

IN THE MATTER OF

GENERAL MOTORS CORPORATION, ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC.
5 OF THE FEDERAL TRADE COMMISSION ACT*Docket 9074. Complaint, Feb. 10, 1976—Decision, June 11, 1980*

This consent order requires, among other things, a Detroit, Mich. motor vehicle manufacturer (GM) to change its official accounting procedures for dealers, to include specified procedures for determining surpluses realized on repossessed vehicles; and stipulate to its dealers that such procedures must be observed. The order requires GM and its subsidiary, General Motors Acceptance Corporation (GMAC), to institute extensive training programs to familiarize dealers with their obligations in handling repossessed vehicles. Following such training, GM is required to conduct a series of field audits to ensure that surpluses are being calculated and paid in a prescribed manner. GMAC is further required to pay \$2 million to eligible consumers whose vehicles were repossessed by the company since May 1, 1974. Additionally, GMAC's post-repossession notices and other relevant documents must include accurate and complete information concerning the nature and duration of customers' rights to redemption and surpluses; and that bulletins be sent to dealers whose arrangements with the company did not call for "title clearance," advising them of their obligations to pay surpluses on repossessed vehicles.

Appearances

For the Commission: *Randall H. Brook, Dean A. Fournier, Ivan Orton, Sharon S. Armstrong, Gregory Colvin and Sarah Jane Hughes.*

For the respondents: *Otis M. Smith, Robert C. Weinbaum and Stephen P. Ormond, Detroit, Mich. and Patrick Leach, Weil, Gotshal & Manges, New York City, for respondent General Motors Corporation. Nancy L. Buc, Weil, Gotshal & Manges, Washington D.C., Carl D. Lobell, Weil, Gotshal & Manges, New York City and John J. Higgins, New York City, for respondent General Motors Acceptance Corporation. Robert C. St. Louis, Aiken, St. Louis & Siljeg, Seattle, Wash., for respondent Chuck Olson Chevrolet, Inc.*

COMPLAINT

The Federal Trade Commission, having reason to believe that General Motors Corporation, General Motors Acceptance Corporation, and Chuck Olson Chevrolet, Inc., corporations, have violated the provisions of the Federal Trade Commission Act, as amended, and that a proceeding in respect thereof would be in the public interest, hereby issues this complaint.

Complaint

PARAGRAPH 1. *Respondents.* Respondent General Motors Corporation ("GM") is a Delaware corporation with its office and principal place of business at 3044 West Grand Boulevard, Detroit, Michigan. Respondent General Motors Acceptance Corporation ("GMAC") is a Delaware corporation with its office and principal place of business at 761 Fifth Ave., New York, New York. It is a wholly-owned subsidiary of GM.

Respondent Chuck Olson Chevrolet, Inc. ("Olson") is a Washington corporation with its office and principal place of business at 17545 Aurora Ave. North, Seattle, Washington.

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

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

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

GMAC is a finance company, wholly-owned by GM, which provides retail financing to customers of GM dealers for their retail installment contract purchases of new and used motor vehicles. It also provides wholesale financing for inventories held by GM dealers.

Olson is an independent GM dealer selling new and used motor vehicles.

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

PAR. 4. *Retail Installment Contract Sales.* Olson and most other GM dealers arrange financing through GMAC or other lenders for retail sales of motor vehicles to their customers. Most of the sales to be financed by GMAC are executed on a printed "retail installment contract" form provided by GMAC, naming the customer as buyer and the dealer as seller. This "retail installment contract" form indicates that the contract will be assigned to GMAC for value, that the buyer is to be indebted to the dealer or its assignee, and that the dealer or its assignee is to be a secured party holding security interest in the vehicle sold. In the event the buyer defaults, GMAC and Olson and other GM

dealers have also expressly undertaken the obligation, by express or implied representations contained in their retail installment contracts, to make a proper disposition of the repossessed collateral and to account to the defaulting buyer for any surplus arising therefrom. These representations have the tendency and capacity to lead buyers to a reasonable expectation that GMAC or the dealer will properly dispose of the vehicle and refund any surplus.

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

PAR. 6. *Post-Default Procedures Determined by Master Agreement.* In instances where GMAC as secured party declares a default, it usually repossesses or causes repossession of the vehicle. The procedures followed by GMAC and the dealer after repossession are determined by a master "GMAC Retail Plan" between GMAC and the dealer, as well as by the terms of the assignment of each retail installment contract to GMAC, and by additional terms and conditions specified from time to time. A substantial majority of the agreements executed between GMAC and GM dealers in the United States are recourse, repurchase, guaranty or similar agreements (hereinafter "recourse" agreements).

PAR. 7. *Recourse Transfer and Payoff.* Pursuant to the agreements described in Paragraph Six, GMAC in most cases returns the repossessed vehicle to the recourse dealer within a specified time, and receives from the dealer a payoff consisting of the unpaid balance of the retail installment contract adjusted by applicable charges and credits. The dealer then resells the vehicle to a third party.

PAR. 8. *Recourse "Title Clearance".* Before returning the vehicle to the recourse dealer, GMAC claims to offer the vehicle for sale, purporting to comply with the public (or private) sale method of disposition of collateral authorized by the Uniform Commercial Code and other state laws. GMAC claims that this procedure "clears title" to the vehicle, extinguishing the defaulting buyer's equity interest in the vehicle, cutting off the buyer's redemption rights, and establishing the amount of deficiency or surplus. In truth and in fact:

A. GMAC does not make reasonable efforts to procure the attendance of competing bidders or buyers at such sales. Hardly anyone ever appears to bid or buy at the "title clearance" sale except a representative of GMAC. GMAC routinely purchases the vehicle from itself, and no money transfer or accounting entry is made.

B. GMAC almost always declares a substantial deficiency based on the "sale," and surpluses are almost never produced.

C. After the vehicle is returned to the recourse dealer, the dealer's payoff compensates GMAC for the entire debt owed by the defaulting buyer, including the deficiency.

D. The subsequent resale by the dealer is almost always made at a higher price than the GMAC "title clearance" sale. Thus, any loss produced by the dealer's resale is much less than the deficiency declared by GMAC, and in a substantial number of instances a surplus is realized.

This "title clearance" method of disposition is a sham, an improper performance of the repossessing secured party's duty, as a fiduciary and trustee, to respect the defaulting buyer's equity interest in the vehicle. As a method of disposition, GMAC's sale procedure is not commercially reasonable, not conducted in good faith, and is therefore violative of the Uniform Commercial Code. The recourse dealer's subsequent resale is the actual disposition of collateral, not GMAC's intervening sale to itself.

Therefore, the method of disposition of repossessed motor vehicles described above is unfair and deceptive.

PAR. 9. *Non-Recourse "Title Clearance"*. In a number of cases GMAC does not return the repossessed vehicle to the original selling dealer, including but not limited to cases where there is no recourse agreement in effect or where the conditions for enforcing the recourse obligation are not met. In many of these instances, GMAC sells the vehicle to itself, using the same "title clearance" method described in Paragraph Eight, and then resells the vehicle to a third party shortly thereafter, usually well within any applicable period specified by state law for a proper disposition. Again, GMAC declares a substantial deficiency based on the "title clearance" sale. The subsequent, third-party sale is frequently made at a higher price than the "title clearance" sale. When it is, the loss produced by the subsequent sale is less than the deficiency declared by GMAC, and in some cases a surplus may be realized.

The sale to a third party is the actual disposition and, applying the same standards of fiduciary duty, commercial reasonableness and good faith set forth in Paragraph Eight, GMAC's "title clearance" sale to itself is unfair and deceptive.

PAR. 10. *Other Surpluses Paid to Dealers.* GMAC has had a procedure by which it may, under certain circumstances, elect not to return a vehicle to a recourse dealer but to sell the vehicle to a third party, with or without an intervening "title clearance" sale, while still holding the dealership to its recourse obligation. If a surplus results from such a disposition, GMAC's procedures call for paying or crediting the surplus amount to the dealer, not to the defaulting buyer. This practice violates the Uniform Commercial Code and is unfair and deceptive.

PAR. 11. *Joint Liability.* Under applicable state law, a recourse dealer who receives a transfer of collateral from a secured party has a duty to properly dispose of the collateral and to account to the defaulting buyer for any surplus. The dealer has this obligation when the transfer is direct, but also when GMAC holds a "title clearance" sale prior to the transfer, as it does in the vast majority of recourse repossessions. GMAC also is obligated to ensure that a proper disposition of the collateral is made and that a proper accounting for any surplus is given to the defaulting buyer. GMAC shares this obligation jointly with the dealer because (1) it continues to be the secured party and continues to be a fiduciary with respect to the defaulting buyer's equity interest; (2) GMAC, as assignor of the contractual duties of a secured party, continues to be liable for the performance of those duties; (3) GMAC has dictated, controlled and acted jointly with the recourse dealer in executing relevant aspects of the credit transaction; and (4) GMAC has made representations to buyers, as set forth in Paragraph Four, that these duties would be properly performed.

PAR. 12. *Failure to Account for Surpluses.* With reference to the surpluses realized on the dealer's disposition as described in Paragraph Eight, and on GMAC's own resale as described in Paragraphs Nine and Ten, GMAC, Olson and other GM recourse dealers have in a substantial number of instances (1) failed to institute or follow correct procedures for determining the existence or amounts of these surpluses, (2) failed to disclose the existence of these surpluses to defaulting buyers, and (3) wrongfully retained such surpluses in violation of the defaulting buyers' statutory and contractual rights. The failure to identify and disclose surpluses has concealed their existence from these consumers and consequently few have asserted their rights under applicable state law. The failure to remit surpluses has deprived numerous consumers of substantial amounts of money rightfully theirs and has unjustly enriched GMAC and its recourse dealers. These practices are therefore unfair and deceptive.

PAR. 13. *Pursuit of Excessive Deficiencies.* GMAC collects c attempts to collect from defaulting buyers many of the deficiencies

declares based on the "title clearance" procedure described in Paragraphs Eight and Nine. Some of the deficiencies are assigned to recourse dealers or others for collection. Whether GMAC or the dealer pursues the deficiency, the amount collected may be shared between them. Such collection efforts have the tendency and capacity to induce defaulting buyers to pay sums to which GMAC or its assigns are not entitled or to otherwise change their positions to their detriment. To the extent that deficiency amounts collected from defaulting buyers exceed the deficiency produced by the recourse dealers' resale, or exceed the deficiency produced by GMAC's subsequent resale (either of which may have in fact produced a surplus), these buyers have been deprived of substantial sums of money, unjustly enriching GMAC and its dealers. This practice is therefore unfair and deceptive.

PAR. 14. *Misrepresentation of Right to Deficiency.* GMAC represents to defaulting buyers that they may be liable for deficiencies on repossessed motor vehicles in instances where state law limits or denies this liability. These representations have the tendency and capacity to induce defaulting buyers to pay sums to which the dealer, GMAC, or its assigns are not entitled or otherwise to change their position to their detriment. Therefore, use of these misleading contracts is unfair and deceptive.

PAR. 15. *Failure to Disclose Material Facts Concerning Redemption.* GMAC and its recourse dealers fail, in some instances, to inform defaulting buyers of facts necessary to their exercise of the right of redemption granted by state law, including but not limited to (1) the nature and duration of the right to redeem, and (2) the amount required to redeem. This failure to disclose material facts has the tendency and capacity to hinder defaulting buyers in exercising the right to redeem and is therefore an unfair and deceptive act or practice.

PAR. 16. *Owned GM Dealers Using Non-GMAC Financing.* A number of wholly- or partially-owned GM dealers engage in the acts and practices ascribed to dealers in Paragraphs Twelve through fifteen, in instances where retail installment financing for their customers is obtained from finance institutions other than GMAC. These acts and practices, for the reasons stated above, are unfair and deceptive.

PAR. 17. *Conclusion.* The acts and practices of respondents set forth Paragraphs Eight through Ten, and Twelve through Sixteen are all to the prejudice and injury of the public and constitute unfair and deceptive acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, as amended.

DECISION AND ORDER

The Commission has issued its complaint charging the respondents with violation of Section 5 of the Federal Trade Commission Act, as amended. The respondents have been served with a copy of that complaint, together with a notice of contemplated relief.

The respondents, their attorneys, and counsel for the Commission have executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the complaint, and waivers and other provisions as required by the Commission's Rules.

The Secretary of the Commission has withdrawn this matter from adjudication in accordance with Section 3.25(e) of its Rules.

The Commission has considered the matter and has accepted the executed consent agreement and placed the agreement on the public record for a period of 60 days and has considered the comments filed pursuant to Section 3.25 of its Rules. In accordance with Section 3.25(f) of its Rules, the Commission makes the following jurisdictional findings and enters the following order:

1. Respondent General Motors Corporation is a Delaware corporation with its offices and principal place of business at 3044 West Grand Boulevard, Detroit, Michigan. Respondent General Motors Acceptance Corporation is a New York corporation with its offices and principal place of business at 767 Fifth Ave., New York, New York. General Motors Acceptance Corporation is a wholly-owned subsidiary of General Motors Corporation. General Motors Corporation and General Motors Acceptance Corporation are referred to as the "General Motors respondents."

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I. Definitions

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

A. "General Motors respondents" or "respondents" means General Motors Corporation ("General Motors") and General Motors Accep-

rance Corporation ("GMAC"), corporations. It shall not refer to Chuck Olson Chevrolet, Inc. References to either or both of the General Motors respondents shall include their successors, assignees, officers, agents, representatives and employees, as well as any corporations, subsidiaries, divisions or devices through which they act in the United States. However, references to General Motors shall not include GMAC and references to either or both of the General Motors respondents shall not include dealerships. The requirements imposed on the General Motors respondents shall apply only to transactions within the United States.

B. "Vehicle" means an automobile or truck with a gross vehicle weight rating less than 11,000 pounds (4,990 kilograms) or a motor home. The term includes all parts, accessories and appurtenances of the vehicle. A van is deemed a "truck."

C. "Dealership" or "dealer" means a corporation, partnership or proprietorship as to its operations within the United States pursuant to a Sales and Service Agreement with General Motors' Buick, Cadillac, Chevrolet, Oldsmobile, or Pontiac divisions, or the GMC Truck and Coach Division.

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

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

F. "Equity dealership" means a dealership in which General Motors holds 50 percent or more of the voting stock or is entitled to elect 50 percent or more of the board of directors.

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

H. "Disposition" or "dispose" means a dealership's sale or lease of a repossessed vehicle previously sold by that dealership and returned to it by or for a financing institution pursuant to a recourse agreement. Such sale or lease includes only transactions with an independent third party; i.e., it does not include a sale or lease to the financing institution, the dealership or a representative of either. Disposition or dispose shall not mean the transfer of a repossessed vehicle to a dealership pursuant to a recourse agreement, or to a person or firm liable under a guaranty, endorsement, or recourse agreement covering the repossessed vehicle, nor mean a sale subsequent to a judicial sale.

I. "Proceeds" means whatever is received for a repossessed vehicle upon its disposition, as proceeds are described in the Initial Compliance Report. Among other things, it does not include charges for separately priced warranties and service contracts itemized in the sales contract or lease.

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

1. expenses paid to persons who are not employees of the dealership nor of the financing institution that financed the retail sale, for repossessing, towing or transporting the vehicle;

2. filing fees, court costs, cost of bonds, and fees and expenses paid to a sheriff or similar officer or to an attorney who is not an employee of the dealership nor of the financing institution, for obtaining possession of or title to the vehicle;

3. fees paid to others to obtain title to the vehicle, to obtain legally required inspection of the vehicle, or to register the vehicle;

4. amounts paid to others for storage (excluding a charge for storage at facilities operated by the dealership);

5. labor and associated parts and supplies furnished by the dealership for the repair, reconditioning or maintenance (including legally required inspections) of the vehicle in preparation for disposition, computed at dealer cost (as defined in the Initial Compliance Report) with appropriate adjustments for any insurance, service contract or warranty recovery;

6. amounts paid to others for labor and associated parts and supplies purchased for the repair, reconditioning or maintenance (including legally required inspections) of the vehicle in preparation for disposition;

7. cost of sales commissions paid for actual participation in the disposition of the particular vehicle, computed at a rate no higher than for the sale or lease, as applicable, of a similar, non-repossessed vehicle in similar circumstances, but excluding all portions of commissions attributable to the selling of service contracts, separately priced warranties, financing or insurance;

8. a proportionate share of expenditures for advertisements that specifically mention the particular vehicle;

9. fees and expenses paid to others for auctioning the vehicle;

10. amounts paid to others for communication (including telephone calls, postage and military locator fees) and photocopying necessary in arranging for the repossession, holding, transportation, reconditioning or disposition of the vehicle.

11. amounts paid to insure the particular vehicle while holding it.

K. "Contract balance" means (1) the unpaid balance as of the date of repossession, less any payments made thereafter and less applicable finance charge, insurance premium and service contract rebates deducted by the financing institution, plus (2) other charges authorized by contract or law and actually assessed or incurred prior to repossession. It may reflect a deduction for insurance, service contract and warranty payments received or to be received by the financing institution.

L. "Surplus" means:

+ + + - - - =	proceeds applicable insurance or warranty reimbursements received by the dealership or financing institution unless these reimbursements were deducted in computing the contract balance any other applicable rebates or credits not deducted in computing the contract balance contract balance allowable expenses amounts paid to discharge any security interest in the vehicle provided for by law Surplus. A negative (minus) amount produced by this calculation is referred to as a "deficiency"
---	---

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

II. Repossession Accounting Procedures

It is further ordered, That General Motors shall provide to all dealers within 10 days of service of this order, and to each new dealer within 30 days of entering into a Sales and Service Agreement, procedures for determining the existence of surpluses and for accounting for surpluses and for any deficiencies sought.

A. These procedures (the "repossession accounting procedures") shall, by physical insertion or as a supplement, be made a part of the

General Motors uniform accounting system referred to in the various dealer Sales and Service Agreements between General Motors and its dealers. These agreements provide that this system (currently called the "General Motors Dealers Standard Accounting System Manual") is to be followed in dealership operations. The requirement that the system be followed, insofar as it relates to the repossession accounting procedures, shall not be deleted from the Sales and Service Agreements, nor modified, without 60 days notice to the Commission. General Motors shall not implement the deletion or modification if the Commission, within that 60-day period, advises General Motors that it objects. The repossession accounting procedures shall also be incorporated into any subsequent set or compendium of comparable instructions.

B. The repossession accounting procedures shall include a standardized form ("dealer repossession accounting form") for dealers' use in determining for each vehicle the existence and amount of any surplus and of any deficiency sought, and in recording payment of each surplus, in accordance with the provisions of Paragraph C below.

C. The repossession accounting procedures shall provide that:

1. Each surplus is to be determined and paid to the recourse financing customer within 45 days of disposition in accordance with a method conforming to Paragraphs I.H through I.M of this order;

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

3. Dispositions are to be commercially reasonable. The dealer should make the same efforts to obtain the best possible price for a repossessed vehicle as would be made for a comparable used vehicle, except that a dealer is not required to offer a warranty without extra charge even though such warranties are provided on other used vehicles. If state law sets forth particular requirements for the disposition of repossessed vehicles, the dealer should comply with those requirements but shall still attempt to obtain the best possible price consistent with those requirements.

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

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

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

- a. is to set forth the calculation of each surplus and of each deficiency sought;
- b. is to identify the vehicle and the financing customer and be certified by a person authorized to sign retail installment contracts on behalf of the dealership;
- c. a copy of the form is to be sent with the surplus payment to each recourse financing customer to whom a surplus is paid and is to be sent to each recourse financing customer from whom a deficiency is sought; and
- d. is to be retained by the dealer, together with all relevant underlying documentation, for at least two years from the date of disposition.

7. Dealers are not to obtain or attempt to obtain waivers of surplus or redemption rights from recourse financing customers, except in the precise manner and under the precise circumstances contemplated by the applicable state law version of Section 9-505 of the Uniform Commercial Code. Under Section 9-505 a waiver of a customer's right to a surplus may not be sought unless the dealer intends to retain the collateral for its own use for the immediate future rather than to resell the collateral in the ordinary course of business. If a waiver is sought, the dealer shall not represent that by proposing the waiver it proposes to forego its right to a deficiency judgment, unless it intends to seek such a judgment should the waiver not be given.

D. The repossession accounting procedures shall state that failure to adhere to the standards of subparagraphs C.1-7 above or to account properly to customers for surpluses may expose the dealer to legal action by the Federal Trade Commission and/or consumers.

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

F. The repossession accounting procedures shall not apply to the sale of a repossessed vehicle subsequent to a judicial sale.

G. The Federal Trade Commission has proposed a Trade Regulation Rule that defines duties involved in disposing of a repossessed vehicle differently from the method described in subparagraph C.3 above. For this reason, that subparagraph is not to be considered a ratification or acceptance by the Commission of that method of disposition, except for purposes of this order.

III. Training and Notification

A. *It is further ordered*, That General Motors shall develop detailed educational materials and training to carry out the purposes of Part II

of this order, and of Part VI (as related to reinstatement and redemption rights), as further described in the Initial Compliance Report. General Motors:

1. Shall provide the educational materials to every dealer within 10 days after service of this order.

2. Shall, commencing no later than 180 days after service of this order and in the normal course of providing seminars and other training, include detailed information on all pertinent aspects of Part II of this order and Part VI (as related to reinstatement and redemption rights) in all appropriate seminars and other training materials offered to dealers.

B. *It is further ordered*, That General Motors:

1. Shall, within 10 days after service of this order, send to each dealer a letter which contains information to the following effect:

a. State law requires that any surplus generated on the disposition of a repossessed vehicle must be paid to the defaulting customer.

b. The Federal Trade Commission has charged that secured parties' sales of repossessed vehicles to themselves are of no effect in computing a customer's deficiency or surplus. With regard to these charges, GMAC has been prohibited from purchasing a repossessed vehicle at any sale it conducts and has been ordered to make payments to some customers whose repossessed vehicles were purchased by GMAC at a sale which it conducted.

c. The duty to pay surpluses has existed for many years, and the company urges dealers to pay all surpluses on repossessed vehicles disposed of by them, except for past GMAC repossessions which were not subject to the reassignment option of the GMAC Retail Plan. This duty covers surpluses arising prior to the date of the letter, as well as those arising later.

d. As of the date of this letter, the law of virtually all states provides that if a dealer does not pay a surplus owed, the defaulting customer has the right to recover a penalty equal to "an amount not less than the credit service charge plus 10% of the principal amount of the debt or the time price differential plus 10% of the cash price".

e. If a customer to whom a surplus is owed has been reported by the dealer or its agent (including a collection agency) to a credit reporting agency as owing a deficiency, the dealer should promptly advise the credit reporting agency of the correct facts.

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

2. Shall include in the above mailing a copy of the Commission's published Analysis of Consent Order.

3. Shall, within 90 days after service of this order, develop and provide to all Motors Holding branch personnel (other than clerical employees) educational materials and training to carry out the purposes of Parts II and V of this order, as further described in the Initial Compliance Report.

4. Shall, if certain acts or practices are found unlawful in Docket 9072, 9073 or 9074, mail a set of documents, to be provided by the Commission at a later date, for the purpose of notifying dealerships that those acts or practices have been found unlawful. The mailing shall be certified mail, return receipt requested, to each dealership president (or Dealer Operator, as that term is defined in General Motors Sales and Service Agreements). General Motors shall provide the Commission with a certification of mailing by a responsible official, including a statement that the mailing list used was complete at the time of mailing to the best of the certifier's knowledge. It shall maintain the receipts for at least three years after (1) the last audit summary is submitted pursuant to Paragraph IV.C of this order, or (2) the mailing is completed, whichever comes later. General Motors may include a covering letter or transmittal sheet in the mailing, with language subject to the approval of the Commission or its authorized representatives.

C. *It is further ordered, That GMAC:*

1. Shall, within 60 days after service of this order, send a letter explaining the duty to pay past surpluses to each dealer to which GMAC returned a repossessed vehicle between May 1, 1974 and service of this order where the dealer executed the reassignment option of the GMAC Retail Plan.

2. Shall, within 90 days after service of this order, develop and provide to all GMAC branch personnel involved in recourse financing transactions (other than clerical employees) educational materials and training to carry out the purposes of Parts II and VI of this order, as further described in the Initial Compliance Report.

D. *It is further ordered, That General Motors shall issue no new materials or instructions to dealers inconsistent with this order and shall provide no materials or instructions to dealers inconsistent with this order after 180 days after service of this order.*

IV. Dealer Audits

A. To determine whether dealers are correctly calculating and paying surpluses after implementation of Parts II and III of this order, General Motors shall conduct audits of dealers with respect to their disposition of repossessed vehicles. The audit process shall:

1. Consist of four successive twelve-month auditing periods, the first to begin approximately 190 days after service of this order.

2. Include 300 recourse dealers per twelve-month auditing period, selected pursuant to the method set forth in the Initial Compliance Report. In addition, each dealer found in the preceding auditing period to have had transactions in which the dealer failed to follow the repossession accounting procedures in calculating surpluses and deficiencies sought or in paying surpluses will be included, limited to one reaudit per dealer.

3. Consist of an audit of each dealer's repossession accounting forms, with resort to all necessary underlying records, as described in the Initial Compliance Report. The audit shall include for each dealer audited the preparation of a summary ("dealer summary report") which shall contain:

- a. the name and address of the dealership;
- b. the number of dispositions audited;
- c. the number and dollar value of surpluses properly calculated and paid;
- d. the number and dollar value of surpluses as to which attempts to pay were unsuccessful;
- e. the number of repossessed vehicles sold at wholesale;
- f. description of any failures to follow the repossession accounting procedures other than in calculating surpluses or deficiencies sought or in paying surpluses;
- g. the number of dispositions in which the dealer failed to follow the repossession accounting procedures in calculating surpluses and deficiencies sought or in paying surpluses, and, for each of these dispositions: (1) a statement of the nature of the failure; (2) a form, described in the Initial Compliance Report, on which the auditor will list all documents in the dealer's files which contain information which should be stated on the dealer repossession accounting form and set forth that information; and (3) any worksheet(s) the auditor prepares in connection with that disposition;
- h. a certification by the auditor that the dealer summary report is accurate to the best of the auditor's knowledge and that the auditor has informed the dealership in writing that it should retain for at least 2 years after the audit all documents relating to any disposition under subparagraph A.3.g.

4. Include, for each dealer audited, each recourse financing repossession disposed of by the dealer during a preceding twelve-month period (defined in the Initial Compliance Report). Dispositions in which the repossession occurs prior to 30 days after General Motors provides

dealers with the repossession accounting procedures need not be included.

B. Audit reports and documents prepared during an audit pursuant to Paragraph A shall be maintained by General Motors for three years following the end of the twelve-month auditing period for which they are prepared.

C. General Motors shall file with the Commission an audit summary for each twelve-month auditing period described in subparagraph A.1. Each summary shall be filed 90 days after the completion of the auditing period. These summaries shall contain the following information in aggregate form:

1. the number of dealers audited;
2. the number of dispositions audited;
3. the number and total dollar value of surpluses properly calculated and paid;
4. the number and total dollar value of surpluses as to which attempts to pay were unsuccessful;
5. the number of dispositions in which the repossessed vehicle was sold at wholesale;
6. the number of dispositions in which there was a failure to follow the repossession accounting procedures in calculating and in paying a surplus, the number of dealerships involved, and the total additional dollar amount the dealerships should have paid according to the repossession accounting procedures;
7. the number of dispositions in which a deficiency was sought, the number of those in which there was a failure to follow the repossession accounting procedures in calculating the deficiency and the number of dealerships involved in these failures; and
8. a statement describing the steps that General Motors took to contact dealerships which were discovered during an audit to have failed to follow the repossession accounting procedures in calculating surpluses or deficiencies sought or in paying surpluses.

D. The audits described in Paragraph A shall be conducted by General Motors' Sales Section or by other qualified representatives designated by General Motors, in accordance with procedures described in this order and in the Initial Compliance Report. The following procedures shall be followed:

1. The General Motors respondents shall not inform dealers or other third parties of the audit procedure or the identity of dealers selected for audit, except to the extent described in this Order.
2. No dealer selected for audit under this Part IV shall be given more than ten business days advance notice of the scheduled audit.

V. Equity Dealership Procedures and Monetary Payments

It is further ordered, That:

A. Within 60 days after service of this order, or within 60 days after issuance of stock in any new equity dealership, General Motors shall, as a shareholder in equity dealerships, present and support resolutions for consideration by the boards of directors of those dealerships, which provide that:

1. the dealership's accounting practices will be conformed to the repossession accounting procedures described in Part II above; and
2. surpluses and deficiencies will be calculated and surpluses paid according to the repossession accounting procedures.

B. Within 100 days after service of this order, General Motors shall advise the Federal Trade Commission in writing of the number of equity dealerships which did not adopt the resolutions described in Paragraph V.A.

C. General Motors shall, during each accounting systems examination ("systems exam") it conducts at an equity dealership, determine if the dealership has, since the last systems exam, calculated surpluses and deficiencies sought and paid surpluses according to the repossession accounting procedures. The systems examiner shall review all accounts in which the repossessed vehicle was disposed of during the period beginning 45 days prior to the preceeding systems exam and ending 45 days prior to the current systems exam. For these accounts the examiner shall review the dealer repossession accounting forms with resort to all necessary underlying records. Dispositions in which the repossession occurs prior to 30 days after General Motors has provided dealerships with the repossession accounting procedures need not be reviewed. Systems exams shall be conducted to examine repossession disposition(s) at least once each year for each equity dealership.

D. When a systems exam or other reliable information discloses the failure of an equity dealership to calculate surpluses or deficiencies sought or pay surpluses according to the repossession accounting procedures, General Motors shall, as a shareholder:

1. request the dealership's board of directors to review with the dealer operator the repossession accounting procedures;
2. send copies of the relevant portions of the systems exam, or the substance of the reliable information, to each of the dealership's board members; and
3. request the dealership's board members to take steps to insure

Decision and Order

that surpluses and deficiencies sought are calculated and surpluses paid in accordance with the repossession accounting procedures.

E. In the course of the first systems exam for a dealership following action taken by General Motors under Paragraph D above, GM shall determine whether all the failures have been corrected. If the failures have not been corrected, GM shall include those failures in an aggregate report compiled at the end of each calendar year. This report shall state the number of dealers with those uncorrected failures, the number and amount of surpluses involved, and the number and amount of excess deficiencies involved.

F. For each equity dealership which, during the report period defined in Paragraph G below, failed to calculate a surplus or deficiency sought, or to pay a surplus, in accordance with the repossession accounting procedures, General Motors shall prepare an examination summary. This summary shall be retained for a period of 3 years following the submission of the equity dealership report referred to in Paragraph G below. It shall contain:

1. the name and address of the dealership;
2. the number of dispositions examined;
3. the number and dollar value of surpluses properly calculated and paid;
4. the number and dollar value of surpluses as to which attempts to pay were unsuccessful;
5. the number of repossessed vehicles sold at wholesale;
6. description of any failures to follow the repossession accounting procedures other than in calculating surpluses or deficiencies sought or in paying surpluses;
7. the number of dispositions in which the dealer failed to follow the repossession accounting procedures in calculating surpluses or deficiencies sought or in paying surpluses, and, for each such disposition, the amount of surplus unpaid or excess deficiency sought, copies of the examiner's worksheets dealing with the disposition, a statement of the nature of the failure, and a certification by the examiner that the examination summary is correct to the best of his or her knowledge. In addition, the examiner shall attach photocopies of all records examined which are necessary to document each of these dispositions.

G. General Motors shall file with the Commission a report with respect to equity dealerships ("equity dealership report"), within 28 months after General Motors has provided dealers with the repossession accounting procedures. The equity dealership report shall cover systems exams completed within two years after the 30-day period

described in Paragraph C above. This two-year period is called the "report period." The equity dealership report shall state the total number of equity dealerships examined and shall contain the following information in aggregate form with respect to equity dealerships which failed during the report period to follow the repossession accounting procedures in calculating surpluses or deficiencies sought or in paying surpluses:

1. the number of dealers;
2. the number of dispositions examined;
3. the number and total dollar value of surpluses properly calculated and paid;
4. the number and total dollar value of surpluses as to which attempts to pay were unsuccessful;
5. the number of dispositions in which the repossessed vehicle was sold at wholesale;
6. the number of dispositions in which there was a failure to follow the repossession accounting procedures in calculating or paying a surplus, the number of dealerships involved and the total additional dollar amount the dealerships should have paid according to the repossession accounting procedures;
7. the number of dispositions in which a deficiency was sought, the number of those in which there was a failure to follow the repossession accounting procedures in calculating the deficiency and the number of dealerships involved in those failures.

H. In the event that more than 10 percent of the equity dealerships had dispositions during the report period which failed to follow the repossession accounting procedures in calculating surpluses or deficiencies sought or in paying surpluses, the Federal Trade Commission shall have the right to reopen this proceeding against General Motors solely with regard to the issue of General Motors' alleged responsibility for equity dealerships' failure properly to calculate surpluses and deficiencies sought or to pay surpluses on repossession dispositions. If this reopening occurs, no charges or evidence shall be based on any disposition where GMAC was the financing institution and the financing plan called for a prior sale (title clearance) by GMAC or where GMAC held a prior sale (title clearance) in connection with a recourse obligation.

I. General Motors shall, within 180 days of service of this order, with respect to all repossessed vehicles returned between May 1, 1974 and 40 days after service of this order (a) to dealerships which are equity dealerships as of the date of service of this order or (b) to dealerships which were equity dealerships at the time the vehicle was

returned to the dealership and were liquidated while equity dealerships between May 1, 1974 and December 31, 1978, establish to the reasonable satisfaction of the Commission, as described in the Initial Compliance Report, that:

1. all surpluses have been offered to financing customers and paid to those who have executed a release; and
2. in each instance where a customer entitled to receive a surplus had been previously reported by the dealership or its agent (including a collection agency) to a credit reporting agency as owing a deficiency, the credit reporting agency has been subsequently advised of the correct facts.

With respect to vehicles repossessed by GMAC, Paragraph I shall apply only to vehicles subject to the reassignment option of the GMAC Retail Plan.

VI. GMAC Retail Plan Changes, Deficiency Representations, Post-Repossession Notices

It is further ordered, That GMAC:

A. Shall, in connection with the extension and enforcement of retail credit obligations relating to the sale of vehicles by dealers, cease and desist from:

1. Purchasing a repossessed vehicle at or through any type of sale (title clearance) conducted by GMAC.
2. Misrepresenting, directly or indirectly, orally, in writing, or in any other manner, that the debtor may be liable to pay a deficiency where GMAC knows or should know that it is not entitled under state or federal law to collect a deficiency.
3. Collecting or attempting to collect a deficiency from a defaulting customer, or from his or her successors or assigns, where GMAC knows or should know that (a) it is not entitled under state or federal law to collect such deficiency, or (b) such deficiency is greater than the amount determined in accordance with the definitions set forth in Part I of this order. For purposes of this subparagraph the definitions of "proceeds" and "allowable expenses" will apply to GMAC's own dispositions.
4. Obtaining or attempting to obtain waivers of redemption or surplus rights from financing customers, except in the precise manner and under the precise circumstances contemplated by the applicable state law version of Section 9-505 of the Uniform Commercial Code. Under Section 9-505 a waiver of a customer's right to a surplus may

not be sought unless GMAC intends to retain the collateral for its own use for the immediate future rather than to resell the collateral in the ordinary course of business or to return it to a dealer pursuant to a recourse agreement. If a waiver is sought, GMAC shall not represent that by proposing the waiver it proposes to forego its right to a deficiency judgment, unless it intends to seek such a judgment should the waiver not be given.

Subparagraph A.1 shall become effective 40 days after service of this order. Subparagraphs A.2-.3 shall not apply to dispositions involving repossessions occurring prior to service of this order.

B. Shall incorporate, by addendum or otherwise, provisions to the following effect into its Retail Plan as it relates to recourse financing within 60 days after service of this order, and into any subsequent edition or successor document:

1. dealers are to permit redemption by the customer whose vehicle has been repossessed, at any time until there is a binding agreement for disposition, except where the dealer has obtained a waiver under subparagraph II.C.7;
2. dealers are to permit redemption in accordance with the post-repossession notice sent by GMAC to the customer, except where the dealer has obtained a waiver under subparagraph II.C.7;
3. dealers are to determine whether a surplus exists on a recourse financing repossession according to the repossession accounting procedures described in Part II of this order;
4. in determining surpluses and deficiencies, dealers are not to deduct expenses other than allowable expenses;
5. dealers are to account for and pay each surplus within 45 days of disposition.

C. Shall develop revised retail installment contract forms which (except as modified as described in Paragraph D below) include a clear, concise statement in lay language that, in the event of repossession:

1. no expenses other than reasonable expenses incurred as a direct result of repossessing, holding, preparing for disposition and disposing of the vehicle may be deducted from the proceeds in determining a surplus or deficiency; and
2. any surplus realized on the resale or other disposition of the vehicle is to be paid to the customer.

D. Shall distribute the revised retail installment contract forms to all dealers who use GMAC forms within one year after the Commission issues a final rule or final adjudicated order not less restrictive than the Paragraph C statements of allowable expenses and the duty to pay

surpluses. If the final rule or final adjudicated order is less restrictive than the Paragraph C statements, GMAC shall complete the distribution within one year after the Commission has modified Paragraph C to render it consistent with the final rule or final adjudicated order. GMAC shall direct its branch offices that, commencing two weeks after the distribution to a dealership of the revised GMAC retail installment contract forms, they are not to purchase from that dealership GMAC forms of retail installment contracts that are not on the revised forms. For two years thereafter, GMAC shall periodically examine its branch office files, in accordance with its usual monitoring procedures, to determine whether GMAC's prior retail installment contract forms are being used, and if so, shall institute appropriate corrective action.

E. Shall, within 60 days after service of this order, establish and follow a procedure for uniformly sending a written notice ("post-repossession notice") to GMAC financing customers as soon as practicable after repossession.

1. GMAC shall periodically examine its branches' files, in accordance with its usual monitoring procedures to determine whether the post-repossession notices have been and are being sent and shall institute appropriate actions to assure that the procedure for sending post-repossession notices is adhered to.

2. The post-repossession notice shall have a GMAC heading and shall specify in clear, lay language:

a. the name and address of the place at which the vehicle is being stored and the address and telephone number of the GMAC branch office to be contacted;

b. the date or interval of time within which the customer may redeem by reinstating the contract in states where the creditor is required to permit reinstatement of the contract;

c. the amount necessary to redeem by reinstating the contract at the time the notice is dated, if the customer is entitled to or will be permitted to redeem by reinstatement;

d. the net amount necessary to redeem by discharging the customer's obligation at the time the notice is dated, except where the customer is entitled to or will be permitted reinstatement until the vehicle is disposed of;

e. the date or interval of time prior to which the vehicle will not be disposed of;

f. that the vehicle can be redeemed at any time prior to a binding agreement for its disposition;

g. that additional expenses may be incurred and may increase the

amount necessary to redeem the vehicle if redemption is delayed (as further described in the Initial Compliance Report);

h. that GMAC should be contacted for further information about getting the vehicle back;

i. that any surplus resulting from a sale or lease must be paid to the customer within 45 days after disposition (the notice may also state that an agreement between the dealer and GMAC provides that the dealer is to pay any surplus);

j. that failure to account for and pay a surplus may give the customer a right to sue for the amount of the surplus and for any penalties provided by law;

k. that the customer will be liable for a deficiency or that the deficiency cannot be collected (the notice is to include the applicable language only);

l. that the customer should call the insurance company or the dealer to make sure that any insurance or service contract has been cancelled and that the customer has a right to credit for any refunds.

F. Shall issue no new materials to dealers inconsistent with this order and, commencing three months and to be completed no later than twelve months after service of this order, shall review all pertinent GMAC forms, notices and internal written procedures and make them consistent with the provisions of this order.

G. In any action by the Commission seeking civil penalties for a violation of subparagraphs A.2-4 and Paragraph E, GMAC may not be held liable if it shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. In applying this paragraph, judicial interpretations of Section 130(c) of the Truth In Lending Act, 15 U.S.C. 1640(c) (1974), shall be used.

VII. Monetary Payments by GMAC

It is further ordered, That GMAC shall pay \$2 million to financing customers whose vehicles were repossessed by GMAC. The money will be distributed as follows:

A. For each financing customer whose account (1) was charted by Commission complaint counsel as an alleged surplus, which chart was provided to GMAC by May 31, 1978; and (2) involved a vehicle repossessed by GMAC which was not subject to the reassignment option of the GMAC Retail Plan, GMAC shall offer, within 60 days after service of this order, to pay the amount alleged as an unpaid surplus on the chart. The offering letter will be modelled on the letter

Decision and Order

described in subparagraph C.4 below. GMAC shall promptly pay the offered amount to each financing customer who properly signs and returns the release.

B. GMAC shall ascertain the public sale (title clearance) price and the contract balance as shown on its Bills Receivable card ("BR card") or, if the BR card can not be located, as shown in the repossession file, for the account of each financing customer whose contract was purchased by GMAC, where: (1) the vehicle was repossessed on or after May 1, 1974 and was returned to the dealer before GMAC implements subparagraph VI.A.1; (2) GMAC purchased the vehicle at a public sale (title clearance) which it conducted and returned the vehicle to the dealer pursuant to a recourse agreement; (3) the vehicle was not redeemed; (4) the contract balance is available as stated above; and (5) the financing customer was not covered by Paragraph VII.A. For repossessed vehicles where the public sale (title clearance) price is not available in the file, GMAC shall use as the public sale (title clearance) price an estimated value.

C. GMAC will pay to financing customers an amount (the "Fund") equal to \$2 million minus the sum actually distributed pursuant to Paragraph A, in the following manner:

1. This Paragraph will apply to financing customers whose vehicles fall within Paragraph B.
2. A calculated "difference" is the public sale (title clearance) price adjusted as described below less the customer's contract balance as determined in Paragraph B above. All prorating referred to below shall be based on calculated differences.
3. GMAC will generate a list of customers eligible for payments by increasing the public sale (title clearance) price of each vehicle by an equal percentage until the sum of all the differences greater than or equal to \$25 equals approximately twice the Fund. Those customers with positive differences greater than or equal to \$25 are the eligible customers. GMAC will then prorate the Fund among the eligible customers. In prorating the Fund, no eligible customer will be assigned less than \$25 or more than \$700.
4. GMAC will send a letter and release (Attachment A to this order) to each eligible customer, identified in subparagraph C.3 above. The letter will state that, pursuant to a consent agreement executed by GMAC and the Federal Trade Commission, GMAC is offering to pay that person at least the prorated sum computed pursuant to subparagraph C.3. The letter will also state that, in order to receive the payment, the customer must waive any claims the customer may have against GMAC, GM or any GM dealers, or their directors or employees,

with regard to the repossession, handling, storage and disposition of the vehicle by signing and returning the release attached to the letter. The customer will have 60 days from the date of the letter to return the signed release.

5. If GMAC has received properly signed and returned releases covering an aggregate of at least 50 percent of the Fund by the end of the 80th day after mailing the last letter pursuant to subparagraph C.4, GMAC will prorate the Fund among those customers who have properly signed and returned releases. Any difference which exceeds \$700 after proration will be deemed equal to \$700 and the excess shall be distributed as part of the remaining Fund. Any amount less than \$25 will be deemed equal to \$25 with the excess deducted from the Fund. GMAC shall, within 60 days after the end of the 80-day period, pay the total amount calculated under subparagraph C.3 and this subparagraph C.5 to these financing customers.

6. If GMAC has not received properly signed and returned releases covering at least 50 percent of the Fund by the end of the 80th day after mailing the last letter pursuant to subparagraph C.4, GMAC shall:

a. Delete from its subparagraph C.1 list the names of all financing customers who were sent releases but who failed to sign and return them.

b. Generate a new list of eligible customers and calculated differences from the now-reduced subparagraph C.1 list. This list will be created by further increasing the public sale (title clearance) price of each vehicle, again by an equal percentage. The procedure for generating the new list will take into account the rate of return of properly signed and returned releases experienced under subparagraph C.4.

c. Promptly pay the eligible customers in subparagraph C.6.b who properly signed and returned the subparagraph C.4 releases the differences recalculated under subparagraph C.6.b. Any amount which exceeds \$700 will be deemed equal to \$700, with the excess distributed as part of the remaining Fund. Any amount less than \$25 will be deemed equal to \$25 with the excess deducted from the Fund. Payments made will reduce the Fund accordingly.

d. The additional eligible customers (if any) in subparagraph C.6.b will be sent the form of letter and offer described in subparagraph C.4 within 60 days of the end of the 80 day period described in subparagraph C.5. The amount offered to each will be a prorated portion of the Fund remaining after the deductions for subparagraph C.6.c payments. At the end of 80 days after the last letter is mailed to

the additional eligible customers, GMAC shall prorate the remaining Fund among those additional eligible customers who have properly signed and returned releases and shall promptly pay those recalculated amounts. The same minimum and maximum amounts as in subparagraphs C.3 and C.5 will apply to offers and payments under this subparagraph.

D. If GMAC offers payment to a financing customer pursuant to Part VII, its obligation under this order to make payment to that customer shall terminate upon expiration of the 60 days provided in the offer. However, GMAC may pay financing customers on the basis of releases mailed subsequent to the expiration of the 60 day period and may deduct from the Fund any sums so distributed.

E. GMAC shall send the letters described in subparagraph C.4 as soon as practicable, but no later than one year after service of this order.

F. In performing its obligations under Part VII, GMAC may employ its records as found. GMAC shall not be required to collect data not presently available in its repossession files, nor to search files for accounts involving repossessed vehicles which were returned to dealers during periods in which the dealer had executed the reassignment option of the GMAC Retail Plan. A public sale (title clearance) shall be deemed to have been held in all cases where the vehicle was returned pursuant to a recourse obligation to a dealer who had not executed the reassignment option.

G. GMAC shall maintain procedures to verify the eligibility of any inquiring person for a monetary payment up to the expiration of all time periods for claiming payments. These procedures shall include providing the Commission with a single GMAC address to which all public inquiries regarding eligibility can be directed.

VIII. Effect of Inconsistent Rule or Order

It is further ordered, That:

A. In the event the Federal Trade Commission issues a final Trade Regulation Rule establishing standards less restrictive on automobile manufacturers, financing companies or dealerships than a corresponding provision or provisions of this order relative to (1) the disposition of repossessed vehicles, (2) the determination, calculation or communication of the existence or amount of surpluses or deficiencies, or the time or manner of paying or accounting for surpluses, or (3) the determination or communication of reinstatement or redemption rights (including their duration and/or the amount necessary to reinstate or redeem), then such less restrictive standards shall, on the effective

date of the Rule, supersede and replace the corresponding provision(s) of this order. The enumeration of subject matter contained in clauses (1), (2) and (3) of this paragraph is exclusive. However, the General Motors respondents shall advise the Commission of their intention to rely upon any provision of a Trade Regulation Rule as having superseded any provision of this order 30 days in advance of reliance thereon.

B. In the event any of the proceedings presently bearing Docket Nos. 9072, 9073 or 9074 result in a final adjudicated or consent order prescribing standards less restrictive (including deferral to state law) than a corresponding provision or provisions of this order relative to (1) the disposition of repossessed vehicles, (2) the determination, calculation or communication of the existence or amount of surpluses or deficiencies, or the time or manner of paying or accounting for surpluses, or (3) the determination or communication of reinstatement or redemption rights (including their duration and/or the amount necessary to reinstate or redeem), then the Commission shall, within 120 days of a General Motors respondent's request pursuant to Section 2.51 of the Commission's Rules of Practice, reopen this proceeding and order modifications of this order or other relief as necessary and appropriate to conform this order to such less restrictive standards prescribed in the other order(s). The enumeration of subject matter contained in clauses (1), (2) and (3) of this Paragraph is exclusive.

IX. Standard Reporting and Recordkeeping

It is further ordered, That:

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

B. Each of the General Motors respondents shall, within 180 days after service of this order, file with the Commission a written report setting forth in detail the manner and form in which it has complied with this order and has implemented the Initial Compliance Report submitted with the Agreement Containing Consent Order.

C. Promptly following service of this order, General Motors shall distribute a copy of this order to its car divisions, GMC Truck and

Decision and Order

95 F.T.C.

Coach Division, Motors Holding Division, and Sales Section, unless previously furnished, and GMAC shall distribute a copy of this order to each of its regional managers, unless previously furnished.

D. Each of the General Motors respondents shall notify the Commission at least 30 days prior to any proposed corporate change which may negate any of the obligations of the General Motors respondents arising out of this order. Such changes include dissolution, assignment or sale resulting in the emergence of a successor corporation or corporations, the discontinuance of General Motors' present program for investing in equity dealerships, and the creation or dissolution of subsidiaries or any other change which may have such effect. No notice need be provided in the event of General Motors' terminating, reducing or acquiring any interest in an equity dealership.

ATTACHMENT A

GENERAL MOTORS ACCEPTANCE
CORPORATION CLAIM NOTICE AND RELEASE

(Name, address, city, state)

GMAC Acct. No. _____

Vehicle _____

Our records show that this car or truck was retaken by GMAC. We will send you a check for at least \$_____. The exact amount may be higher. This depends on how many people answer these letters.

All you have to do to get the money is date and sign the release form below. You must send it back in 60 days. Use the enclosed envelope. We'll send the check in a few months. Here is why we're doing this. We were sued by the Federal Trade Commission (FTC). They said we used an improper method in reselling some vehicles. They also said we should have paid certain customers some money. We denied the charges, but we agreed to make payments to avoid a costly trial. These payments are based on a formula agreed to by the FTC and GMAC. Neither GMAC nor the FTC knows how much you might have gotten except for this settlement. It could have been more, less, or nothing at all. The release means you give up any claims you may have because of the repossession and resale of your vehicle.

GENERAL MOTORS
ACCEPTANCE CORPORATION
P.O. Box 5290
FDR Station
New York, NY 10022
[Address may be in letterhead]

.....
Release

GMAC Acct. No. _____

Vehicle _____

I've read the letter above. The car or truck was mine. I'll be paid at least \$_____ by GMAC if I sign and mail back this release by _____. This payment is based on an agreement by GMAC and the FTC.

825

Decision and Order

In return, I release all claims and counterclaims (but not any defenses) against GMAC, General Motors or any GM dealer, or their directors or employees, due to the repossession, handling, storage or disposition of my vehicle.

Date: _____ (Signed) X _____
(Please Print) _____
Name _____
Address _____
City State Zip

Complaint

95 F.T.C.

IN THE MATTER OF

HOOPER HOLMES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC.
5 OF THE FEDERAL TRADE COMMISSION ACT AND THE FAIR CREDIT
REPORTING ACT

Docket C-3020. Complaint, June 11, 1980—Decision, June 11, 1980

This consent order requires, among other things, a Basking Ridge, N.J. firm, through its Credit Index Division, a consumer reporting and collection agency, to cease violating federal credit laws by failing to maintain reasonable procedures designed so as to ensure that reports are furnished only for lawful purposes and assure the maximum accuracy of reported information. In its role as a debt collector, the agency is required to include in collection communications prescribed notices informing consumers of their rights under federal credit laws. Consumers requesting information in their credit files must be provided with a copy of this information. Additionally, the agency is required to mail to its subscribers, each year for a five-year period, a prescribed notice informing them of their statutory obligations.

Appearances

For the Commission: *Rachel Wolkin Sesser.*

For the respondent: *Edmund Burke, Steptoe & Johnson, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Fair Credit Reporting Act and the Federal Trade Commission Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Hooper Holmes, Inc., a corporation, through its Credit Index Division, hereinafter referred to as respondent, has violated the provisions of said Acts, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent, Hooper Holmes, Inc. is a corporation, organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 170 Mt. Airy Road, Basking Ridge, New Jersey.

COUNT I

Alleging violations of the Fair Credit Reporting Act and Section 5 of