EXHIBIT A

South Carolina
DEPARTMENT OF CONSUMER AFFAIRS
293 Greystone Boulevard Suite 400
P. O. BOX 5757
COLUMBIA, SC 29250-5757

Carri Grube Lybarker
Administrator/
Consumer Advocate

PROTECTING CONSUMERS SINCE 1975

September 11, 2020

James Y. Becker, Esquire
Haynsworth Sinkler Boyd, P.A.
1201 Main Street, 22nd Floor
Columbia, SC 29201

RE: Patriot Chevrolet Motor Vehicle Closing Fees

Dear Mr. Becker:

Thank you for your time on the phone on July 20, 2020, regarding Patriot Chevrolet. Pursuant to my email follow-up and your response on September 9, 2020, please accept this letter as the Department's demand regarding Patriot Chevrolet charging closing fees without having a Certificate of Authority from the time they opened in March, 2019, until they were issued a Certificate on November 26, 2019.

A representative of Patriot informed the Department that they had been charging a closing fee to consumers since opening in March of 2019. I believe this notification came in or around August of 2019. At that time, Patriot was informed that they were not allowed to charge a closing fee until they were permitted to do so by the Department. Patriot applied for a Motor Vehicle Closing Fee Certificate in the amount of $489.00 on August 20, 2019. Because the fee was over $225.00, the Department was required to review the fee and determine its reasonableness pursuant to the statute. During the review process, it was determined that Patriot Chevrolet acquired an existing dealership and was seeking $489.00 based on the prior dealerships permitted fee. Because Patriot Chevrolet was under new ownership and had not amassed the operating history to justify $489.00, the Department agreed to allow Patriot to revise its filing and seek $225.00 so that they could start charging a fee until they operated long enough to have an operating history that would justify a higher closing fee. According to the Department's licensing system, Patriot's application was permitted to charge $225.00 on November 26, 2019.

An investigator for the Department asked Patriot for records of closing fees charged to consumers from the time they were opened in March until they were issued the Certificate. According to records voluntarily provided by Patriot, it was determined that Patriot charged a fee to 166 consumers. One consumer was charged $495.00 and 165 consumers were charged $489.00. The total amount charged was $81,180.00. When we spoke, you indicated that you had received the same documentation.

As we discussed on the phone on July 20, 2020, the Department held several telephone conferences with Ms. VanNess where we explained to her the Department's position that the closing fees needed to be refunded—the last being May 7, 2020. As you and I also discussed, we explained to Ms. VanNess that there was an informal process to handle this matter. If she would agree to refund the closing fees and report to the Department her monthly progress, the Department would not issue formal findings or institute formal proceedings and would consider the matter closed upon her completion of the refund process. On June 6, 2020, Ms. VanNess reported to us that she had mapped everything out and her goal was to get the checks in the mail by June 19th. Afterwards, Mr. Sanchez reached out to the Department and said there were additional questions. We attempted to schedule a call, but I was contacted by you before we could discuss anything further with them.

The Department considers closing fees charged without a valid Certificate of Authority to be excess charges under the *Consumer Protection Code*. Pursuant to S.C. Code Ann. § 37-5-202(2), a consumer has the right to a refund of any excess charges. The Department believes that Patriot Chevrolet is required to refund $81,180.00 in closing fees charged while they did not have a valid Certificate for the period between March of 2019, and November of 2019.

To resolve this matter informally, the Department proposes the following non-hearing resolution:

1. Patriot Chevrolet will refund $81,180.00 in closing fees charged to 166 consumers within twelve (12) months;
2. Patriot Chevrolet will provide the Department a copy of the letter they intend to send with the checks; and,
3. Patriot Chevrolet will provide the Department a listing of consumers refunded and amount in an excel spreadsheet each month during the repayment period.

Please let me know of Patriot's acceptance or refusal of this offer by September 24, 2020. If you have any further questions, please do not hesitate to contact me. I can be reached at jcopeland@scconsumer.gov or (803) 734-0375. Thanks again for your assistance in getting this matter resolved and I look forward to working with you.

Regards,

S.C. DEPARTMENT OF CONSUMER AFFAIRS

James C. Copeland

James C. Copeland
Chief Enforcement Attorney

HAYNSWORTH SINKLER BOYD

HAYNSWORTH SINKLER BOYD, P.A.
1201 MAIN STREET, 22ND FLOOR
P.O. BOX 11889 (29211)
COLUMBIA, SOUTH CAROLINA 29201
MAIN 803.779.3080
FAX 803.765.1243
www.hsblawfirm.com

JAMES Y. BECKER
DIRECT 803.540.7706
jbecker@hsblawfirm.com

September 23, 2020

VIA E-MAIL

James C. Copeland
Chief Enforcement Attorney
S.C. Department of Consumer Affairs
P.O. Box 5757
Columbia, South Carolina 29250-5757
jcopeland@scconsumer.gov

Re: Patriot Chevrolet of Darlington, Inc.
Motor Vehicle Closing Fees
HSB File No. 42555.0001

Dear Jim:

Thank you for speaking with me on July 20, 2020, and for your letter dated September 11, 2020, regarding the motor vehicle closing fees charged by Patriot Chevrolet of Darlington, Inc., d/b/a Patriot Chevrolet ("Patriot"). In your letter, the Department demands that Patriot repay the closing fees collected from sales customers from March 18, 2019, when Patriot purchased the dealership assets and real estate of Auddie Brown Automotive of Darlington, LLC ("Brown") through November 26, 2019, when Patriot was issued a Motor Vehicle Closing Fee Certificate to charge $225.00 ("relevant time period"). The subject closing fees total $81,180, which is the full amount of the closing fees charged in the approximately 166 motor vehicles sales transactions which occurred during the relevant time period.[1]

On March 18, 2019, Patriot purchased the dealership assets and real estate owned by Brown. As is common with such transactions, the Bill of Sale and Assignment ("Assignment") executed in connection with the transaction provided for the sale and conveyance of "[a]ny governmental permits, licenses, certificates and authorizations held by Assignor and related to the ownership, improvement, use or operation of the Real Property, but only to the extent such permits, licenses, certificates and authorizations can be lawfully assigned." Copy attached as Exhibit A. Patriot reasonably relied upon this assignment to continue charging the same closing fee of its predecessor to the dealership's customers in the same location and with substantially the same personnel that

[1] We believe that this number may include a few dealer trades for which a closing fee was not charged.

had served customers before the dealership transfer, at least until the closing fee certificate would have expired on January 31, 2020.

We note that the closing fee registration certificate issued to Patriot on May 11, 2020 states, "THIS DOCUMENT IS NOT TRANSFERABLE," and we assume that the closing fee registration certificate issued to Auddie Brown Automotive was also similarly marked as non-transferable, but we are not aware of any statutory or regulatory authority which would prevent such a transfer. Under the closing fee statute, any licensed motor vehicle dealer is allowed to charge closing fees in motor vehicle sales to consumers, and the statutory authority to charge fees is not dependent upon any personal characteristics or qualifications of the particular dealer. We are thus also not aware of any public policy reason which would prevent the transfer of a closing fee registration from one licensed motor vehicle dealer to another, and especially here where Patriot purchased all of the assets and real estate of the dealership and, upon closing, began operating the very same dealership in the same location. The relevant operations of this business did not materially change upon closing, and all but a very few of the dealership's personnel continued performing the same jobs at the same salaries for the dealership's customers. Consequently, the costs of closing sales transactions with consumers also did not materially change immediately after the change of ownership.

Aside from failing to immediately register for a new closing fee registration with the Department, Patriot complied with all other aspects of the closing fee statute. It posted the closing fee registration of its predecessor in the exact same conspicuous place in the dealership as its predecessor had used; it included the closing fee on a virtually identical sales contract (buyer's order) to the one its predecessor had used, (see copies of representative sample of sales contracts attached as Exhibit B); and it included the closing fee in the advertised price of any vehicles which were advertised with a price. The closing fee statute itself states that it is the intent of the legislature "to protect consumers by the *disclosure and notice provisions established in this section* and with the remedies provided by this title." S.C. Code Ann. § 37-2-307(F) (emphasis added). The statute is a disclosure statute. Registration is the only one of the four requirements that does not involve disclosure to the consumer. Because Patriot complied with the other requirements, Patriot served the core intent of the statute. Literal and technical compliance with certain statutory requirements may be excused where a dealer "substantially complies" with all other statutory requirements and the consumer "receives a clear and prominent disclosure of the statutorily required information." *Davis v. NationsCredit Fin. Servs. Corp.*, 326 S.C. 83, 86, 484 S.E.2d 471, 472 (1997) citing *Jordan v. Tadlock*, 223 S.C. 326, 75 S.E.2d 691 (1953) (substantial compliance with statute was sufficient). If a court were to conclude that Patriot did "substantially comply" with the statute, then no excess charges would be recoverable.

As you note in your letter, Patriot applied for its own Motor Vehicle Closing Fee Certificate in the amount of $489.00 on August 20, 2019, which was just over five months after it purchased the dealership, and the Department began its review process of that fee. "During the pendency of the [Department's] review period, a motor vehicle dealer is authorized to charge a closing fee at an amount not to exceed the amount *most recently on file and permitted to be charged by the department*." S.C. Code Ann. § 37-2-307(C)(1) (emphasis added). If Brown's Motor Vehicle Closing Fee Certificate can and did transfer to Patriot by the Assignment, then no excess charge would have occurred on any transactions during the relevant time period.

Even if excess charges are recoverable, we believe they have been significantly overstated. As previously noted, any motor vehicle dealer is authorized to charge closing fees in automobile sales to consumers, and if the fee is $225.00 or less, the statutory authority is automatic and the charge is not subject to any review by the Department for reasonableness. *Id*. Here, Patriot was approved for a closing fee of $413.60 as of May 11, 2020, based on the Department's review of Patriot's actual closing costs, during the preceding 12 months, including the entire relevant time period. For this reason, any excess charge actually paid by Patriot's customers is only $75.40 for 165 sales and $81.40 for one sale, or a total of $12,522.40.[2]

In an effort to settle this matter, Patriot is willing to refund the $12,522.40 total to the customers during the relevant time period in the manner described in your September 11 letter. Patriot looks forward to continuing a dialogue with the Department to resolve this issue.

Sincerely yours,

James Y. Becker

JYB/

Enclosures

[2] See footnote 1 above.

EXHIBIT A

BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE AND ASSIGNMENT, dated as of March 18, 2019, is between Auddie Brown Automotive of Darlington, LLC, a South Carolina limited liability company ("Seller"), and Patriot Chevrolet of Darlington, Inc., dba Patriot Chevrolet, a corporation duly authorized to conduct business in the State of South Carolina ("Buyer").

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Seller, Seller hereby sells, conveys, transfers, assigns, and sets over unto Buyer all right, title and interest of Seller in and to the following:

A. Any unexpired warranties, guaranties and bonds, including, without limitation, contractors' and manufacturers' warranties or guaranties, belonging to Assignor in connection with the real property described in Schedule 1 hereto (the "Real Property"), but only to the extent such warranties, guaranties and bonds can be lawfully assigned; and

B. Any governmental permits, licenses, certificates and authorizations held by Assignor and related to the ownership, improvement, use or operation of the Real Property, but only to the extent such permits, licenses, certificates and authorizations can be lawfully assigned.

Executed as of the date set forth above.

SELLER:

Auddie Brown Automotive of Darlington, LLC

BY: _____(SEAL)
Auddie C. Brown, Member/Manager

EXHIBIT B

Buyer's Order

Patriot Chevrolet of Darlington

1050 Lochend Drive
Darlington, SC 29532
(843) 393 - 4046

[redacted] Stock Number
10/14/2019 Date
HOUSE DEALS Salesman
Home
Work [redacted]

[redacted]

Purchase's Name(s)	Driver's License Number(s)	Date of Birth
[redacted]		

Street	City	County	State	Zip
	Darlington	Darlington	SC	29532

I (or we) hereby agree to purchase from you ONE [XX] NEW [ ] USED [ ] DEMO

Year	Make	Model	Body	Cyl	Serial Number	Color	Stock #	Miles
2019	CHEVROLET	CRUZE LT	HATCH	4	[redacted]	BLACK	[redacted]	25

Trade-in Information:

Year	Make	Model	Body	Cyl	Serial Number	Color	Stock #	Miles

Year	Make	Model	Body	Cyl	Serial Number	Color	Stock #	Miles

Payoff Information: Good Until _____
Bank Name
Street
City State Zip
Contact & Phone

Vehicle Insurance Information	
Company	state farm
Policy#	[redacted]
Agent	
Street	
City State Zip	
Phone#	
Valid Dates	

Lender Information	
Lender's Name	REGIONAL ACCEPTANCE CORPORATI
Street	1424 East Fire Tower Road, Gr
City State Zip	SACRAMENTO CA 95827
Contact & Phone	(704) 854 - 4801

Vehicle Net Selling Price	25,250.00
Accessories	N/A
Maintenance	N/A
State Fees	57.00
PRICE	25,307.00
Trade-in Allowance	N/A
DIFFERENCE	25,307.00
Doc Fee	489.00
SUB TOTAL	25,796.00
Sales Tax 5.00 % Darlington	500.00
Title N/A Tag N/A	N/A
Service/Warranty Contract	N/A
GAP	995.00
Life A&H	N/A
SUB TOTAL	27,291.00
Payoff on Trade-In	N/A
Cash Down Payment	N/A
Rebate(s)	2,250.00
BALANCE	25,041.00

DISCLAIMER OF WARRANTIES

The seller, ,Patriot Chevrolet of Darlington hereby expressly disclaims all warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose and the seller, Patriot Chevrolet of Darlington, neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of the herein described vehicle.

10/14/2019
Manager Signature — Date

Must be signed & dated by dealership manager to be valid

[redacted]
Purchaser #1 Signature — 10/14/2019 Date

[redacted]
Purchaser #2 Signature — 10/14/2019 Date

Buyer's Order

Patriot Chevrolet of Darlington

1050 Lochend Drive
Darlington, SC 29532
(641) 226 - 1150

411

E-MAIL - RSTROUD@GOPATRIOTCHEVROLET.COM

[redacted]
Stock Number
8/23/2019
Date
[redacted]
Salesman
Home [redacted]
Work

[redacted]

Purchase's Name(s)		Driver's License Number(s)	Date of Birth		
[redacted]					
Street	City	County	State	Zip	
	Dillon	Dillon	SC	29536	

I (or we) hereby agree to purchase from you ONE ☐ NEW ☒ USED ☐ DEMO

Year	Make	Model	Body	Cyl	Serial Number	Color	Stock #	Miles
2016	Chevrolet	Silverado 15 Crew		8	[redacted]	BLACK	[redacted]	32,104

Trade-in Information:

Year	Make	Model	Body	Cyl	Serial Number	Color	Stock #	Miles

Year	Make	Model	Body	Cyl	Serial Number	Color	Stock #	Miles

Payoff Information: Good Until _____
Bank Name
Street
City State Zip
Contact & Phone

Vehicle Insurance Information	
Company	state farm
Policy#	[redacted]
Agent	BRIAN
Street	
City State Zip	DILLON SC 29536
Phone#	(843) 774 - 6951
Valid Dates	08/06/2019 02/06/2020

Lender Information	
Lender's Name	ALLY BANK
Street	P.O. BOX 8132
City State Zip	COCKEYSVILLE MD 21030
Contact & Phone	

Vehicle Net Selling Price	34,880.00
Accessories	N/A
Maintenance	N/A
State Fees	57.00
PRICE	34,937.00
Trade-in Allowance	N/A
DIFFERENCE	34,937.00
Doc Fee	489.00
SUB TOTAL	35,426.00
Sales Tax 5.00 % Dillon	500.00
Title N/A Tag N/A	N/A
Service/Warranty Contract	3,000.00
GAP	600.00
Life A&H	N/A
SUB TOTAL	39,526.00
Payoff on Trade-In	N/A
Cash Down Payment	2,000.00
Rebate(s)	N/A
BALANCE	37,526.00

DISCLAIMER OF WARRANTIES

The seller, ,Patriot Chevrolet of Darlington hereby expressly disclaims all warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose and the seller, Patriot Chevrolet of Darlington, neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of the herein described vehicle.

08/23/2019
Manager Signature **Date**
Must be signed & dated by dealership manager to be valid

[redacted] 08/23/2019
Purchaser #1 Signature **Date**

Purchaser #2 Signature **Date**

Buyer's Order

Patriot Chevrolet of Darlington

1050 Lochend Drive
Darlington, SC 29532
(641) 226 - 1150

[redacted]
Stock Number
6/4/2019
Date
[redacted]
Salesman
Home [redacted]
Work

[redacted] [redacted]
Purchase's Name(s) Driver's License Number(s) Date of Birth
[redacted] Darlington Darlington SC 29540
Street City County State Zip

I (or we) hereby agree to purchase from you ONE ☐ NEW ☒ USED ☐ DEMO

Year	Make	Model	Body	Cyl	Serial Number	Color	Stock #	Miles
2018	KIA	SOUL	UTILI	4	[redacted]	BLACK	[redacted]	11,947

Trade-in Information:

Year	Make	Model	Body	Cyl	Serial Number	Color	Stock #	Miles

Payoff Information: Good Until _____
Bank Name
Street
City State Zip
Contact & Phone

Vehicle Insurance Information	
Company	ALLSTATE
Policy#	[redacted]
Agent	DIXON ROGERS AGENCY
Street	319 GARLINGTON #C6
City State Zip	GREENVILLE SC 29615
Phone#	(864) 297 - 5591
Valid Dates	06/04/2019 01/04/2019

Lender Information	
Lender's Name	Santander
Street	4054 willow lake blvd suite 2
City State Zip	memphis TN 38153
Contact & Phone	

Vehicle Net Selling Price	15,500.00
Accessories	N/A
Maintenance	N/A
State Fees	57.00
PRICE	15,557.00
Trade-in Allowance	N/A
DIFFERENCE	15,557.00
Doc Fee	489.00
SUB TOTAL	16,046.00
Sales Tax 5.00 % Darlington	500.00
Title N/A Tag N/A	N/A
Service/Warranty Contract	800.00
GAP	900.00
Life A&H	N/A
SUB TOTAL	18,246.00
Payoff on Trade-In	N/A
Cash Down Payment	500.00
Rebate(s)	N/A
BALANCE	17,746.00

DISCLAIMER OF WARRANTIES

The seller, ,Patriot Chevrolet of Darlington hereby expressly disclaims all warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose and the seller, Patriot Chevrolet of Darlington, neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of the herein described vehicle.

06/04/2019
Manager Signature Date
Must be signed & dated by dealership manager to be valid

[redacted] 06/04/2019
Purchaser #1 Signature Date

Purchaser #2 Signature Date

Buyer's Order

Patriot Chevrolet of Darlington

1050 Lochend Drive
Darlington, SC 29532
(641) 226 - 1150

[redacted] Stock Number
5/11/2019 Date
[redacted] Salesman
Home [redacted]
Work

[redacted] Purchase's Name(s) [redacted] Driver's License Number(s) [redacted] Date of Birth

[redacted] Street | Little Mountain City | Newberry County | SC State | 29075 Zip

I (or we) hereby agree to purchase from you ONE ☐ NEW ☒ USED ☐ DEMO

Year	Make	Model	Body	Cyl	Serial Number	Color	Stock #	Miles
2017	KIA	FORTE			[redacted]		[redacted]	45,774

Trade-in Information:

Year	Make	Model	Body	Cyl	Serial Number	Color	Stock #	Miles

Payoff Information: Good Until _____
Bank Name
Street
City State Zip
Contact & Phone

Vehicle Insurance Information	
Company	GEICO
Policy#	[redacted]
Agent	
Street	
City State Zip	
Phone#	
Valid Dates	02/15/2019 08/15/2019

Lender Information	
Lender's Name	CREDIT ACCEPTANCE
Street	
City State Zip	
Contact & Phone	

Vehicle Net Selling Price	15,450.00
Accessories	N/A
Maintenance	N/A
State Fees	57.00
PRICE	15,507.00
Trade-in Allowance	N/A
DIFFERENCE	15,507.00
Doc Fee	489.00
SUB TOTAL	15,996.00
Sales Tax 5.00 % Newberry	500.00
Title N/A Tag N/A	N/A
Service/Warranty Contract	N/A
GAP	N/A
Life A&H	N/A
SUB TOTAL	16,496.00
Payoff on Trade-In	N/A
Cash Down Payment	779.00
Rebate(s)	N/A
BALANCE	15,717.00

DISCLAIMER OF WARRANTIES

The seller, Patriot Chevrolet of Darlington hereby expressly disclaims all warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose and the seller, Patriot Chevrolet of Darlington, neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of the herein described vehicle.

05/11/2019
Manager Signature **Date**
Must be signed & dated by dealership manager to be valid

[redacted]
Purchaser #1 Signature 05/11/2019 **Date**

Purchaser #2 Signature **Date**

Buyer's Order

Patriot Chevrolet of Darlington

1050 Lochend Drive
Darlington, SC 29532
(641) 226 - 1150

[redacted]
Stock Number
3/28/2019
Date
[redacted]
Salesman
Home [redacted]
Work

[redacted]
Purchase's Name(s)

[redacted] marion SC 29571
Street City County State Zip

I (or we) hereby agree to purchase from you ONE [XX] NEW [ ] USED [ ] DEMO

Year	Make	Model	Body	Cyl	Serial Number	Color	Stock #	Miles
2019	CHEVROLET	COLORADO L	PICKU	4	[redacted]	BLACK	[redacted]	5

Trade-in Information:

Year	Make	Model	Body	Cyl	Serial Number	Color	Stock #	Miles
2015	Kia	Soul	Wagon		[redacted]	red	[redacted]	66,217

Payoff Information: Good Until _____
Bank Name
Street
City State Zip
Contact & Phone

Vehicle Insurance Information
Company
Policy#
Agent
Street
City State Zip
Phone#
Valid Dates

Lender Information	
Lender's Name	GM FINANCIAL
Street	2777 Inkster Road
City State Zip	Inkster MI 48141
Contact & Phone	

Vehicle Net Selling Price	32,175.00
Accessories	N/A
Maintenance	N/A
State Fees	57.00
PRICE	32,232.00
Trade-in Allowance	10,000.00
DIFFERENCE	22,232.00
Doc Fee	489.00
SUB TOTAL	22,721.00
Sales Tax 5.00 %	500.00
Title N/A Tag N/A	N/A
Service/Warranty Contract	N/A
GAP	1,000.00
Life A&H	N/A
SUB TOTAL	24,221.00
Payoff on Trade-In	12,519.00
Cash Down Payment	1,500.00
Rebate(s)	N/A
BALANCE	35,240.00

DISCLAIMER OF WARRANTIES

The seller, ,Patriot Chevrolet of Darlington hereby expressly disclaims all warranties, either expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose and the seller, Patriot Chevrolet of Darlington, neither assumes nor authorizes any other person to assume for it any liability in connection with the sale of the herein described vehicle.

03/28/2019
Manager Signature Date
Must be signed & dated by dealership manager to be valid

X [redacted] 03/28/2019
Purchaser #1 Signature Date

[redacted] 03/28/2019
Purchaser #2 Signature Date

South Carolina
DEPARTMENT OF CONSUMER AFFAIRS
293 GREYSTONE BOULEVARD, STE. 400
P. O. BOX 5757
COLUMBIA, SC 29250-5757

Carri Grube Lybarker
Administrator/
Consumer Advocate

PROTECTING CONSUMERS SINCE 1975

March 24, 2021

James Y. Becker, Esquire
Haynsworth Sinkler Boyd, PA
PO Box 11889
Columbia, SC 29211

RE: Patriot Chevrolet Closing Fees

Dear Mr. Becker:

This letter is in response to your letter of September 23, 2020 regarding closing fees charged to South Carolina consumers by Patriot Chevrolet of Darlington, Inc. ("Patriot Chevrolet"). As I understand your position, you believe that Patriot Chevrolet should not be required to refund $81,180.00 in closing fees charged to South Carolina consumers because a) Auddie Brown Automotive of Darlington, LLC ("Auddie Brown Automotive")'s closing fee certificate transferred to Patriot Chevrolet upon the sale of the Chevrolet dealership from Auddie Brown Automotive to Patriot Chevrolet; b) Patriot Chevrolet substantially complied with the requirements of S.C. Code Ann. § 37-2-307 (Supp. 2020); and c) the Department overstated the amount to be refunded based upon the Department subsequently permitting a closing fee for Patriot Chevrolet of $413.60. If I have misstated your positions, please let me know. I will address each statement in turn.

Transferability

According to the Department's records, Auddie Brown Automotive's closing fees certificate expired on January 31, 2019. It was not renewed until March 20, 2019 when an employee of Patriot Chevrolet incorrectly asserted that Auddie Brown Automotive was renewing its closing fee, maximum rate schedule, and Credit Grantor Notification through the Department's online licensing system. Consequently, Auddie Brown Automotive did not have a closing fees certificate in existence as of March 18, 2019. Accordingly, there was nothing that Auddie Brown Automotive could have transferred to Patriot Chevrolet.

Assuming *arguendo* that Auddie Brown did have a valid closing fees certificate in existence as of March 18, 2019, the Department's position is that it still could not have legally transferred the closing fee certificate to Patriot Chevrolet upon the sale of the dealership. You state that you are

"not aware of any statutory or regulatory authority that would prevent such a transfer." However, you have provided no statutory or regulatory authority that would permit such a transfer.

You did state that per the contract between Patriot Chevrolet and Auddie Brown Automotive, Patriot Chevrolet purchased "[a]ny governmental permits, licenses, certificates and authorizations held by the Assignor and related to the ownership, improvement, use or operation of the Real Property, but only to the extent such permits, licenses, certificates and authorizations can be lawfully assigned." We reviewed the contract, but do not believe it insulates Patriot Chevrolet in this circumstance. As explained earlier, Auddie Brown Automotive's closing fee certificate could not be lawfully assigned to Patriot Chevrolet.

As an intellectual exercise, if we proceeded under your theory, an economic competitor of Patriot Chevrolet, such as Raceway Ford of Darlington, could charge closing fees in the same amount as Patriot Chevrolet simply by purchasing the closing fees certificate issued by the Department to Patriot Chevrolet. Such a scenario would effectively deprive the Department of its statutorily mandated charge to "administer and enforce the subject of motor vehicle dealer closing fees[.]" S.C. Code Ann. § 37-2-307(E)(1) (Supp. 2020). This is an absurd result and would be in direct conflict with the stated intent of the statute.

Substantial Compliance

As mentioned previously, Auddie Brown Automotive did not have a valid closing fees certificate when the dealership was sold on March 18, 2019. Accordingly, it is impossible for Patriot Chevrolet to have "posted the closing fee registration of its predecessor in the exact same conspicuous place in the dealership as its predecessor had used[.]" However, assuming *arguendo* that Auddie Brown Automotive had a valid closing fees certificate on March 18, 2019, the Department believes the doctrine of substantial compliance would still be inapplicable.

Patriot Chevrolet did not comply with the closing fee statute and therefore was not authorized to charge a closing fee. S.C. Code Ann. § 37-2-307(C)(1) (Supp. 2020) plainly states, "Prior to charging a closing fee, a motor vehicle dealer shall provide written notice to the Department of Consumer Affairs of the maximum amount of a closing fee the dealer intends to charge on an annual basis." Patriot Chevrolet failed to provide written notice to the Department of the "maximum amount of a closing fee" that it intended to charge. Therefore, Patriot Chevrolet was not authorized to charge a closing fee.

The "substantial compliance" doctrine you relied on as announced in *Davis v. NationsCredit Fin. Servs. Corp.*, 326 S.C. 83, 484 S.E.2d 471 (1997) only applies with regard to the attorney insurance preference statute. In fact, the Department is unaware of a single published opinion where the *Davis* substantial compliance doctrine was extended to other statutes of the Consumer Protection Code.

Patriot Chevrolet failed to register **its** closing fee with the Department. Accordingly, it failed to meet the first requirement. Thus, the imposition of the closing fee is an "excess charge" that must be refunded to the consumer pursuant to S.C. Code Ann. § 37-5-202(2) (2015).

Overstatement

You argue that because Patriot Chevrolet was permitted to charge a closing fee of $413.60 on May 11, 2020, the Department overstated the amount that Patriot Chevrolet would need to refund to consumers. S.C. Code Ann. § 37-2-307(C)(1) (Supp. 2020) states, "During the pendency of the review period, a motor vehicle dealer is authorized to charge a closing fee at an amount not to exceed the amount most recently on file and permitted to be charged by the department." Patriot Chevrolet did not have a closing fee on file until November 26, 2019, when it was permitted to charge a closing fee of $225.00. Therefore, Patriot Chevrolet was not authorized to charge any closing fee prior to November 26, 2019. The fact that the Department subsequently permitted Patriot Chevrolet to charge a closing fee slightly lower than the amount that it initially filed on August 20, 2019 is immaterial. As Patriot Chevrolet was not authorized to charge any closing fee prior to November 26, 2019, all of the closing fees charged prior to November 26, 2019 must be refunded to the consumers pursuant to S.C. Code Ann. § 37-5-202(2) (2015).

Please let me know if Patriot Chevrolet will agree to refund the $81,180.00 in closing fees it charged between March 18, 2019, and November 26, 2019. As we have said since the beginning, the Department is willing to work with Patriot Chevrolet and let it propose a repayment plan.

Regards,

S.C. DEPARTMENT OF CONSUMER AFFAIRS

Adam Birr

ADAM BIRR
Enforcement Attorney

HAYNSWORTH SINKLER BOYD

HAYNSWORTH SINKLER BOYD, P.A.
1201 MAIN STREET, 22ND FLOOR
P.O. BOX 11889 (29211)
COLUMBIA, SOUTH CAROLINA 29201
MAIN 803.779.3080
FAX 803.765.1243
www.hsblawfirm.com

JAMES Y. BECKER
DIRECT 803.540.7706
jbecker@hsblawfirm.com

April 7, 2021

Via E-Mail to abirr@scconsumer.gov

Mr. Adam Birr
Enforcement Attorney
S.C. Department of Consumer Affairs
P.O. Box 5757
Columbia, South Carolina 29250-5757

Re: Patriot Chevrolet of Darlington, Inc.
Motor Vehicle Closing Fees
HSB File No. 42555.0001

Dear Mr. Birr:

Thank you for your letter of March 24, 2021 in the above-referenced matter. In your letter, you addressed transferability, substantial compliance, and overstatement concerns Patriot has raised in this case. I write to address your comments on these issues and to hopefully take a step forward toward final resolution of this matter. I will address each issue separately below.

Transferability

We disagree with your position that a closing fee registration cannot be transferred; however, we agree with your position that because Auddie Brown did not have a valid closing fee registration on March 18, 2019, it had nothing to transfer to Patriot Chevrolet of Darlington, Inc., d/b/a Patriot Chevrolet ("Patriot") on that date. Thank you for pointing out the lapse of Auddie Brown's registration, a fact of which we were previously unaware.

Substantial Compliance

We disagree with your position that the doctrine of substantial compliance applied in *Davis v. NationsCredit Fin. Servs. Corp.*, 326 S.C. 83, 484 S.E.2d 471 (1997) does not apply in this context. You state that the doctrine of substantial compliance only applies with regard to the attorney insurance preference statute, but this position is clearly in error.

The doctrine of substantial compliance is a common law doctrine with broad application. *E.g., Abernathy v. Baby Boy*, 313 S.C. 27, 437 S.E.2d 25 (1993) (unwed father's conduct with respect to child born out-of-wedlock was sufficient to constitute substantial compliance with statute mandating

that father provide support for child before state must seek his consent for adoption); *S.C. Police Officers Retirement System v. City of Spartanburg*, 301 S.C. 188, 391 S.E.2d 239 (1990) (an employee's failure to file a written request and pay his special contribution prior to retirement did not preclude his retirement benefits because he had substantially complied with the statute). Indeed *Davis v. NationsCredit Fin. Servs. Corp.*, 326 S.C. 83, 484 S.E.2d 471 (1997) contains no language limiting the use of the substantial compliance doctrine. The case *Davis* cites for the doctrine, *Jordan v. Tadlock*, 223 S.C. 326, 75 S.E.2d 691 (1953), did not involve the attorney preference statute. Instead, *Jordan* applied the doctrine of substantial compliance to a statute which required an affidavit in certain actions on statements of account. *Davis* also states: "[t]he approach of not elevating form over substance in consumer protection cases has its basis in our decision in *General Motors Acceptance Corporation v. McMinn*, 285 S.C. 67, 328 S.E.2d 472 (1985), which is a case involving compliance with the Federal Truth in Lending Act, 15 U.S.C. § 1601 *et seq*." *Davis*, 326 S.C. at 87, 484 S.E.2d at 473.

The Consumer Protection Code specifically preserves the applicability of common law doctrines such as substantial compliance. Section 37-1-103, entitled "Supplementary general principles of law applicable" provides:

> [u]nless displaced by the particular provisions of this title, the Uniform Commercial Code and *the principles of law and equity*, including the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, *or other validating or invalidating cause supplement its provisions.*

S.C. Code Ann. 37-1-103 (1976) (emphasis added). As you are aware, there is no particular provision of the Consumer Protection Code which displaces substantial compliance.

The closing fee statute itself appears to incorporate the concept of substantial compliance. Subsection (C)(2) of the closing fee statute provides:

> [i]f the maximum amount of the closing fee that the dealer intends to charge is not more than two hundred twenty-five dollars per vehicle, *the closing fee is deemed approved* and *the dealer does meet and fulfill all reasonableness requirement and criteria in compliance with the law and this section.*

S.C. Code Ann. § 37-2-307(C)(2) (Supp. 2020) (emphasis added). In other words, dealers who charge a closing fee of $225 or less are approved without action of any kind on the part of the Department.

Given the recent amendment to the closing fee statute, there can be no doubt that the purpose of the statute is not simply or only to require registration with the Department, but "to protect consumers by the *disclosure and notice provisions established in this section* and with the remedies provided by this title." S.C. Code Ann. § 37-2-307(F) (emphasis added). The statute is a disclosure statute. The closing fees charged by Patriot were fully disclosed to the customers who paid them. Patriot substantially complied with the closing fee statute, and its technical failure to register does not deprive it of the protections of the common law, as incorporated by Section 37-1-103.

Overstatement

You state that because Patriot was not authorized to charge any closing fee prior to November 26, 2019, all of the closing fees charged prior to that date must be refunded. This position is the bedrock of your argument, but it too is fundamentally flawed. The failure to register does *not* result in forfeiture of all fees for a number of reasons, including:

- Substantial Compliance. As discussed above, Patriot's substantial compliance with the closing fee statute is sufficient to authorize it to charge a closing fee.

- Registration vs. License. The Department incorrectly equates a closing fee registration with a license. A license is "[a] privilege granted by a state or city upon the payment of a fee, the recipient of the privilege then being authorized to do some act or series of acts that would otherwise be impermissible." Black's Law Dictionary (11th ed. 2019). The Consumer Protection Code defines a licensee as "a person licensed pursuant to this title." S.C. Code Ann. § 37-1-301. The Consumer Protection Code also has provisions for specific "licenses," such as licenses for supervised loans, S.C. Code Ann. § 37-6-402; licenses for credit counseling services, S.C. Code Ann. § 37-7-102; or licenses for continued care retirement communities, S.C. Code Ann. § 37-11-30. Motor vehicle dealers, such as Patriot, are licensed pursuant to Title 56 of the S.C. Code to sell motor vehicles to consumers in South Carolina by the S.C. Department of Motor Vehicles. S.C. Code § 56-15-10, *et seq*.

  The closing fee statute does not use the term "license." It requires that dealers pay a "registration" fee. Registration is a ministerial act. Black's Law Dictionary defines the term "registration" as "[t]he act of recording or enrolling." Black's Law Dictionary (11th ed. 2019). The closing fee statute does not require dealers to apply for and obtain any sort of "license" to charge closing fees. Had the legislature intended that dealers be licensed to charge closing fees, it could have so provided, and it did not.

  Because notice to the Department is *not* in the nature of a license, its absence does not bar a dealer from charging a closing fee.

- Statutory Limits on Authority of Department. The closing fee statute authorizes the Department to take certain actions in the event a fee of more than $225 is charged. Specifically, it can require the fee to be reduced or ask for submission of a new fee for review. S.C. Code Ann. § 37-2-37(E)(2). Notably, the Department is not empowered to prevent a dealer from charging a fee or suspend a dealer's right to charge a fee. Perhaps more importantly, the statute does not authorize any action on the part of the Department in the event a dealer fails to register.

In short, the statute makes clear that dealers are permitted to charge a fee of at least $225. Failure to register is the failure to take a ministerial act, which does not result in loss of the ability to charge a closing fee by the dealer.

Despite our firm belief that the Department is attempting to exercise authority it does not possess, Patriot still seeks an agreed resolution to this matter. I have authority to offer the payment of the difference between the fee charged and the safe harbor amount of $225. For 165 sales during the relevant time period, that difference is $264, which equals a total of $43,560. For one sale, that difference is $230. Patriot will, of course, also pay the missing $25 registration fee. The total settlement amount would therefore be $43,815. We propose to pay this amount on the following schedule: 12 customers per month until all 166 customers charged have received payment. This is a 14 month payment period.

We will appreciate your thoughtful consideration of our position, and we look forward to hearing from you.

Sincerely yours,

James Y. Becker

JYB/RLR

South Carolina
DEPARTMENT OF CONSUMER AFFAIRS
293 GREYSTONE BOULEVARD, STE. 400
P. O. BOX 5757
COLUMBIA, SC 29250-5757

Carri Grube Lybarker
Administrator/
Consumer Advocate

PROTECTING CONSUMERS SINCE 1975

September 23, 2021

Mr. James Becker
Haynesworth Sinkler Boyd, PA
PO Box 11889
Columbia, SC 29211

RE: Patriot Chevrolet

Dear Mr. Becker:

The Department is in receipt of your letter dated April 7, 2021 regarding Patriot Chevrolet's proposal to issue $43,560 in refunds to South Carolina consumers. After careful consideration, the Department rejects the proposal from Patriot Chevrolet.

On September 1, 2021, the South Carolina Court of Appeals issued an opinion in *South Carolina Department of Consumer Affairs v. Cash Central of South Carolina, LLC.* The opinion addresses the same "substantial compliance" argument that you make in the present matter involving Patriot Chevrolet. As the South Carolina Court of Appeals stated, "there is no recognized doctrine of substantial compliance in this context[,]" *i.e.* a regulatory filing. *South Carolina Department of Consumer Affairs v. Cash Central of South Carolina, LLC*, No. 2017-002639, 2021 S.C. App. LEXIS at *12 (S.C. Ct. App. Sept. 1, 2021). Furthermore, S.C. Code Ann. § 37-2-307(C)(1) (Supp. 2020) states, "Prior to charging a closing fee, a motor vehicle dealer shall provide written notice to the Department of Consumer Affairs of the maximum amount of a closing fee the dealer intends to charge on an annual basis."

The Department firmly believes the appropriate remedy for Patriot Chevrolet charging impermissible closing fees is a refund of all closing fees collected by Patriot Chevrolet between March 18, 2019 and November 26, 2019. The total amount to be refunded is $81,180 as communicated in previous letters.

The Department is still willing to allow Patriot Chevrolet to come up with a repayment plan where Patriot Chevrolet could repay South Carolina consumers over the next eighteen months. Please consider this letter as a formal demand prior to the initiation of formal proceedings as required by S.C. Code Ann. § 37-6-113(A) (Supp. 2020). Please let me know by October 15, 2021, whether Patriot accepts the Department's offer.

If you have any questions or wish to discuss this matter further, please feel free to reach out to me at 803-734-4258 or abirr@scconsumer.gov.

Regards,
S.C. DEPARTMENT OF CONSUMER AFFAIRS

Adam Birr

Adam Birr
Enforcement Attorney

South Carolina
DEPARTMENT OF CONSUMER AFFAIRS
293 GREYSTONE BOULEVARD, STE. 400
P. O. BOX 5757
COLUMBIA, SC 29250-5757

Carri Grube Lybarker
Administrator/
Consumer Advocate

PROTECTING CONSUMERS SINCE 1975

May 18, 2022

Mr. James Y. Becker
Haynsworth Sinkler Boyd, P.A.
1201 Main St., 22nd Floor
Columbia, SC 29201

Re: Patriot Chevrolet

Mr. Becker:

In my letter of September 23, 2021, the Department offered to allow Patriot Chevrolet to repay the $81,180 over a period of 18 months. That amounts to $4,510 per month.

In 2021, Patriot Chevrolet was permitted to charge a closing fee of $413.60, and it indicated that it sold 571 cars that year. Mathematically, that amounts to $236,165.60 in closing fees. The amount that Patriot Chevrolet must repay amounts to about a third of the closing fee revenue that it made last year. Furthermore, this year, Patriot Chevrolet was permitted to charge a closing fee in the amount of $460.87. This is an increase of $47.27 in closing fees per car sold and amounts to $26,991.17 in additional projected closing fee revenue. That amount of projected additional revenue alone is over a third of the amount that Patriot Chevrolet must refund to consumers.

As the closing fees Patriot Chevrolet charged without having a certificate are all excess charges and should be returned to consumers, the Department is firm that all $81,180 must be refunded to consumers.

During the pendency of this matter, the Department has proceeded in good faith with you and your client. For example, the Department has:

- Permitted Patriot Chevrolet to charge a closing fee of $225 (permitted on November 26, 2019);
- Permitted Patriot Chevrolet to increase its closing fee from $225 to $413.60 (permitted on May 28, 2020);
- Permitted Patriot Chevrolet to increase its closing fee from $413.60 to $460.87 (permitted on March 15, 2022);
- Offered Patriot Chevrolet 12 months to repay the amount, which was agreed to in principal before you were retained;
- Offered Patriot Chevrolet 18 months to repay the amount; and

- For settlement purposes, declined to impose a penalty on Patriot Chevrolet for its violation of South Carolina law.

At this point, it appears like your client is taking advantage of the Department's good faith. Out of courtesy to you, we have delayed filing suit in this matter because you have told us that you needed time to confer with your client. In fact, several of my e-mails to you requesting updates have gone unanswered.

I realize we're both still waiting on the Supreme Court to make a decision about your "substantial compliance" argument in the *Cash Central* case. However, I have already explained the Department's position that, even if it existed, "substantial compliance" would not apply to the present situation. Patriot Chevrolet's "substantial compliance" argument is essentially that it is "piggybacking" on Auddie Brown Chevrolet's closing fee certificate. Aa also already explained, Auddie Brown Chevrolet did not have a valid closing fee certificate at the time of the sale of the dealership to Patriot Chevrolet.

My September 23, 2021 request is still outstanding. Will you accept service of a Summons and Complaint on behalf of your client? Otherwise, I look forward to hearing that Patriot Chevrolet will agree to refund $81,180 in 18 months. Please let me know either way **by 5:00 p.m. on May 23, 2022**.

Regards,
S.C. DEPARTMENT OF CONSUMER AFFAIRS

Adam Birr

Adam Birr
Enforcement Attorney

EXHIBIT B

South Carolina
DEPARTMENT OF CONSUMER AFFAIRS
293 GREYSTONE BOULEVARD, STE. 400
P. O. BOX 5757
COLUMBIA, SC 29250-5757

Carri Grube Lybarker
Administrator/
Consumer Advocate

PROTECTING CONSUMERS SINCE 1975

April 29, 2022

Ms. Linda Carpenter
Bennettsville Motors of SC d/b/a Bennettsville Ford
456 Hwy. 38 S.
Bennettsville, SC 29512

RE: Potential Violations of S.C. Code Ann §§ 37-2-307 (Supp. 2021) and 37-2-305 (Supp. 2021)

Dear Ms. Carpenter:

On or about February 22, 2022, the Department received applications from Bennettsville Motors of SC d/b/a Bennettsville Ford for a motor vehicle closing fee certificate and a maximum rate schedule. Both of these renewal applications were filed after January 31st, which was the expiration date. It also appears that Bennettsville Ford did not have an active closing fee certificate for the 2022 year. Additionally, Bennettsville Ford has a history of filing after the expiration date for the closing fee and maximum rate schedule. As such, this matter has now been escalated to me to attempt to resolve Bennettsville Ford's noncompliance without the need for further formal action. The closing fee noncompliance and the maximum rate schedule noncompliance will each be addressed in turn below. I will also go over Bennetsville Ford's options to resolve the noncompliance without the need for a hearing.

I. Closing Fees

Section 37-2-307(C)(1) states, "Prior to charging a closing fee, a motor vehicle dealer shall provide written notice to the Department of Consumer Affairs of the maximum amount of a closing fee the dealer intends to charge on an annual basis." Closing fee notification certificates expire annually on January 31. *See* S.C. Code Ann. § 37-2-307(A)(1) (Supp. 2021). According to Department records, an application for a closing fee notification certificate was received on January 31, 2019. This closing fee notification certificate would have expired on January 31, 2020. The renewal for the closing fee notification certificate was not received until January 26, 2021. This closing fee notification certificate would have expired on January 31, 2022. The Department did not receive the next renewal application until February 22, 2022. Please let me know immediately if Bennettsville Ford did not charge a closing fee between February 1, 2020, and January 25, 2021.

As such, Bennettsville Ford was not authorized to charge a closing fee between February 1, 2020, and January 25, 2021, or between February 1, 2022, and February 21, 2022, and therefore could

not lawfully charge a closing fee during those time frames. Any closing fee charged by Bennettsville Ford during those time frames is an impermissible excess charge. South Carolina consumers are not obligated to pay any excess charges and are entitled to a refund of any closing fees charged during the periods identified above. *See* S.C. Code Ann. § 37-2-307(D)(3) (Supp. 2021) and § 37-5-202(2) (2015).

Accordingly, please accept this as the Department's demand that Bennettsville Ford refund any closing fee paid by any consumer during the periods between February 1, 2020, and January 25, 2021, as well as February 1, 2022, and February 21, 2022. The Department is willing to consider an appropriate repayment plan. To begin the process, Bennettsville Ford must submit a spreadsheet to include the transaction date, the consumer's name, and the amount of the closing fee charged. This spreadsheet must be submitted by **May 13, 2022**.

II. Maximum Rate Schedule

According to the Department records, Bennettsville Ford filed a maximum rate schedule on January 31, 2019. This maximum rate schedule would have expired on January 31, 2020. Bennettsville Ford did not file a renewal application for a maximum rate schedule until May 19, 2020. This maximum rate schedule would have expired on January 31, 2021. Bennettsville Ford filed a renewal application for a maximum rate schedule on January 26, 2021. This maximum rate schedule expired on January 31, 2022. Bennettsville Ford did not file a renewal application for a maximum rate schedule until February 22, 2022. Without properly filing and posting a maximum rate schedule, the maximum amount of a credit service charge that Bennettsville Ford could impose is eighteen percent per annum (18% APR). *See* S.C. Code Ann. § 37-2-201(2) (2015).

To remedy Bennettsville Ford's failure to file its maximum rate schedules timely, the Department proposes the following non-hearing resolution (you may pick one of the following options):

> **OPTION ONE:** Bennettsville Ford must permanently reduce its interest rate to 18% APR on all contracts executed between February 1, 2020, and May 18, 2020, and between February 1, 2022, and February 21, 2022. It must recalculate its contracts at 18% APR and refund to the consumer the difference, if any, between 18% APR and the amount the consumer actually paid.

If Bennettsville Ford chooses option one, it must provide the Department with photocopies of the checks issued to the consumers. The Department must be able to verify that the consumers received the refunds.

a) **OPTION TWO:** Instead of reducing the rate on all contracts to 18% APR and refunding the excess charges, Bennettsville Ford may keep its contracts at the previously properly filed rate it had on file (30% for the 2020 period and 26% for the 2022 period) and pay an administrative penalty of up to $5,000 made payable to the South Carolina Department of Consumer Affairs.

If Bennettsville Ford chooses option two, it may elect to pay the full amount of the administrative penalty of $5,000. If Bennettsville Ford believes that it is entitled to a potentially reduced amount of an administrative penalty based on its volume of business, then it must provide the Department with a spreadsheet of transactions between February 1, 2020, and May 18, 2020, and between February 1, 2022, and February 21, 2022, where the consumer was charged in excess of 18% APR. The spreadsheet would need to include the consumer's name, the amount financed, the APR, the finance charge, the number of payments, the amount of the payments, and the frequency of the payments. The Department would then review and determine if a lesser penalty amount is appropriate. **Depending upon its volume of business, the administrative penalty amount could still be the maximum $5,000.**

Please note that if Bennettsville Ford chooses option two, this option will not be available to it again for the next forty-eight (48) months. Any future filing or posting violation of the maximum rate schedule law during the next forty-eight (48) months will result in Bennettsville Ford recasting contracts to 18% APR and issuing refunds to South Carolina consumers.

Failure to respond by **May 13, 2022**, could result in the Department initiating further legal action against Bennettsville Ford to recover illegal excess charges paid by consumers, as well as any applicable administrative penalties.

If you have any questions or would like to discuss this matter further, please feel free to reach out to me. I can be reached at 803-734-4258 or abirr@scconsumer.gov.

Regards,
S.C. DEPARTMENT OF CONSUMER AFFAIRS

Adam Birr

Adam Birr
Enforcement Attorney

HAYNSWORTH SINKLER BOYD

HAYNSWORTH SINKLER BOYD, P.A.
1201 MAIN STREET, 22ND FLOOR
P.O. BOX 11889 (29211)
COLUMBIA, SOUTH CAROLINA 29201
MAIN 803.779.3080
FAX 803.765.1243
www.hsblawfirm.com

JAMES Y. BECKER
DIRECT 803.540.7706
jbecker@hsblawfirm.com

May 13, 2022

VIA E-MAIL

Mr. Adam Birr
Enforcement Attorney
S.C. Department of Consumer Affairs
P.O. Box 5757
Columbia, South Carolina 29250-5757
abirr@scconsumer.gov

Re: Bennettsville Motors of SC, Inc. d/b/a Bennettsville Ford
Motor Vehicle Closing Fee and Maximum Rate Filing registrations
HSB File No. 43000.0002

Dear Mr. Birr:

This firm represents Bennettsville Motors of SC, Inc. d/b/a Bennettsville Ford ("Dealer"). We have been provided a copy of your letter dated April 29, 2022 to the Dealer. Your letter concerns the Dealer's annual filings with the South Carolina Department of Consumer Affairs ("Department") for closing fees and maximum rate schedules.

Closing Fees

Dealer's records indicate that it timely filed its annual closing fee registrations with the Department for a $225 closing fee in January of 2018 and 2019. The 2019 registration was automatically approved by the Department and was valid through January 31, 2020. The Dealer next filed an annual closing fee registration, again for a $225 closing fee, on January 26, 2021. Clearly, the Dealer inadvertently failed to file its annual closing fee registration in late January 2020. The Department now demands that Dealer repay the closing fees collected from Dealer's sales customers from February 1, 2020 through January 25, 2021("relevant time period"). The subject closing fees total $45,675.00 in 203 sales transactions. The demand to refund this sum based on the facts and legal analysis set forth below would require an unreasonable forfeiture.

Under the closing fee statute, any licensed motor vehicle dealer is allowed to charge closing fees in motor vehicle sales to consumers. If the Dealer charges a fee of $225 or less (i.e. a statutory "safe-harbor" amount"), there is nothing more for the Department to review, and approval of the fee is automatic and purely ministerial.

Though we cannot say with certainty exactly why the Dealer's personnel inadvertently failed to file the closing fee registration form with the Department prior to January 31, 2020, it is clear from these circumstances that this failure was "not intentional, and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error." S.C. Code Ann. § 37-5-202(7). Dealer has timely filed the registration forms with the Department in January 2018 and 2019, and, and then again in January 2021. The closing fee registration for 2022 was filed on February 22, 2022, which is only three weeks after the deadline. This record demonstrates that the Dealer (1) has reasonably appropriate procedures for regularly filing the closing fee registration, and (2) the failure to file in January 2020 was clearly an aberration. Under these circumstances, there is no plausible reason the Dealer would have intentionally failed to file the registration form in January 2020, when it did so in a timely fashion in preceding and subsequent years and without any notice from the Department.

Aside from failing to register for a renewal closing fee (in the exact same amount) with the Department prior to January 31, 2020, Dealer complied with all other aspects of the closing fee statute. It posted its previous closing fee registration in the exact same conspicuous place in the dealership; it included the closing fee on its sales contract (buyer's order); and it included the closing fee in the advertised price of any vehicles which were advertised with a price. The closing fee statute itself states that it is the intent of the legislature "to protect consumers by the *disclosure and notice provisions established in this section* and with the remedies provided by this title." S.C. Code Ann. § 37-2-307(F) (emphasis added). The closing fee statute is a disclosure statute. Registration is the only one of the four requirements that does not involve disclosure to the consumer. Because Dealer complied with all of the other requirements which concern notice to the consumer, Dealer fulfilled the primary intent of the statute. Literal and technical compliance with certain statutory requirements may be excused where a dealer "substantially complies" with all other statutory requirements and the consumer "receives a clear and prominent disclosure of the statutorily required information." *Davis v. NationsCredit Fin. Servs. Corp.*, 326 S.C. 83, 86, 484 S.E.2d 471, 472 (1997) citing *Jordan v. Tadlock*, 223 S.C. 326, 75 S.E.2d 691 (1953) (substantial compliance with statute was sufficient). This is exactly what happened here.

In these circumstances, we believe that any liability for a refund of excess charges pursuant to S.C. Code Ann. § 37-5-202 have been excused under both the bona fide error defense of S.C. Code Ann. § 37-5-202(7) and the doctrine of substantial compliance set forth in *Davis* and its progeny. Moreover, the closing fee charged by Dealer from 2018 through the present has been the statutory "safe harbor" amount of $225. The Department's demand to refund $45,675.00 based on these facts and legal analysis would require an unreasonable and unwarranted forfeiture.

Maximum Rate Schedule

Dealer filed a maximum rate schedule on January 31, 2019, which was valid until January 31, 2020. The Dealer also inadvertently failed to file its annual renewal maximum rate schedule before January 31, 2020, and the appropriate form was not filed until May 19, 2020, only 3.5 months after the deadline. According to the Department, the maximum interest rate the Dealer could charge during the period from February 1, 2020 to May 18, 2020 ("relevant time period") was 18%. There are only 5 loans with an APR which exceeds 18% during this relevant time period, and the highest APR in this group is only 28.00% per annum. The Dealer's current approved maximum rate is 26% APR, and the 28.00% loan is the only one which exceeds the current maximum rate.

Any liability for inadvertently failing to file the annual maximum rate schedules with the Department is similarly excused based on the same defenses analyzed here.

S.C. Code Ann. § 37-2-305(1) requires that Dealer "shall file a rate schedule with the Department of Consumer Affairs and . . . post in one conspicuous place in [its] place of business in this State . . . a maximum rate schedule issued by the department."

Here again, Dealer timely filed its maximum rate schedule with the Department in January 2018 and 2019, and, and then again in January 2021. The closing fee registration for 2022 was filed on February 22, 2022, which is only three weeks after the deadline. This record demonstrates that the Dealer (1) has reasonably appropriate procedures for regularly filing the maximum rate schedule, and (2) the failure to file in January 2020 was clearly an aberration. Under these circumstances, there is no plausible reason the Dealer would have intentionally failed to file the registration form in January 2020, when it did so in a timely fashion in preceding and subsequent years and without any notice from the Department. Also, Dealer has posted the maximum rate schedule issued by the Department in a conspicuous place in its business premises. Thus the failure to timely file the maximum rate schedule is excused under the bona fide error defense of S.C. Code Ann. § 37-5-202(7).

In addition, the maximum rate that was approved for Dealer in 2021 was 28% for new and used vehicles.[1] None of the loans in the relevant time period which exceed 18% also exceed 28%, and thus there is no excess charge.

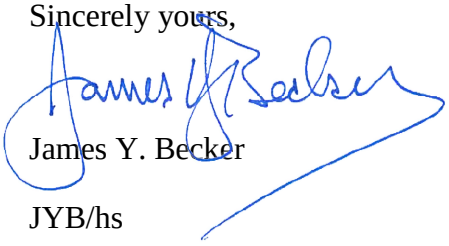
[1] "If [the renewal] filing does not change any maximum rates previously filed, the creditor is not required to alter posted maximum rates." S.C. Code Ann. § 37-2-305(7). While we are in the process of gathering the relevant records for the maximum rate filing in 2019, if the filed rate for 2021 did not change the maximum rates for 2019, then this statutory provision alone should excuse any liability based on these facts.

The statutory purpose of the maximum rate filing and posting requirement is clearly stated in S.C. Code Ann. § 37-2-305(3): "[t]he purpose of this requirement is to assist you in comparing the maximum rates that creditors charge, thereby furthering your understanding of the terms of consumer credit transactions and helping you to avoid the uninformed use of credit."

Since the previously and properly filed maximum rate schedule issued by the department has been conspicuously posted in the dealership continuously throughout the relevant time period, and none of the loans exceed the posted rate of 28%, then the primary purpose of the maximum rate filing and posting requirement, i.e., clear and prominent disclosure to the consumer, has been fully achieved, and Dealer has "substantially complied" with the relevant statutory requirements. *Davis*, 326 S.C. at 86, 484 S.E.2d at 472.

For all of the above reasons, Bennettsville Ford should be excused from any liability in this matter.

Sincerely yours,



James Y. Becker

JYB/hs

South Carolina
DEPARTMENT OF CONSUMER AFFAIRS
293 GREYSTONE BOULEVARD, STE. 400
P. O. BOX 5757
COLUMBIA, SC 29250-5757

Carri Grube Lybarker
Administrator/
Consumer Advocate

PROTECTING CONSUMERS SINCE 1975

April 18, 2022

Ms. Linda Carpenter
Martin Motors of SC, Inc. d/b/a Bennettsville Honda
452 Hwy. 38 S.
Bennettsville, SC 29512

RE: Potential Violations of S.C. Code Ann §§ 37-2-307 (Supp. 2021) and 37-2-305 (Supp. 2021)

Dear Ms. Carpenter:

According to the Department's records, Martin Motors of SC, Inc. d/b/a Bennettsville Honda missed a filing year for the closing fees notification certificate and filed the maximum rate schedule for the period ending January 31, 2021, late. As such, this matter has now been escalated to me to attempt to resolve without the need for further formal action. The Department will address each violation in turn and will also propose options for Bennettsville Honda.

I. Closing Fees

S.C. Code Ann. § 37-2-307(C)(1) (Supp. 2021) states, "Prior to charging a closing fee, a motor vehicle dealer shall provide written notice to the Department of Consumer Affairs of the maximum amount of a closing fee the dealer intends to charge on an annual basis." Closing fee notification certificates expire annually on January 31. *See* S.C. Code Ann. § 37-2-307(A)(1) (Supp. 2021). According to the Department's records, the Department received an application for a closing fee notification certificate on January 31, 2019. This closing fee notification certificate would have expired on January 31, 2020. The Department did not receive another application for a closing fee notification certificate until January 29, 2021.

As such, Bennettsville Honda was not authorized to charge a closing fee between February 1, 2020 and January 28, 2021 and therefore could not lawfully charge a closing fee during that time frame. Accordingly, any closing fee charged by Bennettsville Honda during that time frame is an impermissible excess charge.

S.C. Code Ann. § 37-2-307(D)(3) (Supp. 2021) states, "Whether the vehicle transaction is a credit sale, consumer lease, or cash transaction: … a purchaser injured or damaged by an action of a motor vehicle dealer in violation of this section or any regulation promulgated thereunder, may assert the remedies available pursuant to the provisions of this title." The "remedies available

pursuant to the provisions of this title" can be found at S.C. Code Ann. § 37-5-202(2) (2015), which states, "A consumer is not obligated to pay a charge in excess of that allowed by this title and has a right of refund of any excess charge paid."

Accordingly, please accept this as the Department's demand that Bennettsville Honda refund any closing fee paid by any consumer during the period between February 1, 2020 and January 28, 2021. The Department is willing to consider an appropriate repayment plan. To begin the process, Bennettsville Honda must submit a spreadsheet to include the transaction date, the consumer's name, and the amount of the closing fee charged. This spreadsheet must be submitted by **May 2, 2022**.

II. Maximum Rate Schedule

According to the Department's records, Bennettsville Honda filed a maximum rate schedule on January 31, 2019. This maximum rate schedule expired on January 31, 2020. Bennettsville Honda did not file a renewal application for a maximum rate schedule until May 19, 2020. Without properly filing and posting a maximum rate schedule, the maximum amount of a credit service charge that Bennettsville Honda could impose is eighteen percent per annum (18% APR). *See* S.C. Code Ann. § 37-2-201(2) (2015).

To remedy Bennettsville Honda's failure to file its maximum rate schedule, the Department proposes the following non-hearing resolution:

By **May 2, 2022**, Bennettsville Honda must choose one of the following two (2) options:

> **OPTION ONE:** Bennettsville Honda must permanently reduce its interest rate to 18% APR on all contracts executed between February 1, 2020, and May 18, 2020. It must recalculate its contracts at 18% APR and refund to the consumer the difference, if any, between 18% APR and the amount the consumer actually paid.

If Bennettsville Honda chooses option one, it must provide the Department with photocopies of the checks issued to the consumers. The Department must be able to verify that the consumers received the refunds.

a) **OPTION TWO:** Instead of reducing the rate on all contracts to 18% APR and refunding the excess charges, Bennettsville Honda may keep its contracts at the 30% APR it properly had on file and pay an administrative penalty of up to $5,000 made payable to the South Carolina Department of Consumer Affairs.

If Bennettsville Honda chooses option two, it may elect to pay the full amount of the administrative penalty of $5,000 without doing anything further. However, if Bennettsville Honda believes that it is entitled to a potentially reduced amount of an administrative penalty based on its volume of business, then it must provide the Department with a spreadsheet of transactions between February

1, 2020 and May 18, 2020 where the consumer was charged in excess of 18% APR. The spreadsheet would need to include the consumer's name, the amount financed, the APR, the finance charge, the number of payments, the amount of the payments, and the frequency of the payments. The Department would then review and determine if a lesser penalty amount is appropriate. **Depending upon its volume of business, the administrative penalty amount could still be the maximum $5,000.**

Please note that if Bennettsville Honda chooses option two, this option will not be available to it again for the next forty-eight (48) months. Any future filing or posting violation of the maximum rate schedule law during the next forty-eight (48) months will result in Bennettsville Honda recasting contracts to 18% APR and issuing refunds to South Carolina consumers.

Failure to respond by **May 2, 2022**, could result in the Department initiating further legal action against Bennettsville Honda to recover illegal excess closing fees paid by consumers, finance charges exceeding 18% APR during the time frame when the maximum rate schedule was not properly filed, and a statutory fine of up to $5,000 for a repeated and intentional violation of Title 37.

If you have any questions or would like to discuss this matter further, please feel free to reach out to me. I can be reached at 803-734-4258 or abirr@scconsumer.gov.

Regards,
S.C. DEPARTMENT OF CONSUMER AFFAIRS

Adam Birr

Adam Birr
Enforcement Attorney

HAYNSWORTH SINKLER BOYD

HAYNSWORTH SINKLER BOYD, P.A.
1201 MAIN STREET, 22ND FLOOR
P.O. BOX 11889 (29211)
COLUMBIA, SOUTH CAROLINA 29201
MAIN 803.779.3080
FAX 803.765.1243
www.hsblawfirm.com

JAMES Y. BECKER
DIRECT 803.540.7706
jbecker@hsblawfirm.com

May 13, 2022

VIA E-MAIL

Mr. Adam Birr
Enforcement Attorney
S.C. Department of Consumer Affairs
P.O. Box 5757
Columbia, South Carolina 29250-5757
abirr@scconsumer.gov

Re: Martin Motors of SC, Inc. d/b/a Bennettsville Honda.
Motor Vehicle Closing Fee and Maximum Rate Filing registrations
HSB File No. 43000.0002

Dear Mr. Birr:

This firm represents Martin Motors of SC, Inc. d/b/a Bennettsville Honda ("Dealer"). We have been provided a copy of your letter dated April 18, 2022 to the Dealer. Your letter concerns the Dealer's annual filings with the South Carolina Department of Consumer Affairs ("Department") for closing fees and maximum rate schedules.

Closing Fees

As you note in your letter, Dealer filed its annual closing fee registration with the Department for a $225 closing fee on January 31, 2019. This registration was automatically approved by the Department and was valid through January 31, 2020. The Dealer next filed an annual closing fee registration, again for a $225 closing fee, on January 29, 2021. Clearly, the Dealer inadvertently failed to file its annual closing fee registration in late January 2020. The Department now demands that Dealer repay the closing fees collected from Dealer's sales customers from February 1, 2020 through January 28, 2021("relevant time period"). The subject closing fees total $66,600 in 296 sales transactions. The demand to refund this sum based on the facts and legal analysis set forth below would require an unreasonable forfeiture.

Under the closing fee statute, any licensed motor vehicle dealer is allowed to charge closing fees in motor vehicle sales to consumers. If the Dealer charges a fee of $225 or less (i.e. a statutory "safe-harbor" amount"), there is nothing more for the Department to review, and approval of the fee is automatic and purely ministerial.

Though we cannot say with certainty exactly why the Dealer's personnel inadvertently failed to file the closing fee registration form with the Department prior to January 31, 2020, it is clear from these circumstances that this failure was "not intentional, and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error." S.C. Code Ann. § 37-5-202(7). Dealer has timely filed the registration forms with the Department in January 2018 and 2019, and, and then again in January 2021 and 2022, demonstrating that (1) it has reasonably appropriate procedures for regularly filing the closing fee registration, and (2) the failure to file in January 2020 was clearly an aberration. Under these circumstances, there is no plausible reason the Dealer would have intentionally failed to file the registration form in January 2020, when it did so in a timely fashion in preceding and subsequent years and without any notice from the Department.

Aside from failing to register for a renewal closing fee (in the exact same amount) with the Department prior to January 31, 2020, Dealer complied with all other aspects of the closing fee statute. It posted its previous closing fee registration in the exact same conspicuous place in the dealership; it included the closing fee on its sales contract (buyer's order); and it included the closing fee in the advertised price of any vehicles which were advertised with a price. The closing fee statute itself states that it is the intent of the legislature "to protect consumers by the *disclosure and notice provisions established in this section* and with the remedies provided by this title." S.C. Code Ann. § 37-2-307(F) (emphasis added). The closing fee statute is a disclosure statute. Registration is the only one of the four requirements that does not involve disclosure to the consumer. Because Dealer complied with all of the other requirements which concern notice to the consumer, Dealer fulfilled the primary intent of the statute. Literal and technical compliance with certain statutory requirements may be excused where a dealer "substantially complies" with all other statutory requirements and the consumer "receives a clear and prominent disclosure of the statutorily required information." *Davis v. NationsCredit Fin. Servs. Corp.*, 326 S.C. 83, 86, 484 S.E.2d 471, 472 (1997) citing *Jordan v. Tadlock*, 223 S.C. 326, 75 S.E.2d 691 (1953) (substantial compliance with statute was sufficient). This is exactly what happened here.

In these circumstances, we believe that any liability for a refund of excess charges pursuant to S.C. Code Ann. § 37-5-202 have been excused under both the bona fide error defense of S.C. Code Ann. § 37-5-202(7) and the doctrine of substantial compliance set forth in *Davis* and its progeny. Moreover, the closing fee charged by Dealer from 2018 through the present has been the statutory "safe harbor" amount of $225. The Department's demand to refund $66,600 based on these facts and legal analysis would require an unreasonable and unwarranted forfeiture.

Maximum Rate Schedule

Dealer filed a maximum rate schedule on January 31, 2019, which was valid until January 31, 2020. The Dealer also inadvertently failed to file its annual renewal maximum rate schedule before January 31, 2020, and the appropriate form was not filed until May 19, 2020, only 3.5 months after the deadline. According to the Department, the maximum interest rate the Dealer could charge during the period from February 1, 2020 to May 18, 2020 ("relevant time period") was 18%. There are only four loans with an APR which exceeds 18% during this relevant time period, and the highest APR in this group is only 21.21% per annum.

Any liability for inadvertently failing to file the annual maximum rate schedules with the Department is similarly excused based on the defenses analyzed above.

S.C. Code Ann. § 37-2-305(1) requires that Dealer "shall file a rate schedule with the Department of Consumer Affairs and . . . post in one conspicuous place in [its] place of business in this State . . . a maximum rate schedule issued by the department."

Here again, Dealer timely filed its maximum rate schedule with the Department in January 2018 and 2019, and, and then again in January 2021 and 2022, demonstrating that (1) it has reasonably appropriate procedures for regularly filing the maximum rate schedule, and (2) the failure to file in January 2020 was clearly an aberration. Under these circumstances, there is no plausible reason the Dealer would have intentionally failed to file the registration form in January 2020, when it did so in a timely fashion in preceding and subsequent years and without any notice from the Department. Also, Dealer has posted the maximum rate schedule issued by the Department in a conspicuous place in its business premises. Thus the failure to timely file the maximum rate schedule is excused under the bona fide error defense of S.C. Code Ann. § 37-5-202(7).

In addition, the rate schedule issued in January 2019 had a maximum rate of 30% for new and used vehicles, and the maximum rate schedule issued in January 2022 contains a maximum rate of 28% for new and used vehicles.[1] Here, none of the loans in the relevant time period which exceed 18%, also exceed either filed maximum rate.

The statutory purpose of the maximum rate filing and posting requirement is clearly stated in S.C. Code Ann. § 37-2-305(3): "[t]he purpose of this requirement is to assist you in comparing the

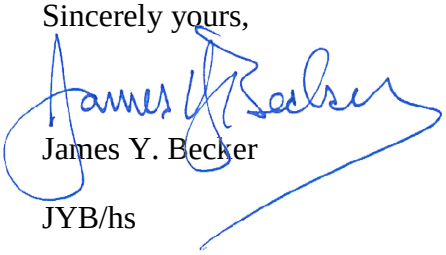
[1] "If [the renewal] filing does not change any maximum rates previously filed, the creditor is not required to alter posted maximum rates." S.C. Code Ann. § 37-2-305(7). While we are in the process of gathering the relevant records for the maximum rate filing in 2021, if the filed rate for 2021 did not change the maximum rates for 2019, then this statutory provision alone should excuse any liability based on these facts.

maximum rates that creditors charge, thereby furthering your understanding of the terms of consumer credit transactions and helping you to avoid the uninformed use of credit."

Since the previously and properly filed maximum rate schedule issued by the department has been conspicuously posted in the dealership continuously throughout the relevant time period, and none of the loans exceed the posted rate of 30%, the primary purpose of the maximum rate filing and posting requirement, i.e., clear and prominent disclosure to the consumer, has been fully achieved, and Dealer has "substantially complied" with the relevant statutory requirements. *Davis*, 326 S.C. at 86, 484 S.E.2d at 472.

For all of the above reasons, Bennettsville Honda should be excused from any liability in this matter.

Sincerely yours,



James Y. Becker

JYB/hs