford Motor Credit, as assignor of the contractual duties of a secured party, continues to be liable for performance of those duties; (3) Ford Motor Credit has dictated, controlled and acted jointly with the repurchase dealer in executing relevant aspects of the credit transaction; and (4) Ford Motor Credit has made representations to buyers, as set forth in Paragraph Four, that these duties would be properly performed.

PAR. 9. *Failure to Account for Surpluses.* In a substantial number of instances Ford Motor Credit, Francis Ford, and other Ford repurchase dealers, have (1) failed to institute or follow correct procedures for determining the existence or amounts of surpluses realized from the sale of repossessed vehicles, (2) failed to disclose the existence of these surpluses to defaulting buyers, and (3) wrongfully retained such surpluses in violation of the defaulting buyers' statutory and contractual rights. The failure to identify and disclose surpluses has concealed their existence from these consumers and consequently few have asserted their rights under applicable state law. The failure to remit surpluses has deprived numerous consumers of substantial amounts of money rightfully theirs and has unjustly enriched Ford Motor Credit and its repurchase dealers. These practices are therefore unfair and deceptive.

PAR. 10. *Failure to Disclose Material Facts Concerning Redemption.* Ford Motor Credit and its repurchase dealers fail, in some instances, to inform defaulting buyers of facts necessary to their exercise of the right of redemption granted by state law, including but not limited to (1) the nature and duration of the right to redeem, and (2) the amount required to redeem. This failure to disclose material facts has the tendency and capacity to hinder defaulting buyers in exercising the right to redeem and is therefore an unfair and deceptive act or practice.

PAR. 11. *Owned Ford Dealers Using Non-Ford Motor Credit Financing.* A number of wholly- or partially-owned Ford dealers engage in the acts and practices ascribed to dealers in Paragraphs Nine and Ten, in instances where retail installment financing for their customers is obtained from finance institutions other than Ford Motor Credit. These acts and practices, for the reasons stated above, are unfair and deceptive.

PAR. 12. *Conclusion.* The acts and practices of respondents set forth in Paragraphs Nine, Ten, and Eleven are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

Commissioner Nye dissented.

DECISION AND ORDER

The Commission having heretofore issued its complaint charging the respondents named in the caption hereof with violation of Section 5 of the Federal Trade Commission Act, as amended, and the respondents having been served with a copy of that complaint together with a proposed form of order; and

The respondents Ford Motor Company and Ford Motor Credit Company, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, admissions by these respondents as to the Commission's jurisdiction, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint, and waivers and other provisions in accordance with the Commission's Rules; and

The Commission having thereafter, in accordance with Section 3.25(c) of its Rules, withdrawn this matter from adjudication as to Ford Motor Company and Ford Motor Credit Company; and

The Commission having considered the matter and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed pursuant to Section 3.25(f) of its Rules, now in further conformity with the procedure prescribed in Section 3.25(f) of its Rules, the Commission hereby makes the following jurisdictional findings and enters the following order:

1. Respondent Ford Motor Company is a Delaware corporation with its office and principal place of business located at The American Road, Dearborn, Michigan.
2. Respondent Ford Motor Credit Company is a Delaware corporation with its office and principal place of business located at The American Road, Dearborn, Michigan.
3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding as to Ford Motor Company and Ford Motor Credit Company, and of these respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered. That for purposes of this order the following definitions shall apply:

A. "Ford respondents" means Ford Motor Company ("Ford") and Ford Motor Credit Company ("Ford Credit"), corporations. It shall not refer to Francis Ford, Inc. References to either or both of the Ford respondents shall include their successors, assignees, officers, agents, representatives and employees, as well as any corporations, subsidiaries, divisions or devices through which they act in the United States. *Provided, however*, that references to Ford shall not include Ford Credit and references to either or both of the Ford respondents shall not include dealerships.

B. "Vehicle" means a passenger car or a truck with a gross vehicle weight less than 26,000 pounds (11,794 kilograms).

C. "Dealership" or "dealer" means a corporation, partnership or proprietorship that is a Ford, Lincoln or Mercury vehicle dealership but excludes truck dealerships whose principal business is the sale of trucks with a gross vehicle weight more than 8,000 pounds (3,629 kilograms).

D. "Retail sale" means the installment credit sale of a vehicle, other than for purposes of resale, (*e.g.*, sale to dealers or wholesalers), lease or rental, to a purchaser who is not a fleet purchaser.

E. "Repurchase financing" means the financing of a retail sale subject to an agreement between a financing institution and a dealership (generally called a "repurchase," "recourse," or "guaranty" agreement) which provides that the dealership is obligated to pay off the outstanding obligation to the financing institution after receiving a transfer of the repossessed vehicle.

F. "Repurchase dealership" or "repurchase dealer" means a dealership that engages more than occasionally in repurchase financing transactions.

G. "Equity dealership" means a dealership in which Ford has a controlling equity interest, holds 50 percent or more of the voting stock, or is entitled to elect 50 percent or more of the board of directors.

H. "Liquidating dealership" means an equity dealership that has ceased or is in the process of ceasing normal operation of a dealership and whose business has been or is being wound up by Ford or under Ford's supervision. It shall not mean a dealership not previously an equity dealership whose assets come into the possession or control of either of the Ford respondents by virtue of default on or compromise of a debt obligation.

I. "Financing customer" means a purchaser of a vehicle from a dealership by means of a retail installment contract.

J. "Disposition" or "dispose" refers to a dealership's sale or lease of a repossessed vehicle previously sold by that dealership and

returned to it by or for a financing institution pursuant to a repurchase agreement. Such sale or lease includes only transactions with an independent third party; *i.e.*, it does not include a sale or lease to the financing institution, the dealership or their representatives, or to a person or firm liable under a guaranty, endorsement, or repurchase agreement covering the repossessed vehicle. Disposition or dispose shall not refer to the repurchase of a repossessed vehicle by a dealership pursuant to a repurchase agreement, or refer to a sale subsequent to a judicial sale in Louisiana.

K. "Proceeds" means whatever is received upon disposition of the repossessed vehicle, but exclusive of sales taxes, services contracts or separately priced warranties.

L. "Allowable expenses" means only actual out-of-pocket expenses incurred as the result of a repossession. The expenses must be reasonable and directly resulting from the repossessing, holding, preparing for sale and reselling of the vehicle, and not otherwise reimbursed to the dealership. They are limited to the following charges (if allowable under applicable state law):

1. expenses paid to others, who are not employees of the dealership or of the financing institution that financed the vehicle, for repossessing, towing or transporting the vehicle;
2. filing fees, court costs, cost of bonds, fees paid to a sheriff or similar officer, and fees and expenses paid to an attorney who is not an employee of the dealership or the financing institution for obtaining possession of or title to the vehicle;
3. fees paid to others to obtain title to the vehicle, to obtain legally required inspection of the vehicle, or to register the vehicle;
4. expenses paid to others for storage (excluding a charge for storage at facilities operated by the dealership);
5. labor and associated parts and supplies furnished by the dealership for the repair, reconditioning or maintenance of the vehicle in preparation for resale, computed at dealer cost (as defined in the Initial Compliance Report) with appropriate adjustments for any insurance or warranty recovery;
6. amounts paid to others for labor and associated parts and supplies purchased for the repair, reconditioning or maintenance of the vehicle in preparation for resale;
7. sales commissions paid for actual participation in the sale of the particular vehicle, computed at a rate no higher than for a similar, nonrepossessed vehicle and excluding portions of commissions attributable to the selling of service contracts, separately priced warranties, financing or insurance;
8. expenses of advertisements that specifically mention the

particular vehicle, including a proportional share of any advertisement that also mentions other vehicles;

9. auctioneer expenses and fees paid; and

10. expenses for telephone calls and postage incurred in arranging for the repossession, holding, transportation, reconditioning and resale of the vehicle.

M. "Contract balance" means (1) the unpaid balance as of the date of repossession less applicable finance charge and insurance premium rebates deducted by the financing institution, plus (2) other charges authorized by contract or law and actually assessed prior to repossession.

N. "Surplus" means the excess of (1) the proceeds plus applicable insurance or warranty reimbursements received by the dealership or financing institution plus any other applicable rebates or credits not deducted by the financing institution, over (2) the contract balance, allowable expenses, and amounts paid to discharge any security interest provided for by law.

O. "Pay" or "paid," in reference to payment of a surplus, means a reasonable attempt to pay in accordance with the standards set forth in the Initial Compliance Report.

II.

It is further ordered, That Ford shall provide to all dealers within 60 days of the effective date of this order, and to each new dealer within 30 days of entering into a sales and service agreement, a system for determining the existence of surpluses and for accounting for surpluses and for any deficiencies sought.

A. This system (hereinafter the "accounting system") shall be made a part of the Ford Manual of Dealer Accounting Procedure referred to in the various dealer sales and service agreements between Ford and its dealers. Such agreements provide that this Manual is to be followed in dealership operations. Ford shall not change the sales and service agreements so as to affect the status of the accounting system portion of the Manual without 60 days notice to the Commission and shall not subsequently so change the sales and service agreements so as to affect the status of the Manual if the Commission, within that time period, advises Ford that it objects to the change. The accounting system shall also be incorporated into any subsequent set or compendium of comparable instructions.

B. The accounting system shall include a standardized form ("Ford accounting form") for dealers' use in determining the existence and amount of surpluses and of any deficiencies sought,

and in recording payment of each surplus in accordance with the provisions of Paragraph II.C below.

C. The accounting system shall provide that:

1. Each surplus is to be determined according to Paragraphs I.J through I.N of this order and paid to the repurchase financing customer within 45 days of disposition;

2. Expenses other than allowable expenses are not to be deducted in calculating surpluses and deficiencies sought;

3. Dispositions are to be commercially reasonable, which in practice means that the dealer should make the same efforts to obtain the best available price for a repossessed vehicle as would be made for a comparable used vehicle except that a dealer is not required to offer a warranty without extra charge even though such warranties are provided on other used vehicles;

4. If any rebate owing to the repurchase financing customer's account has not been received at the time the Ford accounting form is completed, such rebate is to be applied for promptly;

5. If any rebate is received after completion of the Ford accounting form, any surplus or deficiency is to be redetermined and any remaining surplus paid within 45 days of disposition or within 10 days of receiving the rebate, whichever is later;

6. The Ford accounting form is to be prepared by the dealer for each disposition of a repossessed vehicle and:

a. is to set forth the calculation of each surplus, and of each deficiency upon which collection is attempted;

b. is to be certified by a person authorized to sign retail installment contracts on behalf of the dealership;

c. a copy of the form is to be sent with the surplus payment to each repurchase financing customer to whom a surplus is paid and to each repurchase financing customer from whom a deficiency is sought; and

d. is to be retained by the dealer, together with all relevant underlying documentation, for at least two years from the date of disposition;

7. Dealers are not to obtain waivers of surplus or redemption rights from repurchase financing customers.

D. The accounting system shall state that failure to adhere to the standards of Subparagraphs II.C.1 through II.C.7 or to account properly to customers for surpluses will expose the dealer to legal action by the Federal Trade Commission and/or consumers.

E. Ford shall give the Federal Trade Commission 30 days advance notice of any change in its manner and form of carrying out the requirements of Part II of this order.

F. The accounting system shall not apply to sales of repossessed vehicles subsequent to judicial sales in Louisiana.

G. The Federal Trade Commission has proposed a trade regulation rule that defines duties involved in disposing of a repossessed vehicle differently from the method described in Subparagraph II.C.3 above. Said subparagraph is not to be considered a ratification or acceptance by the Commission of that method of disposition.

III.

A. *It is further ordered*, That the Ford respondents:

1. shall, within 90 days of the effective date of this order, develop and provide to every repurchase dealer detailed educational materials and training to carry out the purposes of Part II of this order and of Part VI (insofar as it relates to reinstatement and redemption rights), as further described in the Initial Compliance Report.

2. shall, commencing no later than 180 days after the effective date of this order, include detailed information on all pertinent aspects of Part II of this order and Part VI (insofar as it relates to reinstatement and redemption rights) in all appropriate seminars, correspondence courses and other training materials offered to dealers.

3. shall provide no instructions to dealers inconsistent with this order.

B. *It is further ordered*, That Ford:

1. shall, within 60 days of the effective date of this order, send to each repurchase dealer a letter which contains information to the following effect, with nothing to the contrary or in mitigation thereof:

a. state law requires that any surplus generated on the disposition of a repossessed vehicle must be returned to the defaulting customer;

b. the duty to pay surpluses has existed for many years and the company urges dealers to pay all surpluses on repossessed vehicles disposed of prior to the date of the letter, as well as those arising later;

c. except in California and Louisiana, state law provides that if a dealer does not pay a surplus owed, the defaulting customer has the right to recover a penalty equal to "an amount not less than the credit service charge plus 10 percent of the principal amount of the debt or the time price differential plus 10 percent of the cash price;"

d. if a customer to whom a surplus is owed has been reported by the dealer or its agent to a credit reporting agency as owing a

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deficiency, the dealer should promptly advise such agency of the correct facts; and

e. the Federal Trade Commission has issued complaints against three automobile dealers charging that their failure to pay past surpluses violated federal law.

2. shall include in the above mailing a copy of this order, together with the Commission's published Analysis of Consent Order.

3. shall, within 90 days of the effective date of this order, develop and provide to all Ford Dealer Development branch personnel (other than clerical employees) educational materials and training to carry out the purposes of Parts II and V of this order, as further described in the Initial Compliance Report.

4. shall provide to authorized representatives of the Federal Trade Commission upon 30 days written notice a set of mailing labels addressed to the president of each dealership, together with a list containing the same information and a certification that the labels and list are complete.

C. *It is further ordered, That Ford Credit:*

1. shall, within 60 days of the effective date of this order, send to each dealer to which Ford Credit has returned a vehicle, pursuant to a repurchase agreement, that was repossessed since May 1, 1974:

a. a letter containing the same information required by Subparagraph III.B.1 above; and

b. a list containing the following data for each Ford Credit repossession returned to the dealer between May 1, 1974 and the effective date of this order: name, address and account number of the financing customer, net payoff and date of repossession of the vehicle.

2. shall, within 90 days of the effective date of this order, develop and provide to all Ford Credit branch personnel involved in repurchase financing transactions (other than clerical employees) educational materials and training to carry out the purposes of Parts II and VI of this order, as further described in the Initial Compliance Report.

IV.

It is further ordered, That:

A. To determine whether dealers are correctly calculating and paying surpluses, Ford shall conduct an audit ("initial sample audit") of repurchase dealers. This audit shall:

1. consist of 100 repurchase dealers randomly selected pursuant to a sampling method as set forth in the Initial Compliance Report accepted by the Federal Trade Commission;

2. begin within sixteen months after the effective date of this order and be completed and reported to the Federal Trade Commission in accordance with Subparagraph IV.I.2 below within the next eleven months, exclusive of the month of December, as set forth in the Initial Compliance Report.

B. An audit conducted pursuant to Paragraph IV.A or IV.C shall be deemed to demonstrate dealer compliance if less than 1.5 percent of the dispositions audited are noncomplying transactions. A "non-complying transaction," as further described in the Initial Compliance Report, means a disposition that results in a surplus not correctly calculated and paid in full to the financing customer.

C. In the event the initial sample audit does not demonstrate dealer compliance Ford shall conduct further audits ("follow-up sample audits"), each to consist of 85 dealers randomly selected pursuant to the procedure and schedule described in the Initial Compliance Report, until an audit demonstrating dealer compliance has been attained or a total of four follow-up sample audits have been conducted, whichever occurs first.

D. Within thirty days after a determination by Ford or advice by the Commission's representatives that the initial sample audit or a follow-up sample audit does not demonstrate dealer compliance, Ford shall supplement the accounting system to provide that each dealer submit to Ford:

1. no later than six months after the above advice or determination, the completed Ford accounting forms described in Paragraph II.B of this order for all repurchase financing repossessions disposed of by the dealer that were returned to the dealer during the audit period covered by the prior sample audit; and

2. with each of the above submissions, a signed statement that the Ford accounting forms submitted include all repurchase financing repossessions disposed of by the dealer that were returned to the dealer during the audit period or, alternatively, that there were no such repossessions.

No submission shall be necessary after the last follow-up sample audit.

E. Ford shall review all Ford accounting forms submitted to it pursuant to Paragraph IV.D within 90 days of their receipt. This review shall be conducted by trained clerical personnel in accordance with the Initial Compliance Report, but Ford shall not be required to undertake a detailed analysis of these Ford accounting forms and shall not be deemed to have violated this paragraph if, despite good faith efforts, there are errors or omissions in that review.

F. Three years after completion of the last audit required pursuant to Paragraph IV.A or IV.C, Ford shall conduct a "final sample audit" of 85 randomly selected dealers pursuant to the procedure and schedule described in the Initial Compliance Report.

G. In addition to the audits provided for above, Ford shall conduct a supplemental audit of each dealership:

1. found by Ford, in the immediately preceding initial sample audit or follow-up sample audit of the dealership, to have had noncomplying transactions as set forth in the Initial Compliance Report;

2. which failed to submit either the Ford accounting forms required by Paragraph IV.D or a signed statement that no repurchase financing repossessions were returned to the dealership during the relevant period;

3. which failed to indicate payment of a surplus identified on any Ford accounting form submitted pursuant to Paragraph IV.D;

4. which failed more than occasionally, as further described in the Initial Compliance Report, to sign the certification on Ford accounting forms submitted pursuant to Paragraph IV.D; or

5. found, based on review of the Ford accounting forms submitted pursuant to Paragraph IV.D, to have deducted expenses other than allowable expenses.

Each supplemental audit required by this paragraph shall be completed within six months of detection of the event which triggers it and shall be conducted pursuant to the procedure set forth in the Initial Compliance Report.

H. Within sixty days after completion of each audit of a dealership provided for in Paragraphs IV.A, C, F and G above, Ford shall:

1. submit to the Federal Trade Commission a summary report of the audit for that dealership, containing: (a) the name and address of the dealership; (b) the number of dispositions examined; (c) the number and dollar value of surpluses properly calculated and paid; (d) the number and dollar value of surpluses as to which attempts to pay were unsuccessful; (e) the number of repossessed vehicles sold at wholesale; (f) the number of noncomplying transactions and, for each such transaction, the amount owed, copies of the audit worksheets, the Ford accounting form and business records of the dealership and/or financing institution sufficient to establish such noncompliance; and (g) a certification by the auditor attesting to his or her findings concerning each noncomplying transaction, including the reason for noncompliance and any explanation provided by the dealership; and

2. for each dealership found to have noncomplying transactions as set forth in the Initial Compliance Report, commence further dealership training to correct such noncompliance.

I. The audits provided for in Paragraphs IV.A, C, and F of this order shall conform to Subparagraphs 1-7 below. The audits conducted pursuant to Paragraph IV.G shall conform to Subparagraphs 3-7 below. The audits and report submissions provided for in Paragraphs IV. C, D, E and G shall also conform to Subparagraph 8 below.

1. The Federal Trade Commission shall be given reasonable advance notice of the time of random selection and shall have the opportunity to have its representatives observe and review the random selection process.

2. Ford shall provide to the Commission a summary report of each entire sample audit, within 60 days after completion of such audit, specifying (a) the name and address of each dealership included, (b) the total number of dispositions examined, (c) the total number and dollar value of noncomplying transactions, (d) the number and dollar value of surpluses properly calculated and paid, (e) the number and dollar value of surpluses as to which attempts to pay were unsuccessful, and (f) the number of repossessed vehicles sold at wholesale.

3. For each dealer audited, each repurchase financing repossession returned to the dealer during the audit period shall be examined to determine whether it is a noncomplying transaction.

4. The audit shall be conducted by the General Auditor's Office of Ford Motor Company (or by other qualified auditors designated by Ford), in accordance with the procedure described in the Initial Compliance Report.

5. The Ford respondents shall direct their personnel (including retained consultants or experts) that they are not to inform dealers or other third parties of the audit procedure, the sample period, the method of drawing the sample, or the identity of dealers selected for audit except to the extent described in this order, and the Ford respondents shall take all reasonable measures to ensure that their personnel adhere to this direction.

6. No dealer selected for audit shall be given more than ten business days advance notice of the scheduled audit.

7. Upon request by the Commission's representatives, Ford shall, within 30 days, submit copies of the auditors' worksheets and summary comments on any dealership audited.

8. In particular circumstances of dealer noncompliance, the

schedule and scope of audits and report submissions shall be modified as described in the Initial Compliance Report.

V.

It is further ordered, That Ford:

A. Shall require each Ford employee who is a director of an equity dealership to vote for resolutions so that each such dealership:

1. within 60 days of the effective date of this order or within 60 days of initiating operation as a dealership, whichever is later, adopts and maintains the accounting system described in Part II of this order;

2. pays all surpluses (*provided, however, that a dealership's failure to pay a surplus which has not come to the attention of any Ford employee whose primary responsibilities concern equity dealerships shall not be deemed a violation of this subparagraph*); and

3. has an annual examination of its documents by a certified public accounting firm, for each year up to and including the year that the final sample audit is completed, to determine whether the dealership is following the accounting system; such examination shall (a) include an inspection of underlying documents supporting entries on the Ford accounting form (described in Paragraph II.B of this order) for all repossessed vehicles returned to the dealership during the year covered by the examination and (b) be followed by a report to the dealership board of directors regarding any noncomplying transactions.

B. Shall require that, at every accounting review of an equity dealership, but in any event at least once every calendar year commencing after the effective date of this order, Ford's employees shall randomly select and examine underlying documents supporting entries on the Ford accounting form for at least one-fourth of the repossessed vehicles returned to the dealership since the previous such review or since January 1, 1978, whichever is later. If the examination reveals that the dealership has any noncomplying transactions, then:

1. Ford's employees shall examine underlying documents for the remaining three-fourths of the repossessions and report all noncomplying transactions to the dealership's board of directors; and

2. Ford employees who are members of such board of directors shall institute appropriate measures to correct the noncompliance.

C. Shall ascertain for each liquidating dealership whether any unpaid surpluses have arisen since the last audit by an independent certified public accounting firm, and pay each such surplus.

D. Shall, within 60 days of the effective date of the order, with

respect to repossessed vehicles returned between May 1, 1974 and December 31, 1977 to dealerships which are equity dealerships as of the effective date of this order, and with respect to repossessed vehicles returned between May 1, 1974 and December 31, 1977 to liquidating dealerships, establish to the reasonable satisfaction of the Commission, as described in the Initial Compliance Report, that:

1. all surpluses have been paid; and
2. in each instance where a customer entitled to receive a surplus pursuant to Subparagraph V.D.1 above had been previously reported by the dealership or its agent to a credit reporting agency as owing a deficiency, such agency has been subsequently advised of the correct facts.

VI.

It is further ordered, That Ford Credit:

A. Shall incorporate provisions to the following effect into the "Retail Plan" section of its "Automotive Finance Plans for Ford Motor Company Dealers," within 60 days of the effective date of this order, and into any subsequent edition of that document or any comparable successor document:

1. dealers are to permit redemption by the customer whose vehicle has been repossessed, at any time until there is a binding agreement for disposition;
2. dealers are to permit redemption in accordance with the post-repossession notice sent by Ford Credit to the customer;
3. dealers are to determine whether a surplus exists on a repurchase financing repossession according to the accounting system described in Part II of this order;
4. in determining surpluses and deficiencies, dealers are not to deduct expenses other than allowable expenses;
5. dealers are to account for and pay each surplus within 45 days of disposition.

B. Shall, as soon as practicable, but no later than twelve months after the effective date of this order, develop and distribute to all dealers who use Ford Credit's form of retail installment contract, revised Ford Credit retail installment contract forms that include a clear, concise statement in lay language that, in the event of repossession:

1. no expenses other than reasonable expenses incurred as a direct result of repossessing (including, where permitted, attorney's fees and court costs), holding, preparing for sale and selling the vehicle may be deducted from the proceeds in determining a surplus or deficiency; and

2. any surplus realized on the resale or other disposition of the vehicle is to be paid to the customer.

C. Shall direct its branch offices that, commencing two weeks after the distribution to a dealership of the revised Ford Credit retail installment contract forms described in Paragraph VI.B, they are not to purchase from that dealership Ford Credit forms of retail installment contracts that are not on the revised forms and shall, for a period of two years thereafter, periodically examine its branch office files, in accordance with its usual monitoring procedures, to determine whether prior retail installment contract forms are being used, and, if so, shall institute appropriate corrective action.

D. Shall, commencing 75 days after the effective date of this order, include the following information in clear lay language in at least one notice sent prior to repossession to every Ford Credit repurchase financing customer to whom a notice of intent to repossess is sent:

1. the total amount past due at the time the notice is mailed;
2. in transactions where the customer is entitled to reinstatement of the contract, the customer will have an absolute right to such reinstatement and to regain possession of the vehicle by paying all past due installments and by paying such other amounts and fulfilling such other conditions as provided by law;
3. that the customer will have an absolute right to redeem the vehicle at any time prior to a binding agreement for its disposition, and that this right can be exercised by paying the contract balance plus all expenses incurred as a direct result of repossessing, holding and preparing the vehicle for sale;
4. the date or interval of time prior to which the vehicle will not be sold;
5. that if the vehicle is not redeemed or the contract reinstated, the customer will be entitled to a refund of any surplus within 45 days of disposition;
6. that failure to account for and refund a surplus will give the customer a right to sue for the amount of the surplus and, except in California and Louisiana, for statutory penalties as provided by state law.

E. Shall, within 60 days after the effective date of this order, establish and follow a procedure for uniformly sending a written notice ("post-repossession notice") to Ford Credit financing customers as soon as practicable after repossession. Ford Credit shall periodically examine its branches' files, in accordance with its usual monitoring procedures, to determine whether the post-repossession notices have been and are being sent, and shall institute appropriate

actions to assure that this procedure is adhered to. In the event of any charge of failure to follow the procedure for uniformly sending post-repossession notices, Ford Credit shall not be deemed in violation unless it is shown that Ford Credit has failed to send such notices at least ten days prior to the earliest resale date stated pursuant to Subparagraph VI.E.4 below on more than five percent of the repossessions of each of three Ford Credit branch offices in any twelve-month period. The post-repossession notice shall specify in clear, lay language:

1. the name, address and telephone number of the dealership to which the vehicle has been or will be returned for disposition, if applicable, and the address and telephone number of the Ford Credit branch office to be contacted;
2. the date or interval of time within which the customer may reinstate the contract in states where the creditor is required to permit reinstatement of the contract;
3. the net amount necessary to redeem the vehicle, and, in transactions where the customer is entitled to reinstatement, the amount necessary to reinstate the contract, at the time the notice is sent;
4. the date or interval of time prior to which the vehicle will not be sold;
5. that the vehicle can be redeemed at any time prior to a binding agreement for its disposition;
6. that additional expenses incurred as a direct result of holding and preparing the vehicle for sale may increase the amount necessary to redeem the vehicle if redemption is delayed;
7. that Ford Credit should be contacted to reinstate the contract in states where the customer is entitled to reinstatement;
8. that Ford Credit should be contacted for further information about redemption including the procedure for redeeming the vehicle;
9. that, where the vehicle has been returned to the dealer and is not redeemed or the contract is not reinstated, any surplus must be paid to the customer within 45 days after disposition (the notice may also state that a contract between the dealer and Ford Credit provides that the dealer is to pay any surplus);
10. that failure to account for and refund a surplus will give the customer a right to sue for the amount of the surplus and, except in California and Louisiana, for statutory penalties as provided by state law;
11. that the customer may be liable for a deficiency or that state law prohibits Ford Credit and the dealer from collecting any deficiency (the notice is to include the applicable language only);

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12. that the customer has the right to direct the dealer to apply for a rebate of any unearned premiums payable by any insurance carrier or agent from whom the dealer has, on behalf of the customer, obtained a credit life, accident and health or collision insurance policy.

F. Shall obtain no waivers of redemption or surplus rights from financing customers.

G. Shall, commencing three months and to be completed no later than twelve months after the effective date of this order, revise all pertinent Ford Credit forms, form letters, notices and internal written procedures to be consistent with the provisions of this order.

VII.

It is further ordered, That:

A. In the event the Federal Trade Commission issues a final trade regulation rule establishing standards less restrictive on automobile manufacturers, financing companies or vehicle dealerships than a corresponding provision or provisions of this order relative to (1) the disposition of repossessed vehicles, (2) the determination, calculation or communication of the existence of or the amount of surpluses, or the time or manner of paying or accounting for surpluses, or (3) the determination or communication of reinstatement or redemption rights (including their duration and/or the amount necessary to reinstate or redeem), then such less restrictive standards shall, on the effective date of the rule, supersede and replace the corresponding provision(s) of this order. The enumeration of subject matter contained in clauses (1), (2) and (3) of this paragraph is exclusive. *Provided, however,* that the Ford respondents shall advise the Commission of their intention to rely upon any provision of a trade regulation rule as having superseded any provision of this order 30 days in advance of reliance thereon. *Provided further,* that this paragraph shall not be construed as exempting the Ford respondents from any trade regulation rule, or as limiting in any way their legal right or standing to challenge or otherwise contest any trade regulation rule.

B. In the event any of the proceedings presently bearing Dkts. 9072, 9073, or 9074 results in a final adjudicated or consent order prescribing standards less restrictive than a corresponding provision or provisions of this order relative to (1) the disposition of repossessed vehicles, (2) the determination, calculation or communication of the existence of or the amount of surpluses, or the time or manner of paying or accounting for surpluses, or (3) the determination or communication of reinstatement or redemption rights (including

their duration and/or the amount necessary to reinstate or redeem), then the Commission shall, within 120 days of a Ford respondent's petition pursuant to Section 3.72 of the Commission's Rules of Practice, reopen this proceeding and order modifications of this order or other relief as necessary and appropriate to conform this order to such less restrictive standards prescribed in the other order(s). The enumeration of subject matter contained in clauses (1), (2) and (3) of this paragraph is exclusive.

C. In the event a Ford respondent is of the opinion that changed conditions of law require that this order be altered or modified, the Ford respondent may, pursuant to Section 3.72(b)(2) of the Commission's Rules of Practice, file a petition requesting a reopening of this proceeding for that purpose.

VIII.

It is further ordered, That:

A. The Ford respondents shall maintain complete business records relative to the manner and form of their continuing compliance with this order, including but not limited to copies of notices sent to financing customers pursuant to Paragraphs VI.D and E above, and records prepared pursuant to Paragraphs V.A-C for each equity and liquidating dealership. The Ford respondents shall retain all such records for at least three years and shall, upon reasonable notice, make them available for inspection and photocopying by authorized representatives of the Federal Trade Commission.

B. Each of the Ford respondents shall, within 120 days after the effective date of this order, file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order and has implemented the Initial Compliance Report submitted with the Agreement Containing Consent Order.

C. Ford shall forthwith distribute a copy of this order to its Ford, Lincoln-Mercury and Parts and Services divisions, and to the Dealer Development activity, and Ford Credit shall forthwith distribute a copy of this order to each of its Regions.

D. Each of the Ford respondents shall notify the Commission at least thirty days prior to any proposed corporate change such as dissolution, assignment or sale resulting in the emergence of a successor corporation or corporations, the creation or dissolution of subsidiaries, the discontinuance of Ford's present program for investing in equity dealerships, or any other change which may affect compliance obligations arising out of this order.

Complaint

93 F.T.C.

IN THE MATTER OF
ROYAL FURNITURE CO., INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION AND TRUTH IN LENDING
ACTS

Docket 9090. Complaint, Oct. 26, 1976 — Decision, March 29, 1979

This consent order, among other things, requires a Bronx, N.Y. furniture and appliance retailer to cease failing to advise consumers that co-signers may be required in credit transactions; signed documents are not final until they have been approved; and that customers may, upon denial of credit, cancel their purchases and receive refunds of downpayments. The Company is required to honor valid cancellations; make proper refunds; and furnish consumers with credit disclosures required by Federal Reserve System regulations and booklets outlining their legal and contractual rights. Additionally, the firm is prohibited from engaging in harassing debt collection practices, including false threats of repossession and garnishment; and improper third-party contact. The order also requires the firm to establish procedures for handling complaints regarding defective, damaged or nonconforming merchandise; and maintain specified records.

Appearances

For the Commission: *Henry R. Whitlock* and *Sandra L. Bird*.

For the respondents: *Howard Mann, Weiss, Rosenthal, Heller, Schwartzman & Lazar*, New York City.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and of the Truth in Lending Act and the implementing regulation promulgated thereunder, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission having reason to believe that Royal Furniture Co., Inc., a corporation, and Milton Landes, individually and as an officer of said corporation, hereinafter referred to as respondents, have violated the provisions of said Acts, and of the regulation promulgated under the Truth in Lending Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. For the purpose of this complaint and the proposed order attached hereto, the following definitions of terms shall apply:

1. "Consumer" refers to a natural person who seeks or acquires goods, services or money for personal, family or household use.

2. "Co-signer" refers to a natural person who, by agreement, and without compensation, renders himself liable for the credit purchases of a consumer.

3. "Retail Installment Credit Agreement" refers to a written agreement pursuant to which respondents extend credit to consumers for the present and future purchase of respondents' merchandise.

4. "Debt collection" refers to any activity other than the use of judicial process which is intended to bring about or does bring about repayment of all or part of a consumer debt, except:

(1) Inquiry to locate a consumer whose whereabouts are genuinely unknown to the creditor; and/or

(2) Inquiry to determine the nature and extent of a consumer's wages or property;

Provided that, in these two instances, no specific mention is made of the alleged indebtedness.

PAR. 2. Respondent Royal Furniture Co., Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York with its principal office and place of business located at 2936 Third Ave., Bronx, New York.

Respondent Milton Landes is an officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His business address is the same as that of the corporate respondent.

PAR. 3. Respondents are now, and for some time last past have been, engaged in the purchasing, advertising, offering for sale, sale and distribution of furniture, appliances and related products to the public at retail.

COUNT I

Alleging violation of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs Two and Three hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 4. Respondents maintain and have maintained a substantial course of business including the acts and practices, as hereinafter set forth, which are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended.

PAR. 5. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their merchandise, respondents, through advertising brochures and oral statements of

respondents' salesmen, employees or representatives (hereinafter referred to as "representatives") have made, and continue to regularly make, numerous and various statements and representations concerning the terms and methods of payment, and the availability of credit for the purchase of respondents' merchandise.

Typical and illustrative of the foregoing, but not all inclusive thereof, are the following statements often used in conjunction with one another by their being interspersed throughout respondents' advertising brochures:

- Use Royal's Easy Credit
- Budget Terms
- Budget Accounts Invited at Royal
- Royal Welcomes People on Welfare,
Social Security and Pensions, Newlyweds,
Students and Teenage Accounts, Civil
Service Employees and Union Members
- Terms especially made to fit your
budget
- Low downpayment, convenient credit
terms
- Arrange your own downpayment
- Use your credit
- House Full of Luxury - Instant Credit
Too

PAR. 6. By and through the use of the above-quoted statements and representations and others of similar import and meaning not specifically set out herein, respondents have represented and continue to represent, directly or by implication, that:

1. Respondents offer liberal policies with regard to the extension of credit, downpayments required, terms and conditions of repayment of the indebtedness and/or collection practices.
2. Respondents offer personalized credit and allow their customers to arrange downpayments, payment schedules and credit terms to suit the customer's own financial needs and budget limitations.
3. Customers on low and fixed incomes can establish their own credit accounts.
4. Customers will be given immediate credit from respondents without difficulty.

PAR. 7. In truth and in fact:

1. Respondents do not offer liberal credit terms and customers who fall behind in their payments are subjected to late charges and strict collection practices including law suits.
2. Respondents do not offer personalized credit terms and do not

allow their customers to determine the amount of the downpayment, payment schedule, or credit terms.

3. In many instances customers with low and fixed incomes are not extended credit solely on their own account and must secure one or more co-signers.

4. In many instances, credit is not extended immediately or is withdrawn or otherwise subjected to conditions subsequent to respondents' acceptance of the credit transaction or execution of the contract.

PAR. 8. Therefore, the aforesaid statements, representations, acts and practices regarding the terms, conditions and availability of credit offered by respondents were and are, false, misleading and deceptive, in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT II

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs Two through Eight hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 9. In the further course and conduct of their business as aforesaid, respondents use a form printed on two sides, the front serving as respondents' sales slip and the back containing respondents' Retail Installment Credit Agreement.

The sales slip on the front of said form sets forth a description and price of the consumers' present purchases, downpayment, if any, the balance owed and the amount and time schedule for the consumer's minimum periodic payments.

The Retail Installment Credit Agreement on the back of said form sets forth the terms under which respondents are extending credit to the consumer for his present and future purchases. Such terms include, but are not limited to, the amount and method of assessing finance charges, acceleration of balance due upon default, and liability for attorney's fees. The Retail Installment Credit Agreement incorporates by reference the terms set forth on the sales slip.

PAR. 10. By virtue of respondents' false, misleading and deceptive representations, acts and practices as set forth in Paragraphs Five and Six, consumers have been induced to order merchandise on credit and in regard thereto have paid substantial sums of money to respondents as deposits or downpayments and have entered into Retail Installment Credit Agreements as described herein with respondents.

In many instances, at the time the credit agreements are entered into, respondents represent, directly or by implication, that the sales slips and the credit terms contained in the Retail Installment Credit Agreements have been accepted by or on behalf of respondents, and that the sales have been consummated in mutually binding agreements.

PAR. 11. In many instances, after having received moneys from consumers as deposits or downpayments for merchandise, respondents have failed or refused to honor the terms of the agreement by conditioning delivery of merchandise upon consumers paying larger downpayments or deposits, obtaining co-signers or agreeing to purchase less expensive merchandise than originally ordered.

Therefore respondents' aforesaid misrepresentation that the sales slips and the Retail Installment Credit Agreements between themselves and consumers mutually bind the store and the customer was and is a false, misleading and deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act, as amended, and respondents' failure or refusal to honor their agreements with consumers to deliver the merchandise originally ordered by consumers on the credit terms originally agreed upon was and is an unfair act or practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 12. In the further course and conduct of their business, as aforesaid, in many instances respondents, directly or indirectly, have told consumers who did not agree to the foregoing changes in the terms of either their sales slips or Retail Installment Credit Agreements that respondents would not cancel said consumers' contractual obligations, and/or would not refund any moneys already paid to respondents.

Therefore, the aforesaid act or practice was and is an unfair practice in violation of Section 5 of the Federal Trade Commission Act, as amended.

PAR. 13. As a result of the foregoing respondents have (a) induced and are inducing members of the public through unfair and deceptive acts and practices to pay to respondents substantial sums of money towards the purchase of respondents' merchandise, and (b) have continued to retain substantial sums of said monies and/or have continued to refuse to cancel contractual obligations.

PAR. 14. The use by respondents of the aforesaid acts and practices, including their continued refusal to honor their agreements with consumers on the credit terms originally agreed upon and their continued retention of said sums and their continued refusal to cancel contractual obligations of their customers, was and is unfair

and injurious to the public in violation of Section 5 of the Federal Trade Commission Act, as amended.

COUNT III

Alleging violation by respondents of Section 5 of the Federal Trade Commission Act, as amended, the allegations of Paragraphs Two through Fourteen hereof are incorporated by reference herein as if fully set forth verbatim.

PAR. 15. In the further course and conduct of their business as aforesaid, respondents, in many instances, have required consumers, who want to purchase merchandise on credit, to obtain one or more persons to act as co-signers of the Retail Installment Credit Agreement between respondents and said consumers. The persons acting as co-signers are designated as co-buyers on the Retail Installment Credit Agreements, but in most instances respondents treat said persons as co-signers.

PAR. 16. In most instances where respondents have required co-signers as aforesaid, respondents have not, prior to said co-signers becoming obligated, either orally or in a writing readily understandable to a person without legal experience or background, disclosed to the co-signers their legal obligations and rights as co-signers and which, if any, of the terms and conditions of the Retail Installment Credit Agreements apply to co-signers.

PAR. 17. Respondents have further failed to disclose to potential co-signers that, in many instances, respondents have:

1. Sued co-signers for the unpaid balance owed by consumers plus accrued finance charges and attorney's fees.
2. Applied the technical terms of the Retail Installment Credit Agreements, such as those terms specifically listed in Paragraph Nine above, to the co-signers.
3. Sued co-signers without giving them any notice of consumers' defaults or an opportunity to pay prior to suit.
4. Sued co-signers in the same action as consumers and enforced the judgment obtained against co-signers prior to or simultaneously with enforcement against consumers.

Thus respondents have failed to disclose material facts which if known to certain co-signers would likely affect their decision to become co-signers of respondents' Retail Installment Credit Agreements.

PAR. 18. Therefore respondents' failure to disclose material facts as to the obligations of the aforesaid co-signers and possible

