

COPY FOR CERTIFICATION

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CERTIFIED COPY

8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

9 IN AND FOR THE COUNTY OF MARICOPA

10 STATE OF ARIZONA, ex rel. TERRY
11 GODDARD, Attorney General,

Case No: CV2008-012565

12 Plaintiff,

CONSENT JUDGMENT

13 -vs-

14 BILL HEARD CHEVROLET, INC.-
SCOTTSDALE, an Arizona corporation,

15 Defendant.

16
17 The State of Arizona, having filed a complaint alleging violations of the Arizona
18 Consumer Fraud Act, A.R.S. § 44-1521, *et seq.*; Defendant, Bill Heard Chevrolet, Inc. –
19 Scottsdale, having been served with a copy of the Complaint; having been fully advised of the
20 right to a trial in this matter and, after receiving advice of counsel, having waived the same;
21 admits that this Court has jurisdiction over the subject matter and the parties for purposes of
22 entry of this Consent Judgment and acknowledges that this Court retains jurisdiction for the
23 purpose of enforcing this Consent Judgment.

24 1. In 2005, the Office of the Attorney General initiated an investigation pursuant to
25 the Arizona Consumer Fraud Act concerning the advertising and sales practices of Bill Heard
26 Chevrolet, Inc. – Scottsdale.

1 2. Based upon the results of its investigation, the Attorney General has asserted
2 claims against Bill Heard based upon alleged violations of the Act. Bill Heard has disputed the
3 validity of those claims and expressly denied any liability based thereon, but has agreed to a
4 voluntary compromise of disputed claims, and the State of Arizona and Bill Heard have agreed
5 on a basis for the settlement of these matters in dispute.

6 3. This Consent Judgment does not constitute an admission by Bill Heard or
7 evidence of any liability for any violation of the Act or of any other state or federal statute, rule,
8 regulation or other applicable law. This Consent Judgment is made without trial or adjudication
9 of any issues of fact or law or finding of liability of any kind.

10 **I. PARTIES**

11 1. Plaintiff is the State of Arizona, *ex rel.* Terry Goddard, the Attorney General of
12 Arizona, who is authorized to bring this action under the Consumer Fraud Act, A.R.S. § 44-
13 1521, *et seq.*, (“the Act”).

14 2. Defendant is Bill Heard Chevrolet, Inc. – Scottsdale (“Bill Heard”), an Arizona
15 corporation doing business as a motor vehicle dealer in Scottsdale, Arizona.

16 **II. ORDER**

17 **A. Definitions**

18 For purposes of this Consent Judgment, the following definitions shall apply:

19 1. “Advertisement” (including the terms “advertise” and “advertising”) means any
20 oral, written, graphic, or pictorial statement made that concerns the offering of motor vehicles
21 for sale or lease. “Advertisement” includes, but is not limited to, any oral or written statement or
22 representation made for the purpose of inducing, soliciting, or encouraging consumers in the
23 State of Arizona to purchase goods or services from Bill Heard, in a newspaper, magazine, or
24 other publication; on radio or television; via the Internet or other computer networks; appearing
25 in any notice, handbill, sign, billboard, banner, poster, display, circular, pamphlet, letter, or other
26 printed material; contained in any window sticker or price tag. “Advertisement” does not,

1 however, include (1) statements made solely for the purposes of obtaining financing or vehicle
2 titles or (2) drafts or other preliminary versions of advertising copy or proposed advertisements
3 which are not published, broadcast, mailed or otherwise disseminated to prospective buyers of
4 goods or services from Bill Heard.

5 2. "Clear and conspicuous" (including the terms "clearly" and "conspicuously")
6 means that the statement, representation, or term is stated in words (including commonly used
7 abbreviations or acronyms), numbers and symbols that are reasonably understandable by the
8 person(s) to whom it is directed. If a statement, representation or term in an advertisement
9 (including any statement, representation or term set forth in a footnote) purports to clarify,
10 modify or explain any other statement, representation or term in the same or another
11 advertisement, then the statement is "clear and conspicuous" if (1) it does not materially
12 contradict such other statement, representation or term and (2) it is situated in the advertisement
13 in a manner which makes its relation to the statement, representation or term it clarifies,
14 modifies or explains reasonably apparent.

15 3. "Effective Date" of this Consent Judgment means the date it is signed by the
16 Court.

17 **B. Application**

18 1. This Consent Judgment applies to Bill Heard, any successor entity or entities,
19 whether by acquisition, merger or otherwise, to the extent they are operating a motor vehicle
20 dealership in Arizona, and (during such time as such individuals are affiliated with Bill Heard)
21 to Bill Heard's current or future officers, directors, managerial or supervisory employees, and to
22 any other employees or agents having responsibilities with respect to the subject matter of this
23 Order, but not in any individual capacity; provided, however, that successor entities shall not
24 include any *bona fide* third party purchasers of assets from Bill Heard (even if done for the
25 purpose of operating a motor vehicle dealership in Arizona) but who are not at the time of such
26 purchase or thereafter owned or controlled by Bill Heard or by any other person or entity

1 affiliated through common ownership or management with Bill Heard Enterprises or any of its
2 corporate affiliates or subsidiaries.

3 **C. Injunction**

4 1. Bill Heard shall not engage in any false or deceptive advertising. All offers to sell
5 a motor vehicle shall clearly and conspicuously disclose all material facts, terms and conditions
6 relating to the offer. Any disclosures and disclaimers related to any statements, representations
7 or terms in any advertisement shall be clear and conspicuous.

8 2. Bill Heard shall not state or imply in any advertisement that the persons to whom
9 the advertisement is directed have been specially selected for a discount, credit program, special
10 deal or offer, unique access to inventory or any other type of special discount or benefit not
11 available to others unless such statement is true.

12 3. Bill Heard shall not use words, type, symbols, insignia or other designs that create
13 the false appearance that an advertisement is from or endorsed by any governmental agency, any
14 credit card company, or any other entity that extends credit, credit reporting agency, bank or
15 other financial institution, utility, insurance company, bill collecting company or law firm;
16 provided, however, that nothing in this Consent Judgment, shall prevent Bill Heard from using
17 in its advertisements any registered trademarks, logos or other insignia which it is authorized to
18 use.

19 4. Bill Heard's advertisements shall not create the false appearance that a consumer
20 is receiving a check or negotiable instrument.

21 5. Bill Heard shall not utilize the words or phrases "Bill Heard discount," "bonus
22 cash," "trade assistance" or similar inducements in its advertisements unless the advertised
23 inducements are actually provided to consumers on the terms and conditions as advertised.

24 6. In all advertisements that contain an offer regarding motor vehicle price, financing
25 or options, Bill Heard shall specifically identify the vehicles (i.e., by stock number) if the offer
26 is applicable to fewer than five (5) vehicles. If the offer is applicable to five or more vehicles,

1 but not all vehicles available for sale, the advertisement shall clearly and conspicuously disclose
2 the category(ies) of vehicles to which the offer applies. If the offer does not apply to all of the
3 vehicles available for sale by Bill Heard within any particular category(ies), then the
4 advertisement shall clearly and conspicuously disclose the minimum number of available
5 vehicles in each category to which the offer does apply. For the purpose of this requirement, it
6 shall be sufficient if the advertisement states that there are or will be (at the time the
7 advertisement is published or broadcast) "at least" a certain number of vehicles available, or
8 other similar words or phrases.

9 7. Bill Heard shall not advertise that a certain number of vehicles are available at a
10 specific price or that it has a certain amount of inventory for sale (such as "19 million dollar
11 inventory") unless true as of the time the advertisement is finally prepared and approved for
12 dissemination.

13 8. Bill Heard shall not advertise "we will pay off your trade no matter what you owe"
14 or use words of similar import, unless the advertisement also clearly and conspicuously
15 discloses that any negative equity in the trade-in vehicle may be added to the amount financed of
16 the vehicle being purchased.

17 9. In any transaction involving a trade-in vehicle with negative equity, Bill Heard
18 shall clearly and conspicuously disclose to the customer, either orally or in writing, how the
19 negative equity has been factored into the transaction.

20 10. Bill Heard shall not advertise or offer for sale any used vehicle using the
21 Manufacturer Suggested Retail Price ("MSRP") as a comparative price. Bill Heard may include
22 in an advertisement an accurate statement of the MSRP for a particular vehicle, when new, but
23 only if the advertisement does not create the appearance that Bill Heard's price represents a
24 reduction or discount from the MSRP; provided, however, that the mere inclusion of the Bill
25 Heard sales price and the MSRP for a vehicle in the same advertisement does not, in and of
26 itself, represent comparative pricing.

1 11. Bill Heard shall not advertise that it is experiencing a unique, urgent need for used
2 car trades, that special approval has been obtained or otherwise state that Bill Heard has a
3 unique incentive to sell more cars or provide better prices than usual, unless such statements are
4 true.

5 12. Bill Heard shall not publish any advertisements which create the impression that a
6 sale event is part of the "opening" of the dealership at its present location at 8705 East
7 McDowell in Scottsdale, Arizona.

8 13. Except as provided in this paragraph, Bill Heard shall not offer for immediate sale
9 through any advertisement any vehicle(s) specifically identified (*e.g.*, by stock number or
10 vehicle identification number) in the advertisement which are not in Bill Heard's inventory at the
11 time the advertisement is initially published, broadcast or otherwise disseminated, or which Bill
12 Heard cannot otherwise obtain for sale during the period the advertised price or other terms are
13 effective; provided, however, that Bill Heard shall not be prohibited from advertising the
14 opportunity to purchase vehicles which are not in inventory or otherwise available for
15 immediate sale and delivery (*i.e.*, pre-orders) if the advertisement clearly and conspicuously
16 discloses that information to prospective customers. If Bill Heard sells a vehicle specifically
17 identified (*e.g.*, by stock number or vehicle identification number) in any advertisement before
18 the advertisement is initially published, broadcast or otherwise disseminated to potential buyers,
19 Bill Heard shall either (1) sell the advertised vehicle on the advertised terms or conditions
20 (including price, if applicable, in accordance with Paragraph 14 below) or (2) make available for
21 sale, during the same period and on the same terms and conditions as the advertised vehicle, a
22 different vehicle of the same year, make and model (hereafter, the "substitute vehicle") which
23 has (or had when new, if the advertised vehicle is a used vehicle) an MSRP equal to or greater
24 than the advertised vehicle; provided, however, that if the advertised vehicle was one of several
25 similar (*i.e.*, the same year, make and model) vehicles advertised for sale on the same terms and
26 conditions, then any one of the other similar vehicles may serve as the substitute vehicle, so long

1 as Bill Heard makes available for sale during the same period and on the same terms and
2 conditions the total number of vehicles as advertised. If Bill Heard has sold an advertised
3 vehicle after the advertisement is first published but before the expiration of the advertised offer
4 or terms,¹ Bill Heard shall inform any customers inquiring about the advertised vehicle (e.g., by
5 telephone) that it has been sold. To the extent practicable in light of the medium in which the
6 advertisement was published, Bill Heard shall promptly update its advertisements when
7 advertised vehicles are sold or otherwise become unavailable for sale.

8 14. Bill Heard shall not sell any vehicles, as advertised, for a price higher than the
9 lowest advertised price in effect at the time of the sale, except that Bill Heard may, (1) if the
10 customer agrees, sell and charge the customer for services, equipment, accessories, or other
11 products in addition to those that may be included in or with the vehicle as advertised, so long as
12 Bill Heard does not otherwise increase the total purchase price of the vehicle, and (2) expressly
13 limit any advertised offers to specific consumers or groups of consumers (e.g., former
14 customers) and, in that event, is not bound to honor the terms of the advertised offers to other
15 persons; provided, however, that nothing in this paragraph 14 shall be construed to prohibit Bill
16 Heard from adding the negative equity (if any) in the customer's trade-in vehicle to the amount
17 financed of the vehicle being purchased in the manner disclosed to the customer (as provided in
18 paragraph 9 above), so long as Bill Heard acts consistently with any applicable state and federal
19 laws.

20 15. Bill Heard's advertisements shall accurately reflect the price of any advertised
21 motor vehicle. If the advertisement identifies a specific vehicle (i.e., by stock number), includes
22 the vehicle's price and creates the impression by words and/or illustration that the vehicle
23 includes certain equipment, options, features or products (such as four wheel drive, OnStar
24 navigation, DVD player), the advertised price must include all the items mentioned in the

25 ¹ For the purposes of this paragraph, a vehicle shall not be deemed to have been sold by
26 Bill Heard until the purchaser has either (1) completed the execution of all sale documents or
(2) signed any document concerning the purchase which would be sufficient to satisfy the statute
of frauds and taken possession of the vehicle.

1 advertisement. Bill Heard may also advertise that other equipment, options, features, or products
2 are available for purchase for an extra charge, if true, so long as the advertisement clearly and
3 conspicuously discloses that there is an extra charge for those items.

4 16. Bill Heard shall adopt policies and procedures to implement the provisions of this
5 Consent Judgment.

6 17. For a period of five (5) years from the Effective Date of this Consent Judgment,
7 Bill Heard shall provide regular (at least annual) training to all relevant staff, including newly
8 hired and re-hired employees. Failure to comply with this Consent Judgment shall subject Bill
9 Heard managers and employees who are personally responsible for the failure to comply to
10 discipline, up to and including termination, within the sole discretion of Bill Heard.

11 18. Within fifteen (15) days of the Effective Date of this Order Bill Heard shall
12 prepare a summary of the injunctive terms of this Order for all persons employed by or
13 contracting with Bill Heard, and/or any other person or entity who will be responsible for
14 complying with the Order, including but not limited to third party marketing companies and Bill
15 Heard Enterprise employees involved in the preparation and/or approval of Bill Heard's
16 advertisements. Within thirty (30) days of the Effective Date, Bill Heard shall provide a copy of
17 the summary to the Attorney General. Within sixty (60) days of the Effective Date, Bill Heard
18 shall submit a report outlining how it has or will comply with the provisions of Paragraphs 16
19 and 17 above. Within ninety (90) days of the Effective Date, Bill Heard shall adopt the policies
20 and procedures necessary to implement this Order as required by Paragraph 16 above and shall
21 provide documentation of such compliance to the Attorney General.

22 19. Bill Heard shall not represent or imply that the Attorney General, the State of
23 Arizona, or any agency thereof has approved any of their actions in Arizona or has approved any
24 of their past, present or future business practices in Arizona.

25 **D. Payment and Consumer Restitution**

26 1. Without admitting any liability, and solely to resolve this matter without the fees,

1 expenses, and risks of any litigation, Bill Heard shall pay to the Arizona Attorney General the
2 amount of two hundred and twenty five thousand dollars (\$225,000.00) for civil penalties,
3 attorneys' fees and costs of investigation, to be used for consumer fraud education and for
4 investigative and enforcement operations of the consumer protection division in accordance with
5 A.R.S. § 44-1531.01(C). This amount shall be paid according to the following schedule:

6 An initial payment, in the amount of \$50,000.00, shall be due within five (5) business
7 days after the Effective Date;

8 A second payment of \$35,000.00 shall be due within 35 days after the Effective Date;

9 A third payment of \$35,000.00 shall be due within 65 days after the Effective Date;

10 A fourth payment of \$35,000.00 shall be due within 95 days after the Effective Date;

11 A fifth payment of \$35,000.00 shall be due within 125 days after the Effective Date; and

12 A sixth payment of \$35,000.00 shall be due within 155 days after the Effective Date.

13 Should Bill Heard default on any payment, and further fail to cure the deficiency within
14 five business days after having received written notice from the State of any amount past due,
15 the entire amount still unpaid will become immediately due and owing. Interest on any unpaid
16 balance shall accrue at the statutory rate.

17 2. With respect to any consumer complaints relating to any transactions or events
18 occurring on or after March 1, 2007, and received by Bill Heard (either directly or through the
19 Attorney General's Office or the Better Business Bureau) within ninety (90) days after the
20 Effective Date of this Consent Judgment, Bill Heard shall promptly review and attempt to
21 resolve such complaints in good faith and consistent with the terms of this Consent Judgment;
22 provided, however, that nothing in this paragraph shall be construed as imposing upon Bill
23 Heard an obligation to pay any money, furnish any goods or services, or provide any other
24 benefits or consideration, to any consumer if Bill Heard determines in good faith and consistent
25 with the terms of this Judgment that the consumer is not entitled thereto; provided, further, that
26 nothing in this paragraph shall be construed as imposing upon Bill Heard any obligation to pay

1 any money, furnish any goods or services, or provide any other benefits or consideration, to any
2 consumer who has previously complained to Bill Heard concerning the same transaction or
3 event prior to the effective date of this Consent Judgment, nor does it impair any consumer's
4 right to pursue a private action against Bill Heard (or limit Bill Heard's right to defend any such
5 actions). Within one hundred twenty (120) days of the Effective Date, Bill Heard will provide a
6 report to the Attorney General summarizing the number of complaints received, the number
7 resolved, a description of the disposition of each complaint received, and an estimate of when
8 any outstanding complaints will be resolved.

9 **E. General Terms**

10 1. The State acknowledges by its execution hereof that this Consent Judgment
11 constitutes a complete settlement of its allegations against Bill Heard under the Arizona
12 Consumer Fraud Act. The State further agrees that it shall not institute any additional civil
13 action against Bill Heard based upon Bill Heard's advertisements and/or business practices
14 related to the terms or conditions of the sale or lease of any motor vehicles by Bill Heard,
15 including any equipment, options, features or products purchased by the customer, or related to
16 the transfer of any customer trade-ins to Bill Heard, or related to any advertised services, that the
17 State has asserted or could have asserted prior to the Effective Date of this Consent Judgment in
18 its own right or, in accordance with A.R.S. § 44-1528(A)(2), on behalf of any consumer.

19 2. Notwithstanding the foregoing, the State may institute an action or proceeding to
20 enforce the terms and provisions of this Consent Judgment or to take action based on future
21 conduct by Bill Heard. The Attorney General, however, affirms there are no current
22 investigations against Bill Heard for violations of the Act.

23 3. Nothing in this Consent Judgment restricts any person or entity from pursuing a
24 private action or asserting any available right or remedy against Bill Heard.

25 4. This Court retains jurisdiction of this matter for the purposes of entertaining an
26 application by Plaintiff, State of Arizona, for the enforcement of this judgment.

1 APPROVED AS TO FORM AND CONTENT

2 TERRY GODDARD, Attorney General

SACKS TIERNEY P.A.

3
4 

5 _____
6 Dena Rosen Epstein
7 Assistant Attorney General
8 Attorney for State of Arizona



_____ Brian E. Ditsch
Attorney for Bill Heard Chevrolet, Inc. -
Scottsdale

The foregoing instrument is a full, true and correct copy
of the original document.

Attest JUN 04 2008 20
MICHAEL K. JEANES, Clerk of the Superior Court of the
State of Arizona, in and for the County of Maricopa.
By [Signature] Deputy