Spring 2025

THE DEALER ALLIANCE

IN THIS ISSUE:

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ProGuard Warranty Rebranding Reflects Business Evolution

Bold brand identity unveiled for Proguard Automotive, a vertical service provider of innovative products and solutions to the automotive industry.

ProGuard Warranty announced that as of January 7th the company has become Proguard Automotive to better encompass their expanded role in the automotive industry. The independent company, which has been owned and operated by the same family since inception, determined the rebrand was an important step as they have increased their products and services to support vehicle sales, service and maintenance.

"Our new brand marks an exciting chapter for Proguard. It's not just about a new name or logo; it's a symbol of the growth we've experienced and our vision for the future. We started out exclusively selling vehicle protection plans but as the product line and service offering grew, we recognized that the name was limiting us," said Dominic Limongelli, President. "In addition, having 'warranty' in the name had become a liability, especially as we expanded across the country. We have earned a strong reputation for excellent customer service and claims resolution but in new markets we didn't have our brand reputation to protect us from being associated with bad industry actors. Since what we sell is actually a protection plan and not a warranty, it made absolute sense to remove the hurdle."

Turning Market Conditions into Opportunities

Limongelli, a third-generation family member who has spent his entire career in the automotive space, has led the company to an industry leader known for delivering on their word to the thousands of dealers they partner with. "Over the years we've learned that change is the one constant and are always adapting to whatever is thrown at us, while remaining true to our values. A great example is the after-effects of the pandemic shutdown of auto production which led to a large influx of older, higher mileage vehicles into dealerships. This caused a major increase in claim frequency and severity, putting extreme pressure on plan providers to pay claims. While other companies incorporated tactics to avoid payment, we continued to pay every legitimate claim because maintaining our reputation for excellent claims resolution is crucial for the dealer to protect their reputation with customers."

While competitors lost customers in droves, Proguard maintained high dealer retention rates and used the large claim volume to their advantage. "Being Ahead of the Unexpected™ is our guiding vision, which we achieve by studying trends and proactively developing unique solutions to help our dealer partners adapt and succeed," stated Tyler Todd, Vice President of Sales. "Vehicle protection products will always be our core offering, but our goal is to become a valued resource to help improve profitability across all aspects of our customer's operation."

Innovative Solutions Increase Revenue and Reduce Costs

To fill gaps in the market, recent product developments include the iQ Tech OEM smart technology package and CADProtect, the first and only agricultural truck protection plan. The Proguard Miles™ incentive program allows dealers to accrue and redeem points on a vast catalog of items to reduce operational expenses, while their proprietary Vehicle Component Failure Ranking tool identifies the most problematic parts by make and model and is shared with dealers to avoid at auction or trade-in. To help independent and dealer-owned repair facilities combat market conditions, the Proguard Select Vehicle Repair Network offers one call claims, guaranteed labor rates and sourcing of hard-to-find parts.

Celebrating the Past While Pointing to the Future

Proguard Automotive serves as the umbrella entity, allowing the company to diversify and expand within an ever-evolving industry. "Our new logo conveys a progressive, modern, and energetic company while paying homage to where we have come from," said Limongelli. "As part of our brand launch, we have a new website (proguardautomotive.com) to educate consumers and increase transparency in the buying process. We understand the value dealers provide their customers and will continue to offer our products exclusively through our trusted dealer partners and the core values that have driven us from the beginning will remain in place. Whether it's through Dealer Consultants who work exclusively for Proguard to ensure consistent pricing and undivided product loyalty, ASE certified claim adjustors who find ways to resolve even the toughest claim or our live, U.S.-based service team that ensures customers get what they need quickly — we remain committed to delivering the best customer experience in the industry."

About Proguard Automotive

Proguard Automotive is a vertical service provider for the sales, service and maintenance sectors of the automotive industry. With over 70 years of experience, the company offers innovative products and solutions that can be adapted to meet the individual needs of our customers. Our quality products, which are sold exclusively through dealer partners, are backed by industry-leading service that protects dealers and their customers. Our goal is to deliver on our word every time, which we achieve through transparency, accessibility and flexibility.

Media Contact:

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Sales Manager: Phil Sartin
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In Memory of Barbara Reed 1934-2019
Magazine Cover: Erik Mclean - Pexels.com

PO Box 5036 | Bell Buckle, TN 37020
877-TDN-8320

By: Steve Stauning

Leveraging Facebook to Move Metal

Did you know there are dealers today who are actually moving metal with their free posts on Facebook? Moreover, because these efforts are measurable in Google Analytics, they can quickly tell what's working and what's not. If your website traffic from your organic (free) posts on Facebook isn't driving real leads and calls, then read on to learn how others are doing it.

Social Media Best Practices

Dealers showing success with their Facebook posts understand that an overriding theme of their social media efforts should be to humanize the team – that is, that your team is local, human, and fun. Consumers know you sell cars, so be careful how and how often you remind them. If you want to move metal, sell more parts, and/or drive more service business from free Facebook posts, then follow these 8 quick tips:

1. Employ a Facebook-First Strategy with your organic content. That is, focus on Facebook ahead of all other social media channels. Facebook offers the greatest opportunity for your posts to go viral in your market.

2. If you feel you "need to be everywhere," consider buying ads on other networks like Snapchat, Pinterest, and TikTok.

3. If you're posting good content that's generating engagement on other networks, repost it to Facebook.

4. Contests are the key to building a loyal following in your market, though these efforts should follow four important rules:

a. Keep it Local: Don't offer Amazon or Walmart gift cards, for example, because you don't want to award anything to people living outside your market. Instead, purchase gift cards from local small businesses to give away. You'll be showing community support, and you'll ensure the winners live and/or work in your market. (Hint: If you let the merchant know you're buying these for a Facebook giveaway, you'll often be able to purchase the cards at a discount.)

b. Keep it Simple: There's no need to give away a cruise. Some potential customers will think there's a catch, and your costs won't justify the resulting traffic, leads, calls, and sales. Instead, offer a $25 or $50 gift card. The amount you offer depends on the size of your dealership and market. A small-town dealer selling 40 units/month should probably offer $25 gift cards, while a 200+ unit dealer in Nashville might need to offer $50 gift cards to gain enough local interest.

c. Keep it Regular: So far, weekly contests are proving to work best but keep them regular. For example, announce the contest every Thursday afternoon with the giveaway on Friday afternoon. (Two posts: One announcing the contest; one announcing the winner.) However, it's important to understand that it may take you several weeks before you start to see large increases in engagement. Don't give up after just a few tries.

d. Make it Easy: If it's not easy for consumers to enter the contest, they won't. For example, just ask them to Like and Follow your Page and Like the Post. Award extra entries if they Share the Post or Comment on it.

5. Activity breeds activity, so be sure to post your happy customer photos, and ask the customer to share your posts. Tag them in the posts if they will allow it. And use a gimmick (if allowed by your OEM) in the photos. For example, a giant key, a bow, a red carpet, or even a Fat Head of the owner or GM.

6. Always link to your website. This is non-negotiable! Every post should include a relevant link back to your site. For example, if someone bought a new vehicle and you post the customer photo, the link should point to your current inventory of that model. (This provides some SEO value, but also makes it easy for others to check out similar vehicles with just one click.)

7. Above all else, make sure your posts show the human side of your business. People buy from people they like and trust, so your posts should drive this. Simple content like Birthday and Work Anniversary posts can do a lot to humanize your staff in the eyes of the public.

8. Ditch the "free" OEM posts. OEMs love to fill your Facebook feed with "magazine ads" that end up harming your social media efforts. These posts usually get no engagement, and this results in Facebook throttling back the exposure of your future posts. Anything that looks like an ad should only be posted as an ad.

Once you've mastered these 8 best practices, feel free to get creative with what you post… so long as whatever you're posting shows your team to be local, human, and fun.

Good Selling!

Steve Stauning
Founder
Stauning Solutions Group

Steve is the author of Ridiculously Simple Car Selling and Ridiculously Simple Sales Management; as well as a respected automotive industry veteran and founder of Stauning Solutions Group – a leading training & consulting firm. Steve's consulting work puts him in dealerships nearly every week, working side-by-side with managers, salespeople, and internet teams to help them improve their sales, processes, and profits. Prior to this, Steve served in various automotive leadership roles, including as the Asbury Automotive Group's (NYSE: ABG) director of ecommerce, the director of the Web Solutions division of Reynolds & Reynolds, and as the general manager of Dealer Web Services for Dominion's Dealer Specialties. You may contact Steve directly by calling him at 888-318-6598 or via email at Steve@SteveStauning.com

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By: Eric L. Johnson

Why Dealers Must Remain Vigilant About Compliance Despite Reversal of the FTC's CARS Rule

The recent decision by the U.S. Court of Appeals for the Fifth Circuit to strike down the Federal Trade Commission's Combating Auto Retail Scams (CARS) Rule may have led many motor vehicle dealers to breathe a huge sigh of relief. As you may remember, the FTC claimed that the CARS Rule was designed to curb deceptive practices in the auto retail industry by imposing additional disclosure requirements and prohibiting misrepresentations regarding financing terms, add-on products, and vehicle pricing. The rule was met with significant opposition from industry groups arguing that the FTC exceeded its authority in implementing the rule. The Fifth Circuit's decision to vacate the rule reinforced this perspective, finding that the agency overstepped its regulatory bounds.

So, with the rule now vacated, it's back to business as usual, right? No! Dealers should not interpret this ruling as an indication that compliance with federal and state consumer protection laws is no longer a priority. In reality, the need for compliance remains just as critical—if not more so—given the regulatory landscape and enforcement trends at both the federal and state levels.

While the rule is not currently in effect, this decision is not a death knell for the requirements in the rule, which could go into effect through an adverse decision on rehearing or appeal or if the FTC re-issues the rule under amended procedures. Even if the rule never goes into effect, we do not recommend that dealers discount many of the rule's requirements.

The FTC has certainly been enforcing many of the requirements of the rule in its recent settlements with dealers. For instance, in the recent $20 million settlement with 10 car dealerships and their parent company, the dealerships agreed to perform several duties, including disclosing the "offering price" of a vehicle in advertisements and communications with customers, disclosing the total amount a consumer will pay to purchase or lease a vehicle at that monthly payment after making all payments, and obtaining a consumer's "express, informed consent" before including an add-on product to the deal. Sound familiar? If you guessed that these same requirements were in the rule, you'd be right.

Although our attention has been focused on the rule and its onerous requirements, let's not forget that even though the rule was struck down, several federal laws govern motor vehicle dealers outside of the FTC's unfair and deceptive acts and practices authority. Here are just a few:

• the Equal Credit Opportunity Act and Regulation B, which prohibit discrimination in credit transactions, including auto financing, and require dealers to provide adverse action notices when denying credit to a consumer;

• the Truth in Lending Act and Regulation Z, which require dealers to provide clear and accurate disclosure of credit terms to consumers;

• the Federal Odometer Act, which requires dealers to disclose accurate mileage information to prevent odometer fraud; and

• the Gramm-Leach-Bliley Act and the Safeguards Rule, which require dealers to implement measures to protect consumer financial data from fraud and unauthorized access.

Each of these federal laws carries significant penalties for non-compliance, and enforcement agencies remain active in investigating and prosecuting violations. And thanks to the Dodd-Frank Act, state attorneys general and state regulators are empowered to enforce violations of federal consumer financial protections like many of those above.

In addition to federal laws and regulations, dealers must comply with a patchwork of state laws that often impose stricter requirements than their federal counterparts. Many states have robust consumer protection statutes, such as unfair and deceptive trade practices acts, which empower state AGs (and plaintiffs' attorneys) to bring enforcement actions and lawsuits against dealers engaging in misleading or fraudulent conduct. With all the changes taking place at the federal level, including at the Consumer Financial Protection Bureau, state AGs have signaled their intent to fill the gap with increased enforcement efforts. Dealers should expect continued scrutiny of their advertising and marketing claims, sales practices, and financing arrangements.

Beyond government enforcement, dealers must also be mindful of litigation risks from plaintiffs' attorneys. Class action lawsuits alleging deceptive practices in auto sales and financing have been on the rise, often resulting in substantial settlements or damages awards. Additionally, plaintiffs' attorneys are fairly adept at using state consumer protection laws to challenge fees, add-ons, and misrepresentations, regardless of federal regulatory developments.

Although the CARS Rule is not in effect, its underlying concerns—deceptive sales practices, hidden fees, and consumer protection—are still very much on federal and state regulators' radars. Meanwhile, state enforcement efforts are expected to intensify, making it more important than ever for dealers to maintain robust compliance programs.

While the Fifth Circuit's decision to strike down the CARS Rule eliminates the immediate requirement for dealers to implement new compliance policies and procedures and recordkeeping outlined in the rule, it does not absolve dealers of existing obligations under numerous other federal and state laws. Existing federal and state laws continue to govern dealership practices, and noncompliance can lead to severe consequences. Further, the FTC has continued to enforce many of the provisions of the rule through targeted enforcement actions, despite the legal challenges to the rule. Heightened scrutiny from federal and state regulators and potential state legislative responses to the ruling may trigger the need for dealers to update their compliance programs shortly.

Dealers who prioritize ethical conduct, compliance, and transparency with their customers will not only protect themselves from legal risks but also foster consumer trust and long-term success. Rather than seeing the CARS Rule's invalidation as an opportunity to cut corners, dealerships should view it as a reminder to remain vigilant about compliance.

**Eric L. Johnson is a partner in the Oklahoma office of Hudson Cook, LLP. He can be reached at 405.602.3812 or by email at ejohnson@hudco.com.*


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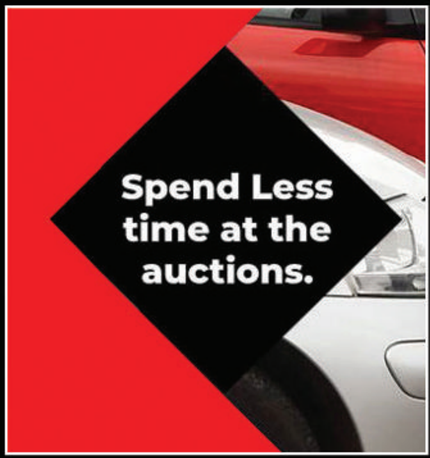

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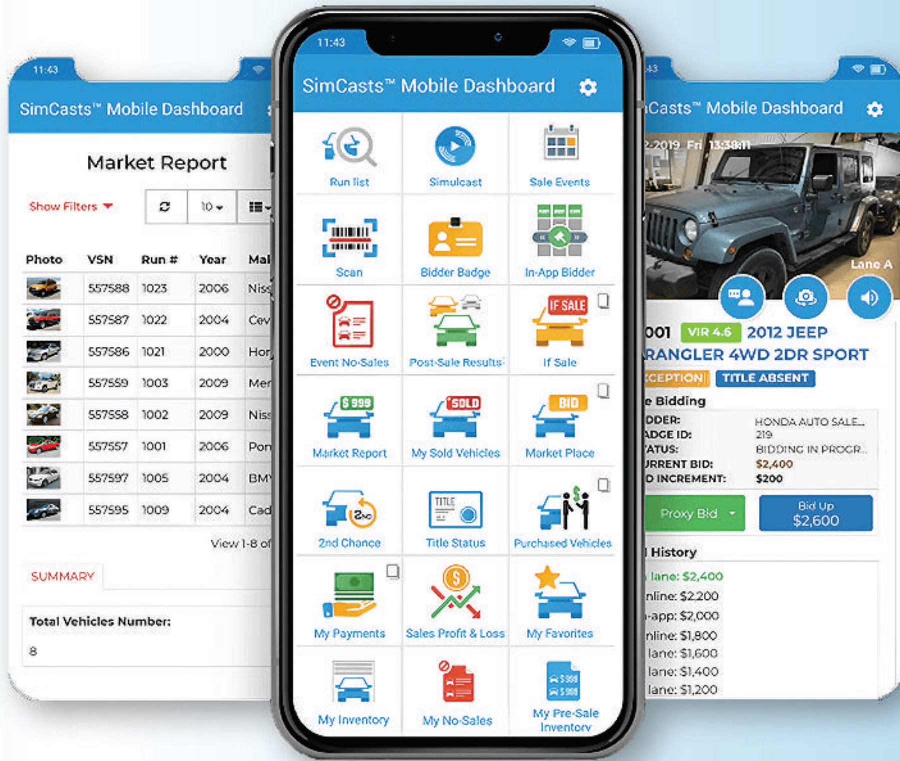

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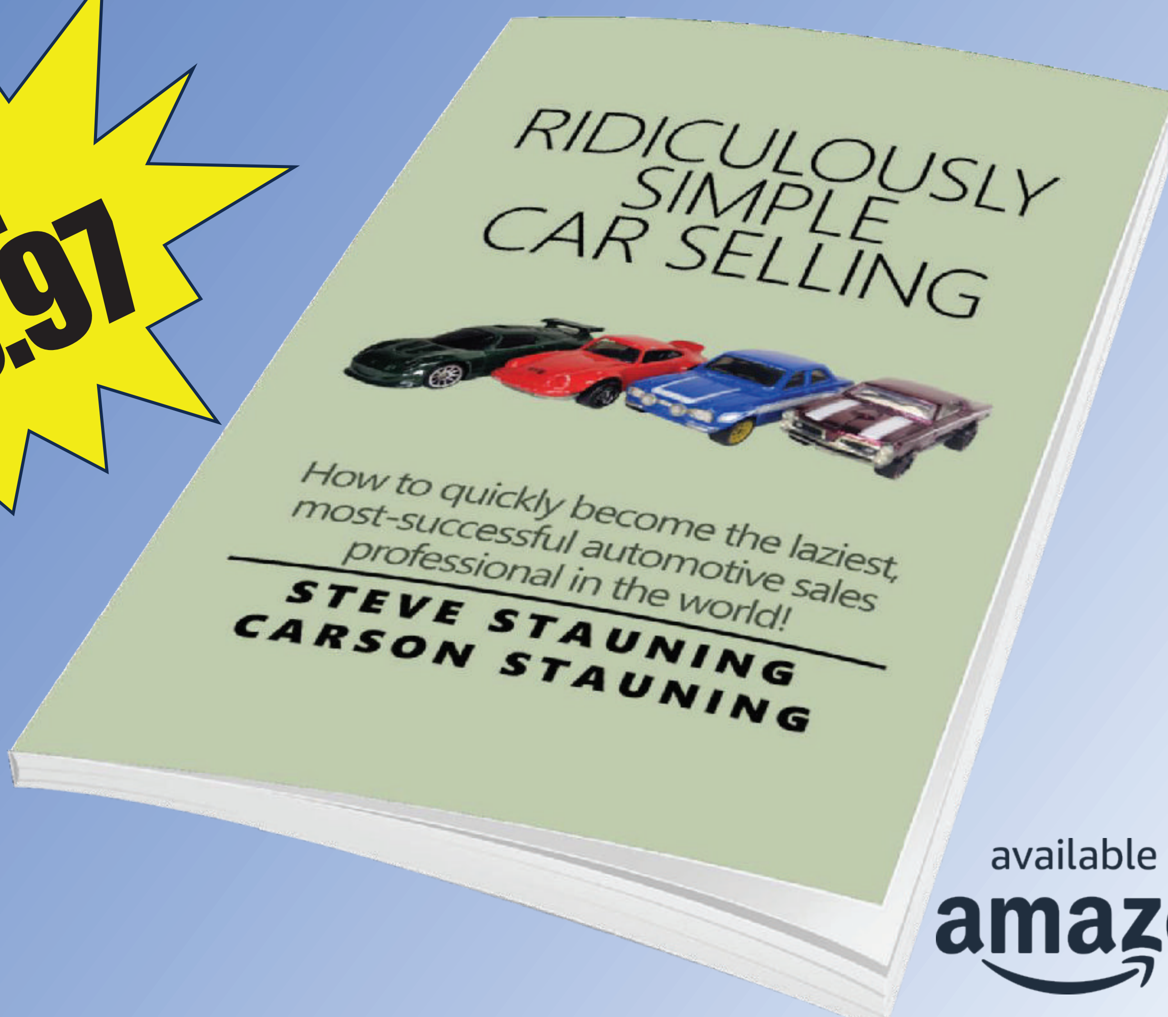

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VANTAGE FINANCE

By: Eric Johnson

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The CARLAWYER©
Federal Developments

On January 29, the **Consumer Financial Protection Bureau released a new report - "Auto Lending for Servicemembers" - which examines data collected from the auto finance data pilot conducted by the CFPB in February 2023.** In connection with the auto finance data pilot, the CFPB issued market monitoring orders to three banks, three finance companies, and three captive lenders to provide information about their auto financing portfolios. The orders requested data regarding accounts originated or with servicing activity from January 1, 2018, through December 31, 2022. For accounts originated prior to 2018 with servicing activity during the 2018-2022 period, the entities were asked to provide key data from account origination. This is the third report examining the data collected from the auto finance data pilot; the first report provided findings on negative equity, and the second report provided findings on auto repossessions. This report provides an analysis comparing servicemembers' origination and servicing outcomes with those of non-servicemembers in the auto financing market. The CFPB's findings include: (1) Servicemembers financed more than non-servicemembers. The average amount financed by servicemembers for new vehicles was approximately $39,000, over $2,200 more than the average amount financed by non-servicemembers.

For used vehicles, servicemembers' average amount financed was over $27,500, almost $400 more than the average amount financed by non-servicemembers; (2) Servicemembers and non-servicemembers purchased similarly priced vehicles; (3) Servicemembers were less likely to make a cash down payment for both new and used vehicles and made smaller down payments when they did. The average down payment for servicemembers who did make a down payment was about $1,100 less than for non-servicemembers for new vehicles and, for used vehicles, about $500 less than for non-servicemembers; (4) Servicemembers were more likely to trade in vehicles with negative equity; (5) Servicemembers spent more on add-on products than non-servicemembers, although both groups paid for similar add-on products. Over 70 percent of both servicemembers and non-servicemembers purchased at least one add-on product with their vehicle; (6) Servicemembers had higher rates and longer financing terms than non-servicemembers; (7) Higher amounts financed and higher APRs translated into higher monthly payments for servicemembers than for non-servicemembers, even accounting for servicemembers' longer financing terms. The average monthly payment for a new vehicle financed by servicemembers was approximately $20 more than for non-servicemembers, and, for a used vehicle, the average monthly payment was $7 more than for non-servicemembers; and (8) Servicemembers were less likely to have their vehicles repossessed or voluntarily surrendered compared with non-servicemembers. Modifications of financing terms were also slightly less likely among servicemembers. However, according to the CFPB, the data did not allow it to determine if servicemembers had less need for or less access to modifications.

On February 24, the Federal Deposit Insurance **Corporation withdrew its amicus curiae brief in the lawsuit filed** in March 2024 by three trade groups - the American Fintech Council, the American Financial Services Association, and the National Association of Industrial Bankers - against the Colorado attorney general and the administrator of the Colorado Uniform Consumer Credit Code, alleging that the Depository Institutions Deregulation and Monetary Control Act of 1980 ("DIDMCA") opt-out bill Colorado enacted in 2023 is invalid. In June 2023, Colorado became the second state to opt out of Section 521 of the DIDMCA. Congress passed the DIDMCA to allow state-chartered banks to lend nationwide at rates up to the higher of their home state's interest-rate cap or a federal interest-rate cap. By opting out, a state could impose its own interest-rate cap, although it could only impose such a rate cap on loans "made in" the opting-out state. In June 2024, a Colorado federal district court granted the plaintiffs' motion for a preliminary injunction. The preliminary injunction enjoined Colorado from "enforcing the interest rates in the Colorado [Uniform Consumer Credit Code] with respect to any loan made by the plaintiffs' members, to the extent that the loan is not 'made in' Colorado and the applicable interest rate in Section 1831d(a) exceeds the rate that would otherwise be permitted." The trade group plaintiffs argued that Colorado's interpretation of "made in" was too broad. The plaintiffs contended that the determination of where a loan is "made" should be based on where the bank is located and performs its non-ministerial functions. Conversely, the state of Colorado argued that a loan is "made in" both the state where the bank enters into the transaction and the state where the borrower enters into the transaction. The court reviewed the statutory text of the opt-out provision and found that the plaintiffs' view is more consistent with the ordinary colloquial understanding of who "makes" a loan. (The bank "makes" a loan while the borrowers "obtain" or "receive" a loan.) The court also found that the plaintiffs' view is more consistent with how the words "make" and "made" are used in the Federal Deposit Insurance Act and the sections of the U.S. Code that govern "Banks and Banking."

Federal Trade Commission

Buyers Guide

Ask yourself:

- Do you complete a Buyers Guide properly for each used vehicle offered for sale?
- Do you post the Buyers Guide prominently and conspicuously on each used vehicle you offer for sale?
- If you choose to include a signature line for the buyer's signature, do you include the following required disclosure language:

I hereby acknowledge receipt of the Buyers Guide at the closing of this sale.

- Do you put the following required disclosure in your sales contract:

The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.

- Do you give the vehicle's Buyers Guide or a copy to the purchaser at the time of sale and make sure it states the final negotiated warranty coverage accurately?
- If a sale is conducted in Spanish, do you use the Spanish language Buyers Guide?
- If you offer a written warranty, do you prepare a warranty document that complies with federal law? Is the warranty document available for examination by potential buyers?

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The CARLAWYER©

Case(s) of the Month

By: Eric Johnson

Dealership that Prevailed on Federal and State Law Claims in Car Buyer's Lawsuit Was Not Entitled to Attorney's Fees: Two individuals bought a used car from a dealership. They financed the purchase by signing a retail installment sale contract that included an attorney's fee provision. They also purchased a service contract. The buyers drove the vehicle for 26 days before they experienced an issue with the engine. They took the vehicle in for repairs and submitted claims for coverage of the repairs under the manufacturer's express warranty and under the service contract. However, those claims were denied. The buyers sued the dealership and the manufacturer, alleging violation of the Magnuson-Moss Warranty Act, breach of the implied warranty of merchantability under California's Song-Beverly Consumer Warranty Act, violation of California's Consumers Legal Remedies Act, and violation of California's unfair competition law and false advertising law. The buyers settled their claims against the manufacturer. The trial court granted summary judgment for the dealership and awarded it costs and attorney's fees pursuant to the attorney's fee provision in the RISC. The buyers appealed.

In the unpublished portion of the opinion, the **Court of Appeal of California** affirmed judgment in the dealership's favor and affirmed the award of costs, other than attorney's fees. In the published portion of the opinion, the appellate court reversed the award of attorney's fees. California Civil Code § 1717 provides that, in an action on a contract that provides for attorney's fees, the prevailing party may be awarded attorney's fees, regardless of whether the prevailing party is the plaintiff or defendant. The buyers argued that the attorney's fee provisions in the MMWA, Song-Beverly Act, and CLRA prohibit an award of attorney's fees under Section 1717. The appellate court agreed. First, the appellate court noted that the MMWA allows for the recovery of attorney's fees only by prevailing consumers, not sellers. Therefore, it concluded that Section 1717 does not permit the recovery of attorney's fees by a defendant that prevails against a plaintiff consumer on an MMWA claim. As such, the dealership was not entitled to an award of attorney's fees under Section 1717 for prevailing on the MMWA claim. Next, the appellate court noted that the Song-Beverly Act allows for an award of attorney's fees to prevailing buyers. Noting that the unilateral nature of the Song-Beverly Act conflicts with Section 1717, the appellate court found that, "assum[ing] the Legislature was aware of the general reciprocal attorney fee provision in section 1717 when it enacted the [Song-Beverly] Act, and expressly chose to codify a unilateral fee provision in favor of consumer plaintiffs," the "Legislature intended for the unilateral fee provisions in the Song-Beverly Act to act as an exception to the ability of a court to award attorney fees to prevailing nonconsumer defendants under section 1717." Therefore, the dealership was not entitled to an award of attorney's fees under Section 1717 for prevailing on the Song-Beverly Act claim. The appellate court then noted that the CLRA provides for attorney's fees "to a prevailing plaintiff," and "[r]easonable attorney's fees may be awarded to a prevailing defendant upon a finding by the court that the plaintiff's prosecution of the action was not in good faith." The appellate court did not find that the buyers filed the action in bad faith. Therefore, the dealership was not entitled to an award of attorney's fees under Section 1717 for prevailing on the CLRA claim. Finally, because the UCL and false advertising claims were premised on and overlapped with the MMWA, Song-Beverly Act, and CLRA claims, the appellate court concluded that the dealership was not entitled to an award of attorney's fees under Section 1717 for prevailing on the UCL and false advertising claims. See **Martinez v. SAI Long Beach B, Inc.**, 2025 Cal. App. LEXIS 36 (Cal. App. January 28, 2025).

This Month's CARLAWYER© Compliance Tip

The case above illustrates that sometimes even when you win, you lose. Even though the retail installment sale contract the buyers signed in the case above included an attorney's fee provision, the court found that the dealership was not entitled to an award of attorney's fees, even though they were successful in the litigation. Notwithstanding the case above, it makes good sense for your retail installment sales contract to state that you're entitled to attorneys' fees and costs if there is a dispute and goes to litigation. And, make sure your retail installment contract also includes an enforceable and properly drafted arbitration agreement or provision so you're not looking down the barrel of a class action!

So, there's this month's roundup! Stay legal, and we'll see you next month.

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