



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

December 8, 2016

Larry A. Tawwater
President
American Association for Justice
777 6th Street, NW Suite 200
Washington, DC 20001

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Tawwater:

We would like to thank your organization for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders.² However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.³ Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.⁴

² In support of your comment, you cite a poll in which consumers self-reported that they expect or prefer that vehicle sellers repair recalls in used vehicles under various scenarios. Although the poll methodology has some significant shortcomings, the results are consistent with our view that information regarding recalls is material to consumers. Requiring dealers who make rigorous inspection claims to clearly and conspicuously disclose the possibility of open recalls allows consumers to decide whether to visit a car lot, proceed with a purchase, and/or have a vehicle repaired.

³ See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

⁴ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. And many consumers' only available remedy would be to bring a private right of action against car sellers after suffering some injury associated with the recall defect. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you also express concern that the remedies in the proposed orders would somehow affect existing state product safety or other consumer protection laws that may apply to motor vehicle sellers. However, to the extent that other federal or state laws regarding product safety or other subject areas offer additional protections, these individual law enforcement actions in no way substitute for or alter them. In states or localities that prohibit the sale of a used car with an open recall, the proposed orders would not alter that prohibition in any way. Similarly, the orders do not affect or alter any existing standards in state law actions involving products liability or negligence. By requiring disclosures to correct misleading claims, the Commission is putting an affirmative obligation on dealers, not creating any new defense against a private action for negligence or products liability that did not already exist under state law.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁵ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the

⁵ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.

important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

L Adams
State of California

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In your comment, you express concern about the conduct of another company, CarMax. While CarMax is not a party in the specific above-referenced proceedings, the FTC has, in fact, announced an action against CarMax – alleging unlawful conduct similar to that in these proceedings and securing similar relief. More information on this matter is available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>.

As alleged in these actions, including CarMax, dealers have sold cars with open, unrepaired recalls and made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out

from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

Thus, consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

The Commission will monitor the companies’ conduct to make sure they comply with the orders. If the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c). Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Richard Ader
State of California

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Ader:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Mark Anderson
State of California

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Anderson:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

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³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

David Angle
State of Missouri

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Angle:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

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Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

William Bensley
Commonwealth of Pennsylvania

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Bensley:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Shannon Blackwell
State of Arizona

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Ms. Blackwell:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Daniel Blinn
State of Connecticut

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Blinn:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Bernard Brown
State of Missouri

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Brown:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. And many consumers' only available remedy would be to bring a private right of action against car sellers after suffering some injury associated with the recall defect. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you also express concern that the remedies in the proposed orders would somehow affect existing consumer protection laws that may apply to motor vehicle sellers. However, to the extent that other federal or state laws regarding product safety or other subject areas offer additional protections, these individual law enforcement actions in no way substitute for or alter them. In states or localities that prohibit the sale of a used car with an open recall, the proposed orders would not alter that prohibition in any way. Similarly, the orders do not affect or alter any existing standards in state law actions involving products liability or negligence. By requiring disclosures to correct misleading claims, the Commission is putting an affirmative obligation on dealers, not creating any new defense against a private action for negligence or products liability that did not already exist under state law.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.

Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Cheryl Brown
Commonwealth of Virginia

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Ms. Brown:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

The Commission appreciates your support of efforts to combat problematic practices in the used auto marketplace. The agency is committed to protecting consumers in auto-related transactions, and we will continue to bring actions against companies that violate the FTC Act¹ by deceiving consumers about material information.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and

¹ The Commission has the authority to enforce the FTC Act and many other civil statutes.

Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Claudine Caralis
State of Illinois

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Ms. Caralis:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

The Commission appreciates your support of efforts to combat problematic practices in the used auto marketplace. The agency is committed to protecting consumers in auto-related transactions, and we will continue to bring actions against companies that violate the FTC Act¹ by deceiving consumers about material information.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and

¹ The Commission has the authority to enforce the FTC Act and many other civil statutes.

Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Andy Carter
State of Washington

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Additionally, the disclosure requirements in the orders will counteract the specific unlawful conduct that we allege – the respondents' failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

December 8, 2016

Evan W. Johnson
Center for Auto Safety
1825 Connecticut Ave., NW, Suite 330
Washington, DC 20009-1160

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Johnson:

We would like to thank your organization for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.”² Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders.³ However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.⁴ Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.⁵

² We also note that legislative proposals on auto safety referenced in your comment – and argued to be insufficient – do not include these detailed requirements.

³ In support of your comment, you cite a poll in which consumers self-reported that they expect or prefer that vehicle sellers repair recalls in used vehicles under various scenarios. Although the poll methodology has some significant shortcomings, the results are consistent with our view that information regarding recalls is material to consumers. Requiring dealers who make rigorous inspection claims to clearly and conspicuously disclose the possibility of open recalls allows consumers to decide whether to visit a car lot, proceed with a purchase, and/or have a vehicle repaired.

⁴ See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

⁵ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁶ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁶ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Hyung Choi
State of Arizona

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define "clearly and conspicuously" in great detail to mean, among other things, that disclosures must be "easily understandable by ordinary consumers," and "difficult to miss (*i.e.*, easily noticeable)," and to require that "[a] visual

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Laura Gipe Christian
State of Maryland

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Ms. Christian:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii).

First and foremost, we want to express our deepest condolences for your loss. We greatly appreciate your efforts to tell your personal story and discuss the important consumer protection issues involved in these matters. And we are grateful to receive your feedback on the proposed orders in the above-referenced proceedings. Below we analyze in some detail these specific law enforcement matters under the FTC Act.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you also express concern that the remedies in the proposed orders would somehow affect existing state product safety or other consumer protection laws that may apply to motor vehicle sellers. However, to the extent that other federal or state laws regarding product safety or other subject areas offer additional protections, these individual law enforcement actions in no way substitute for or alter them. In states or localities that prohibit the sale of a used car with an open recall, the proposed orders would not alter that prohibition in any way. Similarly, the orders do not affect or alter any existing standards in state law actions involving products liability or negligence. By requiring disclosures to correct misleading claims, the Commission is putting an affirmative obligation on dealers, not creating any new defense against a private action for negligence or products liability that did not already exist under state law.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.

Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. Thank you again for sharing your story and submitting your public comment on these matters.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Rosemary Shahan
President
Consumers for Auto Reliability and Safety
State of California

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Ms. Shahan:

We would like to thank your organization and the others that joined your submission for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. The proposed orders address those instances when dealers make rigorous inspection claims but fail to clearly disclose the existence of open unrepaired recalls, or make related misrepresentations. As discussed below, the complaints in these matters allege that these respondents have represented that they conduct rigorous inspections of the vehicles they are selling. We allege, however, that some of these cars were subject to open recalls. The companies' representations about their inspections, absent clear information about the presence of recalls, were likely to mislead reasonable consumers into believing that the inspections included repairing open recalls. Therefore, the companies' failure to disclose this information was deceptive. As explained in more detail below, our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

The complaints in these matters allege that the respondents touted the rigorousness of their inspections of cars that were certified or under warranty – claiming, for example, to engage in a “172-point inspection and reconditioning,” an “exhaustive 160-checkpoint Quality Assurance Inspection,” or a “rigorous and extensive inspection” that checks “all major mechanical and electrical systems and every power accessory.” These affirmative statements were misleading, even if the dealers were conducting inspections that might benefit consumers, because consumers would reasonably believe that the inspections involved repair of all open recalls in all of these vehicles. Our complaints, therefore, state that in light of the advertising representations described above, the failure to disclose adequately that some of these cars were subject to open safety recalls was a deceptive act or practice in violation of Section 5 of the FTC Act.²

The proposed orders directly address the deceptive conduct identified in the complaints, and also impose additional requirements that would prevent these respondents from engaging in other deceptive conduct. Part I.A. of the orders prohibits the respondents from representing that their used motor vehicles are safe, have been repaired for safety issues, or have been subject to an inspection for safety issues unless the vehicles are recall-free or, alternatively, the respondents clearly and conspicuously, in close proximity to the representation, disclose at least two key facts to consumers: first, that the vehicles may be subject to open recalls and, second, how consumers can determine whether an individual car is subject to an open recall (and the representations are not otherwise misleading).

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.”³ Thus, these requirements would prohibit the respondents from making prominent

² It is well-established Commission law that “it can be deceptive to tell only half the truth, and to omit the rest. This may occur where a seller fails to disclose qualifying information necessary to prevent one of his affirmative statements from creating a misleading impression.” *See In re International Harvester Co.*, 104 F.T.C. 949, 1057 (1984).

³ We also note that legislative proposals on auto safety referenced in your comment – and argued to be insufficient – do not include these detailed requirements.

advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders.⁴ However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.⁵ Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.⁶

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. This provision would prohibit a dealer’s salespeople, for example, from making oral misrepresentations to consumers regarding the recall status or safety of cars – a concern raised in your comment. Part II of the orders requires the respondents to mail

⁴ In support of your comment, you cite a poll in which consumers self-reported that they expect or prefer that vehicle sellers repair recalls in used vehicles under various scenarios. Although the poll methodology has some significant shortcomings, the results are consistent with our view that information regarding recalls is material to consumers. Requiring dealers who make rigorous inspection claims to clearly and conspicuously disclose the possibility of open recalls allows consumers to decide whether to visit a car lot, proceed with a purchase, and/or have a vehicle repaired.

⁵ See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

⁶ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

their recent customers a notice informing them of the fact that respondents sold used cars with open recalls, and stating how to check whether their vehicles were affected and get them fixed.⁷ Finally, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls.⁸ And many consumers' only available remedy would be to bring a private right of action against car sellers after suffering some injury associated with the recall defect. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you also express concern that the remedies in the proposed orders would somehow affect existing state product safety or other consumer protection laws that may apply to motor vehicle sellers. However, to the extent that other federal or state laws regarding product safety or other subject areas offer additional protections, these individual law enforcement actions in no way substitute for or alter them. In states or localities that prohibit the sale of a used car with an open recall, the proposed orders would not alter that prohibition in any way. Similarly, the orders do not affect or alter any existing standards in state law actions involving products liability or negligence. By requiring disclosures to correct misleading claims, the Commission is putting an affirmative obligation on dealers, not creating any new defense against a private action for negligence or products liability that did not already exist under state law.

In addition, your comment suggests that the proposed orders should be modified to prohibit outright the sale of cars that an advertiser represents to be “certified” if any of them are subject to open recalls, regardless of whether the advertiser makes clear and conspicuous disclosures regarding those recalls. As the Commission has indicated in its December 2012 Notice of Proposed Rulemaking on the Used Motor Vehicle Trade Regulation Rule,⁹ the

⁷ As part of these notifications, the proposed orders require the dealer-respondents to provide consumers with information about the National Highway Traffic Safety Administration's (NHTSA) online VIN look-up tool. This tool, and more information about it, are available at <http://www.safercar.gov/>.

⁸ In your comment, you also express concern about the conduct of another company, CarMax. While CarMax is not a party in the specific above-referenced proceedings, the FTC has, in fact, announced an action against CarMax – alleging unlawful conduct similar to that in these proceedings and securing similar relief. More information on this matter is available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>.

⁹ 77 Fed. Reg. 74746, 74762-63 (Dec. 17, 2012).

Commission does not believe the term “certified” is inherently deceptive. To avoid misleading consumers, however, an advertiser may need to qualify its use of the term in certain circumstances. Similarly, in these cases, if a respondent were to make rigorous inspection claims without clearly and conspicuously qualifying that its inspection does not include repairing all open recalls such that consumers were misled, the respondent’s conduct would be prohibited by Section 5 of the FTC Act, the proposed orders, and likely state consumer protection laws. As noted above, we also believe that the disclosure of recall information will encourage respondents to inspect and fix their cars. Therefore, the Commission declines to modify the orders as suggested.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation. The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. We believe that legislative bodies are best situated to consider and resolve the many issues implicated by such proposals – including, for example, the competitive effects they would have on independent dealerships that are not authorized to make repairs, the effect they could have on used vehicle trade-ins, the fact that remedies for some recalls may remain unavailable for significant periods of time, and other factors affecting the costs and benefits to consumers. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.¹⁰

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

¹⁰ Your comment also requests that the Commission promulgate (presumably through a rulemaking proceeding) an industrywide ban prohibiting the sale of used vehicles subject to open recalls as an unfair practice. In the instant proceedings, however, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Penny Cunningham
Commonwealth of Virginia

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Ms. Cunningham:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In your comment, you express concern about the conduct of another company, CarMax. While CarMax is not a party in the specific above-referenced proceedings, the FTC has, in fact, announced an action against CarMax – alleging unlawful conduct similar to that in these proceedings and securing similar relief. More information on this matter is available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>.

As alleged in these actions, including CarMax, dealers have sold cars with open, unrepaired recalls and made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

Thus, consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

The Commission will monitor the companies’ conduct to make sure they comply with the orders. If the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c). Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Deason
State of Montana

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In your comment, you express concern about the conduct of another company, CarMax. While CarMax is not a party in the specific above-referenced proceedings, the FTC has, in fact, announced an action against CarMax – alleging unlawful conduct similar to that in these proceedings and securing similar relief. More information on this matter is available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>.

As alleged in these actions, including CarMax, dealers have sold cars with open, unrepaired recalls and made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out

from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

Thus, consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

The Commission will monitor the companies’ conduct to make sure they comply with the orders. If the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c). Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Thomas Domonoske
Commonwealth of Virginia

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Domonoske:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. And many consumers’ only available remedy would be to bring a private right of action against car sellers after suffering some injury associated with the recall defect. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you also express concern that the remedies in the proposed orders would somehow affect existing consumer protection laws that may apply to motor vehicle sellers. However, to the extent that other federal or state laws regarding product safety or other subject areas offer additional protections, these individual law enforcement actions in no way substitute for or alter them. In states or localities that prohibit the sale of a used car with an open recall, the proposed orders would not alter that prohibition in any way. Similarly, the orders do not affect or alter any existing standards in state law actions involving products liability or negligence. By requiring disclosures to correct misleading claims, the Commission is putting an affirmative obligation on dealers, not creating any new defense against a private action for negligence or products liability that did not already exist under state law.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.

Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Robert Donnelly
State of Minnesota

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Donnelly:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

The Commission appreciates your support of efforts to combat problematic practices in the used auto marketplace. The agency is committed to protecting consumers in auto-related transactions, and we will continue to bring actions against companies that violate the FTC Act¹ by deceiving consumers about material information.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and

¹ The Commission has the authority to enforce the FTC Act and many other civil statutes.

Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

December 8, 2016

Sara DuBois
State of Washington

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Ms. DuBois:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In your comment, you express concern about the conduct of another company, CarMax. While CarMax is not a party in the specific above-referenced proceedings, the FTC has, in fact, announced an action against CarMax – alleging unlawful conduct similar to that in these proceedings and securing similar relief. More information on this matter is available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>.

As alleged in these actions, including CarMax, dealers have sold cars with open, unrepaired recalls and made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

Thus, consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

The Commission will monitor the companies’ conduct to make sure they comply with the orders. If the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c). Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Jeff Duran
State of Colorado

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Duran:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In your comment, you express concern about the conduct of another company, CarMax. While CarMax is not a party in the specific above-referenced proceedings, the FTC has, in fact, announced an action against CarMax – alleging unlawful conduct similar to that in these proceedings and securing similar relief. More information on this matter is available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>.

As alleged in these actions, including CarMax, dealers have sold cars with open, unrepaired recalls and made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

Thus, consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

The Commission will monitor the companies’ conduct to make sure they comply with the orders. If the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c). Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Cindy Dutka
Commonwealth of Pennsylvania

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Ms. Dutka:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Laurel Errington
State of New Jersey

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In your comment, you express concern about the conduct of another company, CarMax. While CarMax is not a party in the specific above-referenced proceedings, the FTC has, in fact, announced an action against CarMax – alleging unlawful conduct similar to that in these proceedings and securing similar relief. More information on this matter is available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>.

As alleged in these actions, including CarMax, dealers have sold cars with open, unrepaired recalls and made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out

from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

Thus, consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

The Commission will monitor the companies’ conduct to make sure they comply with the orders. If the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c). Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Dan Esposito
State of California

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Esposito:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

The Commission appreciates your support of efforts to combat problematic practices in the used auto marketplace. The agency is committed to protecting consumers in auto-related transactions, and we will continue to bring actions against companies that violate the FTC Act¹ by deceiving consumers about material information.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and

¹ The Commission has the authority to enforce the FTC Act and many other civil statutes.

Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Joanne Faulkner
State of Connecticut

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Ms. Faulkner:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Richard W. Firth
Commonwealth of Virginia

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Firth:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In your comment, you express concern about the conduct of another company, CarMax. While CarMax is not a party in the specific above-referenced proceedings, the FTC has, in fact, announced an action against CarMax – alleging unlawful conduct similar to that in these proceedings and securing similar relief. More information on this matter is available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>.

As alleged in these actions, including CarMax, dealers have sold cars with open, unrepaired recalls and made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

Thus, consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

The Commission will monitor the companies’ conduct to make sure they comply with the orders. If the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c). Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

T. Michael Flinn
State of Georgia

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Flinn:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Jeff Gantt
State of Tennessee

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Gantt:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In your comment, you express concern about the conduct of another company, CarMax. While CarMax is not a party in the specific above-referenced proceedings, the FTC has, in fact, announced an action against CarMax – alleging unlawful conduct similar to that in these proceedings and securing similar relief. More information on this matter is available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>.

As alleged in these actions, including CarMax, dealers have sold cars with open, unrepaired recalls and made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

Thus, consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

The Commission will monitor the companies’ conduct to make sure they comply with the orders. If the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c). Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

John Gayle
Commonwealth of Virginia

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Gayle:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. And many consumers’ only available remedy would be to bring a private right of action against car sellers after suffering some injury associated with the recall defect. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you also express concern that the remedies in the proposed orders would somehow affect existing consumer protection laws that may apply to motor vehicle sellers. However, to the extent that other federal or state laws regarding product safety or other subject areas offer additional protections, these individual law enforcement actions in no way substitute for or alter them. In states or localities that prohibit the sale of a used car with an open recall, the proposed orders would not alter that prohibition in any way. Similarly, the orders do not affect or alter any existing standards in state law actions involving products liability or negligence. By requiring disclosures to correct misleading claims, the Commission is putting an affirmative obligation on dealers, not creating any new defense against a private action for negligence or products liability that did not already exist under state law.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.

Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

John Gear
State of Oregon

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Gear:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

J.R. Gimblet
State of Texas

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents' failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any

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³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Andrew Goldman
State of New York

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Goldman:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In your comment, you express concern about the conduct of another company, CarMax. While CarMax is not a party in the specific above-referenced proceedings, the FTC has, in fact, announced an action against CarMax – alleging unlawful conduct similar to that in these proceedings and securing similar relief. More information on this matter is available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>.

As alleged in these actions, including CarMax, dealers have sold cars with open, unrepaired recalls and made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

Thus, consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

The Commission will monitor the companies’ conduct to make sure they comply with the orders. If the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c). Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Tony and Cindy Guarnieri
State of Connecticut

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. and Ms. Guarnieri:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In your comment, you express concern about the conduct of another company, CarMax. While CarMax is not a party in the specific above-referenced proceedings, the FTC has, in fact, announced an action against CarMax – alleging unlawful conduct similar to that in these proceedings and securing similar relief. More information on this matter is available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>.

As alleged in these actions, including CarMax, dealers have sold cars with open, unrepaired recalls and made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

Thus, consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

The Commission will monitor the companies’ conduct to make sure they comply with the orders. If the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c). Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

John Hanson
State of California

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Hanson:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Mia Henderson
State of Missouri

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Ms. Henderson:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In your comment, you express concern about the conduct of another company, CarMax. While CarMax is not a party in the specific above-referenced proceedings, the FTC has, in fact, announced an action against CarMax – alleging unlawful conduct similar to that in these proceedings and securing similar relief. More information on this matter is available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>.

As alleged in these actions, including CarMax, dealers have sold cars with open, unrepaired recalls and made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

Thus, consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

The Commission will monitor the companies’ conduct to make sure they comply with the orders. If the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c). Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Walter Hinman
State of Alabama

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Hinman:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

Your comment raises a complaint against CarMax for selling your family members a car that was damaged. We have added your complaint to our agency's complaint database, which assists us in tracking complaints and helps inform our law enforcement decisions. Our enforcement authority includes bringing actions against companies that engage in deceptive practices, such as the conduct at issue in the above-referenced actions, and at issue in our recently-announced case against CarMax (<https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>). As alleged in our actions, these dealers have sold cars with open, unrepaired recalls, and have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and

Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Robert Hoff
State of Michigan

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Hoff:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Carol (Cally) Houck
State of California

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Ms. Houck:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii).

First and foremost, we want to express our deepest condolences for your loss. We greatly appreciate your efforts to tell your personal story and discuss the important consumer protection issues involved in these matters. And we are grateful to receive your feedback on the proposed orders in the above-referenced proceedings. Below we analyze in some detail these specific law enforcement matters under the FTC Act.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you also express concern that the remedies in the proposed orders would somehow affect existing state product safety or other consumer protection laws that may apply to motor vehicle sellers. However, to the extent that other federal or state laws regarding product safety or other subject areas offer additional protections, these individual law enforcement actions in no way substitute for or alter them. In states or localities that prohibit the sale of a used car with an open recall, the proposed orders would not alter that prohibition in any way. Similarly, the orders do not affect or alter any existing standards in state law actions involving products liability or negligence. By requiring disclosures to correct misleading claims, the Commission is putting an affirmative obligation on dealers, not creating any new defense against a private action for negligence or products liability that did not already exist under state law.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.

Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. Thank you again for sharing your story and submitting your public comment on these matters.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Dale Irwin
State of Missouri

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Irwin:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Richard Jaggi
State of Utah

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Jaggi:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Russell Jansing
State of Arizona

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Jansing:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

The Commission appreciates your support of efforts to combat problematic practices in the used auto marketplace. The agency is committed to protecting consumers in auto-related transactions, and we will continue to bring actions against companies that violate the FTC Act¹ by deceiving consumers about material information.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and

¹ The Commission has the authority to enforce the FTC Act and many other civil statutes.

Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Bob Jump
State of California

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Jump:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In your comment, you express concern about the conduct of another company, CarMax. While CarMax is not a party in the specific above-referenced proceedings, the FTC has, in fact, announced an action against CarMax – alleging unlawful conduct similar to that in these proceedings and securing similar relief. More information on this matter is available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>.

As alleged in these actions, including CarMax, dealers have sold cars with open, unrepaired recalls and made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

Thus, consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

The Commission will monitor the companies’ conduct to make sure they comply with the orders. If the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c). Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

David Kasell
State of New York

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Kasell:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Additionally, the disclosure requirements in the orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Scott Kaufman
State of California

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Kaufman:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Greg Koshak
State of Wisconsin

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Koshak:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In your comment, you express concern about the conduct of another company, CarMax. While CarMax is not a party in the specific above-referenced proceedings, the FTC has, in fact, announced an action against CarMax – alleging unlawful conduct similar to that in these proceedings and securing similar relief. More information on this matter is available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>.

As alleged in these actions, including CarMax, dealers have sold cars with open, unrepaired recalls and made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and

easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

Thus, consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

The Commission will monitor the companies’ conduct to make sure they comply with the orders. If the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c). Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Mark Krain
State of Arkansas

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Krain:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In your comment, you express concern about the conduct of another company, CarMax. While CarMax is not a party in the specific above-referenced proceedings, the FTC has, in fact, announced an action against CarMax – alleging unlawful conduct similar to that in these proceedings and securing similar relief. More information on this matter is available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>.

As alleged in these actions, including CarMax, dealers have sold cars with open, unrepaired recalls and made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

Thus, consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

The Commission will monitor the companies’ conduct to make sure they comply with the orders. If the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c). Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

William Krieg
State of California

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Krieg:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. And many consumers’ only available remedy would be to bring a private right of action against car sellers after suffering some injury associated with the recall defect. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you also express concern that the remedies in the proposed orders would somehow affect existing consumer protection laws that may apply to motor vehicle sellers. However, to the extent that other federal or state laws regarding product safety or other subject areas offer additional protections, these individual law enforcement actions in no way substitute for or alter them. In states or localities that prohibit the sale of a used car with an open recall, the proposed orders would not alter that prohibition in any way. Similarly, the orders do not affect or alter any existing standards in state law actions involving products liability or negligence. By requiring disclosures to correct misleading claims, the Commission is putting an affirmative obligation on dealers, not creating any new defense against a private action for negligence or products liability that did not already exist under state law.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.

Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Robert Lanier
State of Florida

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Lanier:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

The Commission appreciates your support of efforts to combat problematic practices in the used auto marketplace. The agency is committed to protecting consumers in auto-related transactions, and we will continue to bring actions against companies that violate the FTC Act¹ by deceiving consumers about material information.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and

¹ The Commission has the authority to enforce the FTC Act and many other civil statutes.

Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Jim Lawless
State of California

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Lawless:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

The Commission appreciates your support of efforts to combat problematic practices in the used auto marketplace. The agency is committed to protecting consumers in auto-related transactions, and we will continue to bring actions against companies that violate the FTC Act¹ by deceiving consumers about material information.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and

¹ The Commission has the authority to enforce the FTC Act and many other civil statutes.

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By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Ira L Lewis
State of Texas

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Lewis:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Malto
State of Florida

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In your comment, you express concern about the conduct of another company, CarMax. While CarMax is not a party in the specific above-referenced proceedings, the FTC has, in fact, announced an action against CarMax – alleging unlawful conduct similar to that in these proceedings and securing similar relief. More information on this matter is available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>.

As alleged in these actions, including CarMax, dealers have sold cars with open, unrepaired recalls and made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out

from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

Thus, consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

The Commission will monitor the companies’ conduct to make sure they comply with the orders. If the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c). Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Logan McNatt
State of Texas

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. McNatt:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

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Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Mariann Michels
State of Maryland

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Ms. Michels:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. We also agree that all recalls pose safety risks to consumers, and that open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

The disclosure requirements in Part I.A. of the proposed orders will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Clay Morrow
Commonwealth of Pennsylvania

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Additionally, the disclosure requirements in the orders will counteract the specific unlawful conduct that we allege – the respondents' failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

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Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any

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³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

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Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Moser
Commonwealth of Virginia

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In your comment, you express concern about the conduct of another company, CarMax. While CarMax is not a party in the specific above-referenced proceedings, the FTC has, in fact, announced an action against CarMax – alleging unlawful conduct similar to that in these proceedings and securing similar relief. More information on this matter is available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>.

As alleged in these actions, including CarMax, dealers have sold cars with open, unrepaired recalls and made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out

from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

Thus, consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

The Commission will monitor the companies’ conduct to make sure they comply with the orders. If the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c). Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Murray
State of Tennessee

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In your comment, you express concern about the conduct of another company, CarMax. While CarMax is not a party in the specific above-referenced proceedings, the FTC has, in fact, announced an action against CarMax – alleging unlawful conduct similar to that in these proceedings and securing similar relief. More information on this matter is available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>.

As alleged in these actions, including CarMax, dealers have sold cars with open, unrepaired recalls and made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out

from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

Thus, consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

The Commission will monitor the companies’ conduct to make sure they comply with the orders. If the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c). Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Paul D. Metrey
Vice President, Regulatory Affairs
National Automobile Dealers Association
8400 Westpark Drive
Tysons, Virginia 22102

December 8, 2016

Re: *Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Metrey:

Thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii), and has given it careful consideration. The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

As you note, your comment does not address the merits of the FTC's allegations in these matters or the provisions of the proposed orders, but instead expresses concerns about the process the Commission employed. Specifically, you suggest that the Commission should have used other tools, such as workshops, studies, policy statements, or guides, prior to bringing law enforcement actions to address the conduct at issue in these cases.

The Commission regularly exercises its enforcement authority to bring enforcement actions to curb deceptive or unfair practices, in addition to other tools that it may employ. In the auto marketplace in particular, the agency has brought dozens of actions in recent years emphasizing that auto dealers cannot make deceptive representations in advertisements. Last year, for example, the Commission announced a sweep of cases ("Operation Ruse Control") challenging deceptive practices in auto sales, financing, and leasing.¹ In 2014, the agency issued administrative orders against ten auto dealers as part of another sweep ("Operation Steer Clear") similarly targeting deceptive advertising in connection with the sale, financing, and leasing of

¹ See Press Release, "Multiple Law Enforcement Partners Announce Crackdown on Deception, Fraud in Auto Sales, Financing and Leasing," March 2015, available at <https://www.ftc.gov/news-events/press-releases/2015/03/ftc-multiple-law-enforcement-partners-announce-crackdown>.

motor vehicles.² These prior actions, as well as the ones at issue, involve straightforward enforcement of the FTC Act's express prohibition against deceptive practices.³ Further, given the potential safety implications of the conduct at issue in these matters, among other considerations, we believe it was especially appropriate to use our law enforcement authority to promptly curb that conduct.

Accordingly, the Commission has determined that the public interest would best be served by issuing the Decision and Order in this matter in final form without modification. The final Decision and Order and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

² See Press Release, "FTC Announces Sweep Against 10 Auto Dealers," January 2014, *available at* <http://www.ftc.gov/news-events/press-releases/2014/01/ftc-announces-sweep-against-10-auto-dealers>; Press Release, "Auto Dealer Agrees to Settle FTC's Deceptive Advertising Charges," March 2014, *available at* <http://www.ftc.gov/news-events/press-releases/2014/03/auto-dealer-agrees-settle-ftcs-deceptive-advertising-charges>.

³ 15 U.S.C. § 45(a).



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Curt Ritchie
State of California

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Ritchie:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In your comment, you express concern about the conduct of another company, CarMax. While CarMax is not a party in the specific above-referenced proceedings, the FTC has, in fact, announced an action against CarMax – alleging unlawful conduct similar to that in these proceedings and securing similar relief. More information on this matter is available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>.

As alleged in these actions, including CarMax, dealers have sold cars with open, unrepaired recalls and made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

Thus, consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

The Commission will monitor the companies’ conduct to make sure they comply with the orders. If the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c). Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Sylvia Rodriguez
State of New York

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Ms. Rodriguez:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In your comment, you express concern about the conduct of another company, CarMax. While CarMax is not a party in the specific above-referenced proceedings, the FTC has, in fact, announced an action against CarMax – alleging unlawful conduct similar to that in these proceedings and securing similar relief. More information on this matter is available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>.

As alleged in these actions, including CarMax, dealers have sold cars with open, unrepaired recalls and made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

Thus, consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

The Commission will monitor the companies’ conduct to make sure they comply with the orders. If the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c). Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Deborah Roher
Commonwealth of Massachusetts

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Ms. Roher:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Jamie Schaefer-Wilson
Executive Director
The Safety Institute
340 Anawan Street
Rehoboth, MA 02769

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Schaefer-Wilson:

We would like to thank your organization for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any

² See *FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls.⁴ As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁵ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In your comment, you also express concern about the conduct of another company, CarMax. While CarMax is not a party in the specific above-referenced proceedings, the FTC has, in fact, announced an action against CarMax – alleging unlawful conduct similar to that in these proceedings and securing similar relief. More information on this matter is available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>.

⁵ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Jane Santoni
State of Maryland

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Ms. Santoni:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Eric Soley
State of New Jersey

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Soley:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

The Commission appreciates your support of efforts to combat problematic practices in the used auto marketplace. The agency is committed to protecting consumers in auto-related transactions, and we will continue to bring actions against companies that violate the FTC Act¹ by deceiving consumers about material information.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and

¹ The Commission has the authority to enforce the FTC Act and many other civil statutes.

Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

December 8, 2016

Jeff Sovern
State of New York

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Sovern:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Robert Splittorff
State of Indiana

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Splittorff:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Robert Stemper
State of California

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Stemper:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Steven Taterka
State of Tennessee

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Taterka:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We share your concerns regarding the safety issues raised by recalls in the used automobile marketplace. All recalls pose safety risks to consumers, and open recalls should be repaired. However, in the absence of any existing federal law prohibiting car dealers from selling used cars subject to open recalls,¹ dealers have sold cars with open, unrepaired recalls. And some sellers have made misleading claims masking this fact. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

¹ Federal law prohibits the sale of new cars subject to open recalls. *See* 49 U.S.C. § 30101 et seq. In addition, effective June 1, 2016, federal law prohibits the sale by rental car companies of rental vehicles subject to open recalls. *See* PL 114-94, December 4, 2015, 129 Stat 1312.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “easily understandable by ordinary consumers,” and “difficult to miss (*i.e.*, easily noticeable),” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

In your comment, you raise concerns about the effectiveness of the disclosure requirements in the proposed orders. However, as explained above, these disclosure requirements will counteract the specific unlawful conduct that we allege – the respondents’ failure to disclose adequately that some of their cars were subject to open recalls when making the inspection claims detailed in the complaints – to avoid giving consumers a misleading impression.² Consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. We believe that the disclosure of recall information will encourage dealers to fix their cars, because this information will likely affect consumers’ decisions on whether to visit a particular lot and purchase a car. At the same time, by allowing the respondents to promote their inspection programs, with clear and conspicuous disclosures regarding recalls, the orders will allow them to provide truthful information that is material to consumers and encourage them to inspect cars for other safety issues, rather than, to consumers’ detriment, scale back or stop these inspection programs.³

In addition to the disclosure requirements in Part I.A., the orders include provisions to curb deceptive conduct and to provide consumers with important information regarding recalls. For example, Part I.B. of the orders prohibits the respondents from making misrepresentations regarding the safety or recall status of their vehicles. Further, if the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c).

² *See FTC Policy Statement on Deception*, appended to *In the Matter of Cliffdale Assoc.’s., Inc.*, 103 F.T.C. 110, 176 (“Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.”).

³ For example, we would want dealers who are inspecting cars to ensure that important parts – like the brakes – are working properly to be able to inform consumers that those important parts had been inspected, because doing so would provide consumers useful information about the overall condition of the car. Of course, if dealers falsely represent that they are inspecting cars, those representations would violate Section 5 of the FTC Act, as well as these orders.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. And many consumers’ only available remedy would be to bring a private right of action against car sellers after suffering some injury associated with the recall defect. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

In your comment, you also express concern that the remedies in the proposed orders would somehow affect existing consumer protection laws that may apply to motor vehicle sellers. However, to the extent that other federal or state laws regarding product safety or other subject areas offer additional protections, these individual law enforcement actions in no way substitute for or alter them. In states or localities that prohibit the sale of a used car with an open recall, the proposed orders would not alter that prohibition in any way. Similarly, the orders do not affect or alter any existing standards in state law actions involving products liability or negligence. By requiring disclosures to correct misleading claims, the Commission is putting an affirmative obligation on dealers, not creating any new defense against a private action for negligence or products liability that did not already exist under state law.

Congress has been considering legislative proposals that would prohibit the sale of used cars with unrepaired recalls entirely. We support efforts seeking to address this serious public safety issue and emphasize that our actions are not intended to replace or substitute for any possible legislation.⁴ The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace. Again, we share the important goal of ensuring that recalled cars are repaired, and as discussed above, we believe that the truthful disclosure of recall information will, in fact, encourage dealers to fix the cars.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and

⁴ In the instant proceedings, the Commission is considering only whether to accept the proposed orders in these individual law enforcement actions, associated with the specific deceptive conduct alleged in the complaints, and therefore does not address other conduct or companies in the marketplace.

Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Gary Urinoski
State of Alabama

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Urinoski:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In your comment, you express concern about the conduct of another company, CarMax. While CarMax is not a party in the specific above-referenced proceedings, the FTC has, in fact, announced an action against CarMax – alleging unlawful conduct similar to that in these proceedings and securing similar relief. More information on this matter is available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>.

As alleged in these actions, including CarMax, dealers have sold cars with open, unrepaired recalls and made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

Thus, consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

The Commission will monitor the companies’ conduct to make sure they comply with the orders. If the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c). Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Elizabeth Wailes
Commonwealth of Virginia

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Ms. Wailes:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In your comment, you express concern about the conduct of another company, CarMax. While CarMax is not a party in the specific above-referenced proceedings, the FTC has, in fact, announced an action against CarMax – alleging unlawful conduct similar to that in these proceedings and securing similar relief. More information on this matter is available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>.

As alleged in these actions, including CarMax, dealers have sold cars with open, unrepaired recalls and made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and

easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

Thus, consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

The Commission will monitor the companies’ conduct to make sure they comply with the orders. If the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c). Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Christopher Walker
State of Arkansas

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Walker:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In your comment, you express concern about the conduct of another company, CarMax. While CarMax is not a party in the specific above-referenced proceedings, the FTC has, in fact, announced an action against CarMax – alleging unlawful conduct similar to that in these proceedings and securing similar relief. More information on this matter is available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>.

As alleged in these actions, including CarMax, dealers have sold cars with open, unrepaired recalls and made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

Thus, consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

The Commission will monitor the companies’ conduct to make sure they comply with the orders. If the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c). Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

Reginald Young
State of California

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Young:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

We agree that it is important to combat problematic practices that have been occurring in the used automobile marketplace. These actions help achieve this goal. In your comment, you express concern about the conduct of another company, CarMax. While CarMax is not a party in the specific above-referenced proceedings, the FTC has, in fact, announced an action against CarMax – alleging unlawful conduct similar to that in these proceedings and securing similar relief. More information on this matter is available at <https://www.ftc.gov/enforcement/cases-proceedings/142-3202/carmax>.

As alleged in these actions, including CarMax, dealers have sold cars with open, unrepaired recalls and made misleading claims masking this fact – in violation of Section 5 of the FTC Act. Our proposed orders will curb such deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers about recalls. Additionally, the orders will prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify consumers who have made recent car purchases regarding recalls. These requirements provide significant protections for consumers that are tailored appropriately to address the law violations alleged in these actions. Further, by requiring the respondents that promote their inspection programs to do so truthfully, with clear and conspicuous disclosures regarding recalls, the orders ensure they provide information material to consumers while at the same time encouraging them to inspect cars for recalls and other important safety issues.

Importantly, the proposed orders define “clearly and conspicuously” in great detail to mean, among other things, that disclosures must be “difficult to miss (*i.e.*, easily noticeable) and easily understandable by ordinary consumers,” and to require that “[a] visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.” Thus, these requirements would prohibit the respondents from making prominent advertising claims regarding their rigorous inspections and then burying their disclosures in fine print or inconspicuous point-of-sale representations to consumers. Instead, in any medium where they make the safety-related claims listed in Part I.A. of the order, whether in a television or Internet advertisement or when consumers are visiting their lots, they would have to clearly, conspicuously, and in close proximity disclose information about recalls.

Thus, consumers will receive important information about open recalls whenever respondents make these kinds of claims, including when seeing advertisements prior to even visiting a dealership to make a purchase. Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

The Commission will monitor the companies’ conduct to make sure they comply with the orders. If the respondents violate any provision of these orders, the Commission can seek civil penalties of up to \$40,000 per violation against them. *See* Section 5(l) of the FTC Act, 45 U.S.C. § 45(l), as adjusted by 16 C.F.R. § 1.98(c). Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and Orders and other relevant materials are available from the Commission’s website at <http://www.ftc.gov>. It helps the Commission’s analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

December 8, 2016

William Zipkin
State of Florida

Re: *In the Matters of General Motors LLC (File No. 152 3101),
Jim Koons Management Company (File No. 152 3104), and
Lithia Motors, Inc. (File No. 152 3102)*

Dear Mr. Zipkin:

We would like to thank you for commenting on the Federal Trade Commission's (FTC) proposed consent orders in the above-referenced proceedings. The Commission has placed your comment on the public record pursuant to Rule 4.9(b)(6)(ii) of the agency's Rules of Practice, 16 C.F.R. § 4.9(b)(6)(ii). The Commission is committed to protecting consumers in automobile transactions from deceptive or other unlawful practices, so we greatly appreciate your feedback on these matters.

The Commission appreciates your support of efforts to combat problematic practices in the used auto marketplace. The agency is committed to protecting consumers in auto-related transactions, and we will continue to bring actions against companies that violate the FTC Act¹ by deceiving consumers about material information.

Taken together, the provisions of the proposed orders provide significant protections for consumers. Without our actions, these car dealers could not only continue to sell used vehicles subject to open recalls (a practice currently permitted under federal product safety law), but could also make misleading inspection claims masking this fact – without in any way disclosing the possibility of recalls. As a result of these orders, the proposed respondents must clearly and conspicuously provide information to consumers about recalls in any advertising in which they make their triggering claims (for example, on website, television, or radio ads). Simply put, these orders will provide consumers information about recalls when they are still in a position to make purchasing decisions based upon it.

Accordingly, having carefully considered your comments, along with the others submitted in these proceedings, we conclude that the public interest would best be served by issuing the orders in these matters in final form without modification. The final Decision and

¹ The Commission has the authority to enforce the FTC Act and many other civil statutes.

Orders and other relevant materials are available from the Commission's website at <http://www.ftc.gov>. It helps the Commission's analysis to hear from a variety of sources in its work, and we thank you again for your comment.

By direction of the Commission.

Donald S. Clark
Secretary