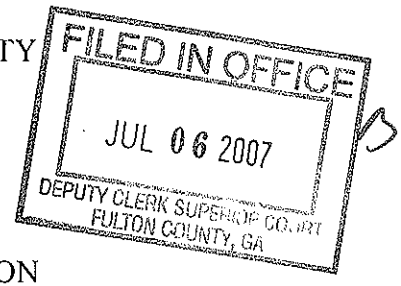


IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



BILL HEARD ENTERPRISES, INC.,	*	
Plaintiff,	*	
v.	*	
Joseph B. Doyle, Administrator of	*	CIVIL ACTION
the Fair Business Practices Act of	*	2007CV133775
1975, <i>sub nomine</i> Governor's Office	*	
Of Consumer Affairs,	*	
Defendant.	*	

Joseph B. Doyle, Administrator of	*
the Fair Business Practices Act of 1975,	*
Plaintiff-in-Counterclaim,	*
v.	*
BILL HEARD ENTERPRISES, INC. and	*
BILL HEARD CHEVROLET COMPANY,	*
Defendants-in-Counterclaim.	*

**ANSWER, VERIFIED COUNTERCLAIM AND
REQUEST FOR JOINDER OF ADDITIONAL PARTY**

COMES NOW the Defendant Joseph B. Doyle, Administrator of the Georgia Fair Business Practices Act of 1975 ("the Administrator"), erroneously identified in the Complaint by misnomer as the "Governor's Office of Consumer Affairs",¹ and shows this honorable Court the following:

FIRST DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief may be granted.

¹ In the event, and to the extent, Defendants-in-Counterclaim fail to acknowledge that they have erroneously identified the Administrator of the Fair Business Practices Act of 1975 as the "Governor's Office of Consumer Affairs", Joseph B. Doyle, Administrator of the Fair Business Practices Act of 1975, hereby intervenes to appear as a matter of right in this action pursuant to O.C.G.A. § 10-1-397.1. Moreover, if so requested by the Court, Administrator shall seek leave to intervene as a matter of right pursuant to O.C.G.A. § 9-11-24(c).

SECOND DEFENSE

The documents and information which Plaintiff seeks are not subject to inspection under the Open Records Act pursuant to O.C.G.A. § 10-1-393(d) because they contain confidential information protected by law which could reasonably serve to identify the individuals who have filed complaints with the Administrator.

THIRD DEFENSE

Certain documents and information which Plaintiff seeks are not subject to inspection under the Open Records Act pursuant to O.C.G.A. § 50-18-72(a)(4) because they are records of a regulatory agency in a pending investigation of an unlawful activity.

FOURTH DEFENSE

Certain documents and information which Plaintiff seeks are not subject to inspection under the Open Records Act pursuant to O.C.G.A. § 50-18-72(a)(11.1) to the extent they contain the social security numbers of individuals who have filed complaints with the Administrator.

FIFTH DEFENSE

Certain documents and information which Plaintiff seeks are not subject to inspection under the Open Records Act pursuant to O.C.G.A. § 50-18-72(a)(11.3) to the extent they contain the social security numbers or other private financial information protected by this subsection of individuals who have filed complaints with the Administrator.

SIXTH DEFENSE

Certain documents and information which Plaintiff seeks are subject to redaction under the Open Records Act pursuant to O.C.G.A. § 50-18-72(a)(11.1) and 50-18-

72(a)(11.3) to the extent they contain the social security numbers or other private financial information protected by this subsection of individuals who have filed complaints with the Administrator.

SEVENTH DEFENSE

The documents and information which Plaintiff seeks is protected from disclosure under the Open Records Act because disclosure would invade individual privacy.

EIGHTH DEFENSE

Plaintiff has acted without substantial justification in instituting this litigation.

NINTH DEFENSE

Plaintiff's Complaint is barred by the doctrine of unclean hands.

TENTH DEFENSE

The Administrator responds to the numbered paragraphs of the Plaintiff's Complaint as follows:

1.

Admitted.

2.

In response to Paragraph 2, the Administrator admits only that the entity described by misnomer in the Complaint as the "Governor's Office of Consumer Affairs" is the Administrator of the Fair Business Practices Act of 1975, that the Administrator is subject to the jurisdiction of this Court, and that the Administrator may be served with process at the address described.

3.

Admitted.

4.

Denied.

5.

In response to Paragraph 5, the Administrator admits only that he received the letter attached to the Complaint as Exhibit 1, the contents of which speaks for itself, and otherwise denies each and every allegation in the paragraph to the extent they are inconsistent with the document.

6 - 8.

In response to Paragraphs 6 through 8, the Administrator admits only that a member of his staff sent the letter attached to the Complaint as Exhibit 2, the contents of which speaks for itself, and otherwise denies each and every allegation in the paragraphs to the extent they are inconsistent with the document.

9.

In response to Paragraph 9, the Administrator admits that his office received the letter attached as Exhibit 3 to the Plaintiff's complaint, the contents of which speaks for itself, but denies that such a letter constitutes a good faith effort to resolve an Open Records Act dispute. Administrator otherwise denies each and every allegation in the paragraph to the extent they are inconsistent with the document.

10.

In response to Paragraph 10, the Administrator admits only that a member of his staff sent the letter attached to the Complaint as Exhibit 4, the contents of which speaks for itself, and otherwise denies each and every allegation in the paragraph to the extent they are inconsistent with the document.

RESPONSE TO CAUSE OF ACTION

11.

The Administrator incorporates by reference his responses to Paragraphs 1 through 10 of the Plaintiff's Complaint as if expressly set forth herein.

12.

Paragraph 12 asserts a conclusion of law for which no response is necessary. To the extent Paragraph 12 asserts an allegation of fact, the Administrator states only that Georgia's Open Records Act speaks for itself and otherwise denies each and every allegation in the paragraph to the extent they are inconsistent with the law.

13 - 14.

In response to Paragraphs 13 and 14, the Administrator admits only that he received the letter attached to the Complaint as Exhibit 1, and that the letter speaks for itself and otherwise denies each and every allegation in the paragraphs to the extent they are inconsistent with the document.

15.

Paragraph 15 asserts an erroneous conclusion of law for which no response is necessary. To the extent Paragraph 15 asserts an allegation of fact, the Administrator denies each and every such allegation to the extent they are inconsistent with the law.

16.

Denied.

17.

Denied.

18.

The Administrator denies any and all allegations of the Plaintiff's Complaint to which no specific response has been made above.

COUNTERCLAIM

1.

This counterclaim is brought pursuant to the Georgia Fair Business Practices Act of 1975 ("FBPA"), O.C.G.A. § 10-1-390 *et seq.*, which was enacted to protect consumers from "unfair or deceptive practices in the conduct of any trade or commerce in part or wholly in the state." O.C.G.A. § 10-1-391(a).

2.

Joseph B. Doyle is the Administrator of Georgia's Fair Business Practices Act of 1975, and is authorized to bring this action pursuant to O.C.G.A. § 10-1-397(a)(2). Joseph B. Doyle is further authorized pursuant to O.C.G.A. §§ 10-1-397.1 and 9-11-24 to intervene in this matter as a matter of right to implement the provisions of Georgia's Fair Business Practices Act of 1975.

3.

The court has jurisdiction over this action pursuant to Georgia Constitution Art. 6, Sec. 4, Par. 1, O.C.G.A. § 15-6-8, and O.C.G.A. § 10-1-397(a)(2).

4.

The Court has jurisdiction over Defendant-in-Counterclaim BILL HEARD ENTERPRISES, INC. Moreover, Defendant-in-Counterclaim BILL HEARD ENTERPRISES, INC. is a corporation organized under the laws of Georgia, and has consented to the jurisdiction and venue of this Court.

5.

The Court has jurisdiction over Defendant-in-Counterclaim BILL HEARD CHEVROLET COMPANY. Moreover, Defendant-in-Counterclaim BILL HEARD CHEVROLET COMPANY is a corporation organized under the laws of Georgia, and has consented to the jurisdiction and venue of this Court. BILL HEARD CHEVROLET COMPANY was not named as a party in the Complaint. However, its presence is required for the granting of complete relief in the determination of this Counterclaim.

6.

Defendants-in-Counterclaim, BILL HEARD CHEVROLET COMPANY and BILL HEARD ENTERPRISES, INC., acted in concert in connection with the activities that are the subject of this counterclaim, and will be referred to collectively as "BILL HEARD".

THE HISTORY OF THE EFFORTS BY THE GOVERNOR'S OFFICE OF CONSUMER AFFAIRS TO COMPEL BILL HEARD TO COMPLY WITH THE FAIR BUSINESS PRACTICES ACT

7.

The Governor's Office of Consumer Affairs has an extensive history of attempting to compel BILL HEARD ENTERPRISES, INC. and its subsidiaries to comply voluntarily with the Fair Business Practices Act, culminating in the filing of this action by the Administrator.

8.

The BILL HEARD automobile dealerships have been the subject of numerous complaints over the past sixteen years alleging unfair and deceptive practices in the

advertising and marketing of automobiles, resulting in numerous actions by the

Administrator, including:

- In August 1991, an “Assurance of Voluntary Compliance” pursuant to O.C.G.A. § 10-1-402, with a civil penalty of \$2000 and consumer restitution of \$1196;
- In June 1992, a second “Assurance of Voluntary Compliance”;
- In December 1997, a “Letter of Understanding” governing particular types of representations made by BILL HEARD in its advertisements;
- In January 1998, a second “Letter of Understanding”;
- In September 1998, a third “Letter of Understanding”;
- In July 1999, a fourth “Letter of Understanding”;
- In August 1999, a fifth “Letter of Understanding”;
- In September 1999, a third “Assurance of Voluntary Compliance” with payment of \$1000 in administrative expenses;
- In December 2000, a sixth “Letter of Understanding”; and
- In April 2001, two more “Letters of Understanding,” with payment of \$4000 in administrative expenses.

9.

Since 2003, various BILL HEARD entities have signed five additional Assurances of Voluntary Compliance (“AVCs”) as a result of investigations and enforcement actions undertaken by the Administrator and the Governor’s Office of Consumer Affairs. Through these AVCs, the Administrator and the Governor’s Office of Consumer Affairs have attempted to reach negotiated accommodations by which BILL HEARD agreed not to engage in certain past behaviors or to commit future violations of

the FBPA in exchange for an agreement by the Administrator not to initiate legal action against BILL HEARD ENTERPRISES and its subsidiaries.

10.

On December 1, 2003, William T. Heard signed an AVC on behalf of Defendant-in-Counterclaim BILL HEARD CHEVROLET COMPANY and other subsidiaries of BILL HEARD ENTERPRISES, INC., arising from certain alleged deceptive advertising practices in violation of the FBPA. Pursuant to the December, 2003 AVC, certain BILL HEARD entities, including Defendant-in-Counterclaim BILL HEARD CHEVROLET COMPANY, agreed, among other things, to comply with federal and state Fair Business Practices and Truth-in-Lending laws in all future advertisements, not to imply or state in any advertisement that they have a special, unique or exclusive relationship with General Motors Corporation, financing companies or any other entities unless such claims were true and accurate, and to pay \$84,000.00 to the Governor's Office of Consumer Affairs in civil penalty.

11.

A true copy of the Assurance of Voluntary Compliance dated December 2, 2003, signed by both BILL HEARD ENTERPRISES, INC. and BILL HEARD CHEVROLET COMPANY, is attached as State's Exhibit 1.

12.

In December of 2004, the Administrator and the Governor's Office of Consumer Affairs required certain BILL HEARD entities to enter into four additional AVCs. Again, the subject of the AVCs was certain alleged false and deceptive representations made in advertisements by BILL HEARD. Pursuant to the December, 2004 AVCs,

certain BILL HEARD entities agreed, among other things, to comply with state Fair Business Practices laws and polices in all future advertisements, not to imply or state in any advertisement that goods being promoted for sale had sponsorship, approval, quantities, or characteristics unless such claims were in fact true and accurate, and to pay \$188,000.00 to the Governor's Office of Consumer Affairs in civil penalty.

BILL HEARD'S MOST RECENT EFFORTS TO DECEIVE GEORGIA CONSUMERS

13.

In October 2006, BILL HEARD caused a written solicitation ("Recall Notice") to be designed, printed and mailed out to approximately ten thousand individuals in the consumer marketplace. Many of the recipients were residents of the State of Georgia. A true copy of the Recall Notice, with the recipient's name and street address redacted, is attached as State's Exhibit 2.

14.

The Recall Notice carries the words "URGENT POTENTIAL RECALL NOTIFICATION" in large bold type directly above the recipient's name and address. In fact, the ten thousand persons receiving the Recall Notice were chosen solely because they had previously done business with BILL HEARD, and not because the General Motors Corporation had authorized a recall -- urgent, potential or otherwise -- affecting the motor vehicles they owned.

15.

The Recall Notice states that “We believe your vehicle qualifies for a free service campaign/recall.” In fact, General Motors Corporation had authorized no such “free service campaign/recall.”

16.

The Recall Notice purports to come from a “Program Headquarters” with the mailing address of P. O. Box 2001, Norco, California 92860. In fact, there is no “Program Headquarters” in Norco, California affiliated with General Motors Corporation or any entity authorized to administer free automobile service or recall campaigns.

17.

The Recall Notice displayed the brand logos of the Chevrolet, Buick, Saturn, GMC, Cadillac and Pontiac Divisions of the General Motors Corporation, as well as the brand logo of the General Motors Corporation itself. In fact, neither General Motors Corporation nor any of its divisions had approved, authorized or reviewed the “Recall Notice” before it was mailed out.

18.

The Recall Notice asks the recipient to “call our appointment hotline at 1-(866) 495-4444 to schedule your appointment to get your free service.” That number is the telephone number of Defendant-in-Counterclaim BILL HEARD CHEVROLET.

19.

In publishing the representations contained in the Recall Notice, as described in paragraphs 13 through 18 above, BILL HEARD engaged in “unfair and deceptive acts or practices in trade or commerce” within the meaning of O.C.G.A. § 10-1-393.

**GENERAL MOTORS ACKNOWLEDGES THAT
BILL HEARD'S ACTIONS WERE FALSE AND DECEPTIVE**

20.

On November 20, 2006, the General Motors Corporation ("GM") sent a letter to BILL HEARD. A true copy of that letter is attached as State's Exhibit 3.

21.

In that letter, GM notified BILL HEARD that the statements made in the Recall Notice are false and that BILL HEARD's actions in sending out the Recall Notice "constitute deceptive trade practices under both state law and federal trade law".

22.

Specifically, GM notified BILL HEARD that the Recall Notices

are designed and have the effect of creating the impression that there has been a recall of the recipients' Chevrolet, Cadillac, Buick, Saturn, GMC, and Pontiac vehicles. Additionally, these notices suggest to the recipients that their vehicles are potentially unsafe. These notices and statements sent by [BILL HEARD] are false.

[BILL HEARD's] actions are an impermissible way to solicit warranty and recall repairs. Further, [BILL HEARD] is not authorized to initiate warranty, service or recall campaigns for any GM brands other than Chevrolet and Cadillac. [BILL HEARD's] actions constitute deceptive trade practices under both state law and federal law.

State's Exhibit 3, p.1.

23.

In that letter, GM further notified BILL HEARD that its actions are in breach of the following paragraphs of BILL HEARD's Dealer Sales and Service Agreement with General Motors Corporation:

Article 5.1.1 "Dealer agrees to effectively, ethically and lawfully sell and promote the purchase, lease and use of Products by consumers..."

Article 5.1.6 "Dealer agrees to advertise and conduct promotional activities that are lawful and enhance the reputation of Dealer, General Motors and its products. Dealer will not advertise or conduct promotional activities in a misleading or unethical manner, or that is harmful to the reputation of Dealer, General Motors, or its Products".

State's Exhibit 3, p.1-2.

24.

GM demanded that BILL HEARD "correct these breaches or otherwise explain them to GM's satisfaction."

25.

Notwithstanding the foregoing, BILL HEARD made no effort to contact the ten thousand recipients of its Recall Notice to retract, correct or clarify the misleading statements contained therein, even though the company that printed and mailed the Recall Notice for BILL HEARD offered to send out another mailer.

**COUNT ONE: VIOLATIONS OF THE
FAIR BUSINESS PRACTICES ACT OF 1975**

26.

The Administrator incorporates by reference herein paragraphs 1 through 25 above as if fully set forth herein.

27.

BILL HEARD has conducted consumer transactions and consumer acts or practices in trade or commerce in part or wholly in the State of Georgia.

28.

The Recall Notice was intended and designed to mislead recipients into believing that their automobiles were subject to an urgent recall, so that the recipients would call BILL HEARD's sales staff and be solicited for an automobile purchase or service contract.

29.

The issuance of the Recall Notice by BILL HEARD ENTERPRISES and its subsidiaries, including BILL HEARD CHEVROLET, was an intentionally deceptive and unfair act in the conduct of consumer transactions in violation of O.C.G.A. § 10-1-393(a).

30.

The issuance of the Recall Notice by BILL HEARD ENTERPRISES and its subsidiaries, including BILL HEARD CHEVROLET, was designed to cause actual confusion and misunderstanding as to the source, sponsorship, and approval of the recall services offered in violation of O.C.G.A. § 10-1-393(b)(3).

31.

The issuance of the Recall Notice by BILL HEARD ENTERPRISES and its subsidiaries, including BILL HEARD CHEVROLET, constituted a deceptive representation and designation of geographic origin of the Recall Notice in connection with the offering of goods and services in violation of O.C.G.A. § 10-1-393(b)(4).

32.

Based on these violations of the FBPA, as well as past violations by BILL HEARD, the Administrator has determined that there is an immediate danger of harm to the citizens of the State of Georgia and to the citizen of other states.

**COUNT TWO: VIOLATIONS OF THE ASSURANCE OF VOLUNTARY
COMPLIANCE FILED DECEMBER 2, 2003**

33.

The Administrator incorporates by reference herein paragraphs 1 through 32 above as if fully set forth herein.

34.

As shown above, BILL HEARD automobile dealerships have been the subject of numerous complaints over the past sixteen years alleging unfair and deceptive practices in the advertising and marketing of automobiles, resulting in numerous actions by the Administrator.

35.

Among other things, BILL HEARD ENTERPRISES and BILL HEARD CHEVROLET COMPANY agreed in a December 2003 Assurance of Voluntary Compliance that:

- Jurisdiction and venue in connection with the Assurance would lie in this County; and
- BILL HEARD would make every reasonable effort to act in full compliance with the FBPA and with the Office of Consumer Affairs' written, published policies on automobile advertising.

36.

BILL HEARD has failed to honor the terms of the Assurance of Voluntary Compliance, and has continued to employ deceptive and unfair methods of advertising its automobiles and services to the public.

37.

BILL HEARD has acted in bad faith in connection with the subject matter of the complaint and this counterclaim, has been stubbornly litigious, and has put the Administrator to unnecessary trouble and expense, causing the Administrator to use resources of the State of Georgia in addressing this matter.

COUNT THREE: CLAIM FOR PERMANENT INJUNCTIVE RELIEF

38.

The Administrator incorporates by reference herein paragraphs 1 through 37 above as if fully set forth herein.

39.

The Administrator is entitled to injunctive relief under O.C.G.A. § 10-1-397(a)(2)(A), permanently enjoining BILL HEARD from further violations of the FBPA.

40.

As detailed in the preceding paragraphs, BILL HEARD has repeatedly and knowingly violated the FBPA and all past efforts by the Administrator and the Governor's Office of Consumer Affairs to cause BILL HEARD to comply with the law voluntarily. The repeated violations have occurred in spite of multiple AVCs and Letters of Understanding in which BILL HEARD has (1) acknowledged its obligations to the State of Georgia and Georgia consumers; (2) agreed not to violate the FBPA; and (3) agreed to implement voluntary policies and procedures to ensure compliance with the FBPA.

41.

Due to BILL HEARD's repeated, continuous, and willful violations notwithstanding the Administrator's unsuccessful attempts to have BILL HEARD comply voluntarily with the FBPA, there is a substantial threat that BILL HEARD will continue to violate the FBPA, and in so doing, cause substantial and irreparable harm to citizens of the State of Georgia.

42.

Absent injunctive relief, the Administrator is without complete adequate legal remedy. While the FBPA does allow the Administrator to seek civil penalties, such penalties have proven ineffective in the past in deterring BILL HEARD from further violating the FBPA and engaging in unfair and deceptive trade practices. In addition, the repeated and continual nature of BILL HEARD's violations necessitates a permanent injunction to relieve the Administrator from a multiplicity of actions seeking additional future civil penalties.

43.

Enforcement of the Administrator's requested injunction would be feasible, practicable, and effective to vindicate the rights of the Administrator and the citizens of the State of Georgia. A permanent injunction barring violations of the FBPA would not require the Court to supervise BILL HEARD. Plus, in addition to the normal penalties for violating a court-ordered injunction, the FBPA explicitly provides for civil penalty of not more than \$25,000.00 per violation.

A permanent injunction barring BILL HEARD from further violating the FBPA would cause no greater hardship or burden on BILL HEARD than is necessary to protect the citizens of the State of Georgia.

WHEREFORE, The Administrator prays that the Court enter the following relief:

- (a) an order dismissing with prejudice the claims asserted in the Complaint;
- (b) an order adding BILL HEARD CHEVROLET COMPANY as a defendant-in-counterclaim pursuant to O.C.G.A. § 9-11-13(h), and that summons be served upon him with a copy of this Answer and Counterclaim;
- (c) an injunction permanently enjoining and restraining BILL HEARD ENTERPRISES, and all of its subsidiary corporations, including BILL HEARD CHEVROLET COMPANY, from further violations of the FBPA pursuant to O.C.G.A. § 10-1-397(a)(2)(A);
- (d) an award of civil penalties against BILL HEARD ENTERPRISES and BILL HEARD CHEVROLET in an amount up to a maximum of \$5,000.00 per violation of the FBPA pursuant to O.C.G.A. § 10-1-397(a)(2)(B);
- (e) an award or restitution to any person or persons adversely affected by BILL HEARD's actions in violation of the FBPA pursuant to O.C.G.A. § 10-1-397(a)(2)(D);
- (f) an award of court costs and attorney's fees against BILL HEARD;
- (g) such other and further relief as the Court may deem just and equitable pursuant to O.C.G.A. § 10-1-397(a)(2)(F).

The Administrator further requests that the Court order **trial by jury** pursuant to O.C.G.A. § 9-11-39(b) on all issues of fact raised by his Counterclaim.

This 6th day of July 2007.

Respectfully submitted,

MCKENNA LONG & ALDRIDGE LLP



J. RANDOLPH EVANS

Georgia Bar No. 252336

STEFAN C. PASSANTINO

Georgia Bar No. 565845

Appointed to assume control and responsibility for the representation of the Administrator and the Office of Consumer Affairs by Executive Order of the Governor dated July 3rd, 2007.

P. MICHAEL FREED

Georgia Bar No. 061128

303 Peachtree Street, Suite 5300

Atlanta, Georgia 30308

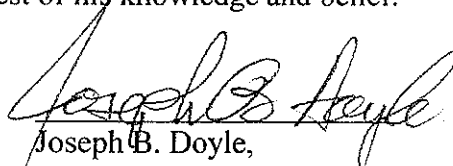
(404) 527-4000

(404) 527-4198 (facsimile)

STATE OF GEORGIA
COUNTY OF FULTON

VERIFICATION

Personally appeared before the undersigned attesting officer, Joseph B. Doyle, Administrator of the Fair Business Practices Act, who after being first duly sworn, deposes and states on oath that the facts set forth in the within and foregoing Counterclaim are true and correct to the best of his knowledge and belief.


Joseph B. Doyle,
Administrator

Sworn to and subscribed
Before me this 6th day
Of July, 2007


Notary Public

My commission expires:

Notary Public, Cobb County, Georgia
My Commission Expires March 19, 2011

Certificate of Service

I certify that a copy of the foregoing pleading was served this 6th day of

July, 2007, by regular mail addressed as follows:

Michael J. Bowers, Esq.
J. Matthew Maguire, Jr., Esq.
Marlie McDonnell, Esq.
Balch & Bingham LLP
30 Allen Plaza, Suite 700
30 Ivan Allen Jr. Boulevard, N.W.
Atlanta GA 30308



Stefan C. Passantino

enter into an Assurance of Voluntary Compliance (the "Assurance") pursuant to O.C.G.A. § 10-1-402, to finally settle and resolve the allegations set forth in Section "V" below. It is therefore stipulated and agreed as follows:

I.

Respondents are now and have been for a period of time engaged in consumer transactions or consumer acts or practices in the conduct of trade or commerce in part or wholly within the State of Georgia, as defined in O.C.G.A. § 10-1-392.

II.

Respondents are Georgia corporations, each having its principal place of business in this state.

III.

The parties acknowledge that jurisdiction is proper in this honorable Court.

IV.

The parties agree that venue in connection with this matter will lie in the Superior Court of Fulton County, Georgia.

V.

The Administrator alleges that the Respondents have used unfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce as declared unlawful by O.C.G.A. § 10-1-393. Among others, the Administrator alleges that each Respondent has committed some or all of the acts or practices enumerated in Notices of Contemplated Legal Action served on Respondents on or about March 14 and 17, 2003 (collectively the "NCLAs"), which NCLAs are incorporated by reference as though fully set forth herein. It is recognized that Respondents are not in agreement that any of such acts or practices were deceptive.

VI.

Respondents hereby enter into this Assurance in order to resolve this matter without the necessity of formal legal action and without admitting any wrongdoing.

VII.

By acceptance of this Assurance, the Administrator hereby agrees not to initiate legal or administrative action against Respondents seeking recovery of civil penalties or other monetary payments relating to advertisements published or disseminated prior to the effective date of this Assurance; provided, however, that nothing in this Agreement shall be deemed a waiver by any party hereto of the right to introduce any relevant and admissible evidence in any future enforcement action.

VIII.

Respondents hereby acknowledge the receipt of copies of the Fair Business Practices Act and the Automobile Advertising Enforcement Policies (hereinafter the "AAE Policies"). Each Respondent further acknowledges that it has knowledge of the FBPA and the AAE Policies and the provisions of each.

IX.

Respondents further agree that, effective with the date of acceptance by the Administrator of this Assurance, Respondents, their respective officers, agents, employees or representatives, and all persons acting in concert with the Respondents:

- A. Shall make every reasonable effort to act in full compliance with the FBPA and the Office of Consumer Affairs' written, published AAE Policies; provided, however, that nothing contained herein shall prevent Respondents from publication or dissemination of advertisements that are truthful and not misleading;
- B. Shall in all future advertisements list all required federal Truth-in-Lending and Truth-in-Leasing credit terms and not violate the federal Truth-in-Lending/Truth-in-Leasing regulations, 12 C.F.R. §§ 213.7, 226.16, and 226.24;
- C. Shall comply with the terms, provisions, and requirements of O.C.G.A. §§ 10-1-393 (b) (16), (22) and (23) when utilizing promotional contests in any future advertising;

- D. Shall not utilize the term "wholesale" in any form of advertising directed to the consuming public, which is in violation of O.C.G.A. § 10-1-424;
- E. Shall not imply or state in any advertisement that Respondents have a special unique or exclusive relationship with the manufacturer, with financing companies or any other entities, unless such claim(s) are in fact true and accurate;
- F. Shall only advertise goods with the intent to sell them as advertised and shall disclose any limitation of quantity of advertised goods;
- G. Shall not mail any notice, notification, or similar statement to any consumer with respect to winning or receiving a prize in a promotion unless the enclosure for the notice is in compliance with O.C.G.A. § 10-1-393(b)(27); and
- H. Shall not utilize advertisements containing terms of the type enumerated in Paragraphs "2" and "7" of the NCLAs, to the extent that use of those terms would violate the FBPA.

X.

As evidence of good faith efforts to comply with and carry out the terms of this Assurance, and in consideration of acceptance by the Administrator of this Assurance, Respondents further acknowledge and agree:

- A. Prior to the effective date of this Assurance, Respondents, together with their legal counsel, have developed and initiated the implementation of new and revised policies and procedures (the "Policies and Procedures") that address the manner in which Respondents develop, produce and disseminate their respective advertisements for automobile sales and services;
- B. The Policies and Procedures involve and consist of the following:
 - i. All initial advertisement production materials (scripts, proposals, lay-outs, etc.) are required to be presented and delivered to Respondents' legal counsel, Keith A. Meador, for legal compliance review.

- ii. Upon receipt of commentary and suggested changes from legal counsel, a Respondent will contact legal counsel and discuss any open or unclear issues concerning any proposed advertisement.
 - iii. All recommended changes, deletions or additions from legal counsel are incorporated and made to the proposed advertisement.
 - iv. Only after the recommended changes, deletions or additions from legal counsel have been made will any advertisement be released and forwarded to the applicable media outlet for dissemination to the consuming public.
- C. Under and pursuant to the Policies and Procedures, Respondents' management and advertising personnel are allowed and encouraged to contact Respondents' legal counsel with advertisement related questions, and all such personnel have acknowledged and understand that any and all advertisements remain subject to the development, production and dissemination components of the Policies and Procedures as set forth in item "B" above.
- D. Representatives of Respondents will meet with the Office of Consumer Affairs at a mutually agreeable time in January 2004 to discuss the need for continued submission of all advertisement production materials to Mr. Meador or to Burr & Forman, Respondents' corporate counsel, for review prior to release. Should the parties determine in good faith that legal review of all advertisement production materials should continue, Respondents will continue to submit those materials to legal counsel for review through June 30, 2004. After that date, Respondents may revise the above stated Policies and Procedures and the item-by-item participation of legal counsel may be reduced. However, as a part of any revision, Respondents shall institute and maintain supervisory compliance procedures which are reasonably designed to ensure compliance with this Assurance, including, without limitation, the training of relevant employees, revisions to and/or development of appropriate training materials and the development and

implementation of internal procedures, including periodic monitoring, to ensure compliance with the terms hereof.

E. In order to carry out the terms of this Assurance, and specifically to afford and meet the intent of this Paragraph "X", Respondents have conducted the following:

- i. A meeting between management and advertising personnel for each Respondent and legal counsel was held prior to the effective date of this Assurance in order to review and discuss in detail the Notice of Contemplated Legal Action served by the Office of Consumer Affairs and the issues addressed in this Assurance;
- ii. Prior to the effective date of this Assurance, an educational seminar was conducted by Respondents' legal counsel, Keith A. Meador, and attended by Respondents' management and advertising personnel in order to review and discuss in detail the FBPA and AAE Policies; and
- iii. Copies and a summary of the FBPA and of the written, published rules of the Office of Consumer Affairs were disseminated to Respondents' management and in-house advertising personnel.

F. Within fifteen (15) calendar days of the effective date of this Assurance, Respondents shall provide copies of this Assurance to all employees involved in preparation, supervision and/or approval of advertisements, including, but not limited to, all dealership general managers. Each employee involved in preparation, supervision and/or approval of advertisements shall acknowledge receipt of a copy of the Assurance, and shall agree to comply with the provisions of same.

G. Each Respondent shall file with the Office of Consumer Affairs two written compliance reports, each signed by an officer with knowledge of the Respondent's obligations under this Assurance, as to the Respondent's compliance with the terms and conditions hereof. The first compliance report

shall be filed six months after the effective date of this Assurance, and the second report shall be filed six months thereafter.

XI.

Simultaneous with the execution of this Assurance, Respondents, jointly and severally, shall:

- A. Deliver to the Office of Consumer Affairs a certified check or money order, made payable to the Clerk of the Superior Court of Fulton County, a One hundred and twenty-one Dollar (\$121.00) filing fee; and
- B. Pay, by certified check or money order made payable to the Governor's Office of Consumer Affairs, a civil penalty in the amount of Eighty-four Thousand and no/100 Dollars (\$84,000.00).

XII.

This Assurance, when accepted by the Administrator, will bind the Respondents, individually and collectively, and their successors and/or assigns that take with notice of the terms and provisions hereof. Each Respondent hereby agrees to give notice of this Assurance to its successors and/or assigns.

XIII.

This Assurance shall be effective upon the date of acceptance by the Administrator.

Proposed, consented and agreed to by:

BILL HEARD CHEVROLET COMPANY

BILL HEARD OLDSMOBILE-
CADILLAC, INC.

BILL HEARD CHEVROLET, INC. -
UNION CITY


TOM JUMPER CHEVROLET, INC.

BILL HEARD CHEVROLET AT TOWN
CENTER, LLC

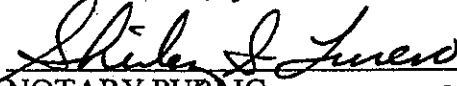
BILL HEARD CHEVROLET, INC. -
BUFORD

BILL HEARD OLDSMOBILE AT TOWN
CENTER, LLC

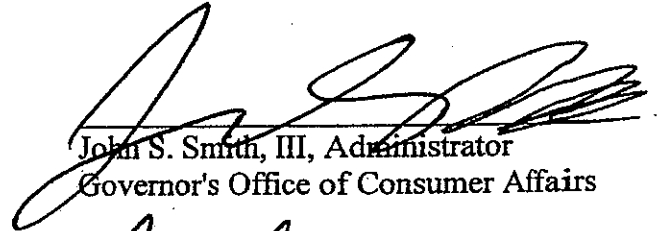
BILL HEARD ENTERPRISES, INC.

BY 
William T. Heard
President of Each

Sworn to and subscribed before me, this
12th day of November, 2003.


NOTARY PUBLIC Notary Public, Cobb County, Georgia
My commission expires My Commission Expires August 29, 2005

ACCEPTED:


John S. Smith, III, Administrator
Governor's Office of Consumer Affairs

December 1, 2003
(Date)



GMC.



PONTIAC

PRESORTED
FIRST CLASS
U.S. POSTAGE
PAID
ANPM

Program Headquarters
P.O. Box 2001
Norco, CA 92860

URGENT POTENTIAL RECALL NOTIFICATION

422 79368
*****AUTO**5-DIGIT 36870
8272 21





Dear Customer,

We believe your vehicle qualifies for a free service campaign/recall. Please call our appointment hotline at 1-(866) 495-4444 to schedule your appointment to get your free service...

Plus a *FREE 28 Point Safety Inspection* on your vehicle.

Thank you,

Milton Watts

Program Director





General Motors

Certified Mail # 7003 1010 0004 4522 4344

Return Receipt Requested

November 20, 2006

Mr. William T. Heard, Jr.
Bill Heard Enterprises, Inc.
200 Brookstone Centre Parkway
Suite 205
Columbus, GA 31904

Subject: Notice of Breach of Dealer Sales & Service Agreements

Attention: Mr. William T. Heard, Jr.

This letter is written by General Motors Corporation ("GM") on behalf of its Chevrolet, Cadillac, Buick, Saturn, GMC and Pontiac divisions regarding the Dealer Sales and Service Agreements ("Dealer Agreements") in effect with Bill Heard Enterprises, Inc. ("Dealership" or "Dealer").

It has come to the attention of GM that Dealer is disseminating to the public, through the mail and on the Internet, "Urgent Potential Recall Notification" and "Safety, Campaign and Recall Inspection" notices. (See enclosed copies). These notices are designed and have the effect of creating the impression that there has been a recall of the recipients' Chevrolet, Cadillac, Buick, Saturn, GMC, and Pontiac vehicles. Additionally, these notices suggest to the recipients that their vehicles are potentially unsafe. These notices and statements sent by Dealer are false.

Dealer's actions are an impermissible way to solicit warranty and recall repairs. Further, Dealer is not authorized to initiate warranty, service or recall campaigns for any GM brands other than Chevrolet and Cadillac. Dealer's actions constitute deceptive trade practices under both state law and federal trade law. Additionally, Dealer's actions are in breach of Article 5.1.1 and 5.1.6 of the Dealer Sales and Service Agreements that provide, in relevant part, the following:

Article 5.1.1

"Dealer agrees to effectively, ethically and lawfully sell and promote the purchase, lease and use of Products by consumers..."

Article 5.1.6

"Dealer agrees to advertise and conduct promotional activities that are lawful and enhance the reputation of Dealer, General Motors and its products. Dealer will not advertise or conduct promotional activities in a misleading or unethical

manner, or that is harmful to the reputation of Dealer, General Motors, or its Products”.

Dealer's use of GM owned trademarks and tradenames is governed under the terms and conditions of the Dealer Agreements. Dealer is not authorized to use the marks of any GM division except Chevrolet and Cadillac. Dealer's improper use of GM trademarks and tradenames constitutes a breach of Section 17.5 of the Dealer Sales and Service Agreements that provide, in relevant part, the following:

Article 17.5

“ Dealer is granted the non-exclusive right to display Marks in the form and manner approved by General Motors in the conduct of its dealership business”.

Based on Dealer's violations of Articles 5.1.1, 5.1.6 and 17.5, the Breaches and Opportunity to Remedy section of the Dealer Sales and Services Agreements states the following:

Article 13.1

“The following acts or events, which are within the control of Dealer or originate from action taken by Dealer or its management or owners, are material breaches of this Agreement. If General Motors learns that any of the acts or events has occurred, it may notify the Dealer in writing. If notified, Dealer will be given the opportunity to respond in writing within 30 days of receipt of the notice, explaining or correcting the situation to General Motors satisfaction”.

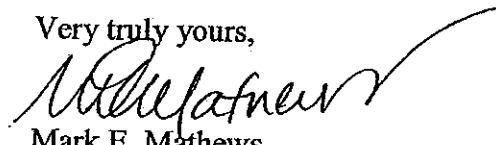
Article 13.1.14

“Any other material breach of Dealer's obligations under this Agreement not otherwise identified in this Article 13 or in Article 14, or any other fraudulent conduct not specifically mentioned above”.

Based on Dealer's material breaches of the Dealer Sales and Service Agreements, GM is providing you thirty (30) days from your receipt of this letter to correct these breaches, or otherwise explain them, to GM's satisfaction. If you fail to do so, GM may elect to terminate the Dealer Agreements and cease all business relationships with your dealership.

Please be assured that in the meantime, GM will continue to conduct business with your dealership according to the Dealer Agreements; and will expect your dealership to likewise fulfill its responsibilities and obligations under this Dealer Agreements.

Very truly yours,



Mark E. Mathews
Director – Public Companies
General Motors Corporation