

68374-8

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No. 68374-8-1

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

GMAC, aka ALLY FINANCIAL INC., a Delaware corporation,

Appellant,

v.

EVERETT CHEVROLET, INC., a Delaware corporation,
JOHN REGGANS, AND JANE DOE REGGANS,

Respondents.

APPELLANT'S OPENING BRIEF

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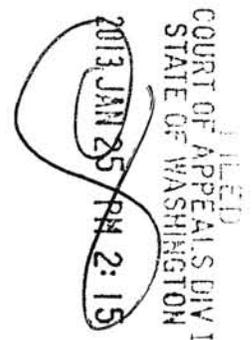


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I. ASSIGNMENTS OF ERROR

1. The trial court erred by failing to grant GMAC's motion for summary judgment by applying the duty of good faith to a demand obligation, contrary to *Allied Sheet Metal Fabricators, Inc. v. Peoples National Bank of Washington*, 10 Wn. App. 530, 536, 518 P.2d 734, review denied, 83 Wn.2d 1013, cert. denied, 419 U.S. 967 (1974).¹

2. The trial court erred by failing to grant GMAC's motion for summary judgment by applying a "free floating" duty of good faith to the written contract, where no specific contract term was breached, contrary to *Badgett v. Security State Bank*, 116 Wn.2d 563, 570, 807 P.2d 356 (1991).

3. The trial court erred by failing to grant GMAC's motion for summary judgment by relying on a basis not pled or argued by defendant Everett Chevrolet, Inc. ("EC") and by finding a triable issue based upon

¹ The trial court's oral ruling is attached to its order denying summary judgment, and page number citations are to the attached oral ruling. Clerks' Papers ("CP") 20; Appendix ("App.") B hereto. For the convenience of the Court, GMAC has attached, as an Appendix to this brief, copies of the court's order denying summary judgment, the various pretrial replevin hearing exhibits, portions of the replevin hearing testimony, and other pleadings or documents discussed or cited in this brief. Copies of replevin hearing exhibits were attached to the Declaration of John Glowney In Support of GMAC's Summary Judgment Motion to dismiss Bad Faith Claims (CP 250)as Exhibit B thereto and are referenced in this brief and in the App. as "R. Ex. _," and copies of replevin hearing testimony are referenced in this brief and in the App. as "RP Vol. _." The Court's working copy and service copies have been tabbed for convenience of reference.

II. ISSUES PRESENTED FOR REVIEW

1. Does controlling Washington precedent bar the application of the duty of good faith as a limitation upon GMAC's contractual right to make demand for payment? (Assignment of Error No. 1.)

2. Is a demand obligation not subject to any duty of "good faith" found in Article 9? (Assignment of Error No. 1.)

3. Was GMAC's demand proper where the duty of good faith does not apply to a demand obligation and a "demand obligation" permits demand for payment to be made "at any time" "with or without reason"? (Assignment of Error No. 1.)

4. Did the trial court fail to follow the controlling Washington precedent of *Badgett* by applying a "free floating" duty of good faith to retroactively inject new terms into the written contract? (Assignment of Error No. 2.)

5. Did the trial court fail to follow the controlling Washington precedent of *Badgett* by failing to require a showing by specific facts that a specific contract term was violated? (Assignment of Error No. 2.)

6. Was the trial court's determination that there was a fact issue of "bad faith" requiring a trial not based upon a recognized legal theory, and did EC, the non-moving party, fail to submit "specific facts"

as required by CR 56(e) to support its argument? (Assignment of Error No. 3.)

7. Should the Court remand the case with directions that it be assigned to a different trial court judge? (Assignment of Error Nos. 1, 2, 3.)

III. STATEMENT OF THE CASE²

A. Relevant Facts

1. EC's Loans From GMAC Were Payable Upon Demand

EC was a car dealership in Everett, Washington. John Reggans was its sole shareholder and personally managed its affairs.³ GMAC financed EC's acquisition of vehicles by a wholesale floor plan financing arrangement, which provided EC loans to buy new and used car inventory. R. Exs. 3, 6, 7. EC gave GMAC a security interest in EC's car inventory and its other assets. R. Exs. 2, 3.

As this Court acknowledged in its October 11, 2010 unpublished opinion addressing GMAC's first appeal in this case:

² Most of the facts cited in this brief are taken from the original pretrial writ of replevin hearing conducted in March/April 2009. The Verbatim Report of Proceedings for that hearing ("RP") was submitted as part of the record in GMAC's first discretionary review. *GMAC v. Everett Chevrolet, Inc.*, Court of Appeals Cause No. 63331-7-I. The RP was subsequently submitted to the trial court as part of the summary judgment motion on appeal in this discretionary review. CP 250 (Ex. A). In January 2013, GMAC obtained an order from the Court to transfer the RP from the first discretionary review case file to this case.

³ Reggans owned 100% of the stock of EC. RP Vol. X 105:4-5.

The core document for this financing arrangement is a Wholesale Security Agreement (Agreement), executed in 1996. This Agreement provides that any and all credit lines GMAC supplies to EC are subject to the Agreement. The Agreement requires EC to repay to GMAC the amounts GMAC advances “on demand”.^[4] The Agreement was amended in March 2000. The amendment did not change the “on demand” provision of the Agreement. ... In 2000, GMAC agreed to provide additional financing to EC under a revolving line of credit. This Agreement provides terms for payments in the ordinary course of business but also allows GMAC to require full payment on demand.^[5]

Several amendments to the Wholesale Security Agreement (“WSA”) were signed in 1996 (and later),⁶ including the “Fleet Sales Amendment” (R. Ex. 7) upon which the trial court relied in denying GMAC’s summary judgment motion (*see* section IV.D. *infra*).

2. EC’s Deteriorating Financial Condition Led GMAC To Ask EC To Restructure The Loan

As the Court of Appeals has also already acknowledged,⁷ and as

⁴ The pertinent clause states: “We [EC] agree upon demand to pay to GMAC the amount it advances or is obligated to advance to the manufacturer or distributor for each vehicle with interest at the rate per annum designated by GMAC from time to time” R. Exs. 3, 6.

⁵ *GMAC v. Everett Chevrolet, Inc.*, 158 Wn. App. 1004 (table), 2010 WL 4010113, at *1 (2010), *review denied*, 171 Wn.2d 1007 (2011).

⁶ None of the amendments changed the WSA’s “payable on demand” provision.

⁷ “By 2008, EC owed GMAC more than \$700,000 on the revolving line of credit and GMAC was unwilling to extend this line of credit further. EC proposed to improve its position by purchasing the property on which its business is located and asked GMAC to loan it the money to accomplish this. GMAC did not respond immediately but eventually refused EC’s request.” *GMAC*, 2010 WL 4010113, at *1.

EC's financial records and the testimony of Reggans⁸ confirm, EC's decline began in 2007 when car sales began to fall, well before GMAC's letter requests (R. Ex. 1, July 31, 2008), as the general nationwide contraction of the automobile sales industry took its toll.⁹ Two weeks before GMAC finally made demand in December 2008, EC, despite having received \$500,000 in October,¹⁰ sought a loan from Motors Holdings for an additional \$540,000 just to pay ordinary business expenses.¹¹

EC's annual profit shrank from \$700,000 in 2006 to just \$28,000 in 2007.¹² EC's own financial reports¹³ showed that this substantial

⁸ Reggans testified that he had observed the auto market declining in 2006 and had begun "proactively" trying to address EC's financial distress in July 2007 *even before* GMAC raised the issue with EC in early 2008. RP Vol. X 103:17-23; RP Vol. XIII 100:1-25, 118:5-16. In mid-2007, Reggans wanted to obtain more working capital by having GMAC provide 100% financing to purchase the dealership property. RP Vol. X 104:3-9; RP Vol. XIII 100:18-101:3. GMAC declined to do so. RP Vol. I 20:20-23:9. GMAC had no obligation to make a real estate loan to EC. RP Vol. XIV 45:4-46:6.

⁹ Reggans testified that the U.S. auto sales industry suffered a substantial downturn in 2007 and "went off a cliff" in 2008. RP Vol. X 103:19-21, 99:7-100:13.

¹⁰ RP Vol. X 125:1-7; RP Vol. XIV 46:21-47:7.

¹¹ Reggans testified that on December 5, 2008, he asked Motors Holdings for \$540,537 "to pay current and due expenses of \$358,715 as well as \$175,000 in payroll and taxes due December 2008 and January 2009." App F, CP 78, Reggans' Decl., Ex. 4 to Beaver Decl, paragraph 27.

¹² RP Vol. X 100:1-7.

¹³ EC submitted monthly financial statements to GM available to both GM and GMAC. RP Vol. I 25:16-26:9; *see R Ex. 79*. A year-to-date monthly profit

contraction in profitability became a trend of operating losses in 2008: through July 2008, EC had five straight months of substantial operating losses.¹⁴ Rebecca Iverson, EC's long-time controller (1996-Sept. 2008), testified to EC's severe financial problems starting in 2007 and its problems paying numerous bills in 2008.¹⁵

EC's financial problems caused Reggans, in late 2007, to seek and obtain from GMAC a \$300,000 increase (from \$500,000 to \$800,000) in the credit limit on the Revolving Line of Credit Agreement ("RLCA").¹⁶ But by May 2008, EC had used virtually all of those additional funds to pay bills, while its monthly losses continued to accumulate.¹⁷

By spring 2008, with EC's growing losses, GMAC was very concerned about EC's financial problems.¹⁸ GMAC's branch manager discussed GMAC's concerns with Reggans in June, and on July 31, 2008, GMAC sent EC a letter detailing its concerns and proposing to restructure the loan by, among other things, having EC increase its capitalization by

or loss summary is contained on the lower center portion of the front page of each report.

¹⁴ R. Ex. 79 (March (\$111,899); April (\$104,010); May (\$78,218); June (\$87,405); July (\$87,040)). Monthly losses continued through December.

¹⁵ RP Vol. III 4:23-25, 7:19-8:2, 10:2-12, 12:4-13:3, 18:1-15.

¹⁶ RP Vol. I 18:17-20:16 (Vick); R. Exs. 1, 8, 54.

¹⁷ *Id.*

¹⁸ RP Vol. I 24:13-32:25, 140:7-141:10.

\$800,000 and having Reggans provide a personal guaranty of EC's obligations. *Id.*; R. Ex. 1. The letter gave EC until October 31 (90 days) to comply and notified EC that if it did not, "GMAC may suspend or terminate [EC's] wholesale credit lines." R. Ex. 1. GMAC also declined another request by EC to advance additional funds.¹⁹

EC never met GMAC's requests. EC never injected \$800,000 of unencumbered capital into the corporation, and Reggans never provided a personal guaranty.

EC's monthly losses continued.²⁰ Iverson, EC's long-time controller, resigned in September because of her concern over potential personal liability for EC's unpaid state sales tax.²¹ GMAC's audits of EC's payments showed that EC made many late payments to GMAC.²²

In October 2008, EC received \$500,000 from Motors Holdings.²³ But EC's existing substantial losses forced EC to use those funds to pay

¹⁹ "GMAC is unable to increase the limit of the Dealership's Revolving Line of Credit or extend a working capital loan to the Dealership." R. Ex. 1.

²⁰ R. Ex. 79. EC's monthly loss in August 2008 was \$73,095; in September 2008, \$78,413; and in October 2008, \$96,291.

²¹ RP Vol. III 15:18-17:10.

²² GMAC's audits of the dealership had shown numerous late payments by EC to GMAC in August, September, October, and November 2008. *See* R. Exs. 66, 140-142; R. Ex. 88 (last page, letter dated Sept. 22, 2008) (81% payment delays); R. Ex. 89 (last page, letter dated Oct. 16, 2008) (60% payment delays); R. Ex. 90 (last page, letter dated Sept. 22, 2008) (44% payment delays); R. Ex. 91 (letter dated Nov. 19, 2008) (38% payment delays).

²³ RP Vol. X 125:1-7; RP Vol. XIV 46:21-47:7.

amounts in arrears to GMAC and other debt rather than holding the funds as working capital. *Id.*

It was very troubling to GMAC that even after receiving a \$500,000 cash injection EC still had a negative cash position.²⁴ GMAC was faced with a borrower that was suffering substantial monthly operating losses, that was repeatedly “out of trust,”²⁵ and that was unwilling or unable to meet the terms that GMAC offered to continue its financing of the dealership.

Nevertheless, GMAC extended EC’s wholesale credit line until November 30, to give EC additional time to address its financial problems.²⁶ EC was unable to do so. By the end of November, EC’s total year-to-date operating losses had worsened to \$717,552. R. Ex. 79.

By early December, despite having just obtained \$500,000 in October, Reggans sought an immediate loan of an additional \$540,000 from Motors Holdings, just to pay ordinary business expenses.²⁷ EC’s severe cash shortage caused it to go “out of trust” on three occasions in the

²⁴ RP Vol. VII 24:8-25:7.

²⁵ Selling “out of trust” is an industry term referring to an auto dealer’s failure to timely pay its wholesale lender the “floor plan” amount after a retail sale of a vehicle. RP Vol. I 44:3-17 (Vick); R. Ex. 3. EC had been “out of trust” a number of times earlier in 2008, which had prompted additional audits by GMAC. RP Vol. I 51:23-52:11 (Vick).

²⁶ RP Vol. VII 29:2-35:7; R. Ex. 9.

²⁷ Footnote 11, *supra*.

span of approximately two weeks.²⁸ GMAC then twice agreed to “floor” additional vehicles for EC.²⁹ On December 8, GMAC suspended EC’s wholesale credit line.³⁰ In mid-December, GMAC terminated its financing arrangements with EC and made demand for full payment.³¹ A few days later EC *again* went “out of trust”³² and made no provisions to pay.³³

B. Procedural History

In response to GMAC’s demand for immediate payment in full, EC stopped paying GMAC at all, even for vehicles it sold. It sold 33 vehicles and pocketed every penny of the sales proceeds, \$778,774.80,

²⁸ RP Vol. VII 38:4-42:8; R. Ex. 76.

²⁹ This effectively loaned additional funds to EC so it could pay the delinquency due GMAC. RP Vol. I 39:23-47:21, 119:2-120:14; RP Vol. VII 52:18-53:15; R. Exs. 10, 23, 32.

³⁰ R. Ex. 76.; R. Ex. 6. On December 4, 2008, GMAC also gave notice to GM on its “open account” with EC. R. Ex. 56.

³¹ \$5,629,294.89 was owed on the floor plan financing and \$738,000 on the RLCA (total \$6,367,294.89). R. Ex. 77.

³² RP Vol. VII 60:19-67:24; R. Ex. 14. EC claimed that it could not pay the amount due by cashier’s check, as GMAC had previously required, because the big snowstorm of December 2008 had caused its bank to close early on December 18. RP Vol. VII 64:9-10. (The bank did close early that day. R. Ex. 105.) But EC had known since it received the results of the audit of December 16 that payment for a number of cars would come due on the 18th. R. Ex. 14; RP Vol. II 33:24-38:15.

³³ Despite knowing for two days that \$206,000 would come due on the 18th, EC made no arrangements of any kind on either the 18th or 19th (or any day thereafter) to pay GMAC. RP Vol. VII 64:1-65:12; RP Vol. VIII 5:10-9:1. When EC defaulted by not paying upon demand, GMAC was entitled to have EC make its collateral available for GMAC’s immediate possession. R. Ex. 3, ¶ 9.

instead of repaying GMAC, as agreed, the amounts GMAC had lent EC to acquire those vehicles.³⁴ To halt this substantial misapplication of sale proceeds—the proceeds of GMAC’s collateral—GMAC filed this action on December 31, 2008, and obtained a temporary restraining order halting all sales by EC. Several weeks later, the order was modified to an injunction that allowed EC to sell cars but ordered it to pay GMAC the proceeds of cars as they were sold.³⁵

In March and April 2009, the trial court held a three-week hearing on GMAC’s motion for replevin, and denied replevin based upon GMAC’s alleged “bad faith.” GMAC sought discretionary review of this and other trial court orders. This Court’s Commissioner found the trial court’s “bad faith” ruling to be “probable error” and granted discretionary

³⁴ RP Vol. VI 27:14-30:22; RP Vol. VIII 9:2-16; R. Ex. 52. EC converted proceeds of \$778,774.80 instead of paying GMAC as the parties’ contract required. *Id.*

³⁵ R. Ex. 13. In March and April 2009, despite the outstanding injunction requiring EC to pay GMAC when it sold vehicles, and while the replevin hearing was proceeding, EC sold another 18 vehicles without paying any proceeds to GMAC. App. E.

review.³⁶ In October 2010, this Court reversed the order denying replevin and remanded.³⁷

In November 2011, GMAC filed its motion for summary judgment to dismiss EC's bad faith counterclaims and defenses based upon the two leading Washington cases, *Allied* and *Badgett*, in effect asking the trial court to correct its "probabl[y] erro[neous]" prior ruling. App. D, CP 506. The trial court again ruled that GMAC had acted in "bad faith" and denied GMAC's motion. App. B. But this time the trial court based its ruling upon a completely new theory that was not even argued by EC, and upon the trial court's speculation instead of "specific facts" as required by CR 56(e). App. B, CP 20. GMAC again sought discretionary review, and this Court issued an Order granting GMAC's motion for discretionary review on August 16, 2012.

IV. LEGAL ARGUMENT

A. Summary Of The Argument

The issues before this Court on this appeal were addressed in some detail in the ruling of the panel of this Court that granted discretionary

³⁶ See App. C, *GMAC v. Everett Chevrolet, Inc.*, Court of Appeals Cause No. 63331-7-I, Commissioner's Ruling Granting Motion for Discretionary Review. This Court reversed the trial court's replevin order on a procedural ground and did not reach the merits of the good faith issue.

³⁷ See *GMAC*, 2010 WL 4010113 (reversing all of the trial court's other rulings on related issues as well).

review.³⁸ The panel, following the well-established precedent of *Allied* and *Badgett*, found that a demand obligation is not limited by a claim of good faith³⁹ and that the trial judge’s “new theory appears to be nothing more than the imposition of a ‘free floating’ duty of good faith on the contract of the parties.” App K, Order at *6.

The panel’s analysis should be adopted, and the trial court’s order denying GMAC’s summary judgment motion on EC’s defense and counterclaims based upon bad faith should be reversed. The trial court, as it did at the replevin hearing, again refused to follow *Allied* or *Badgett* with respect to the demand obligations and good faith, and relied upon its own speculation, not “specific facts” as required by CR 56(e).

The trial court abandoned its original erroneous theory of bad faith and substituted a new, but equally erroneous, theory of bad faith that it revealed to the parties *only after* it had finished hearing the summary

³⁸ App K, *GMAC v. Everett Chevrolet, Inc.*, No. 68374-8-I, 2012 WL 3939863 (Wash. Ct. App. Aug. 16, 2012) (“Order”).

³⁹ “GMAC first argues that a demand obligation is not limited by a claim of bad faith. We agree. *Allied Sheet Metal Fabricators, Inc. v. Peoples National Bank of Washington*, on which GMAC chiefly relies, sets forth the governing principles of law.” Order at *3 (footnote omitted).

“ We conclude from these cases that there is no duty of good faith imposed on one who has a demand instrument to avoid exercising the right to demand payment of the obligation. These cases make this clear, and we see no reason to depart from either their reasoning or result. There was no duty of good faith requiring GMAC to refrain from exercising its right to demand payment.” Order at *4.

judgment oral argument. App. B. The trial court now found that GMAC had, in bad faith, breached a provision of the WSA's Fleet Sales Amendment.⁴⁰ But not only is there no evidence in the record that either GMAC or EC ever invoked the Fleet Sales Amendment, this argument was never raised by EC either in its answers and counterclaims,⁴¹ or in its written response to the summary judgment motion, or oral argument to the trial court.⁴² In fact, EC's counsel asserted at the summary judgment hearing that EC was not required to identify any express contract provision for its bad faith claim.⁴³

Allied and *Badgett* unambiguously require that EC's bad faith claims be dismissed as a matter of law, for the reasons set forth in the panel's discussion of these cases. Under *Allied*, GMAC may demand payment by EC at any time for any reason without any "good faith" limitation. Under *Badgett*, a claim of bad faith must be based upon a

⁴⁰ R. Ex. 7. Aside from being admitted into evidence in the replevin hearing, this Fleet Sales Amendment was not otherwise mentioned in the testimony of any witness during the entire three-week hearing.

⁴¹ App. H; CP 229, 526.

⁴² App. I; CP 58. The panel's ruling noted that EC had not disputed that it never made this argument (Order), and the full transcript of the hearing and EC's summary judgment briefs confirm that conclusion. *See* App. G.

⁴³"The Court: ... I don't think you identified a contract provision that you could argue that GMAC breached Mr. Beaver: I would just simply have to say, Your Honor, I did not read that requirement out of *Badgett*. ... I don't get out of that the requirement that you must cite to a specific contractual term." App. G 31:19-21; 32:11-13.

specific contract clause. The trial court cannot rely upon a contract clause that neither party invoked at any time as the basis for bad faith, and the trial court cannot create a genuine issue of material fact for trial by relying upon speculation rather than specific facts.

Moreover, it is an error of law for the trial court to create a new argument in favor of one party where the argument was never raised by that party;⁴⁴ to first reveal the basis for its decision only after argument had concluded; and to base its ruling upon alleged conduct by GMAC for which there was no factual evidence in the record.

Taken together, the record shows a trial judge who has reached conclusions based upon his own speculation and who is unwilling to apply the controlling precedent to the actual facts. Unfortunately, the trial judge refuses to apply unambiguous Washington law and the rules of summary judgment, and to heed previous discretionary review rulings. This leaves GMAC with no choice but to request remand of this case to a different judge. The trial court's latest ruling, and the manner in which it was made, shows that there is no reason to believe that citing controlling legal authority will have any effect upon the trial judge.

⁴⁴ Unfortunately, this is not the first instance of the trial judge creating new legal theories in favor of EC. See footnote 63, *infra*.

B. The Trial Court Erred In Failing To Follow *Allied*: A Demand Obligation Is Not Limited By The Duty Of Good Faith

Contrary to the trial court's rulings, the duty of good faith does not limit GMAC's right to demand repayment by EC at any time for any reason.⁴⁵ Any attempt to rely on the duty of good faith to limit the right to make demand under a demand obligation fails as a matter of law. *Allied*, 10 Wn. App. at 536 n.5.⁴⁶ Multiple courts across the country have so held.⁴⁷ A lender has no "good faith" obligation to delay making demand because of the borrower's financial difficulties.⁴⁸ The duty of good faith does not limit a creditor's right to call for payment under a "demand

⁴⁵ As this Court correctly noted on the prior appeal, the WSA "requires EC to repay to GMAC the amounts GMAC advances 'on demand'." *GMAC*, 2010 WL 4010113, at *1. Likewise, the RLCA "allows GMAC to require full payment on demand." *Id.*

⁴⁶ "Although these facts might raise questions as to the bank's business judgment, they create no factual issue as to the bank's right to do what it did, and so are not material facts. This is particularly so under our interpretation of what constituted the agreement between the parties, namely, the terms of the demand notes." *Allied*, 10 Wn. App. at 536 n.5.

⁴⁷ See *Larson v. Vermillion State Bank*, 567 N.W.2d 721, 723 (Minn. Ct. App. 1997); *Fulton Nat'l Bank v. Willis Denney Ford, Inc.*, 269 S.E.2d 916, 918 (Ga. Ct. App. 1980); *Centerre Bank of Kansas City, N.A. v. Distributions, Inc.*, 705 S.W.2d 42, 47-48 (Mo. Ct. App. 1985); *Taggart & Taggart Seed, Inc. v. First Tenn. Bank Nat'l Ass'n*, 684 F. Supp. 230, 235-36 (E.D. Ark. 1988); *Mirax Chem. Prods. Corp. v. First Interstate Commercial Corp.*, 950 F.2d 566, 570 (8th Cir. 1991). See cases cited in App. A.

⁴⁸ "Demand notes with the security agreements here executed indeed put the bank in a position where if it takes action, as a practical matter, the company is in trouble because it has lost its financing, but that is the agreement that the parties made by appropriate written instruments." *Allied*, 10 Wn. App. at 534.

obligation” because the “very nature” of “demand instruments or obligations” “permits call at any time with or without reason.”⁴⁹

Despite this unambiguous precedent, in its first ruling on good faith in 2009, the trial court disregarded *Allied*. App. J. In ruling on this summary judgment motion in 2011, the trial court again refused to follow *Allied* and tried to distinguish *Allied* by suggesting that it involved a negotiable instrument unlike the demand obligations in the non-negotiable WSA and RLCA contracts. App. B 49:16-50:2.

The trial court’s distinction is unsupported by any authority and is reversible error. The “negotiability” of a demand instrument or contract is not relevant to the duty of good faith.⁵⁰ What distinguishes negotiable

⁴⁹ See cmt. former RCW 62A.1-208. Revised Article 1 of the UCC was approved by the National Conference of Commissioners on Uniform State Laws and The American Law Institute in 2001, but has not been adopted in Washington. Former Section 1-208 is now designated as Section 1-309 in revised UCC Article 1, and this specific sentence in the comment has been relocated to the comments to Section 1-309 of revised Article 1. Washington retained this sentence in its comments to RCW 62A.1-208. More recently, Washington revised its Article 1 of the UCC, eliminating Section 1-208 as of June 7, 2012. However, under the savings and application notes to RCW 62A.1-101, the former provisions of Washington’s UCC remain the governing law in this case.

⁵⁰ *Mirax Chemical* illustrates the point. It involved a line of credit agreement which provided that “[d]ebtor promises to pay Secured Party, on demand, all or any part of the debit balance at any time.” 950 F.2d at 568 (brackets in original). There was no promissory note. Yet the court held that the agreement was a “demand obligation” to which the duty of good faith, as codified in UCC § 1-208 (now § 1-309), did not apply. *Id.* at 570; *cf. Larson*, 567 N.W.2d at 723 (explaining why imposition of a duty of good faith would impair the utility of demand instruments and raise the cost of lending); *Solar*

instruments from other contracts is the manner in which rights in instruments may be transferred and the defenses an obligor may assert against a transferee. See RCW 62A.3-201, 3-305. It is the nature of “demand,” not “negotiability,” that permits call at any time with or without reason, and thus excludes any duty of good faith.

Under *Allied*, GMAC properly made demand, and no claim of bad faith can be based upon GMAC’s exercise of that right.

C. “The duty [of good faith] exists only ‘in relation to performance of a specific contract term.’”⁵¹

As *Badgett* held, a borrower like EC must show that the lender breached a specific contract term in bad faith. There is no cause of action for bad faith independent of a specific contract term.⁵²

In its initial ruling denying replevin, the trial court ignored *Badgett*, and the Commissioner found “probable error.” App. C.

Motors, Inc. v. First Nat'l Bank of Chadron, 545 N.W. 2d 714 (Neb. 1996) (same).

⁵¹ *Keystone Land & Dev. Co. v. Xerox Corp.*, 152 Wn.2d 171, 177, 94 P.3d 945 (2004) (quoting *Badgett*, 116 Wn.2d at 570).

⁵² See, e.g., former RCW 62A.1-203 cmt. Under the savings and application notes to RCW 62A.1-101, the former provisions of Washington’s UCC remain the governing law in this case. This comment remains part of the Official Comment to Section 1-304 of the UCC. (“This section does not support an independent cause of action for failure to perform or enforce in good faith.”); *Baxter Healthcare Corp. v. O.R. Concepts, Inc.*, 69 F.3d 785, 792 (7th Cir. 1995) (“[T]he covenant of good faith and fair dealing is not an independent source of duties for the parties to a contract. Instead, the covenant merely ‘guides the construction of the explicit terms in the agreement.’” (citations omitted)).

Following remand, in opposing GMAC's summary judgment, EC continued to ignore *Badgett's* unambiguous rule and did not identify any contract term that was breached.⁵³

Rather than finding EC's stated position a conclusive acknowledgment that EC had no bad faith claim and granting GMAC's summary judgment motion, the trial court invented a breach on its own, seizing on a heretofore unnoticed contract provision buried in the Fleet Sales Amendment, which EC never pled or argued as a basis for its bad faith claim. App. B, 50:8-51:8.

D. Summary Judgment Requires "Specific Facts," Not Speculation By The Trial Judge

A brief examination of the Fleet Sales Amendment shows why EC has never claimed it was breached. The amendment applied to a very narrow set of circumstances, *i.e.*, delayed payment in a "fleet sale" of vehicles: "any and all vehicles sold or leased, more than one Vehicle per individual transaction, to a customer."⁵⁴ Moreover, the Fleet Sales Amendment did not operate unless EC made a specific written request to

⁵³ See footnote 43, *supra*.

⁵⁴ R. Ex. 7 (emphasis added). This section continues: "and in which the full payment thereof by cash or on a properly perfected retail installment contract or other security agreement basis is not made contemporaneous with the delivery of such Vehicles by Dealer (the 'Delayed Payment Vehicles')" *Id.* at 1.

GMAC, and GMAC agreed to each such sale.⁵⁵ Only then did Paragraph 8 authorize GMAC to take certain actions.⁵⁶

There was no evidence submitted in the original three-week replevin hearing in 2009, or at the summary judgment proceeding in 2012, that EC ever made any fleet sales; that EC ever requested GMAC to grant the Delayed Payment Privilege; that GMAC ever invoked Paragraph 8; or that EC ever asserted that GMAC violated this provision.⁵⁷

Despite the fact that (a) neither the trial judge nor EC set forth any “specific facts” showing that GMAC took any such action and (b) EC

⁵⁵ The Fleet Sales Amendment required the Dealer to “advise GMAC of each and every potential transaction in which Dealer requests GMAC to grant the Delayed Payment Privilege ...” and that “[s]uch request shall be made of GMAC in writing and on a form of the type and kind provided by GMAC from time to time.” R. Ex. 7, at 3 (**emphases added**). The Fleet Sales Amendment further stated that “WHEREAS, Dealer has requested the privilege of delaying payment of the Vehicle Amount Financed in the limited instances where such financed motor vehicles are sold by Dealer to a purchaser for whom both Dealer and GMAC have agreed to a delay payment period (‘the Delayed Payment Privilege’).”

⁵⁶ Paragraph 8 provides: “GMAC may take such actions as it deems appropriate to assure and enforce compliance with this Agreement, including requesting, for such purposes, verification from the Dealer’s customers the fact of delivery, possession, and amount, date, and circumstances of payment of any Delayed Payment Privilege Vehicles, and the notification to appropriate persons of any security interest, assignment or other claim in the Delayed Payment Privilege Vehicles of GMAC.” R. Ex 7.

⁵⁷ The absence of any evidence or argument whatsoever on this point is not for lack of opportunity: the issue of GMAC’s good faith has been litigated in a three-week replevin hearing, and briefed to the trial court, the Court of Appeals’ Commissioner, and this Court.

never even argued that Paragraph 8 was violated, the trial court nevertheless ruled as follows:

In Allied, Peoples Bank just loaned money. But in the instant case, GMAC went beyond the financing function into areas of management or operations. It claimed the authority to do so pursuant to the following contract term [identifying Paragraph 8 of the Fleet Sales Amendment].

App. B 50:6-22 (emphasis added).⁵⁸ No evidence supports this conclusory assertion.

It is reversible error to deny summary judgment, and send a case to trial, based upon events that never took place. Moreover, such action ignores the basic rules and purpose of the summary judgment procedure. It is black-letter law that the responding party to a summary judgment motion “must set forth specific facts” showing that there is a genuine issue for trial. CR 56(e).⁵⁹ If that party cannot do so, summary judgment

⁵⁸ The trial court asserted that “[Paragraph 8] allows GMAC to assert its control over the dealer’s operation. Pursuant to this global grant of authority, GMAC took the following actions.” App. B 51:3-6. The trial judge then proceeded to relist many of the alleged breaches of the parties’ contract he had listed in his first ruling, but this time he asserted that they were all actions taken under Paragraph 8 of the Fleet Sales Amendment.

⁵⁹ After the moving party has submitted adequate affidavits, the burden shifts to the non-moving party to set forth specific facts sufficiently rebutting the moving party’s contentions and disclosing the existence of a material issue of fact. *Seven Gables Corp. v. MGM/UA Entm’t Co.*, 106 Wn.2d 1, 12-13, 721 P.2d 1 (1986).

should be granted to avoid a “useless trial.”⁶⁰ Neither the responding party nor the trial court can rely “merely on conclusory allegations, speculative statements or argumentative assertions.”⁶¹ There is no purpose to have a trial except where actual, material facts show a genuine issue in factual dispute that can only be resolved by a trial.

Here, that fundamental purpose of summary judgment was entirely ignored. The trial judge invented an argument favoring EC that was not based upon anything EC had ever argued, premised his entire ruling upon that argument, and first revealed this incorrect rationale only after oral argument had concluded (thus denying GMAC any opportunity to respond).⁶²

And this is not the only instance of the trial judge relying on invented arguments favoring EC in this case which were not presented by EC. In 2009, the trial judge framed an argument favoring EC—an

⁶⁰ “The purpose of summary judgment is to avoid a useless trial when there is no genuine issue of any material fact.” *Olympic Fish Prods., Inc. v. Lloyd*, 93 Wn.2d 596, 602, 611 P.2d 737 (1980).

⁶¹ *Las v. Yellow Front Stores, Inc.*, 66 Wn. App. 196, 198, 831 P.2d 744 (1992); e.g., *In re Morris*, 260 F.3d 654, 665 (6th Cir. 2001); *S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 889 (9th Cir. 2003) (The “party opposing summary judgment must direct [the court’s] attention to specific triable facts.”). “[T]he non-movant must identify specific evidence in the record and articulate the manner in which that evidence supports that party’s claim.” *Johnson v. Deep E. Tex. Reg’l Narcotics Trafficking Task Force*, 379 F.3d 293, 301 (5th Cir. 2004).

⁶² App. B 48:3-4 (“I have some prepared remarks ...”).

argument that EC had not previously asserted—and based part of his replevin ruling on speculation rather than facts found in the record.⁶³

E. The Trial Court Erred In Finding That GMAC Engaged In Management Or Operations, Not Just Financing

The trial court's purported justification for its refusal to follow *Allied* and *Badgett* was that "GMAC went beyond the financing function into areas of management or operations," rather than just lending money as the creditor in *Allied* had done. App. B 50:6-8.⁶⁴

This conclusion lacks both a legal and factual basis. It is common and proper for commercial lenders to take steps similar to those GMAC took here to encourage borrowers to shore up their failing or financially

⁶³ In the 2009 replevin proceedings, the trial court introduced its "false targets" theory in an extended cross-examination of a GMAC witness by the trial judge himself. RP Vol. IX 131-146; App. J. In short, the trial court speculated that GMAC withheld material information related to GMAC's proposed loan modification, *i.e.*, that the "deadline and conditions necessary to maintain the wholesale credit lines were no longer valid at the time they were made in July 2008," and speculated that GMAC knew that even if EC met its demands for \$800,000 of additional capital and a personal guaranty from Reggans, EC could not meet an undisclosed "3-1 debt equity ration [sic] established during GMAC's sophisticated analysis of EC's business." But this was pure speculation by the trial judge about what GMAC would have done if EC had met GMAC's demands, because Reggans never agreed to a personal guaranty, and EC never infused an additional \$800,000 of working capital into the business. Then, as now, the trial judge himself devised an argument favoring EC not originally asserted by EC and based it upon speculation, not "specific facts."

⁶⁴ The trial court did not explain how GMAC's alleged complete takeover of EC had escaped the attention of everyone—in particular EC—in the three-week replevin hearing conducted in 2009.

distressed businesses.⁶⁵ Claims that a commercial lender improperly interfered with a borrower's management or operations require more than a showing that the lender acted to protect its loan: the lender must act to control the day-to-day management of the borrower. *FAMM Steel, Inc. v. Sovereign Bank*, 571 F.3d 93, 103 (1st Cir. 2009).⁶⁶ EC presented no evidence to show that GMAC controlled EC's day-to-day management or operations.⁶⁷

To be sure, when EC refused or failed to improve its capital position or provide the additional security, GMAC might have immediately exercised its right to demand payment. But “[a] creditor’s exercise of its right to declare a loan in default or to forbear from taking

⁶⁵ EC’s financial condition had been rapidly deteriorating for over a year. GMAC notified EC of its concerns and requests in person, by telephone calls (June), and then in a writing (July 31). GMAC gave EC a 90-day deadline, then extended the deadline another six weeks before making demand—which, under its contract, GMAC could have done at any time for any reason.

⁶⁶ *Accord First Sec. Bank & Trust of Miles City v. VZ Ranch*, 807 P.2d 1341, 1344-45 (Mont. 1991); *First Nat’l Mont. Bank of Missoula v. McGuinness*, 705 P.2d 579, 585-86 (Mont. 1985).

⁶⁷ Of the acts the trial court characterized as “management or operations,” several were requests that EC increase its capitalization, sell more cars, or take other steps to solidify its financial condition. *See* App. B. at 51. Contrary to the trial court’s reasoning, these requests were normal responses by a lender in dealing with a borrower’s deteriorating financial condition. Such requests did not remotely constitute GMAC taking over EC’s management or operations. *See Star Bank, N.A. v. Mgmt. Techs., Inc.*, 590 N.E.2d 298, 300 (Ohio Ct. App. 1990) (given borrower’s eroding financial condition, there was nothing wrongful in lender’s requesting personal guaranty from its owner).

such action only upon a debtor agreeing to certain modifications in the agreement is not ‘wrongful conduct’”⁶⁸

Moreover, other GMAC actions cited by the trial court were expressly authorized by the parties’ agreements and so cannot provide a basis for finding that GMAC exercised improper control over EC’s business operations constituting a breach of good faith.⁶⁹ Among these acts are GMAC’s audits of EC’s business records and inventory;⁷⁰ GMAC’s suspension, termination, and demand for full repayment of EC’s credit lines;⁷¹ and GMAC’s demands that EC pay \$10,000 per month under the RLCA.⁷² These contractual provisions are standard loan terms

⁶⁸ *Glenfed Fin. Corp. v. Penick Corp.*, 647 A.2d 852, 857 (N.J. Super. Ct. App. Div. 1994); *accord Reger Dev., LLC v. Nat’l City Bank*, 592 F.3d 759, 766 (7th Cir. 2010) (“The bank’s decision to hold off on taking full advantage of its legitimate powers until it could discuss less painful possibilities with its customer is not an impermissible threat and cannot give rise to any suit for breach.”).

⁶⁹ *See Badgett*, 116 Wn.2d at 570 (“[T]here cannot be a breach of the duty of good faith when a party simply stands on its rights to require performance of a contract according to its terms.”).

⁷⁰ The WSA provides that “GMAC shall at all times have the right of access to and inspection of the vehicles and the right to examine our [EC’s] books and records pertaining to the vehicles.” R. Ex. 3. *See, e.g., Fulton Nat’l Bank*, 269 S.E.2d at 917.

⁷¹ As already noted, both the RLCA and WSA were payable on demand. R. Exs. 3, 6, 8. Under *Allied* and *Badgett*, calling those lines of credit due, demanding payment, and exercising GMAC’s rights in collateral for the lines cannot constitute a breach of the duty of good faith. Also, these acts occurred after EC had defaulted. “When the borrower is in default, that necessarily alters the contours of the covenant of good faith and fair dealing.” *FAMM Steel*, 571 F.3d at 101.

⁷² The RLCA required EC to pay monthly the amount set forth in the billing statement that GMAC sent EC, thereby authorizing GMAC to set the monthly

in many commercial loans, and their exercise does not constitute an improper intrusion into EC's management. Simple enforcement of ordinary commercial loan terms to which EC agreed does not and cannot constitute bad faith.⁷³

V. REQUEST FOR REMAND TO DIFFERENT JUDGE

GMAC respectfully requests that this Court remand this case to a different trial judge in order to safeguard the appearance of fairness. Parties to a case are entitled to a judge who appears to be, and is, impartial. *Hyundai Motor Am. v. Magana*, 141 Wn. App. 495, 523, 170 P.3d 1165 (2007), *rev'd on other grounds*, 167 Wn.2d 570, 220 P.3d 191 (2009). In order to support an appearance of impartiality claim, the complaining party must submit proof of actual or perceived bias. *Id.*

The trial court's refusal to apply *Allied* and *Badgett* has now resulted in two discretionary review motions; in both, GMAC showed that the trial court committed "probable error." The record also shows that the trial judge has, on two separate occasions, invented theories of liability, neither of which were advanced by EC, in order to deny GMAC relief.

payment. R. Ex. 8. The RLCA also made the entire debt payable immediately on GMAC's demand. RLCA ¶ 1(d)(ii)(A), (C). The WSA required EC to pay on GMAC's demand. R. Ex. 3. *See Diversified Foods, Inc. v. First Nat'l Bank of Boston*, 605 A.2d 609, 613-14 (Me. 1992) (removal of collateral from line of credit base is not breach of good faith).

⁷³ See R. Ex. 69.

These theories were based upon the trial judge's factual speculation and his refusal to follow *Allied* or *Badgett*. The circumstances of the trial judge's rulings show that he believes, regardless of the facts or law—in fact contrary to the facts and the law—that GMAC acted wrongfully. In short, having so concluded in the initial replevin hearing, the trial judge is unwilling to change his mind. He is unwilling and/or unable to apply the governing law to the facts and has demonstrated that he cannot set aside his previously expressed opinion that GMAC acted in “bad faith.”

In *Saldivar v. Momah*, 145 Wn. App. 365, 186 P.3d 1117, *reconsideration granted in part*, 2008 Wn. App. Lexis 2216 *3 (2008), *rev. denied*, 165 Wn.2d 1049, 208 P.3d 555 (2009), the appellate court remanded the case to a different trial judge, reasoning that “in the interest of the appearance of fairness, a new superior court judge should conduct further proceedings on remand where it appears that a trial court judge will have difficulty setting aside a previously expressed opinion.”

[w]here a trial court judge appears to have difficulty setting aside a previously expressed opinion, we will appoint a new judge to preserve the appearance of fairness.

As noted, the present case is materially similar to *Saldivar* and the cases cited in *Saldivar*. *In re Custody of R.*, 88 Wn. App. 746, 762, 947 P.2d 745 (1997); *McSherry v. City of Long Beach*, 423 F.3d 1015, 1023 (9th Cir. 2005).

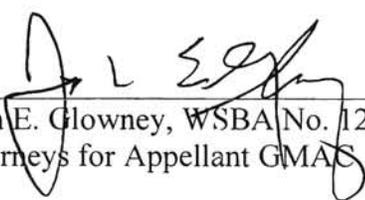
At the conclusion of the summary judgment hearing in this case; after reading his prepared ruling into the record, the trial judge stated, “[S]o that’s the way I see it. And I’ve seen it that way for a while.”⁷⁴ The trial judge has made it clear that he cannot set aside his view of the case regardless of contrary facts and law. Under these circumstances, remand to a different trial judge is necessary to preserve the appearance of fairness.

VI. CONCLUSION

For the foregoing reasons, the trial court’s order denying GMAC’s motion for summary judgment should be reversed, and this case should be remanded to a different trial court judge to enter summary judgment as GMAC requested and for further proceedings.

Dated this 25th day of January, 2013.

STOEL RIVES LLP



John E. Glowney, WSBA No. 12652
Attorneys for Appellant GMAC

⁷⁴ App. B 56:25-57:1.

APPENDIX

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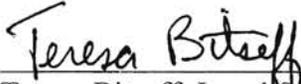
CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that I caused a true and correct copy of the foregoing document, APPELLANT'S OPENING BRIEF (WITH APPENDIX THERETO), to be served on the following counsel of record by Hand-Delivery/Legal Messenger:

Counsel for Defendants/Respondents:

JEFFREY A. BEAVER
GRAHAM & DUNN, PC.
2801 Alaskan Way, Ste 300
Seattle, WA 98121

Dated at Seattle, Washington, this 25 January 2013.



Teresa Bitseff, Legal Secretary
STOEL RIVES

APP. A

Appendix A

Because one of the primary purposes of the UCC is to create a uniform national body of commercial law, the decisions of other courts on UCC issues are relevant precedent in Washington. See RCW 62A.1-103(a)(3); *Larson v. Vermillion State Bank*, 567 N.W.2d 721, 724 (Minn. App. 1997). *Zeno Buick-GMC Inc. v. GMC Truck & Coach*, 844 F. Supp. 1340, 1350 (E.D. Ark. 1992); *Coffee v. GMAC*, 5 F. Supp. 2d 1365 (S.D. Ga. 1998); *Solar Motors, Inc. v. First Nat'l Bank of Chadron*, 545 N.W.2d 714 (Neb. 1996); *Taggart & Taggart Seed, Inc. v. First Tenn. Bank Nat'l Ass'n*, 684 F. Supp. 230, 235-36 (E.D. Ark. 1988), aff'd, 881 F.2d 1080 (8th Cir. 1989); *Kham & Nate's Shoes No. 2, Inc. v. First Bank of Whiting*, 908 F.2d 1351, 1357-58 (7th Cir. 1990); *Dominion Bank, N.A. v. Moore*, 688 F. Supp. 1084, 1086-87 (W.D. Va. 1988); *Spencer Cos. v. Chase Manhattan Bank, N.A.*, 81 B.R. 194, 199 (D. Mass. 1987); *Pavco Indus., Inc. v. First Nat'l Bank of Mobile*, 534 So. 2d 572, 576-77 (Ala. 1988); *Flagship Nat'l Bank v. Gray Distribution Sys., Inc.*, 485 So. 2d 1336, 1340 (Fla. Dist. Ct. App.), review denied, 497 So. 2d 1217 (Fla. 1986); *Fulton Nat'l Bank v. Willis Denney Ford, Inc.*, 269 S.E.2d 916, 918-19 (Ga. Ct. App. 1980); *Centerre Bank of Kansas City, N.A. v. Distributions, Inc.*, 705 S.W.2d 42, 46-48 (Mo. Ct. App. 1985); *Simon v. N.H. Savs. Bank*, 296 A.2d 913, 915 (N.H. 1972); *Mirax Chem. Prods. Corp. v. First Interstate Commercial Corp.*, 950 F.2d 566, 570 (8th Cir. 1991) (good-faith obligation arising under UCC does not apply to demand instruments); *Henning Constr., Inc. v. First E. Bank & Trust Co.*, 635 So. 2d 273 (La. Ct. App.), writ denied, 642 So. 2d 870 (La. 1994); *Waller v. Md. Nat'l Bank*, 620 A.2d 381 (Md. Ct. Spec. App.), cert. granted, judgment vacated on other grounds and remanded, 631 A.2d 447, and cert. granted, 631 A.2d 451 (table) (Md. 1993).

APP. B

FILED

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**SONYA KRASKI
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**SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY**

GMAC, a Delaware corporation,

Plaintiff,

vs.

EVERETT CHEVROLET, INC., a Delaware corporation; and JOHN REGGANS and JANE DOE REGGANS and their marital community,

Defendants.

) No. 08-2-10683-5

) ORDER DENYING GMAC'S MOTION FOR SUMMARY JUDGMENT

) No. 11-2-08883-7

ALLY FINANCIAL INC., a Delaware corporation,

Plaintiff,

JOHN REGGANS, an individual; and the marital community of JOHN REGGANS and CARMENLYDIA REGGANS, husband and wife,

Defendants.

THIS MATTER came before the Court on January 5, 2012 on GMAC's Motion for Summary Judgment. In adjudicating this motion, the Court heard oral argument by counsel and reviewed the following pleadings:

ORDER DENYING GMAC'S MOTION FOR SUMMARY JUDGMENT -- 1

GRAHAM & DUNN PC
Pier 70, 2801 Alaskan Way ~ Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

- 1 1. GMAC's Motion for Summary Judgment to Dismiss Everett Chevrolet Inc's Bad
2 Faith Claims;
- 3 2. Declaration of John Glowney in Support of GMAC's Summary Judgment Motion
4 to Dismiss Bad Faith Claims, and exhibits thereto;
- 5 3. Everett Chevrolet's Opposition to Motion for Summary Judgment; and
6 4. Declaration of Jeffrey Beaver in Opposition to GMAC's Motion for Summary
7 Judgment and exhibits thereto.
- 8 5. GMAC's Reply Brief in Support of Summary Judgment Dismissing Bad Faith
9 Claims.
- 10 6. Argument of Counsel.

11 IT IS HEREBY ORDERED THAT for the reasons articulated in the Court's oral ruling as
12 set forth in the excerpt of the Verbatim Report of Proceedings dated January 5, 2012, pages 46
13 through 57 appended hereto as Exhibit A, GMAC'S Motion for Summary Judgment is DENIED.

14 DONE IN OPEN COURT this _____ day of February, 2012.

15

16

Hon. Eric Z. Lucas

17

PRESENTED BY:

18

19

20 _____
Jeffrey A. Beaver, WSBA# 16091
21 Email: jbeaver@grahamdunn.com
Attorneys for Defendants

22 APPROVED AS TO FORM;
23 NOTICE OF PRESENTATION WAIVED:
24 STOEL RIVES LLP

25 _____
John E. Glowney, WSBA# 12652
26 Attorneys for GMAC n/k/a Ally Financial Inc.

ORDER DENYING GMAC'S MOTION
FOR SUMMARY JUDGMENT -- 2

m43949-1702702.doc

GRAHAM & DUNN PC
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Hon. Eric Z. Lucas

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Jeffrey A. Beaver, WSBA# 16091
Email: jbeaver@grahamdunn.com
Attorneys for Defendants

22

APPROVED AS TO FORM;
NOTICE OF PRESENTATION WAIVED:
STOEL RIVES LLP

23

24

25

John E. Glowney, WSBA# 12652
Attorneys for GMAC n/k/a Ally Financial Inc.

26

ORDER DENYING GMAC'S MOTION
FOR SUMMARY JUDGMENT -- 2

GRAHAM & DUNN PC
Pier 70, 2801 Alaskan Way ~ Suite 300
Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

EXHIBIT A

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

GMAC n/k/a Ally Financial)	
Inc, a Delaware)	
Corporation,	)	Cause No. 08-2-10683-5
)	
Plaintiffs,)	
)	
vs.)	
)	
EVERETT CHEVROLET, INC., A)	
DELAWARE CORPORATION,)	
Et al.)	
)	
Defendants.)	

VERBATIM REPORT OF PROCEEDINGS
VOLUME I

BE IT REMEMBERED that on 5th day of January, 2012, the above-entitled and numbered cause came on for Summary Judgement before JUDGE ERIC Z. LUCAS, Snohomish County Superior Court, Everett, Washington.

A P P E A R A N C E S

For the Plaintiff	JOHN E. GLOWNEY and DONALD CRAM
For the Defendant	JEFFREY BEAVER

REPORTED BY:
DIANA NISHIMOTO, OFFICIAL COURT REPORTER
SNOHOMISH COUNTY COURTHOUSE
3000 EVERETT, WA 98201
PHONE (425)388-3281
CSR. 3222

1 THE COURT: That's okay. I know what you were
2 talking about.

3 MR. BEAVER: Footnote two.

4 THE COURT: I was just being me.

5 MR. BEAVER: For the record, can I read it?

6 THE COURT: If you like, go ahead.

7 MR. BEAVER: Liebergesell held only that the
8 duty -- "The duty to disclose relevant information to a
9 contractual party [during negotiation] can arise as a
10 result of the transaction itself within the party's
11 general obligation to deal in good faith." And that has
12 not been repealed.

13 THE COURT: And for the record, that language is
14 just about a perfect quote from the actual case. And the
15 actual case quote is, and I think I cited this in my oral
16 decision, "The law has not yet acknowledged a general
17 requirement of full disclosure of all relevant facts in
18 all business relationships. However, it is clear from
19 these cases that the duty to disclose relevant information
20 to a contractual party can arise as a result of the
21 transaction itself within the parties' general obligation
22 to deal in good faith."

23 And then it says, "See restatement section 472." And
24 that is what I call the blessing. And to understand what
25 that particular positive affirmation means, you have to go

1 read restatement 472. And have fun, if you want to do
2 that.

3 MR. GLOWNEY: Your Honor, may I --

4 THE COURT: Was there anything else that you
5 wanted to --

6 MR. GLOWNEY: There is, I would just follow up
7 on, I would like to indicate what is here, the footnote
8 472 in part. And that's down in footnote two, and they
9 talk about there is no privilege of non disclosure by a
10 party who knows the other party is acting on a mistake --

11 THE COURT: Oh, yeah, they cited a couple parts
12 of it, they didn't cite it all.

13 MR. GLOWNEY: Right. Well, these are the ones
14 they cited, so I assume that's the ones we are referring
15 to. And the mistake, if mutual, would render voidable a
16 transaction caused by relying thereon, a transaction would
17 render voidable a transaction caused by relying thereon.
18 And that's what I wanted to get to. So that's just the
19 follow up on my point there, your Honor.

20 THE COURT: I understand what you are getting
21 to. Okay.

22 MR. GLOWNEY: Unless the Court has questions.

23 THE COURT: I don't.

24 MR. GLOWNEY: I appreciate your attention very
25 much. Thank you, your Honor.

1 THE COURT: I don't.

2 All right. So interestingly enough, I see this
3 slightly differently than you guys do. And I have some
4 prepared remarks, and I want to sort of preface this by,
5 you know, making the observation by -- on a summary
6 judgment motion the facts are given an inference in favor
7 of the non moving party.

8 So under this summary judgment motion the issue could
9 be stated as follows:

10 Does the statutory duty of good faith and fair dealing
11 apply to a financing contract that has a demand provision?

12 Instructive on this point is the case of Allied Sheet
13 Metal Fabricators vs. People's Bank of Washington. In
14 that case, the Court stated with the concept of demand
15 instruments "We are of the opinion that Allied's assertion
16 of breach of contract is based on a misconception of what
17 constituted the agreement between the parties. Allied
18 apparently believes that the general written security
19 agreement between the parties constituted a contract
20 guaranteeing continued financing which could not be
21 terminated without a formal declaration of default
22 pursuant to that agreement, even though the loans in
23 question were all based on demand promissory notes.

24 We are persuaded that the trial court, based upon the
25 undisputed facts, correctly interpreted the nature of the

1 agreement between the parties and that agreement is
2 expressed on the face of the demand note. In short, the
3 provisions of the security agreement are irrelevant and
4 simply not applicable to the actions of People's
5 challenged by Allied, because such actions were based on
6 the uncontroverted terms of the demand note.

7 In this connection, contrary to appellate's contention,
8 the mere fact that People's had provided financing to
9 Allied continuously since 1968 affected no change in the
10 terms of the demand note, and did not alter the rights the
11 parties hereby created. Allied failed to set forth any
12 facts which indicate a commitment by People's for
13 continued financing or extension of credit and therefore
14 the demand note which indicate the contrary are
15 controlling."

16 So in other words, the Allied case is an example of
17 pure bank financing. The bank issues demand notes and
18 then can call them without notes. The Allied court did
19 not rely on the terms of the security agreement, calling
20 it irrelevant.

21 In the instant case, there are no demand notes. The
22 only thing that exists in this relationship is the various
23 security agreements, where you identified the wholesale
24 security agreement with all of its various amendments or
25 revolving line of credit agreement. The security

1 agreements are contracts with demand provisions, not
2 notes.

3 I use the term pure financing, because there is a
4 difference between what People's Bank does and Allied and
5 what GMAC did here.

6 In Allied, People's Bank just loaned money. But in the
7 instant case, GMAC went beyond the financing function into
8 areas of management or operations. It claimed the
9 authority to do so pursuant to the following contract term
10 from the agreement amending the wholesale security
11 agreement and conditionally authorizing the sale of new
12 floor plan vehicles on a delayed payment privilege basis,
13 sub paragraph eight, which says, "GMAC may take such
14 actions as it deems appropriate to assure and enforce
15 compliance with this agreement, including requesting for
16 audit purposes verification from dealer's customers, the
17 fact of delivery, possession and amount, date and
18 circumstances of payment of any delayed payment privilege
19 vehicle and the notification to appropriate persons or of
20 any security interest assignment or any other claims in
21 the delayed payment privilege for vehicles of GMAC."
22 That's the end of this section of the contract.

23 This term is not a financing term. This contract term
24 gives GMAC the authority to "take such actions as it deems
25 appropriate to assure and enforce compliance of this

1 agreement."

2 This is part of the wholesale security agreement, but
3 it is not remotely related to a demand provision. It
4 allows GMAC to assert its control over the dealer's
5 operation. Pursuant to this global grant of authority
6 GMAC took the following actions. Many of these actions
7 directly involve GMAC in the management or operation of
8 Everett Chevrolet. These actions are as follows:

9 First, a target for cash injection is set that can
10 either not be reached, or if it is reached, will not bring
11 ECI into compliance with the policy metric of a three to
12 one debt equity ratio.

13 Next is the communication to ECI is that the break even
14 is in units, and that he needs to sell more units to meet
15 GMAC's goal. ECI is also told that they need to decrease
16 their inventory, and when the Court asked what this means,
17 she said, sell more cars. Sell more cars is not a
18 financing directive, it is a management one.

19 Next is the \$500 audit charge. Then there is the
20 \$10,000 principle reduction charge. This is a way of
21 controlling the business's working capital, not mere
22 financing, and it is a management issue.

23 Then the revolving line of credit is suspended here in
24 Exhibit 69 a letter from Michelle Smith dated
25 October 16th, 2008, while at the same time the interest

1 rate is increased from Libor plus 300 points to Libor plus
2 600, an increase of a hundred percent. All past credit
3 decisions were based on ECI's performance. But this one
4 is based, from the language of her letter, on "market
5 conditions" without indicating what metric in the market
6 is being used.

7 If the dealer fails to sign the interest rate amendment
8 then GMAC indicates it will terminate the revolving line
9 of credit. Here again, this directly involves GMAC in the
10 management of the business.

11 Next is the inventory reduction charge billed out at
12 over \$170,000. It comes directly out of working capital
13 without being earned. The calculation of the sum has no
14 metric and appears completely arbitrary. Again, this is a
15 management issue.

16 Then there is the November refusal to floor
17 unencumbered new and used vehicles at the dealer's request
18 when it would have had maximum positive affect on the
19 dealer in response to the dealer's efforts to be proactive
20 and avoid being out of trust, followed by the decision in
21 December to allow flooring, after audits found ECI to be
22 out of trust.

23 This action violated GMAC's own rule as testified to by
24 Ms. Smith that no flooring would be done once the floor
25 plan was suspended. But in the December case, the

1 flooring helps GMAC by obtaining more of ECI's assets and
2 harms the dealer because only his earlier proactive
3 approach in November would have enabled him to avoid the
4 out of trust position in December.

5 These actions deeply involve GMAC in day-to-day
6 tactical management decisions, and these decisions were
7 made in favor of GMAC to the detriment of ECI.

8 The three day agreement rule in this context is used to
9 limit working capital. When the business most needs
10 flexibility, the rule is strictly, if not arbitrarily
11 enforced. This rule is not uniform among dealers. Some
12 have a five day business day agreement rule. And there
13 was no testimony in the record concerning how it was
14 applied.

15 The sales date determined by GMAC is arbitrary. Pedram
16 Davoudpour testified that when there was a dispute about
17 the sales date, then they would negotiate it with the
18 dealer. However, it was clear from the testimony that
19 there was no negotiating with Mr. Vick or Mr. Ted
20 Modrzejewski. The date is applied in an arbitrary manner
21 because cars are considered sold before the deals closed
22 and were funded. Even known unwinds are included in the
23 audits as due and payable. This limits working capital
24 because it requires the dealer to fund the GMAC floor plan
25 out of his working capital rather than out of the sale.

1 A dealer with five day remit will have a distinct
2 advantage here over one who has a three day remit. Again,
3 this is day-to-day management, not mere financing.

4 Audits taking place on a daily basis also limit working
5 capital. All the employees testified that the daily
6 audits interfered with their performance. They testified
7 that it reduced sales. These are facts in the record and
8 are clearly management issues unrelated to financing.
9 Inefficient performance diminishes working capital because
10 employees must be paid who are not achieving peak
11 performance.

12 Mr. Jaffe testified that GMAC was on site interfering
13 with the business operation from November 14th, 2008 until
14 he left on January 28th, 2009. He testified that during
15 this time "There was not one day when they were not
16 physically on the premises". He testified that the
17 customers overheard their conversations when they would
18 come into his office and demand information.

19 This testimony is contrary to GMAC witness' who said
20 they were polite and asked employees to step out.

21 On December 4th, this is from hearing exhibit 56, the
22 demand on the open account severely impacted not only
23 working capital, but the dealer's cash position by
24 diverting and freezing these critical funds. On December
25 15th GMAC demanded payment on all credit lines with a

1 deadline of March 19th. On December 19th GMAC demanded
2 immediate payment of all credit lines referenced in the
3 letter of December 15th, 2008. These two actions coming
4 within days of each other did not make sense, unless they
5 were intended to stop his investment from Motor's Holding.
6 This is an inference allowed from the facts in the record.

7 On December 30th GMAC acquired the temporary
8 restraining order that shut the business down for two
9 weeks. Demand notices went to financing institutions and
10 this action stopped all financing of sales until relief
11 was granted by the Court on January 15th, 2009, by Judge
12 Allendoerfer.

13 Now, these acts identified in the Court's oral decision
14 are actions per the above contract clause. Given that
15 these acts of bad faith are directly related to a contract
16 provision, and the provision is not a demand or financing
17 provision but rather is "A management of dealer control
18 provision." This Court finds that Badgett vs. Security
19 State Bank is not controlling in this analysis.

20 I don't think anyone disputes that the clause gives
21 GMAC unfettered authority to come in and control dealer
22 operations in order to "assure and enforce compliance with
23 this agreement."

24 However, this contract term is not a demand provision,
25 and as such must be in compliance with the statutory UCC

1 duty of good faith and fair dealing of "honesty in fact
2 and the observance of the reasonable commercial standards
3 of fair dealing."

4 These inferences in favor of ECI show that GMAC
5 injected itself into the day-to-day management of ECI and
6 then managed it into a default position, then GMAC made
7 its demand.

8 It is this Court's view those efforts, at least for
9 purposes of summary judgment, show disputed material facts
10 with regard to GMAC's actions under the wholesale security
11 agreement. These acts, if true as construed, indicated a
12 violation of statutory covenant of good faith and fair
13 dealing, because it is obviously unfair to manage an
14 owner's business in favor of the manager to the owner's
15 detriment. As such GMAC and Allied's motion for summary
16 judgment is denied.

17 Okay. What next?

18 MR. BEAVER: Shall we prepare an order, your
19 Honor?

20 THE COURT: Sure.

21 MR. GLOWNEY: I think that was the only matter
22 on the Court's docket for this case.

23 THE COURT: For today?

24 MR. GLOWNEY: For today, your Honor.

25 THE COURT: Yeah, for today. Okay. So that's

APP. C

JUN 08 2009

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

DOCKETED

GMAC, a Delaware Corporation,)
)
 Petitioner,)
)
 v.)
)
 EVERETT CHEVROLET, INC.,)
 a Delaware Corporation; and)
 JOHN REGGANS and JANE)
 DOE REGGANS and their)
 marital community,)
)
 Respondents.)
 _____)

No. 63331-7-1

RECEIVED

JUN 08 2009

STOEL RIVES LLP

COMMISSIONER'S RULING
GRANTING MOTION FOR
DISCRETIONARY REVIEW

GMAC, LLC seeks discretionary review of a trial court order denying its request for replevin. Review is granted.

FACTS

This is a commercial dispute between two corporations, Everett Chevrolet, Inc. (Everett) and GMAC. Everett sells automobiles and GMAC provides financing for Everett. In general, the financing arrangement allows Everett to purchase new and used vehicles and repay GMAC as the vehicles are sold. GMAC has a security interest in the cars Everett has available for sale and in the other assets of Everett's business. The core document for this financing arrangement is a Wholesale Security Agreement, executed in 1996. This Agreement provides that any and all credit lines GMAC supplies to Everett are subject to the Agreement. The Agreement requires Everett to pay GMAC the amounts GMAC advances "on demand". In the normal course of business, the amount Everett owes to GMAC is constantly shifting as Everett purchases cars (increasing the amount owed) and pays GMAC for the sales it makes (decreasing the

amount owed). In 1999, GMAC agreed to provide additional financing to Everett under a revolving line of credit. This agreement provides terms for payments in the ordinary course of business but also allows GMAC to require full payment on demand.

For most of its existence, Everett has been a profitable business, but car sales have recently fallen. By 2008, Everett owed GMAC more than \$700,000 on the revolving line of credit and GMAC was unwilling to extend this line of credit further. GMAC expressed concern about Everett's ability to repay its debts and attempted to get Everett to change certain aspects of its business operation and restructure its financial position. Everett proposed to improve its position by purchasing the property on which its business is located, using funds borrowed from GMAC. GMAC did not respond immediately and eventually denied the request, and Everett was not then able to obtain alternate funding. GMAC told Everett it should inject additional capital into its business but Everett did not meet GMAC's requirements. In November 2008, GMAC believed Everett was selling cars without paying GMAC, a practice referred to as "selling out of trust". On December 15, 2008, GMAC terminated Everett's wholesale credit line and demanded full payment of the outstanding balances Everett owed by March 13, 2009. GMAC alleges that Everett then continued to sell cars out of trust. Shortly thereafter, GMAC demanded full payment immediately.

On December 31, 2008, GMAC filed a replevin action, seeking possession of Everett's inventory and assets. In January, 2009, the trial court entered an injunction, which, as later modified, restricted Everett's ability to sell vehicles and required regular documentation concerning vehicle sales. GMAC posted a bond in conjunction with the issuance of the injunction. According to GMAC, Everett continued to sell vehicles

without paying what GMAC claims it is owed from each sale, and, in some cases, without paying GMAC anything. GMAC requested relief under the terms of the injunction. However, after a replevin show cause hearing, a motion by GMAC to amend its complaint, and a motion to enforce the injunction, the trial court reached the merits of the underlying suit.

The trial court made extensive oral findings that bear on its decision. It found that Everett was profitable and doing well from 1996 through 2006 but that the car business began to decline after 2006. In 2007, GMAC increased Everett's revolving line of credit. At the end of 2007, Everett requested that GMAC help finance the purchase of real estate that Everett was leasing. Everett saw this purchase as critical to its profitability because it was facing a dramatic increase in lease payments. Although Everett made it clear to GMAC that the deal has to close by the end of 2007, GMAC did not respond until May 2008, orally declining to finance the purchase. The court found that from a business standpoint, GMAC's position was not reasonable, and that its delay, rather than swift rejection, denied Everett the opportunity to pursue other options.

In April 2008, Everett's financial statement showed a year to date loss of \$163,042. Everett and GMAC met on June 10th. Everett's owner testified that the meeting was dominated by GMAC's request that he personally guarantee Everett's debts. GMAC's branch manager testified that a number of topics were covered, including the need for an \$800,000 cash injection. The court found the testimony by the GMAC branch manager not credible, and found that it was unreasonable for GMAC to send Everett a letter fifty days later outlining what GMAC claims was discussed at the meeting, thus depriving Everett of time to meet GMAC's conditions. The court

characterized the letter as a "drop dead" letter, a communication that the relationship between GMAC and Everett was over and that it was just a matter of time until the end. But the court found that GMAC attempted to mask its intent by justifying its actions based on credit trends and performance, by manipulating and withholding information, and that it thereby misled Everett. The court found that GMAC's conditions would not, in fact, have allowed Everett to meet the financial parameters GMAC was seeking. The court found that GMAC's request for a personal guaranty, characterized as having some "skin in the game", was highly insulting, and that GMAC's true purpose to put Everett's owner in a position where it could reach his personal assets. Essentially, the court found that GMAC was operating with a hidden agenda, purporting to deal with Everett on an ongoing basis while setting Everett up for failure and a default, and suggesting changes that would improve GMAC's position without helping Everett survive. The court found that GMAC's actions and demands were not commercially reasonable. It found that GMAC's suit deprived Everett of the opportunity to obtain another pending investment from another company.

Quoting from Liebergessel,¹ the court found a general obligation to deal in good faith. It found GMAC breached this duty by failing to disclose aspects of its financial analysis of Everett's business, by setting false targets, by misleading Everett about its future actions, and by deliberately depriving Everett of working capital. It found GMAC had a duty of disclosure which it failed to meet, thus breaching an implied covenant of good faith and fair dealing. It found that GMAC did not conduct itself honestly, and operated with a hidden agenda and the goal of shutting Everett down. It found that

¹ Liebergessel v. Evans, 93 Wn.2d 881, 613 P.2d 1170 (1980).

GMAC did not have a contractual right to put Everett out of business and that it could only withdraw its financing in a commercially reasonable manner.

The court rejected GMAC's reliance on Badgett² as not on point because Badgett dealt with an affirmative expansion of a duty of good faith by requiring cooperation. The court stated it was not requiring GMAC to cooperate in any venture, but only to be honest, to not attempt to manufacture defaults, to not attempt to put pressure on the business to fail, and to not block other opportunities. The court found that all these things were done in the present case, in bad faith.

The court then dissolved the injunction but granted Everett's motion to hold the bond so Everett could pursue monetary damages. The court stated it was "not sure" whether the damage claim would be in this action or some other action but that it would retain jurisdiction for further replevin proceedings and send the matter back to presiding for a damages trial.

On April 10, 2009, the court entered a written order which (1) denied GMAC's request for replevin, finding that GMAC breached its Wholesale Security Agreement and violated its duty of good faith and fair dealing under the Washington Uniform Commercial Code (UCC) and Washington common law, (2) denied GMAC's motion to enforce the injunction, (3) dissolved the injunction, (4) released certain funds previously held in the court's registry, (5) denied GMAC's motion to amend its complaint, and (6) retained jurisdiction to resolve remaining issues related to the replevin request,

² Badgett v. Sec. State Bank, 116 Wn.2d 563, 807 P.2d 356 (1991).

including Everett's counterclaims against GMAC's \$2,000,000 bond. GMAC seeks interlocutory review.³

DISCRETIONARY REVIEW CRITERIA⁴

Discretionary review of an interlocutory decision may be accepted under RAP

2.3(b) only in the following circumstances:

(1) The superior court has committed an obvious error which would render further proceedings useless;

(2) The superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act;

(3) The superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by an inferior court or administrative agency, as to call for review by the appellate court; or

(4) The superior court has certified, or that all parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.

DECISION

The trial court did not explicitly explain why GMAC's breach defeated the replevin action, but it appears to have concluded either that the breach made the replevin

³ GMAC contends that the court's denial of its motion to amend was also error but spends little time discussing the issue. It is not clear whether the court denied the motion for any reason other than it considered the underlying case to have been decided. If so, the amendment was unnecessary. If not, the motion to amend should have been considered. The issue will not be addressed in this ruling but may be raised in the appeal.

⁴ Citing Quient v. Jennings, 136 Wash. 532, 240 P. 899 (1925), Everett argues that the decision appealed from is not appealable and that the appeal should be dismissed. But GMAC is seeking discretionary review, not appealing as a matter of right. Quient is inapplicable.

remedy unavailable or that the breach excused Everett's performance.⁵ The trial court did not explicitly decide whether Everett was in default on its obligations to GMAC, what duties it had in light of GMAC's breach,⁶ or what to do with Everett's existing delinquencies.

A replevin action is an abbreviated proceeding under RCW ch. 7.64. It entitles a claimant to possession after a show cause proceeding if the claimant "establishes the right to obtain possession of the property pending final disposition". RCW 7.64.035. The plaintiff seeking replevin must be able to prevail on the strength of her title or right, regardless of the defendant's title or right to possession. Graham v. Notti, 147 Wn. App. 629, 635, 196 P.3d 1070 (2008).

In this case, GMAC's action started with the premise that it had the right to take possession of its collateral because Everett failed to pay its obligations when GMAC made demand that it do so. There seems to be no dispute that this is a remedy GMAC may exercise under its contracts with Everett or under the UCC. Thus, in order to resolve the request for replevin, the trial court had to determine whether GMAC had a right to possession. The trial court held that GMAC breached its duty of good faith and denied replevin. This holding necessarily implies that Everett is in default but that GMAC has no right to possession because of its own breach. The inference that Everett is in default is also consistent with the trial court's issuance of a preliminary

⁵ The trial court subsequently denied GMAC's request for injunctive relief on the ground that it had unclean hands, thus suggesting that it would not authorize any court assistance to protect GMAC's security interest. While not condoning Everett's actions and its failure to abide by its financing agreement, the court simply refused to interfere with those actions, suggesting that GMAC's only resort was self help, but indicating it did not approve of this remedy. The court's ruling suggests that its denial of replevin was based on both theories.

⁶ Everett volunteered that it would pay the "floor plan" amount on cars it sold. It is not clear whether it is actually doing so. GMAC alleges it is not.

injunction. To obtain the injunction, GMAC must have demonstrated a clear right, a well grounded fear of immediate invasion of that right, and the possibility of substantial harm. RCW 7.40.020; Tyler Pipe Indus., Inc. v. State, Dep't of Revenue, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982). The trial court would not have issued an injunction restricting Everett's rights to sell the collateral absent a clear showing that Everett was not honoring its obligations.

The crux of the issue then is whether a debtor may raise as a defense to replevin a claim that its creditor did not act in good faith when that secured creditor demands payment under the terms of a demand payment financing arrangement.

In finding a duty of good faith and a breach, the trial court explicitly relied on Liebergesell v. Evans. The defendants in Liebergesell were engaged in the business of buying and renovating houses. They persuaded Liebergesell to invest funds in their venture and drew up notes evidencing the indebtedness. The defendants knew these notes were usurious and knew that Liebergesell was unaware the notes were illegal, but they did not inform her of their usurious character or of the adverse consequences. When Liebergesell attempted to enforce the notes, the defendants asserted usury as a defense. The trial court denied the defendants' motion for summary judgment, the Court of Appeals reversed, and the Supreme Court reversed the Court of Appeals, joining a number of other jurisdictions in holding that a borrower may be estopped from asserting a usury defense. In discussing the issue, the Court stated:

The law has not yet acknowledged a general requirement of full disclosure of all relevant facts in all business relationships. However, it is clear from these cases that the duty to disclose relevant information to a contractual party can arise as a result of the transaction itself within the parties' general obligation to deal in good faith.

Liebergesell, 93 Wn.2d at 893 (emphasis added). It appears the trial court applied Liebergesell to conclude that GMAC had a duty to respond promptly to Everett's proposal to purchase property, and a duty to fully inform Everett regarding the business parameters GMAC wanted Everett to meet.

GMAC relies on Allied Sheet Metal Fabricators, Inc. v. Peoples Nat'l Bank of Washington, 10 Wn. App. 530, 518 P.2d 734 (1974) and Badgett v. Sec. State Bank, 116 Wn.2d 563, 807 P.2d 356 (1991).

In Allied, Peoples Bank financed Allied's business under the terms of security agreements secured by accounts receivable and other collateral. The loans were evidenced by demand promissory notes. Peoples Bank made \$50,000 loans to Allied on two successive days. Six days later, Peoples Bank decided to take steps to collect Allied's entire debt. Without notice, it applied Allied's checking account deposits to the indebtedness, causing Allied's outstanding checks to be dishonored. Allied asserted that Peoples Bank acted in bad faith because it knew the proceeds of the final two loans were earmarked for payment of Allied's obligations and the general operation of the company. Allied alleged that Peoples Bank breached its contract and duty of good faith under RCW 62A.1-203 by claiming the checking account funds without declaring a default and making a demand for payment. The trial court and the Court of Appeals rejected this argument. The Court noted that a demand note is payable immediately upon execution.

The Missouri Court of Appeals followed Allied in Centerre Bank of Kansas City, N.A. v. Distribs., Inc., 705 S.W.2d 42, 47-48 (Mo. App. W.D. 1985), a case whose facts

are somewhat similar to the present case. In discussing whether the duty of good faith imposed obligations on the holder of a demand note, the court stated:

Demand instruments are recognized by [Missouri law] and under [Missouri law], a cause of action accrues against the maker of a demand instrument on its date or its date of issue. The good faith requirement of [Missouri's version of RCW 62A.1-203] is in the performance or enforcement of a contract or duty. The imposition of a good faith defense to the call for payment of a demand note transcends the performance or enforcement of a contract and in fact adds a term to the agreement which the parties had not included. The additional term would be that the note is not payable at any time demand is made but only payable when demand is made if such demand is made in good faith. The parties by the demand note did not agree that payment would be made only when demand was made in good faith but agreed that payment would be made whenever demand was made. Thus [Missouri's version of RCW 62A.1-203] has no application because it does not relate to the performance or enforcement of any right under the demand note but in fact would add an additional term which the parties did not agree to.

Centerre Bank, 705 S.W.2d at 47-48.

In Badgett, the Badgetts sued Security State Bank after it refused to restructure their agricultural loans. Relying on Liebergesell, the Court of Appeals held that the bank may have had a good faith duty to consider the Badgetts' proposals for restructuring the loan. The Supreme Court reversed, identifying the critical question as whether or not, as a matter of law, the bank had a duty to consider the Badgetts' proposal. While recognizing that there is an implied duty of good faith and fair dealing in every contract, the Court held that the duty does not extend to obligate a party to accept a material change in the terms of its contract, does not inject additional terms into the contract, but only requires that the parties perform in good faith the obligations imposed by their agreement. Badgett, 116 Wn.2d at 569. The Court held that Liebergesell was not on point and did not stand for the broad interpretation read into it by the Court of Appeals. Badgett, 116 Wn.2d at 570 n.2. The Court held that there is no free floating duty of

good faith unattached to underlying legal document, that a duty to cooperate only exists in relation to a specific contract term, and that there can be no breach of duty, as a matter of law, when a party simply stands on its rights to require performance of a contract according to its terms. Badgett, 116 Wn.2d at 570. The Court adhered to and applied this holding in Keystone Land & Dev. Co. v. Xerox Corp., 152 Wn.2d 171, 177, 94 P.3d 945 (2004) and the Court of Appeals also applied it in Carlile v. Harbour Homes, Inc., 147 Wn. App.193, 215–16, 194 P.3d 280 (2008). In another case, the Court of Appeals held that a course of dealing cannot override express terms in a contract or add additional obligations to it. Seattle-First Nat'l Bank v. Westwood Lumber, Inc., 65 Wn. App. 811, 829 P.2d 1152 (1992).

GMAC had demand notes. The trial court did not find otherwise. GMAC demanded payment, which Everett did not make. There is nothing in any of the financing contracts that obligates GMAC to make other loans, to consider alternate business structures, or to explain its reasons for asking for changes to Everett's capitalization.⁷ Whether GMAC's actions make business sense is irrelevant to the issue of whether it may demand payment. Everett may or may not have a cause of action for interference with a business expectancy or some other tort, but such a claim is also irrelevant to the issue of whether GMAC could demand payment. It thus appears, despite its statements to the contrary, that the trial court added a good faith defense to the demand note and that its decision therefore conflicts with Badgett and Allied.

GMAC has shown probable error.

⁷ When a contract provides that a party may require additional collateral at will, RCW 62A.1-208 provides that the party may do so only if the party believes in good faith that the prospect of payment or performance is impaired. Neither party cites any such provision in this case. But even if such a provision does exist, it is evident that GMAC had a good faith belief that its prospects for payment were impaired.

The issue of whether the error substantially alters the status quo or substantially limits GMAC's freedom to act is somewhat difficult to address. Resolving the replevin action on the ground that GMAC breached a duty of good faith leaves the status of GMAC's rights as a secured creditor unclear. It does not determine whether GMAC is still entitled to enforce all, some, or none of its remedies under its contracts or the UCC. Because the remedy of replevin is in addition to others remedies, a secured creditor does not necessarily forfeit its right to UCC remedies by seeking replevin. RCW 7.64.010. But does the finding that GMAC breached its duties bar those remedies? If so, is GMAC without recourse if Everett, as GMAC alleges, continues to sell vehicles without paying GMAC?⁸ The trial court's resolution also leaves unresolved the question of whether Everett must comply with all, some, or none of its contractual obligations. If Everett's performance is partly excused, as Everett seems to believe, to what extent must it still perform? If Everett has no duty to perform, is GMAC no longer a secured creditor? Although the resolution of these issues is not clear, if GMAC had a right to possession of its collateral when Everett failed to honor GMAC's demand for payment, as seems to be the case, and does not have such a right now, as seems to be the case,

⁸ GMAC alleges that Everett continues to sell vehicles without paying GMAC. GMAC maintains that all proceeds from all sales belong to it because it has demanded payment of Everett's outstanding obligations and Everett has not made payment. GMAC also maintains that Everett is not even remitting the funds that it would be required to remit under the financing agreement. GMAC alleges that Everett is using these funds to pay current operating expenses and stay in business, and that the only proceeds Everett is remitting come from vehicles for which GMAC holds the title, sales which could not be completed without releasing the title. Everett does not specifically deny GMAC's allegations. Rather it maintains that it is continuing to do business is a commercially reasonable way to mitigate GMAC's damages. Everett characterized its payment efforts as "doing the best it can". However, GMAC maintains that its security is being dissipated. Although Everett may have moderated its position somewhat, it has also suggested that the trial court's finding that GMAC breached its duties completely excuses Everett's performance. Everett represented to the trial court that it would pay GMAC the "floor plan" amount. It is not clear exactly what this amount is or whether Everett has been paying it.

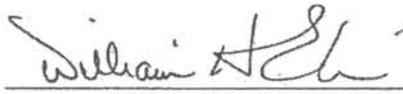
No. 63331-7-1/13

the trial court's ruling has substantially altered the status quo.⁹ GMAC's motion for discretionary review shall accordingly be granted.

Now, therefore, it is hereby

ORDERED that GMAC's motion for discretionary review is granted.

Done this 5th day of June, 2009.



Court Commissioner

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STATE OF WASHINGTON
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⁹ The trial court's subsequent denial of GMAC's request for relief makes it clear that it will not act to assist GMAC in protecting its security interest.

APP. D

CONFIRMATION
COPY

FILED

CIVIL MOTIONS – JUDGE’S CALENDAR
Hearing Date: Dec. 8, 2011 @ 9:30 a.m.

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SNOHOMISH COUNTY CLERK
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SUPERIOR COURT
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SNOHOMISH COUNTY

GMAC n/k/a Ally Financial Inc, a Delaware
corporation,

Plaintiff,

v.

EVERETT CHEVROLET, INC., a
Delaware Corporation; and JOHN
REGGANS and JANE DOE REGGANS
and their marital community

Defendants.

No. 08-2-10683-5

**GMAC’S¹ MOTION FOR SUMMARY
JUDGMENT TO DISMISS EVERETT
CHEVROLET INC’S BAD FAITH
CLAIMS**

I. RELIEF REQUESTED

Plaintiff GMAC asks the Court to enter an order of summary judgment dismissing, as a matter of law, Defendant EC’s’ claims of bad faith.² This is a case between a lender with demand financing and an auto dealership borrower. GMAC asserts in this summary judgment motion that EC’s bad faith claims lack any basis in the parties’ loan agreements and should all be

¹ GMAC is now known as Ally Financial Inc.

² EC’s first through third counterclaims and EC’s affirmative defense of Estoppel in Pais, which asserts that GMAC’s alleged “bad faith” conduct estops it from claiming that EC breached the Wholesale Security Agreement (discussed below) and its untitled affirmative defense, contained in ¶ 2.6 of EC’s Answer.

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GMAC’S SUMMARY JUDGMENT MOTION RE GOOD FAITH - 1

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1 dismissed under the two leading Washington cases that address bad faith issues between a lender
2 with demand financing and a borrower: *Allied Sheet Metal Fabricators, Inc. v. Peoples National*
3 *Bank of Washington*, 10 Wn. App. 530, 536, 518 P.2d 734, review denied, 83 Wn.2d 1013, cert.
4 denied, 419 U.S. 967 (1974) and *Badgett v. Security State Bank*, 116 Wn.2d 563, 807 P.2d 356
5 (1991).

6 II. ISSUES PRESENTED

7 1. Under *Allied*, is EC's claim that GMAC violated the duty of good faith when it
8 made demand for payment barred as a matter of law because under the UCC the duty of good
9 faith does not apply to demand obligations?

10 2. Under *Badgett*, are EC's bad faith claims barred as a matter of law because they
11 are not based upon specific contract terms?³

12 3. Under *Badgett*, are EC's bad faith claims barred because engaging in loan
13 restructuring negotiations does not violate the duty of good faith?

14 4. Under *Badgett*, are EC's bad faith claims barred because "[a]s a matter of law,
15 there cannot be a breach of the duty of good faith when a party simply stands on its rights to
16 require performance of a contract according to its terms." *Id.* at 570.

17 5. Is EC's claim for tortious interference with business expectancies barred because
18 GMAC had a right to exercise its contractual remedies against its collateral, which included
19 giving notice to an account debtor to pay GMAC rather than EC? RCW 62A.9A-607(a);
20 62A.9A-406. (EC's Third Counterclaim.)

21 III. EVIDENCE RELIED UPON

22 1. Declaration of John E. Glowney, including the following exhibits:

23 2. Ex A: Verbatim Report of Proceedings (RP).⁴

24
25
26 ³ EC's Second Counterclaim is entitled "Breach of the Duty of Good Faith and Fair Dealing." This Counterclaim incorporates paragraphs 2.5(a)-(1) of its affirmative defenses.

1 should not have been considered in a pretrial show cause replevin hearing. Glowney Ex. C. The
2 Court of Appeals ordered that replevin should have been granted and reversed all of Judge
3 Lucas' other rulings. *Id.*

4 GMAC has noted this motion on the civil motions calendar because Judge Lucas has not
5 been assigned to this matter. References in this motion to "the Court" or "this Court" pertain to
6 Judge Lucas. Citations to the Verbatim Report of Proceedings (RP) and Replevin Exhibits ("R
7 Ex.") pertain to the show cause replevin hearing conducted by Judge Lucas.

8 **B. GMAC and EC Had "Demand" Financing**

9 Everett Chevrolet was a Chevrolet dealer formerly located in Everett, Washington. In
10 December 1996, EC and GMAC entered into what is commonly known in the auto dealership
11 industry as a wholesale floor plan financing arrangement. R Ex. 3. GMAC's floor plan
12 financing contract⁶ with EC contained a UCC "promise to pay on demand." *Id.* Both the
13 "Wholesale Security Agreement" and the "Amendment to Wholesale Security Agreement,"
14 dated December 10, 1996, signed by John Reggans, EC's principal,⁷ provided that EC agrees
15 "upon demand to pay to GMAC the amount it advances or is obligated to advance." R Exs. 3, 6
16 (emphasis added).

17 The Court of Appeals recognized that both the Wholesale Security Agreement, including
18 all amendments, and the Revolving Line of Credit Agreement ("RLCA") entered into by EC
19 with GMAC provide for "demand" financing. In its unpublished opinion dated October 11, 2010,
20 the Court of Appeals explained that:

21 [t]he core document for the financing arrangement between GMAC and
22 EC is a Wholesale Security Agreement (Agreement), executed in 1996.
23 This Agreement provides that any and all credit lines GMAC supplies to
24 EC are subject to the Agreement. The Agreement requires EC to repay
to GMAC the amounts GMAC advances "on demand." The Agreement

25 ⁶ The replevin proceeding record contains copies of a number of amendments to the loan contract, none of
which are of relevance to the claims of bad faith addressed in this motion. See R Ex. 4-6.

26 ⁷ John Reggans owned 100% of the stock of EC. RP Vol. X 105:4-5.

1 was amended in March 2000. The amendment did not change the “on
2 demand” provision of the Agreement. In the normal course of business,
3 the amount EC owes to GMAC is constantly shifting as EC purchases
4 cars and repays GMAC from the sales it makes.⁸ In 2000, GMAC
5 agreed to provide additional financing to EC under a revolving line of
6 credit. This Agreement provides terms for payments in the ordinary
7 course of business but also allows GMAC to require full payment on
8 demand.

9
10 Glowney Ex. C, Opinion, p. 2. As noted, GMAC had also provided additional financing to EC
11 through a revolving line of credit agreement (“RLCA”). R Ex. 8. GMAC’s security interest
12 covered all of EC’s vehicles, floored and non-floored, and virtually all of its other assets. R Exs.
13 2, 3.

14 C. The Auto Industry Recession Caused EC’s Financial Problems Starting in 2007

15 EC’s financial records and the testimony of Mr. Reggans established that EC’s financial
16 woes started in 2007, well before GMAC’s letter requests (R Ex. 1, July 31, 2008), and were the
17 result of the severe general nationwide recession in the automobile sales industry.

18 EC’s annual profit shrank from \$700,000 in 2006 to \$28,000 in 2007. RP Vol. X 100:1-
19 7. Mr. Reggans admitted that the U.S. auto sales industry suffered a substantial downturn in
20 2007 and “went off a cliff” in 2008.⁹ Mr. Reggans admitted that he had observed the auto

21 ⁸ Wholesale floor plan financing provides a financing mechanism for auto dealers who are continually
22 buying vehicles from the manufacturer and selling to retail consumers. RP Vol. I 169:22-170:18 (Cady).
23 In the ordinary course, the amount GMAC advanced for each vehicle purchased wholesale by EC, the
24 “floor plan” amount for that vehicle, was added to the GMAC financing balance. *Id.* When EC sold that
25 vehicle to a retail customer, EC was obligated to pay GMAC the “floor plan” amount for that vehicle. *Id.*
26 The Wholesale Security Agreement provides in relevant part:

[A]s each vehicle is sold, or leased, we [*i.e.*, EC] will, faithfully and promptly remit to you
[*i.e.*, GMAC] the amount you advanced or have become obligated to advance on our behalf
to the manufacturer, distributor or seller . . .”

R Ex. 3, ¶ 7.

⁹ RP Vol. X 103:19-21; 99:7-100:13.

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GMAC’S SUMMARY JUDGMENT MOTION RE GOOD FAITH - 5

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1 market declining in 2006 and had begun "proactively" trying to address EC's financial distress in
2 July 2007 even before GMAC raised the issue with EC in early 2008.¹⁰

3 Rebecca Iverson, EC's long-time controller (1996-Sept. 2008), testified to EC's severe
4 financial problems starting in 2007 and its problems paying numerous bills in 2008.¹¹
5 Ms. Iverson eventually resigned in September 2008 because of her concern over potential
6 personal liability for EC's unpaid state sales tax. RP Vol. III 15:18-17:10. EC's financial
7 reports showed that, through July 2008, EC had five straight months of substantial operating
8 losses. R Ex. 79 (March (\$111,899); April (\$104,010); May (\$78,218); June (\$87,405); July
9 (\$87,040)).

10 **D. In the Face of the Recession, Both Parties Sought to Restructure the Loan**
11 **Agreement: EC Sought Additional Funds from GMAC and GMAC Asked for More**
12 **Capital in the Business and a Personal Guaranty**

13 In mid-2007, Mr. Reggans asked GMAC to provide 100% financing for EC's proposed
14 purchase of the dealership property EC was then renting which GMAC declined to do.¹² GMAC
15 had no obligation to make a real estate loan to EC.¹³ In late 2007, Mr. Reggans also sought and
16 obtained from GMAC a \$300,000 increase (from \$500,000 to \$800,000) in the credit limit on the
17 RLCA.¹⁴ By May 2008, EC had used virtually all of those additional funds to pay bills,
18 increasing EC's outstanding balance on the RLCA to \$786,000. *Id.*

19 By early spring 2008, GMAC was seriously concerned with its borrower's financial
20 problems.¹⁵ Although GMAC's financing contract gave GMAC the right to demand payment at
21 any time, Jerry Vick, GMAC's branch manager, first discussed GMAC's concerns with

22 _____
23 ¹⁰ RP Vol. X 103:17-23; RP Vol. XIII 100:1-25, 118:5-16.

24 ¹¹ RP Vol. III 4:23-25; 7:19-8:2; 10:2-12; 12:4-13:3; 18:1-15.

25 ¹² RP Vol. XIII 100:18-101:3; RP Vol. X 104:3-9; RP Vol. I 20:20-23:9.

26 ¹³ RP Vol. XIV 45:4-46:6.

¹⁴ RP Vol. I 18:17-20:16 (Vick). R Exs. 1, 8, 54.

¹⁵ RP Vol. I 24:13-32:25; 140:7-141:10.

1 Mr. Reggans in telephone calls and then in a meeting in early June 2008. *Id.* On July 31, 2008,
2 GMAC put its concerns and requests in a letter to Mr. Reggans. R Ex. 1.

3 Based on an analysis of the Dealership's operating trends, repayment
4 capacity, and available security, GMAC is unable to increase the limit of
5 the Dealership's Revolving Line of Credit or extend a working capital
loan to the Dealership.

6 Further, the deteriorating operating trends and credit base of the
7 Dealership and its poor wholesale performance increase GMAC's credit
8 risk associated with the Dealership's account. In order to continue the
9 financing arrangement between the Dealership and GMAC and to help
10 mitigate GMAC's credit risk, GMAC requires, at a minimum, the
11 following: [the letter lists requests for an \$800,000 unencumbered
capital injection, a personal guaranty from Mr. Reggans, and faithful and
prompt payment for vehicles upon sale, (and sets a deadline of
October 31, 2008).

12 R Ex. 1.¹⁶ GMAC's letter expressly advised EC that, if it could not meet GMAC's requests that
13 "GMAC may suspend or terminate the Dealership's wholesale credit lines." *Id.*

14 EC never met any of GMAC's requests stated in the July 31 letter. EC never injected
15 \$800,000 of unencumbered capital into the corporation and Mr. Reggans never provided a
16 personal guaranty. Nevertheless, until December 2008, GMAC continued to advance funds to
17 EC to purchase new vehicles from manufacturers as it had for the previous 12 years.

18 After the July 31st letter, EC continued to lose money. R Ex. 79.¹⁷ GMAC's audits of
19 EC's payments in the fall of 2008 showed that EC was making many late payments to GMAC.¹⁸
20 In October 2008 EC received \$500,000 of additional funds from GM. But EC's existing
21

22 ¹⁶ This letter contained GMAC's first request to EC to pay \$10,000/month on the RLCA and to pay audit
costs of \$500 per inventory audit.

23 ¹⁷ EC's loss in August, 2008 was \$73,095; in September, 2008, \$78,413; and in October 2008, \$96,291.

24 ¹⁸ GMAC's audits of the dealership had shown numerous late payments by EC to GMAC in August,
25 September, October, and November 2008. See R Exs. 66, 140-142; R Ex. 88 (last page, letter dated
26 Sept. 22, 2008) (81% payment delays); R Ex. 89 (last page, letter dated Oct. 16, 2008) (60% payment
delays); R Ex. 90 (last page, letter dated Sept. 22, 2008) (44% payment delays); R Ex. 91 (letter dated
Nov. 19, 2008) (38% payment delays).

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GMAC'S SUMMARY JUDGMENT MOTION RE GOOD FAITH - 7

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1 substantial losses forced EC to use those funds to pay amounts in arrears to GMAC and other
2 debt.¹⁹

3 It was very disconcerting to GMAC that EC had received a \$500,000 cash injection but
4 still had a negative cash position. RP Vol. VII 24:8-25:7. Nevertheless, when EC failed to meet
5 GMAC's original deadline of October 31, 2008, GMAC extended EC's wholesale credit line
6 until November 30, 2008, and again asked EC to address its financial problems. RP Vol. VII
7 29:2-35:7; R Ex. 9. EC was unable to do so. By the end of November 2008, EC's total year-to-
8 date operating losses had worsened to \$717,552. R Ex. 79.

9 A December 5th audit revealed that EC was "out of trust" on seven vehicle sales totaling
10 approximately \$132,000.²⁰ On December 8, 2008, GMAC suspended EC's wholesale credit
11 line.²¹ R Ex. 76. GMAC, on two occasions in early December, agreed to "floor" additional
12 vehicles for EC, to permit EC to pay delinquent amounts due GMAC.²²

13 In mid-December 2008, GMAC terminated its financing arrangements with EC and made
14 demand for payment. R Ex. 77. After GMAC's initial demand on December 15, 2008, EC again
15 sold a number of vehicles "out of trust." On December 18 approximately \$206,000 came due to
16 GMAC for the sale of cars by EC.²³ When EC made no arrangements to pay this amount on
17 December 18 or 19, GMAC demanded full payment immediately from EC. *Id.* R Ex. 83.²⁴

18 _____
19 ¹⁹ RP Vol. X 125:1-7; Vol. XIV 46:21-47:7. Mr. Reggans' testimony on the nature of these funds was
20 less than clear. RP Vol. XI 56:1-22; RP Vol. XIV 46:21-51:25. Nevertheless, the funds appeared to be a
21 loan to EC, not unencumbered capital, and were immediately spent instead of being available as working
22 capital.

23 ²⁰ RP Vol. VII 38:4-42:8. R Ex. 76. "Out of trust" is an industry term meaning the dealer had failed to
24 timely pay the lender after making a sale to a consumer.

25 ²¹ As noted above, GMAC and EC's contract provides that GMAC could modify or suspend the credit
26 lines. R Ex. 6. On December 4, 2008, GMAC also gave notice to GM on its "open account" with EC. R
27 Ex. 56.

28 ²² See RP Vol. I 39:23-47:21; 119:2-120:14; Vol. VII 52:18-53:15. R Exs. 10, 23, 32.

29 ²³ RP Vol. VII 60:19-67:24; R Ex. 14.

30 ²⁴ EC has claimed that it could not pay this amount by cashier's check, as GMAC had previously
31 required, because the big snowstorm of December 2008 had caused its bank to close early on
32 December 18. RP Vol. VII 64:9-10. (The bank did close early that day. R Ex. 105.) But EC had known

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GMAC'S SUMMARY JUDGMENT MOTION RE GOOD FAITH - 8

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1 EC's response to GMAC's demand was to convert proceeds of \$778,774.80 from the sale
2 of 33 vehicles in December and early January 2009 instead of paying the floor plan amount due
3 to GMAC as the parties' contract required.²⁵

4 V. ARGUMENT & ANALYSIS

5 A. Summary of the Argument

6 This summary judgment motion asks the Court to dismiss all of EC's bad faith claims
7 under the two leading Washington cases, *Allied, supra*, and *Badgett, supra*, that address bad faith
8 issues between a lender with demand financing and a borrower.

9 There is no duty of good faith that limits GMAC's right to make demand "at any time"
10 "with or without a reason" and a court cannot limit that right by imposing new duties or
11 constraints through the duty of good faith. *Allied supra*.

12 Under *Badgett*, any alleged act of bad faith must be based upon a specific contract term.
13 EC did not identify specific contract terms that GMAC allegedly breached in bad faith.

14 The rule that there is no "free floating" duty of good faith extends to loan modification
15 negotiations under *Badgett*. As a matter of law, neither party breached the duty of good faith by
16 requesting modifications and neither party had any obligation to agree to the other party's
17 proposals. *Badgett* is a leading case among a number of cases across the country that reject the
18 application of the duty of good faith to negotiations for modifications because such negotiations
19 are not performance of a specific contract term. GMAC was entitled to make demand upon EC
20 regardless of the parties' negotiations to modify the loan terms. *Badgett* also held that "[a]s a
21 matter of law, there cannot be a breach of the duty of good faith when a party simply stands on
22 its rights to require performance of a contract according to its terms." *Id.* at 570.

23
24 since it received the results of the audit of December 16 that payment for a number of cars would come
25 due on the 18th. R Ex. 14; RP Vol. II 33:24-38:15. Despite knowing for two days that \$206,000 would
26 come due on the 18th, EC made no arrangements of any kind on either the 18th or 19th (or any day
thereafter) to pay GMAC. RP Vol. VII 64:1-65:12; Vol. VIII 5:10-9:1.

²⁵ RP Vol. VI 27:14-30:22; Vol. VIII 9:2-16. R Ex. 52.

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GMAC'S SUMMARY JUDGMENT MOTION RE GOOD FAITH - 9

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1 Because GMAC had a right to be paid upon demand, and because EC's alleged acts of
2 bad faith are not based upon the specific terms of its loan contract, EC's claims of bad faith must
3 be dismissed as a matter of law.

4 **B. Standards for Granting Summary Judgment**

5 Summary judgment is proper if there is no genuine issue of material fact and the moving
6 party is entitled to judgment as a matter of law. CR 56(c); *Hubbard v. Spokane County*, 146
7 Wash.2d 699, 707-08, 50 P.3d 602 (2002). Summary judgment should be granted if reasonable
8 persons could reach but one conclusion from the evidence presented. *Id.* See also, *Korslund v.*
9 *Dyncorp. Tri-Cities Servs., Inc.*, 156 Wn.2d 168, 177, 125 P.3d 119 (2005). The purpose of
10 summary judgment is to avoid an unnecessary trial. *E.g., Preston v. Duncan*, 55 Wn.2d 678, 349
11 P.2d 604 (1960). If the nonmoving party fails to establish the existence of an element essential
12 to his case then summary judgment should be granted. *Hines v. Data Line Systems, Inc.*, 114
13 Wash.2d 127, 148, 787 P.2d 8 (1990). EC cannot establish the essential elements of a claim for
14 bad faith under *Allied* and *Badgett* and its bad faith claims should be dismissed.

15 **C. The Duty of Good Faith Applies Only to Specific Contract Terms**

16 Under Washington law, and UCC case law across the country, it is an absolute
17 prerequisite to EC's bad faith claim that it identify the specific contract term that it claims
18 GMAC breached. *Badgett* repeatedly states that the duty of good faith applies only to specific
19 contract terms and cannot be used to add duties to those contained in a contract. *Badgett*, 116
20 Wn. 2d at 569-570. The duty of good faith cannot be used to "inject substantive terms into the
21 parties' contract." *Id.* at 569. It cannot be used "to create obligations on the parties in addition
22 to those contained in the contract." *Id.* at 570. There is no "free-floating duty of good faith" and
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1 fair dealing that is unattached to an existing contract. *Id.* at 570. There is no independent cause
2 of action for failure to perform in good faith.²⁶

3 This Court previously found as “bad faith,” that GMAC (1) did not provide a timely
4 response to EC’s request for a real estate loan, App. at 4-5; (2) did not send the July 31 letter
5 soon enough, *id.* at 6-7; (3) did not inform Mr. Reggans that GMAC was undertaking a
6 sophisticated financial analysis of the dealership’s debt-to-equity ratio, *id.* at 8-9; (4) did not
7 discuss, in detail, various elements of GMAC’s financial analysis of EC’s operations and
8 financial condition with Mr. Reggans, *id.* at 9; (5) GMAC set targets without justification, *id.* at
9 9;²⁷ and (5) refused to floor unencumbered new and used vehicles in November at the
10 dealership’s request, *id.* at 13.

11 None of these alleged acts of bad faith are based upon a specific contract term found in
12 the parties’ loan contract and therefore must be dismissed. All of EC’s claims of bad faith not
13 based upon the breach of a specific contract term must be dismissed as a matter of law. *Badgett*
14 at 563.

15 **D. *Badgett* Rejected *Liebergessell* In Existing Lending Contractual Relationships**

16 This Court relied upon *Liebergessell*, *supra*²⁸ to hold that GMAC had a duty to provide its
17 credit analysis information to EC. *Badgett* expressly rejected *Liebergessell* in the context of
18 lending contracts.

19 _____
20 ²⁶ See Official Comment to RCW 62A.1-203 (“This section does not support an independent cause of
21 action for failure to perform or enforce in good faith.”). See, e.g., *Baxter Healthcare Corp. v. O.R.*
22 *Concepts, Inc.*, 69 F.3d 785, 792 (7th Cir. 1995) (“[T]he covenant of good faith and fair dealing is not an
independent source of duties for the parties to a contract. Instead, the covenant merely guides the
construction of the explicit terms in the agreement.”) (citations omitted).

23 ²⁷ As discussed *infra*, the duty of good faith does not apply to restructuring negotiations since such
discussions are not based upon specific contract terms.

24 ²⁸ In *Liebergessell*, a widowed school teacher with no expertise in business, investments, or lending
practices relied on the superior knowledge of a person knowledgeable and skilled in accounting.
25 *Liebergessell*, 93 Wn.2d at 884-85. In contrast, Mr. Reggans is an experienced auto dealer with 19 years
of experience in the industry, including 12 years at EC. R Ex. 100; RP Vol. X 63:2-64:6. There was no
26 evidence that GMAC had ever provided its credit analysis information to EC in the course of their 12-
year contractual relationship or that EC had any expectation of receiving such information. *Liebergessell*

1 The Court of Appeals relied on *Liebergesell v. Evans*, 93 Wash.2d 881,
2 613 P.2d 1170 (1980), to assert that "the scope of the good faith
3 obligation can be expanded by the conduct of a contracting party which
4 gives rise to reasonable expectations on the part of the other party."
5 *Badgett*, 56 Wash. App. at 877, 786 P.2d 302. *Liebergesell* is not on
6 point, and more importantly, does not support the broad conclusion
7 stated by the Court of Appeals.

8 *Badgett*, 116 Wn.2d at 570 n.2. There was no loan contract term requiring GMAC to provide its
9 credit analysis to EC. *Badgett* rather than *Liebergesell* is the controlling authority.

10 E. GMAC's Demand for Payment Did Not Breach the Duty of Good Faith

11 As the Court of Appeals recognized, GMAC's floor plan financing agreement with EC
12 was demand financing: EC agreed "upon demand to pay to GMAC the amount it advances or is
13 obligated to advance." R Exs. 3, 6. Under the UCC, this contract language creates a "demand"
14 promise.²⁹ RCW 62A.3-108(a).³⁰

15 As *Allied* and numerous courts have recognized, the central legal premise of a demand
16 promise is that the lender can make demand "at any time" "with or without a reason."³¹ The

17 dealt with a pre-contract factual setting, unlike this case and *Badgett*, where the parties have defined their
18 duties in a contract.

19 ²⁹ EC's claim for "wrongful acceleration" must be dismissed because "[a]cceleration" requires a change in
20 the date of maturity from the future to the present." *Production Credit Ass'n of Fargo v. Ista*, 451 N.W.2d
21 118, 122 (N.D. 1990). A payment date, which does not by definition exist in a demand note, cannot be
22 moved." *Solar Motors, Inc. v. First Nat'l Bank of Chadron*, 537 N.W.2d 527, 536 (Neb. Ct of App.
23 1995); *Solar Motors*, 545 N.W.2d at 720.

24 ³⁰ "A promise or order is "payable on demand" if it (i) states that it is payable on demand or at sight, or
25 otherwise indicates that it is payable at the will of the holder, or (ii) does not state any time of payment."
26 (emphasis added).

27 ³¹ *Zeno Buick-GMC Inc. v. GMC Truck & Coach*, 844 F. Supp. 1340, 1350 (E.D. Ark. 1992); *Coffee v.*
28 *GMAC*, 5 F. Supp. 2d 1365 (S.D. Ga. 1998); *Solar Motors, Inc. v. First Nat'l Bank of Chadron*, 545
29 N.W.2d 714 (Neb. 1996); *Taggart & Taggart Seed, Inc. v. First Tenn. Bank Nat'l Ass'n*, 684 F. Supp.
30 230, 235-36 (E.D. Ark. 1988), *aff'd*, 881 F.2d 1080 (8th Cir. 1989); *Kham & Nate's Shoes No. 2, Inc. v.*
31 *First Bank of Whiting*, 908 F.2d 1351, 1357-58 (7th Cir. 1990); *Dominion Bank, N.A. v. Moore*, 688 F.
32 Supp. 1084, 1086-87 (W.D. Va. 1988); *Spencer Cos. v. Chase Manhattan Bank, N.A.*, 81 B.R. 194, 199
33 (D. Mass. 1987); *Pavco Indus., Inc. v. First Nat'l Bank of Mobile*, 534 So. 2d 572, 576-77 (Ala. 1988);
34 *Flagship Nat'l Bank v. Gray Distribution Sys., Inc.*, 485 So. 2d 1336, 1340 (Fla. Dist. Ct. App.), *review*
35 *denied*, 497 So. 2d 1217 (Fla. 1986); *Fulton Nat'l Bank v. Willis Denney Ford, Inc.*, 269 S.E.2d 916, 918-

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1 Uniform Commercial Code's (UCC) Article 1 excludes "demand instruments or obligations"
2 from the duty of good faith because the "very nature" of "demand instruments or obligations"
3 permits call "at any time with or without reason." Official Comment to RCW 62A.1-208.³² See
4 *Allied*, 10 Wn. App. at 536. Therefore, this Court cannot limit GMAC's right to make demand
5 by imposing new duties or limitations through the duty of good faith.

6 This Court found that "GMAC does not have a contractual right to shut down the Dealer
7 and put him out of business. GMAC may withdraw their financing, but they must do so in a
8 commercially reasonable manner." Glowney Dec. Ex. E at 19.

9 But this Court cannot substitute its opinion of commercial reasonableness for the parties
10 existing contract and UCC rights.³³ The impact upon the business of a decision to make demand
11 cannot be used to limit the right to make demand. *Allied*, faced with a similar situation, reached
12 the opposite conclusion from this Court and rejected a "bad faith" defense to a demand promise
13 as a matter of law.

14 Demand notes with the security agreements here executed indeed put the
15 bank in a position where if it takes action, as a practical matter, the
16 company is in trouble because it has lost its financing, but that is the
17 agreement that the parties made by appropriate written instruments.

18 19 (Ga. Ct. App. 1980); *Centerre Bank of Kansas City, N.A. v. Distribs., Inc.*, 705 S.W.2d 42, 46-48 (Mo.
19 Ct. App. 1985); *Simon v. N.H. Savs. Bank*, 296 A.2d 913; 915 (N.H. 1972); *Mirax Chem. Prods. Corp. v.*
20 *First Interstate Commercial Corp.*, 950 F.2d 566, 570 (8th Cir. 1991) (good-faith obligation arising under
21 UCC does not apply to demand instruments); *Henning Constr., Inc. v. First E. Bank & Trust Co.*, 635 So.
22 2d 273 (La. Ct. App.), writ denied, 642 So. 2d 870 (La. 1994); *Waller v. Md. Nat'l Bank*, 620 A.2d 381
23 (Md. Ct. Spec. App.), cert. granted, judgment vacated on other grounds and remanded, 631 A.2d 447,
24 and cert. granted, 631 A.2d 451 (table) (Md. 1993).

22 ³² "Obviously, this section has no application to demand instruments or obligations whose very nature
23 permits call at any time with or without reason." Official Comment 1 to UCC § 1-309. Revised Article 1
24 of the UCC was approved by the National Conference of Commissioners on Uniform State Laws and The
25 American Law Institute in 2001, but it has not been adopted in Washington. Former Section 1-208 is
26 now designated as Section 1-309 in revised Article 1, and this specific sentence in the comment has been
relocated to the comments to Section 1-309 to revised Article 1. Washington has retained this sentence in
its comment to RCW 62A.1-208.

³³ As the Court of Appeals Commissioner noted, "[w]hether GMAC's actions make business sense is
irrelevant to the issue of whether it may demand payment.." Glowney Ex. D at 11.

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GMAC'S SUMMARY JUDGMENT MOTION RE GOOD FAITH - 13

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1 *Allied* at 534.

2 Although these facts might raise questions as to the bank's business
3 judgment, they create no factual issue as to the bank's right to do what it
4 did, and so are not material facts. This is particularly so under our
5 interpretation of what constituted the agreement between the parties,
6 namely, the terms of the demand notes.

7 *Id.* at 536 n.5 (emphasis added).³⁴

8 Because GMAC complied with the UCC in making demand, its actions were
9 commercially reasonable as a matter of law. Like the court in *Allied*, numerous courts as a
10 matter of law, have rejected attempts to limit or condition a lender's right to make demand
11 through a duty of good faith. *Larson*, 567 N.W.2d at 723 (citation omitted) ("This court cannot
12 limit the bank's ability to enforce its rights under the demand note without interposing new terms
13 into the parties' agreement.");³⁵ *Fulton Nat'l Bank* 269 S.E.2d at 918;³⁶ *Centerre Bank* 705
14 S.W.2d at 47-48 ("The imposition of a good faith defense to the call for payment of a demand
15 note transcends the performance or enforcement of a contract and in fact adds a term to the
16 agreement which the parties had not included.");³⁷

17 However, the defendant bank maintains that the U.C.C. good faith
18 requirement is not applicable to a demand note and, therefore, the
19 question of good faith is immaterial to the resolution of this case. The
20 court agrees and finds that allegations of bad faith do not create a
21 genuine issue of material fact to preclude summary judgment.

22
23 ³⁴ The *Badgett* opinion twice favorably cited *Allied*, thereby firmly establishing the continuing authority
24 of *Allied*.

25 ³⁵ The court dismissed the case for failure to state a claim.

26 ³⁶ The trial court denied the bank's summary judgment motion. The Court of Appeals accepted
interlocutory review and reversed.

³⁷ Jury verdict in favor of defendant borrowers/guarantors vacated.

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1 *Taggart & Taggart* 684 F. Supp. at 235-36;³⁸ *Mirax*, 950 F.2d at 570 (same).³⁹ GMAC's
2 December 2008 demand to EC for payment in full of all obligations then due to GMAC does not
3 constitute a breach of the duty of good faith.

4 **F. *Badgett: Because The Duty of Good Faith Applies to Specific Contract Terms, It***
5 ***Does Not Apply to Restructuring Negotiations Between the Parties***

6 Both EC and GMAC sought modifications to the existing loan terms. Mr. Reggans
7 wanted GMAC to provide 100% financing for his proposed purchase of the dealership property,
8 which GMAC declined to do, and as noted above, EC sought and obtained an additional
9 \$300,000 of credit under the RLCA. GMAC proposed to restructure EC's loan by requiring that
10 EC increase its capital by \$800,000 and by obtaining a personal guaranty from John Reggans. In
11 the same July 31, 2008 letter, GMAC again declined Reggans' request to modify the loan
12 agreements by having GMAC advance additional funds to EC.

13 GMAC is unable to increase the limit of the Dealership's Revolving Line
14 of Credit or extend a working capital loan to the Dealership.

15 R Ex. 1. As a matter of law, neither party breached the duty of good faith by requesting
16 modifications, and neither party had any obligation to agree to the other party's proposals. As
17 Court Commissioner Ellis correctly observed when granting discretionary review to GMAC:
18 "[t]here is nothing in any of the financing contracts that obligates GMAC to make other loans, to
19 consider alternate business structures, or to explain its reasons for asking for changes to Everett's
20 capitalization (footnote omitted) Commissioner's Ruling Granting Motion for Discretionary
21 Review at 11. As one court recently observed in addressing bad faith allegations arising out of
22 loan restructuring negotiations, "[w]hile Shawmut was free to negotiate with Carney, it was
23

24 ³⁸ Summary judgment in favor of bank.

25 ³⁹ See also *Dominion Bank*, 688 F. Supp. at 1086-87; *Pavco Indust.*, 534 So. 2d at 576-77; *Waller v. Md.*
26 *Nat'l Bank*, 620 A.2d 381, 392 (Md. Ct. Spec. App.), cert. granted, judgment vacated on other grounds
and remanded, 631 A.2d 447, and cert. granted, 631 A.2d 451 (table) (Md. 1993) (same).

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1 under no obligation to do so, and was equally free to exercise the rights which it had acquired
2 under the loan agreements.”⁴⁰

3 *Badgett* refused to apply the duty of good faith to loan restructuring negotiations, stating
4 that there is no “free-floating” duty of good faith and ruling that a lender has no duty of good
5 faith in loan modification negotiations arising outside the “underlying legal document.”

6 By urging this court to find that the Bank had a good faith duty to
7 affirmatively cooperate in their efforts to restructure the loan agreement,
8 in effect the [debtors] ask us to expand the existing duty of good faith to
9 create obligations on the parties in addition to those contained in the
10 contract – a free-floating duty of good faith unattached to the underlying
11 legal document. This we will not do. The duty to cooperate exists only
12 in relation to performance of a specific contract term.

13 *Badgett*, 116 Wn.2d at 570. Giving EC time to consider and meet its proposed restructuring
14 terms as GMAC did here – instead of making demand immediately – does not violate the duty of
15 good faith, nor does it expand the scope of the duty of good faith. And *Badgett* does not stand
16 alone in concluding that lenders can engage in restructuring negotiations without violating the
17 duty of good faith or losing their ability to enforce their written loan contracts according to their
18 terms. Cases across the country reach the same result. *Badgett*; e.g., *Rosemark Gardens*
19 *Funeral Chapel-Cemetery, Inc. v. Trustmark Nat’l Bank*, 330 F. Supp. 2d 801, 811 (S.D. Miss.
20 2004) (“A number of courts have implicitly recognized, in fact, that a duty of good faith and fair
21 dealing does not arise even where a lender begins negotiations towards restructuring an existing
22 loan.”).⁴¹ Conducting restructuring negotiations does not disable or prevent lenders, under the

21 ⁴⁰ *Carney v. Shawmut Bank, N.A.*, No. 07-P-858, 72 Mass App. Ct. 1117, 893 N.E. 2d 802 (Table) 2008
22 Mass. App. Unpub. LEXIS 458, at *9 (Mass. App. Ct. Sept. 19, 2008).

23 ⁴¹ “See, e.g., *Carter’s Court Assocs. v. Metropolitan Fed. Sav. and Loan Ass’n*, 844 F. Supp. 1205, 1210
24 (M.D. Tenn. 1994) (holding that lender was not under a duty to restructure the loan under the express
25 terms of the loan documents or under any implied terms; that “in the absence of an express contract term,
26 there is no duty on the part of a lender to negotiate a workout or provide increased credit;” that “there is
no breach of good faith for a party to act consistently with the terms of a written agreement;” and that
therefore, even after it began negotiating, lender had no duty of good faith and fair dealing); cf. *Teachers*
Ins. & Annuity Ass’n of America v. LaSalle Nat. Bank, 295 Ill. App. 3d 61, 691 N.E.2d 881, 229 Ill. Dec.
408 (Ill. App. 1998)” *Rosemark Gardens*, 330 F. Supp. 2d at 811; see also *Price v. Wells Fargo*

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GMAC’S SUMMARY JUDGMENT MOTION RE GOOD FAITH - 16

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1 duty of good faith, from enforcing their contracts. See e.g., *Price v. Wells Fargo Bank*, 213 Cal.
2 App. 3d 465, 261 Cal. Rptr. 735, 742 (1989) (The duty of good faith and fair dealing “does not
3 impose any affirmative duty of moderation in the enforcement of legal rights.”).⁴² Indeed, such a
4 limitation upon work-out or restructuring negotiations would be bad commercial law policy.⁴³

5 GMAC could have simply demanded full payment in July 2008, or at any time earlier or
6 later, instead of giving EC almost half a year to meet GMAC’s conditions to continue financing.
7 Under the duty of good faith, GMAC was free to request different terms to continue its financing
8 of EC, and GMAC was not thereby foreclosed from exercising its contractual rights.

9 This Court asserted that GMAC gave EC “false targets,” *Glowney Dec. Ex. E.* at 11. But
10 GMAC’s restructuring proposal is not a “false target,” it is a proposal to change the terms of the
11 loan. EC was free to refuse the new terms; indeed, EC and Reggans never agreed to provide a
12 personal guaranty. By the same token, GMAC was free to refuse EC’s proposals for additional
13 loans and to enforce its existing contract rights. Therefore, the fact that GMAC proposed to
14 restructure EC’s loan in July 2008, and later chose to make demand, as a matter of law, cannot
15 form the basis for a claim of bad faith. *Allied, supra*.

16
17
18 *Bank*, 213 Cal. App. 3d 465, 261 Cal. Rptr. 735, 742 (1989) (covenant of good faith and fair dealing is
19 not breached when lender takes “hard line” in loan repayment negotiations since “[c]ontracts are
enforceable at law according to their terms”);

20 ⁴² *Rosemark Gardens*, 330 F. Supp. 2d at 810-11 (“Countless other cases have recognized this same
21 fundamental principle. See, e.g., *Bank of Am. N.T. & S.A. v. McMahon*, 8 F.3d 25, 1993 WL 366663, *3
22 (9th Cir. 1993) (holding that ‘the covenant of good faith and fair dealing is not breached when a lender
23 takes a “hard line” in loan repayment negotiations’ since ‘contracts are enforceable at law according to
their terms’); *Glenfed Financial Corp., Commercial Finance Div. v. Penick Corp.*, 276 N.J. Super. 163,
176, 647 A.2d 852, 858 (N.J. Super. A.D. 1994).

24 ⁴³ *Fasolino Foods Co. v. Banca Nazionale del Lavoro*, 961 F.2d 1052, 1057 (2d Cir. 1992) (“Indeed, a
25 contrary view would discourage lenders from allowing borrowers leeway and encourage those lenders to
26 play hardball in the face of every default, no matter how minor.”); *Kham & Nate’s Shoes*, 908 F.2d at
1357 (“Any attempt to add an overlay of ‘just cause’ . . . to the exercise of contractual privileges [based
on the UCC’s requirement of ‘honesty in fact’] would reduce commercial certainty and breed costly
litigation.”).

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1 And it is undisputed that EC refused to provide a personal guaranty and did not meet
2 GMAC's *stated* terms. EC never provided \$800,000 of additional working capital and
3 Mr. Reggans refused to provide a personal guaranty. It is therefore purely a hypothetical question
4 of what GMAC would have done had EC agreed to GMAC's proposed restructuring of the
5 loan.⁴⁴

6 **G. There is No Bad Faith In Requiring Performance of a Contract According to its**
7 **Terms**

8 *Badgett* also held that "[a]s a matter of law, there cannot be a breach of the duty of good
9 faith when a party simply stands on its rights to require performance of a contract according to
10 its terms." 116 Wn. 2d at 570. Therefore it was not "bad faith" to require EC to perform
11 according to the loan's terms, *i.e.*, for GMAC to require EC to pay "upon demand." To the
12 contrary, EC had a good faith duty to cooperate with GMAC's demand for payment to give
13 GMAC the benefit of its bargain. *Id.* As another example, this Court deemed it "commercially
14 unreasonable" that GMAC increased the interest rate on the RLCA based upon "market
15 conditions" without indicating any metric or specific market term or contract term. But
16 Mr. Reggans expressly agreed to the increase in writing. R Ex. 69. Therefore, there can be no
17 bad faith arising from this action.

18 Accordingly, as a matter of law, GMAC did not violate the duty of good faith by standing
19 on its contractual right to make a demand for payment⁴⁵ in December 2008, its right to inspect
20 the vehicles and EC's books,⁴⁶ its right to receive payment when EC sold cars,⁴⁷ and its right to
21 demand principal payments under the RLCA.⁴⁸

22
23 ⁴⁴ Michele Smith repeatedly testified that GMAC would have honored the July 31 letter had EC met its
requests. RP Vol. IX 134:19-136:16.

24 ⁴⁵ EC agrees "upon demand to pay to GMAC the amount it advances or is obligated to advance." R Ex. 3.

25 ⁴⁶ The Wholesale Security Agreement expressly provided GMAC with a right of access and inspection of
the vehicles and related records. R Ex. 3, ¶ 5.

26 ⁴⁷ R Ex. 3, ¶ 7.

1 H. GMAC Properly Exercised Its Remedies Against GM's Open Account and EC's
2 Retail Banks

3 GMAC properly asserted rights against EC's Open Account with GM and EC's retail
4 banks. GMAC had a right to exercise its contractual remedies against its collateral, which
5 included giving notice to an account debtor to pay GMAC rather than EC. RCW 62A.9A-
6 607(a); 62A.9A-406.

7 EC's Security Agreement and the RLCA granted GMAC security interests in, among
8 other things, EC's accounts and general intangibles. R Exs. 3, 8. EC's "Open Account" with
9 GM represented money owed to EC by GM.⁴⁹ EC's retail banks owed money to EC when a
10 retail customer financed a purchase of a vehicle from EC through one of the banks. Accordingly,
11 these accounts or general intangibles were subject to GMAC's security interest. GMAC
12 therefore had the right to exercise its rights against this collateral by giving notice to these parties
13 to pay GMAC rather than EC.⁵⁰ RCW 62A.9A-607(a); 62A.9A-406. R. Exs. 56, 76. Likewise,
14 later in December, GMAC gave notice to a number of EC's retail banks when GMAC learned
15 that EC was selling vehicles but not paying any proceeds to GMAC. R Ex. 16. Under RCW
16 62A.9A-406, GM and the retail banks were required to pay GMAC.

17 Any claim that GMAC "interfered" with EC's bank financing, when EC was converting
18 the proceeds of vehicle sales, is baseless. GMAC's lending contract, and the UCC, gives a
19 lender the absolute right to exercise its rights under RCW 62A.9A-607(a); 62A.9A-406. Even if
20 the elements of tortious interference are present (and they are not here), interference is justified,

21 ⁴⁸ GMAC requested a \$10,000 monthly principal reduction on the RLCA. R Ex. 1. The RLCA provided
22 that the "mandatory payment of credit line advances" included "the amount, if any, at a minimum
23 indicated on a Billing Statement as may be sent to Borrower by GMAC, payable by the due date shown
on such statement." R Ex. 8.

24 ⁴⁹ The term "account," as defined in the UCC, includes "a right to payment of a monetary obligation,
25 whether or not earned by performance." RCW 62A.9A-102(2). The term "general intangibles" includes
payment intangibles. RCW 62A.9A-102(42).

26 ⁵⁰ This is similar to *Allied*, where the bank had rights against the debtor's accounts with the bank. *Allied*,
10 Wn. App. at 537.

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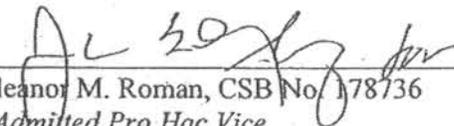
1 as a matter of law, if the interferer has engaged in the exercise of an absolute right equal or
2 superior to the right which was invaded. *E.g. Plumbers & Steamfitters Union Local 598 v.*
3 *Washington Public Power Supply System*, 44 Wn. App. 906, 724 P.2d 1030 (1986).

4 VI. CONCLUSION

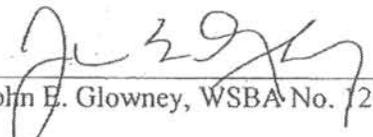
5 For the reasons set forth above and based on the authorities and evidence cited, GMAC
6 respectfully requests that the Court enter summary judgment in favor of GMAC dismissing
7 Defendants' counterclaims and their affirmative defenses for bad faith because GMAC did not
8 breach the Wholesale Agreement or the RLCA by demanding payment in full from EC, and did
9 not violate the covenant of good faith and fair dealing as a matter of law.

10 DATED this 10th day of NOVEMBER 2011.

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APP. E

The Hon. Eric Z. Lucas

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SNOHOMISH COUNTY

GMAC LLC, a Delaware limited liability
company,

Plaintiff,

v.

EVERETT CHEVROLET, INC., a
Delaware corporation, et al.,

Defendants.

No. 08-2-10683-5

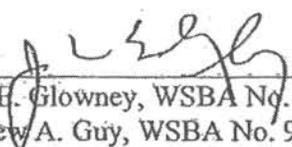
GMAC'S NOTICE OF ERRATA

On Thursday, April 8, 2009, GMAC filed a declaration of R. Michele Smith that was incorrectly entitled "Declaration of R. Michele Smith In Support of GMAC's Motion In Limine and In Opposition To Expedited Discovery." The correct title of the declaration should be "Declaration of R. Michele Smith." There are no changes to the body of the declaration. A corrected declaration (without attachments) is attached hereto and should be substituted for the incorrectly titled declaration.

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DATED THIS 10th DAY OF APRIL 2009.

STOEL RIVES LLP



John H. Glowney, WSBA No. 12652
Andrew A. Guy, WSBA No. 9278
Attorneys for GMAC LLC

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THE HONORABLE ERIC Z. LUCAS

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SNOHOMISH COUNTY

GMAC, a Delaware corporation,

Plaintiff,

v.

EVERETT CHEVROLET, INC., a
Delaware corporation, et al.,

Defendants.

No. 08-2-10683-5

DECLARATION OF R. MICHELE
SMITH

R. Michele Smith hereby declares as follows:

1. I am an Operations Manager employed by GMAC Financial Services, and am responsible for overseeing the management of the credit line extended by GMAC to Everett Chevrolet, Inc. (EC). I make this declaration based on my personal knowledge and my review of records maintained by GMAC in the ordinary course of its business, which records, in turn, are based on information provided by the Dealership or received from persons employed or engaged by GMAC who have knowledge of the facts at the time the events are recorded in the records. GMAC relies upon these records in the ordinary course of its business.

2. Attached to this declaration as the first page of Exhibit A is a spreadsheet listing the vehicles floorplanned by GMAC that Everett Chevrolet, Inc. ("EC") sold from January 14, 2009 through April 5, 2009. This spreadsheet was prepared from records provided by EC to

1 GMAC or its auditors. Beginning on March 9, 2009 and continuing to date, EC has not paid
2 GMAC any of the proceeds of these sales. Ten floorplanned vehicles have been sold, eight of
3 which were cash sales, with none of the proceeds coming to GMAC. The remaining pages in
4 Exhibit A are copies of receipts, checks, contracts, and cash that evidence that EC has received
5 payment for the floorplanned vehicles it sold from March 9 through April 5, 2009.

6 3. Attached to this declaration as the first page of Exhibit B is a spreadsheet listing
7 the vehicles not floorplanned by GMAC that EC sold from January 14, 2009 through March 31
8 2009 (the most recent reported sale). This spreadsheet also was prepared from records provided
9 by EC to GMAC or its auditors. Beginning on February 26, 2009 and continuing to date, EC has
10 not paid GMAC any of the proceeds of these sales. Eight non-floorplanned vehicles have been
11 sold, six of which were cash sales, with none of the proceeds coming to GMAC. The remaining
12 pages in Exhibit B are copies of receipts, checks, contracts, and cash that evidence that EC
13 received payment for the non-floorplanned vehicles it sold from February 26 through March 31,
14 2009.

15 4. In summary, 18 floored and non-floored vehicles have been sold since January 14,
16 2009, with respect to which GMAC has not received any payment. The cash proceeds of these
17 sales that EC has received, according to records EC has provided to GMAC, are shown at the
18 bottom of the columns entitled "Cash Rec'd by EC." The additional amounts EC should have
19 received from financing provided by third-party lenders to the vehicle buyers are shown at the
20 bottom of the columns entitled "Contract Amount."

21 I declare under penalty of perjury under the laws of the State of Washington that the
22 foregoing is true and correct.

23 Signed at Plano, Texas this 9 day of April 2009.

24 
25 R. Michele Smith
26

APR 10 2009

DOCKETED

THE HONORABLE ERIC Z. LUCAS
Hearing Date: March 17, 2009
COURT COMMISSIONER
Hearing Date: March 11, 2009
With oral argument

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR SNOHOMISH COUNTY

GMAC, a Delaware corporation,

Plaintiff,

v.

EVERETT CHEVROLET, INC., a Delaware corporation, et al.,

Defendants.

No. 08-2-10683-5

DECLARATION OF R. MICHELE SMITH
IN SUPPORT OF GMAC'S MOTION IN
LIMINE AND IN OPPOSITION TO
EXPEDITED DISCOVERY

R. Michele Smith hereby declares as follows:

1. I am an Operations Manager employed by GMAC Financial Services, and am responsible for overseeing the management of the credit line extended by GMAC to Everett Chevrolet, Inc. (EC). I make this declaration based on my personal knowledge and my review of records maintained by GMAC in the ordinary course of its business, which records, in turn, are based on information provided by the Dealership or received from persons employed or engaged by GMAC who have knowledge of the facts at the time the events are recorded in the records. GMAC relies upon these records in the ordinary course of its business.

2. Attached to this declaration as the first page of Exhibit A is a spreadsheet listing the vehicles floorplanned by GMAC that Everett Chevrolet, Inc. ("EC") sold from January 14, 2009 through April 5, 2009. This spreadsheet was prepared from records provided by EC to GMAC or its auditors.

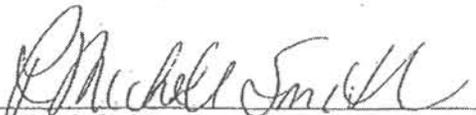
1 Beginning on March 9, 2009 and continuing to date, EC has not paid GMAC any of the proceeds of these
2 sales. Ten floorplanned vehicles have been sold, eight of which were cash sales, with none of the
3 proceeds coming to GMAC. The remaining pages in Exhibit A are copies of receipts, checks, contracts,
4 and cash that evidence that EC has received payment for the floorplanned vehicles it sold from March 9
5 through April 5, 2009.

6 3. Attached to this declaration as the first page of Exhibit B is a spreadsheet listing the
7 vehicles not floorplanned by GMAC that EC sold from January 14, 2009 through March 31 2009 (the
8 most recent reported sale). This spreadsheet also was prepared from records provided by EC to GMAC or
9 its auditors. Beginning on February 26, 2009 and continuing to date, EC has not paid GMAC any of the
10 proceeds of these sales. Eight non-floorplanned vehicles have been sold, six of which were cash sales,
11 with none of the proceeds coming to GMAC. The remaining pages in Exhibit B are copies of receipts,
12 checks, contracts, and cash that evidence that EC received payment for the non-floorplanned vehicles it
13 sold from February 26 through March 31, 2009.

14 4. In summary, 18 floored and non-floored vehicles have been sold since January 14, 2009,
15 with respect to which GMAC has not received any payment. The cash proceeds of these sales that EC has
16 received, according to records EC has provided to GMAC, are shown at the bottom of the columns
17 entitled "Cash Rec'd by EC." The additional amounts EC should have received from financing provided
18 by third-party lenders to the vehicle buyers are shown at the bottom of the columns entitled "Contract
19 Amount."

20 I declare under penalty of perjury under the laws of the State of Washington that the foregoing is
21 true and correct.

22 Signed at Plano, Texas this 9 day of April, 2009.

23 
24 R. Michele Smith
25
26

EX. A

Floor Plan Sales Since 1-14-09

Sales Date	VIN	Customer	FP Amount	Funds Rec'd From the Dealership*	Variance	Finance/Cash	Cash Rec'd by EC	Check Specifics	Contract Amount	Contract With		
01/15/09	125493	H. & P. Fife	\$7,218.75	\$10,476.44	\$3,257.69							
01/15/09	299259	C. Tutmark	\$24,396.70	\$18,793.87	(\$5,602.83)							
01/16/09	114805	P. Bowles	\$27,895.00	\$28,070.54	\$375.54							
01/17/09	204876	S. Burgess	\$25,812.50	\$10,383.15	(\$15,429.35)							
01/17/09	294212	J. Budmets	\$24,184.10	\$23,137.16	(\$1,046.94)							
01/19/09	280127	S. & G. Gelicame	\$24,095.00	\$29,548.48	\$5,453.48							
01/23/09	187912	Spurrier	\$15,206.25	\$15,206.25	\$0.00							
01/28/09	104954	R. Oberg	\$30,089.35	\$12,796.92	(\$17,292.43)							
01/28/09	325968	Gasline Mech. Inc.	\$19,015.20	\$14,201.84	(\$4,813.36)							
02/02/09	115599	J. O'Mack	\$40,383.40	\$36,735.28	(\$3,648.12)							
02/04/09	548101	K. Johnson	\$5,981.25	\$7,793.31	\$1,812.06							
02/08/09	127552	M. Bremnes	\$13,895.00	\$13,895.00	\$0.00							
02/14/09	028878	J. Bolton	\$10,095.00	\$10,095.00	\$0.00							
02/17/09	A02145	L. & J. Phillips	\$8,823.25	\$8,823.25	\$0.00							
02/18/09	204985	J. & T. Louzy	\$7,781.25	\$7,781.82	\$0.57							
02/19/09	552083	S. Petrusca	\$7,181.26	\$4,880.87	(\$2,300.38)							
03/03/09	240090	M. Vicente	\$18,368.50	\$18,368.50	\$0.00							
03/08/09	512285	K. & K. Qualls	\$19,069.20	\$19,069.20	\$0.00							
03/08/09	214966	R. Deblasi	\$5,250.00	\$0.00	(\$5,250.00)	Cash	\$ 13,100.00	Navy Federal Credit Union \$12,600/Cash \$500				
03/10/09	109063	D & M Christensen	\$15,413.25	\$0.00	(\$15,413.25)	Finance	\$ 13,208.15	no copy of check Pas ck \$828.01/Wells \$7105.05	\$ 12,734.23	BECU		
03/13/09	351042	M. Tucker	\$4,818.75	\$0.00	(\$4,818.75)	Cash	\$ 7,733.15	Navy Federal Credit Union				
03/13/09	183808	T. Eilford	\$10,678.00	\$0.00	(\$10,678.00)	Cash	\$ 13,303.54	Navy Federal Credit Union				
03/14/09	321033	R. Jackson, Jr.	\$10,125.00	\$0.00	(\$10,125.00)	Cash	\$ 13,112.14	Personal Check \$10,300 - Cash \$200				
03/18/09	484123	T. Dodson	\$4,690.00	\$0.00	(\$4,690.00)	Cash	\$ 10,500.00			First Technology CU		
03/22/09	197284	A. Puzio	\$9,030.00	\$0.00	(\$9,030.00)	Finance	\$ 2,000.00	Personal Check Navy Federal Credit Union	\$ 21,344.35			
04/03/09	172616	R. and H. Hucks	\$6,595.00	\$0.00	(\$6,595.00)	Cash	\$ 10,045.22	Personal Check for Trust Acct				
04/03/09	136639	C. J. Mulanax	\$15,995.00	\$0.00	(\$15,995.00)	Cash	\$ 25,541.88					
04/06/09	255478	C. Krueger	\$8,793.75	\$0.00	(\$8,793.75)	Cash	\$ 14,375.93	BSCU				
			26	at	\$418,479.70				\$287,866.88	(\$130,622.82)	\$122,920.81	\$ 34,078.58
Subtotal for Floor Plan Sales in which GMAC has not received any proceeds			10	at	\$91,388.75							

*Denotes GMAC receiving funds directly from the Dealership specifically to pay off floorplan

THIS DOCUMENT HAS AN ARTIFICIAL WATER-MARK PRESSED ON THE BACK. THE FRONT OF THIS DOCUMENT HAS A MICRO-PRINT SIGNATURE LINE. ABSENCE OF THESE FEATURES WILL INDICATE A COPY.

OFFICIAL CHECK

16-4220
1220

No 80157457

more than
just money **BECU**

Box 97800, Seattle, WA 98124-9750
+131-5700 Toll Free 1-800-233-2228

Teller I.D.: 701
Date: 4/6/09

PAY TO THE ORDER OF: Everett Chevrolet and Charlene and Kurt Krueger

\$ 14,375.93

Fourteen thousand three hundred seventy-five and 93 / 100***** DOLLARS

Drawer: BECU

ISSUED BY: MONEYGRAM PAYMENT SYSTEMS, INC.
BOX 9476 MINNEAPOLIS MN 55480
AWEE: PREFERRED BANK, LOS ANGELES, CA

Kathie Eilser

[Signature]

⑈80157457⑈ ⑆122042205⑆0160010356058⑈

RECEIPT

RECEIVED FROM: *Charlene & Kurt Krueger*

DATE: *4-6-09*

NO. *098251*

ADDRESS: *Fourteen thousand three hundred seventy-five and 93/100*

FOR: *Fourteen thousand three hundred seventy-five and 93/100*

AMOUNT	14,375.93
DATE	4-6-09
ACCOUNT	
HOW PAID	

BY: *[Signature]*

NOTES:

NAVY 
FEDERAL
Credit Union

NAVY FEDERAL CREDIT UNION
PO Box 3000
Merrifield VA 22119-3000

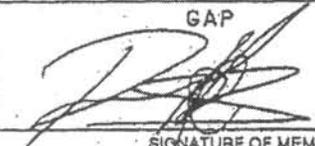
687894
2560

009147728

SERIAL NO.	ACCOUNT NO.	DATE	AMOUNT
0314034020	430007968109-02	04/02/09	***10,045.22

PAY
TO THE ORDER OF RICHARD M HUCKS
AND EVERETT CHEVROLET

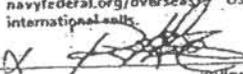
GAP


SIGNATURE OF MEMBER

⑈0314034020⑈ ⑆256074974⑆

⑈002

If Payment Protection Plan and/or Guaranteed Asset Protection has been elected, by signing, I request that protection and agree to the terms and conditions in the Payment Protection Plan Agreement and Disclosure and/or the Guaranteed Asset Protection Agreement and Disclosure (attached). I understand I can cancel either Protection Plan at any time by contacting Navy Federal Credit Union toll-free in the U.S. 1-888-842-6328. For toll-free numbers when overseas, visit navyfederal.org/overseas. Use 1-703-255-8837 for collect international calls.


 Endorse Here

DEALERS

Endorsement of this instrument guarantees recording of a first lien on

Year 2016 Make Chev. Model Uplander
 VIN 1GNNDV23L116D172616

Odometer Reading 56687 in favor of Navy Federal Credit Union (NFCU) P O Box 25109 Leigh Valley, PA 18003-9987 within 20 days as required by 11 U.S.C. § 547, and title forwarded to NFCU. When the vehicle is to be registered in a non-title state the undersigned seller will forward a properly assigned proof-of-ownership.

Dealers Endorsement



NOTICE TO MEMBER

Do NOT deposit or endorse this instrument for payment until you have signed all necessary documents and returned them to NFCU.

The security features listed below, as well as those not listed, exceed industry guidelines. Absence of these features may indicate alteration.

 <p>Security Features: Chemically Sensitive Paper Fluorescent Fibers Artificial Watermarks</p>	<p>Results of document alterations: Appearance of fibers and or other items may indicate alterations. Presence of fibers required to reproduce legal text or marks in color, absence indicates alteration.</p>
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NOTES: *CR# 5152*

RECEIPT DATE 3/22/09 NO. 098250

RECEIVED FROM Anthony Puzio

ADDRESS _____

FOR SK# 9619A 01# 3678 \$ 2000

ACCOUNT	AMOUNT	DATE	INITIALS	REMARKS

BY: *MJL*

03/24/2009

MY ENCHANTED ACRES
 KIMBERLY ANN PUZIO
 ANTHONY J. PUZIO
 PUZIO/JA/ABD1
 16408 - 65TH AVE. SE 390-658-6103
 SNOHOMISH, WA 98065-6387

Pay to the order of: Everett Chevrolet \$: 2000

Two Thousand 00/100

DATE: 3/22/09 5152

WAMU
 725 - 4th St
 Everett, WA 98201-4319

Notar: *Anthony Puzio*

W# 3250707601: 39313717061# 5152

**RETAIL INSTALLMENT SALE CONTRACT
SIMPLE FINANCE CHARGE**

Dealer Number _____ Contract Number _____

Buyer Name and Address (Including County and Zip Code) ANTHONY J PUZIO 16408 65TH AVE SE SNOHOMISH WA 98296	Co-Buyer Name and Address (Including County and Zip Code) KIMBERLY A PUZIO 16408 65TH AVE SE SNOHOMISH WA 98296	Creditor-Seller (Name and Address) EVERETT CHEVROLET 7300 EVERGREEN WAY EVERETT WA 98203
---	---	---

You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract. You agree to pay the Creditor - Seller (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below, as explained in section 1 on the back. The Truth-In-Lending Disclosures below are part of this contract.

New/Used/Demo	Year	Make and Model	Odometer	Vehicle Identification Number	Primary Use For Which Purchased
USED	2007	CHEVROLET COLORADO	24201	1GCDT19E178197284	<input type="checkbox"/> personal, family or household <input type="checkbox"/> business <input type="checkbox"/> agricultural

FEDERAL TRUTH-IN-LENDING DISCLOSURES				
ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of your credit as a yearly rate.	The dollar amount the credit will cost you.	The amount of credit provided to you or on your behalf.	The amount you will have paid after you have made all payments as scheduled.	The total cost of your purchase on credit, including your down payment of 2000.00
5.59 %	\$ 3889.49	\$ 21344.35	\$ 25233.84	\$ 27233.84 is

Your Payment Schedule Will Be:

Number of Payments	Amount of Payments	When Payments Are Due
72	350.47	Monthly beginning 05/06/2009

Or As Follows:

Late Charge. If payment is not received in full within 10 days after it is due, you will pay a late charge of \$ 5 or 5 % of the part of the payment that is late, whichever is greater.

Prepayment. If you pay off all your debt early, you will not have to pay a penalty.

Security Interest. You are giving a security interest in the vehicle being purchased.

Additional Information: See this contract for more information including information about nonpayment, default, any required repayment in full before the scheduled date and security interest.

ITEMIZATION OF AMOUNT FINANCED

1 Cash Sale Price

Vehicle Cash Price	\$ 17990.00
Other B&O OVERHEAD TO: EVERETT CHEVROLET	\$ 84.73
Other N/A	\$ N/A
Other N/A	\$ N/A
Other N/A	\$ N/A
Sales Tax	\$ 1608.65
Dealer Documentary Service Fee (Documentary fees are not required by the state of Washington.)	\$ 50.00
Total Cash Sale Price	\$ 19733.38 (1)

2 Total Downpayment =

Trade-in (Year) (Make) (Model)	
Gross Trade-In Allowance	\$ N/A
Less Payoff Made By Seller	\$ N/A
Equals Net Trade In	\$ N/A
+ Cash	\$ 2000.00
+ Other N/A	\$ N/A
Total Downpayment	\$ 2000.00 (2)

(If total downpayment is negative, enter "0" and see 4H below)

3 Unpaid Balance of Cash Price (1 minus 2) **\$ 17733.38 (3)**

4 Other Charges Including Amount Paid to Others on Your Behalf

Insurance. You may buy the physical damage insurance this contract requires (see back) from anyone you choose subject to our approval of your choice as the law allows. You are not required to buy any other insurance to obtain credit.

If any insurance is checked below, policies or certificates from the named insurance companies will describe the terms and conditions.

Check the insurance you want and sign below:

Optional Credit Insurance

Credit Life: Buyer Co-Buyer Both

Credit Disability (Buyer Only)

Premium:

Credit Life \$ N/A

Credit Disability \$ N/A

Insurance Company Name N/A

Home Office Address N/A

Credit life insurance and credit disability insurance are not required to obtain credit. Your decision to buy or not to buy credit life insurance and credit disability insurance will not be a factor in the credit approval process. They will not be provided unless you sign and agree to pay the extra cost. If you choose this insurance, the cost is shown in Item 4A of the Itemization of Amount Financed. Credit life insurance is based on your original payment schedule. This insurance may not pay all you owe on this contract if you make late payments. Credit disability insurance does not cover any increase in your payment or in the number of payments. Coverage for credit life insurance and credit disability insurance ends on the original due date for the last payment unless a different term for the insurance is shown below.

Other Optional Insurance

N/A N/A

Type of Insurance Term

Premium \$ N/A

Insurance Company Name N/A

Home Office Address N/A

N/A

N/A N/A

Type of Insurance Term

Premium \$ N/A

NOTES

RECEIPT

NO. 098249

DATE 3-21-09

RECEIVED FROM Rubens + Tracy LLC Dallas

ADDRESS

\$ 10300.00

FOR Job 2003 Sub Fee

PAID IN FULL

Check #4275

AMT OF ACCOUNT PAID	HOW PAID		
	CASH	CHECK	MONEY ORDER
		<input checked="" type="checkbox"/>	
BALANCE DUE			

BY

[Signature]

GS-001 (REVISED 9-81) MFS

ROBERT A. DODSON
211 KIRKLAND AVE., APT. 504
KIRKLAND, WA 98033-8408

IP-7678/3258
3053345071

4275

Date: 3-21-09

Pay to the
order of:

Florett Chescolet

\$10,300⁰⁰

Ten Thousand three hundred ⁰⁰/₁₀₀ Dollars

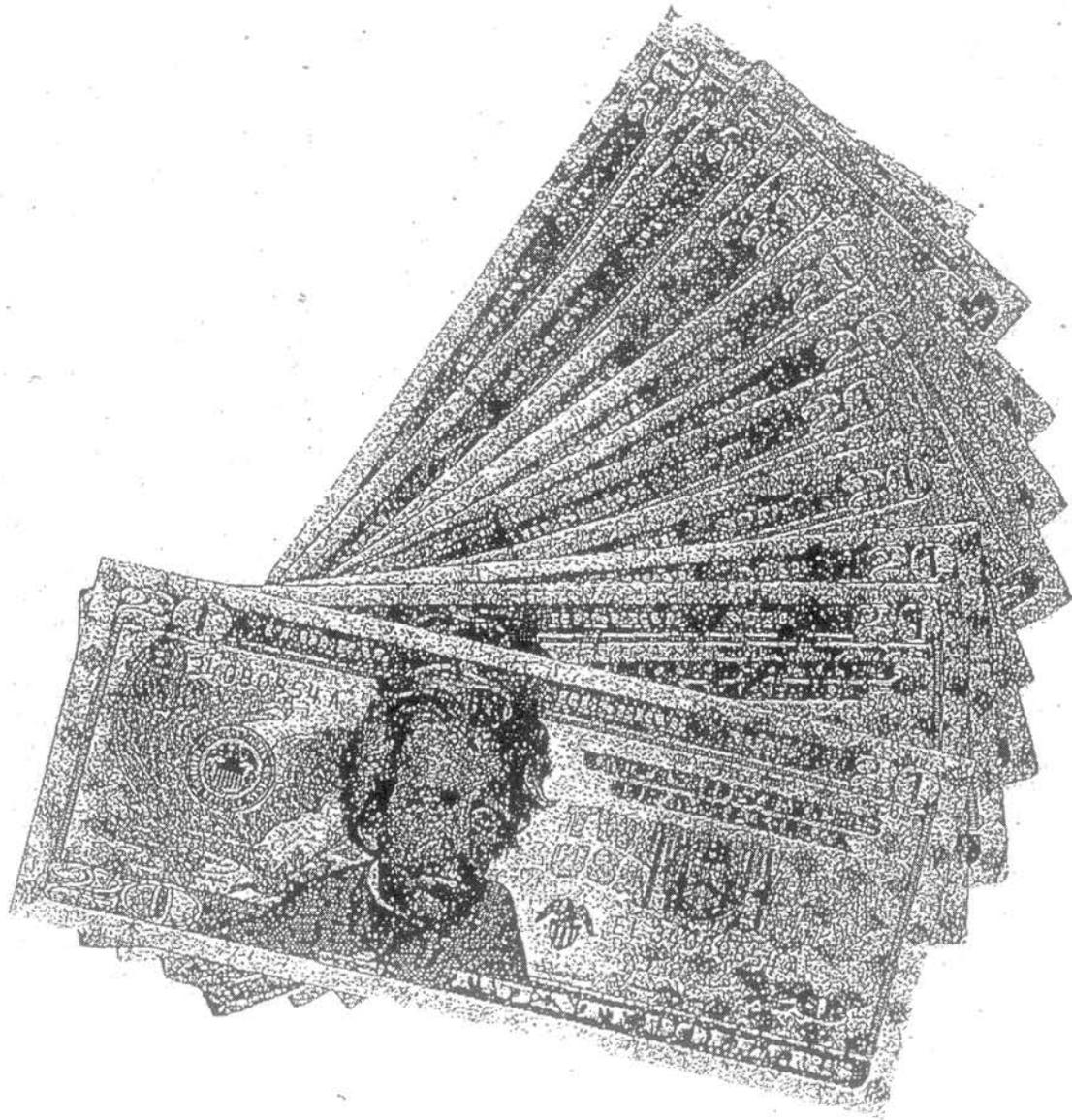
WAMU

Washington Mutual Bank
National Public Depository 33
1400 Broadway, Seattle, WA 98101-3000
Member FDIC

Notes:

Robert A. Dodson

⑆325070760⑆ 3893244091⑆ 4275



Navy Federal Credit Union
Vienna, VA

USE 009105106

DRAFT NO. 0201362974
 NOT TO EXCEED \$ **18,500.00
 VOID SIXTY DAYS AFTER 03 13 09
 MO. DAY YR.

PAY TO THE ORDER OF EVERETT CHEEKER
 PAYEE MUST BE AUTHORIZED VEHICLE DEALER OR PRIVATE SELLER
Christina Howard Headed Due to
 \$ 1312.14
 AMOUNT IN NUMBERS DOLLARS

VEHICLE IDENTIFICATION NUMBER
 YEAR MAKE MANUFACTURER MODEL
2006 Chevrolet Impala 2G11M158169321033
 NFCU LOAN NUMBER: 43005182091-04 BORROWER'S NAME: ROY L JACKSON
 CO-SIGNER'S NAME (if shown below, must sign Promissory Note on reverse):
 MEMBER'S SIGNATURE: [Signature] DATE: 14 MAR 09

THIS DRAFT WILL NOT BE PAID UNLESS ALL INFORMATION AND ENDORSEMENTS ARE COMPLETE ABOVE AND ON REVERSE
 500.11
 11767629521 11762951020.11

NOTES
 STA# 80435A
 DEAL # 3671

RECEIPT
 RECEIVED FROM Roy L Jackson
 ADDRESS _____
 DATE 3-14-09 NO. 098236
 FOR STA# 80435A 06 Impala \$ 1312.14

AMOUNT PAID	AMOUNT PAID	AMOUNT PAID	AMOUNT PAID
✓			

BY [Signature]

0901 DEPOSIT © 1/10

USE 009093164

Navy Federal Credit Union
Vienna, VA

51160

68-7497
2560

DRAFT NO. 0201360820	NOT TO EXCEED \$ ***14,000.00	VOID SIXTY DAYS AFTER	MO. 03	DAY 09	YR. 09
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PAY TO THE ORDER OF EVERETT CHEVROLET \$ 13,303.54
PAYEE MUST BE AUTHORIZED VEHICLE DEALER OR PRIVATE SELLER AMOUNT IN NUMBERS

THIRTEEN THOUSAND THREE HUNDRED THREE AND 54/100 DOLLARS
AMOUNT IN WORDS

VEHICLE DESCRIPTION	YEAR	MAKE/MANUFACTURER	MODEL	VEHICLE IDENTIFICATION NUMBER
	07	PONTIAC	Grand Prix	2G2W1P5S26711183808

NFCU LOAN NUMBER: 430007006439-05
 BORROWER'S NAME: TYLER W ERFORD
VIN MUST BE LEGIBLE TO ENSURE PAYMENT OF THIS DRAFT

COSIGNER'S NAME (if shown below, must sign Promissory Note on reverse):

SAP
Tyler W Erford
 MEMBER'S SIGNATURE DATE 13 MAR 2009

THIS DRAFT WILL NOT BE PAID UNLESS ALL INFORMATION AND ENDORSEMENTS ARE COMPLETE ABOVE AND ON REVERSE

⑈0201360820⑈ ⑆256074974⑆

⑈005

THIS MICR LINE AREA OF THE DOCUMENT CHANGES COLOR GREATLY AND EVEN FROM DARK TO LIGHT WITHIN THE AREA. PLEASE HOLD THE CHECK UP TO THE LIGHT AND VIEW FROM BOTH TOP AND BOTTOM.

WELLS FARGO

Pay to the Order of: **EVERETT CHEVORLET AND MARTIN TUCKER AND DONALD KAUFFMAN**

The Sum of: **SEVEN THOUSAND ONE HUNDRED FIVE DOLLARS AND 5 CENTS**

Memorandum: *Richard King*

Check Number: **475905254**

Check Date: **03/16/2009**

Check Amount: **\$7,105.05**

MEMPHIS, TN 38103

⑆ 2007800249 ⑆ ⑆ 22204771 ⑆ 475905254 ⑆

MARTIN TUCKER
16808 118TH ST NE
ARLINGTON, WA 98223-7978

2526
18-654/7560 3833
3317274961

DATE: 3-18-09

PAY TO THE ORDER OF: Everett Chevoret \$ 625.01

Six hundred twenty eight and 01/100 DOLLARS

WELLS FARGO Wells Fargo Bank, N.A. WELLS FARGO WELLS FARGO

FOR: Car payment *Richard King*

⑆ 25008547 ⑆ 331727496 ⑆ 02526

RETAIL INSTALLMENT SALE CONTRACT
SIMPLE FINANCE CHARGE

Dealer Number _____

Contract Number _____

Buyer Name and Address (Including County and Zip Code) DAVID B CHRISTENSEN 7302 SW 164TH PLACE EDMONDS WA 98026 SNOHOMISH	Co-Buyer Name and Address (Including County and Zip Code) MICHELLE L CHRISTENSEN 7302 SW 164TH PLACE EDMONDS WA 98026 SNOHOMISH	Creditor-Seller (Name and Address) EVERETT CHEVROLET 7300 EVERGREEN WAY EVERETT WA 98203
---	---	---

You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract. You agree to pay the Creditor - Seller (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below, as explained in section 1 on the back. The Truth-in-Lending Disclosures below are part of this contract.

New/Used/Demo	Year	Make and Model	Odometer	Vehicle Identification Number	Primary Use For Which Purchased
USED	2006	CHEVROLET SUBURBAN L	65894	1GNFK16Z56J109063	<input checked="" type="checkbox"/> personal, family or household <input type="checkbox"/> business <input type="checkbox"/> agricultural

FEDERAL TRUTH-IN-LENDING DISCLOSURES				
ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.	Total Sale Price The total cost of your purchase on credit, including your down payment of \$ 13209.15 to \$ 27744.15
5.24 %	\$ 1800.77	\$ 12734.23	\$ 14535.00	
Your Payment Schedule Will Be:				
Number of Payments	Amount of Payments	When Payments Are Due		
60	242.25	Monthly beginning		04/24/2009
Or As Follows:				
Late Charge. If payment is not received in full within 10 days after it is due, you will pay a late charge of \$ 5 or % of the part of the payment that is late, whichever is greater.				
Prepayment. If you pay off all your debt early, you will not have to pay a penalty.				
Security Interest. You are giving a security interest in the vehicle being purchased.				
Additional Information: See this contract for more information including information about nonpayment, default, any required repayments in full before the scheduled date and security interest.				

Insurance. You may buy the physical damage insurance this contract requires (see back) from anyone you choose subject to our approval of your choice as the law allows. You are not required to buy any other insurance to obtain credit.

If any insurance is checked below, policies or certificates from the named insurance companies will describe the terms and conditions.

Check the insurance you want and sign below:

Optional Credit Insurance

Credit Life Buyer Co-Buyer Both
 Credit Disability (Buyer Only)

Premium:

Credit Life \$ N/A
Credit Disability \$ N/A

Insurance Company Name N/A
Home Office Address N/A

Credit life insurance and credit disability insurance are not required to obtain credit. Your decision to buy or not to buy credit life insurance and credit disability insurance will not be a factor in the credit approval process. They will not be provided unless you sign and agree to pay the extra cost. If you choose this insurance, the cost is shown in item 4A of the itemization of Amount Financed. Credit life insurance is based on your original payment schedule. This insurance may not pay all you owe on this contract if you make late payments. Credit disability insurance does not cover any increase in your payment or in the number of payments. Coverage for credit life insurance and credit disability insurance ends on the original due date for the last payment unless a different term for the insurance is shown below.

ITEMIZATION OF AMOUNT FINANCED	
1 Cash Sale Price	
Vehicle Cash Price	\$ 21223.00
Other B&O OVERHEAD TO: EVERETT CHEVROLET	\$ 99.96
Other N/A	\$ N/A
Other N/A	\$ N/A
Other N/A	\$ N/A
Sales Tax	\$ 1097.74
Dealer Documentary Service Fee (Documentary fee are not required by the state of Washington.)	\$ 50.00
Total Cash Sale Price	\$ 23270.70 (1)
2 Total Downpayment =	
Trade-In (Year) (Make) (Model)	
Gross Trade-In Allowance	\$ N/A
Less Payoff Made By Seller	\$ N/A
Equals Net Trade In	\$ N/A
+ Cash	\$ 13209.15
+ Other N/A	\$ N/A
(If total downpayment is negative, enter "0" and see 4B below)	\$ 13209.15 (2)
3 Unpaid Balance of Cash Price (1 minus 2)	
	\$ 10061.55 (3)
4 Other Charges Including Amounts Paid to Others on Your Behalf (Seller may keep part of these amounts):	
A Cost of Optional Credit Insurance Paid to Insurance Company or Companies:	
Life	\$ N/A
Disability	\$ N/A
B Other Optional Insurance Paid to Insurance Company or Companies	
Total Insurance Paid to Insurance Companies	\$ N/A
C Official Fees Paid to Government Agencies	
to N/A for N/A	\$ N/A
to N/A for N/A	\$ N/A
to N/A for N/A	\$ N/A
D Optional Gap Contract	
	\$ N/A
E Government Taxes Not Included in Cash Price	
	\$ N/A
F Government License and/or Registration Fees	
LICENSE	\$ 180.00
G Government Certificate of Title Fees	
	\$ 0.00
Total Official Fees Paid to Government Agencies	\$ 180.00
H Other Charges (Seller must identify who is paid and describe purpose)	
to N/A for Pre-Cash or Lease Balance	\$ N/A

Other Optional Insurance

N/A Type of Insurance N/A Term

Premium \$ N/A

Insurance Company Name N/A
Home Office Address N/A

N/A Type of Insurance N/A Term

Premium \$ N/A

Insurance Company Name N/A
Home Office Address N/A

Other optional insurance is not required to obtain credit. Your decision to buy or not buy other optional insurance will not be a factor in the credit approval process. It will not be provided unless you sign and agree to pay the extra cost. If you want the insurance checked above, we will apply for this insurance on your behalf.

X
Buyer Signature _____ Date _____

X
Co-Buyer Signature _____ Date _____

THIS INSURANCE DOES NOT INCLUDE INSURANCE FOR BODILY INJURY LIABILITY, PUBLIC LIABILITY, OR PROPERTY DAMAGE LIABILITY.

Returned Check Charge: If any check you give us is dishonored, you will pay a charge of the lesser of \$40 or the face amount of the check if we make written demand that you do so.

Trade-In	(Year)	(Make)	(Model)	
Graces Trade-In Allowance				\$ N/A
Less Payoff Made by Seller				\$ N/A
Equals Net Trade In				\$ N/A
+ Cash				\$ 13209.15
+ Other <u>N/A</u>				\$ N/A
(If total downpayment is negative, enter "0" and see 4H below)				\$ 13209.15 (2)
3 Unpaid Balance of Cash Price (1 minus 2)				\$ 12061.55 (2)
4 Other Charges including Amounts Paid to Others on Your Behalf (Seller may keep part of these amounts):				
A Cost of Optional Credit Insurance Paid to Insurance Company or Companies.				
Life			\$ N/A	
Disability			\$ N/A	
B Other Optional Insurance Paid to Insurance Company or Companies				\$ N/A
Total Insurance Paid to Insurance Companies				\$ N/A
C Official Fees Paid to Government Agencies				
To	N/A	for	N/A	\$ N/A
To	N/A	for	N/A	\$ N/A
To	N/A	for	N/A	\$ N/A
D Optional Gap Contract				\$ N/A
E Government Taxes Not Included in Cash Price				\$ N/A
F Government License and/or Registration Fees				
LICENSE				\$ 180.00
G Government Certificate of Title Fees				\$ 0.00
Total Official Fees Paid to Government Agencies				\$ 180.00
H Other Charges (Seller must identify who is paid and describe purpose)				
To	N/A	for	Prior Credit or Lease Balance	\$ N/A
To	NATIONAL WARRANTY	for	SERVICE CONT	\$ 2287.00
To	N/A	for	N/A	\$ N/A
To	NATIONAL WARRANTY	for	VSC-SLS-TX @ B-6-t	\$ 106.68
To	N/A	for	N/A	\$ N/A
To	N/A	for	N/A	\$ N/A
Total Other Charges and Amounts Paid to Others on Your Behalf				\$ 3673.68 (4)
5 Amount Financed (3 plus 4)				\$ 12734.23 (5)

Type of Insurance Term

Premium \$ N/A

Insurance Company Name N/A

Home Office Address N/A

N/A N/A

Type of Insurance Term

Premium \$ N/A

Insurance Company Name N/A

Home Office Address N/A

Other optional insurance is not required to obtain credit. Your decision to buy or not buy other optional insurance will not be a factor in the credit approval process. It will not be provided unless you sign and agree to pay the extra cost. I want the insurance checked above. We will apply for this insurance on your behalf.

X Buyer Signature _____ Date _____

X Co-Buyer Signature _____ Date _____

THIS INSURANCE DOES NOT INCLUDE INSURANCE FOR BODILY INJURY LIABILITY, PUBLIC LIABILITY, OR PROPERTY DAMAGE LIABILITY.

Returned Check Charge: If any check you give us is dishonored, you will pay a charge of the lesser of \$40 or the face amount of the check if we make written demand that you do so.

OPTIONAL GAP CONTRACT. A gap contract (debit cancelled on contract) is not required to obtain credit and will not be provided unless you sign below and agree to pay the extra charge. If you choose to buy a gap contract, the charge is shown in item 4D of the Remittance Advice Financed. See your gap contract for details on the terms and conditions it provides. It is a part of this contract.

Term: _____ Name of Gap Contract N/A

I want to buy a gap contract. Buyer Signs X _____

OPTION: You pay no finance charge if the Amount Financed, item 5, is paid in full on or before N/A, Year _____, SELER'S INITIALS _____

NO COOLING OFF PERIOD

State law does not provide for a "cooling off" or cancellation period for this sale. After you sign this contract, you may only cancel it if the seller agrees or for legal cause. You cannot cancel this contract simply because you change your mind. This notice does not apply to home solicitation sales.

The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge.

HOW THIS CONTRACT CAN BE CHANGED. This contract contains the entire agreement between you and us relating to this contract. Any change to this contract must be in writing and we must sign it. No oral changes are binding. Buyer Signs X _____ Co-Buyer Signs X _____

If any part of this contract is not valid, all other parts stay valid. We may delay or refrain from enforcing any of our rights under this contract without losing them. For example, we may extend the time for making some payments without extending the time for making others.

You authorize us to obtain information about you, or the vehicle you are buying, from the state motor vehicle department or other motor vehicle registration authorities. See back for other important agreements.

NOTICE TO BUYER: (a) Do not sign this contract before you read it or if any spaces intended for the agreed terms, except as to unavailable information, are blank. (b) You are entitled to a copy of this contract at the time you sign it. (c) You may at any time pay off the full unpaid balance due under this contract, and in so doing you may receive a partial rebate of the finance charge. (d) The finance charge does not exceed 5.24 % (must be filled in) per annum computed monthly.

You agree to the terms of this contract. You confirm that before you signed this contract, we gave it to you, and you were free to take it and review it. You confirm that you received a completely filled-in copy when you signed it.

Buyer Signs X _____ Date 03/10/09 Co-Buyer Signs X _____ Date 03/10/09

Co-Buyers and Other Owners — A co-buyer is a person who is responsible for paying the entire debt. An other owner is a person whose name is on the title to the vehicle but does not have to pay the debt. The other owner agrees to the security interest in the vehicle given to us in this contract.

Other owner signs here X Address _____

Seller signs EVERETT CHEVROLET Date 03/10/09 By X Title F&I

Seller assigns its interest in this contract to:

Assigned with recourse BECU Assigned without recourse Assigned with limited recourse

Signed: EVERETT CHEVROLET By _____ Title F&I

LAW FORM NO. 853-WA (REV. 10/07) U.S. PATENT NO. 6,507,892
 ©2007 The Republic and the State of Colorado. TO OBTAIN INFORMATION IN THIS STATE, IN 1-800-531-3889
 FOR FURTHER INFORMATION, CONTACT THE STATE OF COLORADO, 1370 CHURCH ST. DENVER, CO 80202
 THIS FORM IS NOT A SUBSTITUTE FOR LEGAL COUNSEL.

ORIGINAL LIENHOLDER

SALES SUMMARY



SALE No. 3660 BY CHRISTOPHER ALAN BBO/10/2009	UNIT: USED 2006 CHEVROLE SUBURBAN 1GNFK16Z56J109063	STK No. 9448
BUYER DAVID B CHRISTENSEN	SALESPERSON: STEVEN S CAPLINGER 757	MGR:
PRICE: \$ 20994.00	TRADE INFORMATION	
COST: \$ 21901.66	YEAR:	MAKE:
SUB TOTAL \$ -907.66	MODEL:	VIN:
OVER ALLOWANCE: \$ N/A	LIC. No.:	ACV. N/A
WE OWES -130.00	NET PAYOFF: N/A	HIGH: LOW
ADDITIONS: TURN SIGNAL \$ 130.00	GOOD UNTIL:	
ADDITIONS: GRILL, FOG LIGHT, DAY MIRE LIGHT	PAYOFF TO: POSTED MAR 1 2009	
ADDITIONS: TRANNY FLUSH \$ N/A		
ADDITIONS: \$ N/A		
ADDITIONS: \$ N/A		
TOTAL ADDITIONS: \$ 130.00		
DEALER INCENTIVE \$ N/A		
MARKET VEHICLE GROSS \$ -808.66		
PACK \$ N/A		
GROSS GROSS PAYABLE \$ -808.66		
AFTER MKT \$ N/A		
RESERVE: \$ 1000.77 \$ 127.34		
CREDIT LIFE \$ N/A		
A & H: \$ N/A		
WARRANTY: \$ 2287.00 \$ 640.00		
EDUCATION: \$ N/A		
TOTAL F & I: \$ 767.34		
SUB TOTAL: \$ -41.32		
TOTAL COMMISSION: \$ 403.47		
PERCENTAGE XX TOTAL PROFIT \$ -444.79		
	LOAN INFORMATION	
	DOWN PAYMENT N/A	ADVANCE OVER
	TRADE CASH 13209.15	UNDER
	HOLD FOR <input type="checkbox"/> SENT TO <input type="checkbox"/> MONEY IN <input type="checkbox"/> 1 PAY DUE	
	LEGAL TO BE: BECU	
	P.O. BOX 997500	
	SACRAMENTO CA 95899-7500	

SALES PAY VOUCHER

SALESPERSON: STK No 9448	MAKE-MODEL USED 2006 CHEVROLET TRUCK DATE: SUBURBAN L 1GNFK16Z56J109063 03/10/09
BUYER DAVID B CHRISTENSEN 7302 SW 164TH PLACE EDMONDS WA 98026 (425)787-1268	<input type="checkbox"/> PAY
COMMISSION FRONT-END: N/A	<input type="checkbox"/> HOLD FOR
BACK-END: N/A	GROSS PYBL: -808.66
SPIFF: N/A	
TOTAL COMMISSION N/A	

SALES PAY VOUCHER

SALESPERSON: STK No 9448	MAKE-MODEL USED 2006 CHEVROLET TRUCK DATE: SUBURBAN L 1GNFK16Z56J109063 03/10/09
BUYER DAVID B CHRISTENSEN 7302 SW 164TH PLACE EDMONDS WA 98026 (425)787-1268	<input type="checkbox"/> PAY
COMMISSION FRONT-END: N/A	<input type="checkbox"/> HOLD FOR
BACK-END: N/A	GROSS PYBL: -808.66
SPIFF: N/A	
TOTAL COMMISSION	

FORM # 2075

SALESPERSON: STK No 9448	MAKE-MODEL USED 2006 CHEVROLET TRUCK DATE: SUBURBAN L 1GNFK16Z56J109063 03/10/09
BUYER DAVID B CHRISTENSEN 7302 SW 164TH PLACE EDMONDS WA 98026 (425)787-1268	<input type="checkbox"/> PAY
COMMISSION FRONT-END: N/A	<input type="checkbox"/> HOLD FOR
BACK-END: N/A	GROSS PYBL: -808.66
SPIFF: N/A	
TOTAL COMMISSION	

FORM # 2075

USE 009087515 Navy Federal Credit Union
Virginia, VA

88-7477
2560

DRAFT NO. 0201359604

VOID SIXTY DAYS AFTER 03 06 09

MO. DAY YR.

NOT TO EXCEED \$ **12,600.00

PAY TO THE ORDER OF EMMA CHEVROLET

\$ 12600.00

TWELVE THOUSAND AND SIX HUNDRED DOLLARS 00 DOLLARS

AMOUNT IN WORDS

VEHICLE DESCRIPTION: 04 Chevrolet Impala 2G

YEAR MAKE/MANUFACTURER MODEL

VEHICLE IDENTIFICATION NUMBER: 1G1WPS51814924968

NFCULAN NUMBER: 43009739763-01

BORROWER'S NAME: RICHARD G. DEBLASI

VIN MUST BE LEGIBLE TO ENSURE PAYMENT OF THIS DRAFT

COSIGNER'S NAME (If shown below, must sign Promissory Note on reverse):

MEMBER'S SIGNATURE: Richard G. DeBlasi DATE: 3-9-09

THIS DRAFT WILL NOT BE PAID UNLESS ALL INFORMATION AND ENDORSEMENTS ARE COMPLETE ABOVE AND ON REVERSE

①

⑈0201359604⑈ ⑈256074974⑈ ⑈005

NOTES

RECEIPT

DATE 3-9-09 NO. 098240

RECEIVED FROM Richard DeBlasi

ADDRESS

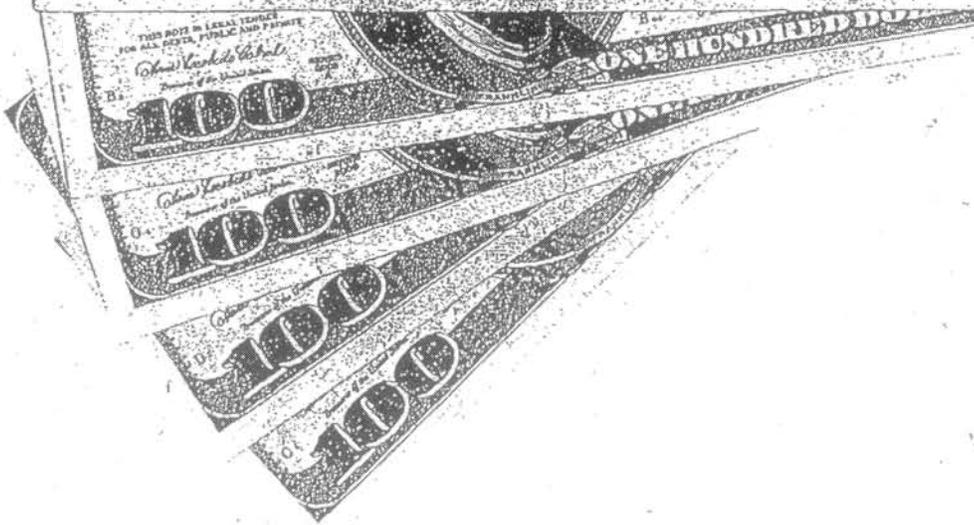
FOR STAFF 90046B 04 EMPLOYEES \$ 13,100.00

AMOUNT PAID	HOW PAID
500.00	CASH
12600.00	CHEQ
	MONEY ORDER
	BY <u>[Signature]</u>

AMOUNT PAID BALANCE DUE

Don't # 3659

©2001 BANCORP 011029



EX. B

Non-Floored Sales Since 1-14-08

Date of Contract or Buyers Order	VIN	Customer Name	Base Sales Price	Dealer Add'l/Oil/Options	Estimated Taxes*	Cash Down Pmt	Rebate	Trades In Allow	Doc and Other Fees	Serv/Warr Cntrs	Ins Cntrs	Final Balance	Fin/Cash Deal	Funds Rec'd from Client	Cash rec'd by EC	Check Specifics	Contract Amount	Contract With
01/13/08	282455	Devchon	37,497.00	0.00	548.50	0.00	10.00	0.00	0.00	0.00	0.00	0.00	Cash	37,111.00				
01/17/08	063461	JR Motorsports	11,500.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	Cash	11,500.00				
01/17/08	222898	JR Motorsports	3,500.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	Cash	3,500.00				
01/18/08	193107	Holmes	48,891.00	0.00	1,055.32	0.00	13,000.00	0.00	0.00	0.00	0.00	0.00	Cash	37,923.33				
01/20/08	124485	B. Allen	44,895.00	0.00	1,557.21	0.00	0.00	0.00	0.00	0.00	0.00	0.00	Cash	43,337.79				
01/21/08	118454	W. B. J. DeBoli	111,931.00	0.00	1,129.71	0.00	0.00	0.00	0.00	0.00	0.00	0.00	Financed	0.00				
01/28/08	272487	Dreyfus Laine Chevy	312,500.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	Cash	112,500.00				
02/13/08	A67459	N. Valdivia	119,102.87	0.00	1,847.13	0.00	0.00	0.00	0.00	0.00	0.00	0.00	Cash	119,291.84				
02/18/08	181518	M. Hunt	114,798.00	0.00	2,758.85	0.00	0.00	10,023.93	0.00	0.00	0.00	0.00	Financed	0.00				
02/26/08	330638	Adams	38,999.00	0.00	508.69	0.00	0.00	0.00	0.00	0.00	0.00	0.00	Financed	0.00	1,500.00	Personal check	5,137.89	Reliable Credit
02/28/08	402460	C. Berthel	18,314.28	0.00	588.74	0.00	0.00	0.00	0.00	0.00	0.00	0.00	Cash	0.00	10,250.00	Resale/Personal check		
03/06/08	196813	W Ruffin & A Chevrolet	110,897.00	0.00	1,841.88	0.00	0.00	10,328.15	0.00	0.00	0.00	0.00	Financed	0.00	2,250.00	Resale/Personal check	13,687.00	Capital One
03/06/08	794014	F. Hutz	11,994.00	0.00	277.88	0.00	0.00	0.00	0.00	0.00	0.00	0.00	Cash	0.00	2,315.89	Visa Redept		
03/20/08	871828	R. Sibonns	44,875.87	0.00	1,474.13	0.00	0.00	0.00	0.00	0.00	0.00	0.00	Cash	0.00	0.00	receipt indicate cash		
03/28/08	346898	C. Rivelle	110,248.00	0.00	1,126.48	0.00	0.00	0.00	0.00	0.00	0.00	0.00	Cash	0.00	11,940.48	Personal check		
03/31/08	184186	J. Hites	88,888.00	0.00	1,491.83	0.00	0.00	0.00	0.00	0.00	0.00	0.00	Cash	0.00	7,727.68	Personal check		
03/31/08	774878	S. Stone	18,321.01	0.00	1,828.89	0.00	0.00	0.00	0.00	0.00	0.00	0.00	Cash	0.00	7,000.00	receipt indicate cash		
		17	1139,368.01											\$ 174,769.84	\$ 48,204.78		\$ 18,874.89	

*Subtotal for Non-Floor Plan Sales in which GMAC has not received any proceeds

1105

Chad Adams
5711 Riverside Dr
Everett, WA 98203

Date: Feb 26, 2009

19-2/1258 VIA
0310

Pay to the order of Chad Adams

Five thousand & no/100ths

\$ 1500.00

Dollar

Bank of America

Signature: Chad Adams

1105

SIMPLE FINANCE CHARGE

Dealer Number _____ Contract Number _____

Buyer Name and Address (Including County and Zip Code) CHAD W. ADAMS 6004 DEXTER AVE. EVERETT WA 98203	Co-Buyer Name and Address (Including County and Zip Code)	Creditor-Seller (Name and Address) EVERETT CHEVROLET 7300 EVERGREEN WAY EVERETT WA 98203
--	--	---

You, the Buyer (and Co-Buyer, if any); may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract. You agree to pay the Creditor - Seller (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below, as explained in section 1 on the back. The Truth-in-Lending Disclosures below are part of this contract.

New/Used/Demo	Year	Make and Model	Odometer	Vehicle Identification Number	Primary Use For Which Purchased
USED	1994	CHEVROLET SILVERADO		1GCHK33F8RJ330538	<input checked="" type="checkbox"/> personal, family or household <input type="checkbox"/> business <input type="checkbox"/> agricultural

FEDERAL TRUTH-IN-LENDING DISCLOSURES				
ANNUAL PERCENTAGE RATE <small>The cost of your credit as a yearly rate.</small>	FINANCE CHARGE <small>The dollar amount the credit will cost you.</small>	Amount Financed <small>The amount of credit provided to you or on your behalf.</small>	Total of Payments <small>The amount you will have paid after you have made all payments as scheduled.</small>	Total Sale Price <small>The total cost of your purchase on credit, including your down payment of</small>
29.99 %	\$ 2326.41	\$ 5157.69	\$ 7484.10	\$ 7500.00 \$ 8984.10

Your Payment Schedule Will Be:

Number of Payments	Amount of Payments	When Payments Are Due
30	249.47	Monthly beginning 04/12/2009

Or As Follows:

Late Charge. If payment is not received in full within 10 days after it is due, you will pay a late charge of \$ 5 or 5 % of the part of the payment that is late, whichever is greater.

Prepayment. If you pay off all your debt early, you will not have to pay a penalty.

Security Interest. You are giving a security interest in the vehicle being purchased.

Additional Information: See this contract for more information including information about nonpayment, default, any required repayment in full before the scheduled date and security interest.

Insurance. You may buy the physical damage insurance this contract requires (see back) from anyone you choose subject to our approval of your choice as the law allows. You are not required to buy any other insurance to obtain credit.

If any insurance is checked below, policies or certificates from the named insurance companies will describe the terms and conditions.

Check the insurance you want and sign below:

Optional Credit Insurance

Credit Life: Buyer Co-Buyer Both
 Credit Disability (Buyer Only)

Premium:
 Credit Life \$ N/A
 Credit Disability \$ N/A

Insurance Company Name N/A
 Home Office Address N/A

Credit life insurance and credit disability insurance are not required to obtain credit. Your decision to buy or not to buy credit life insurance and credit disability insurance will not be a factor in the credit approval process. They will not be provided unless you sign and agree to pay the extra cost. If you choose life insurance, the cost is shown in Item 4A of the Itemization of Amount Financed. Credit life insurance is based on your original payment schedule. This insurance may not pay all you owe on this contract if you make late payments. Credit disability insurance does not cover any increase in your payment or in the number of payments. Coverage for credit life insurance and credit disability insurance ends on the original due date for the last payment unless a different term for the insurance is shown below.

ITEMIZATION OF AMOUNT FINANCED

1 Cash Sale Price

Vehicle Cash Price	\$ 5999.00
Other <u>B&O OVERHEAD TO: EVERETT CHEVROLET</u>	\$ 28.26
Other <u>N/A</u>	\$ N/A
Other <u>N/A</u>	\$ N/A
Other <u>N/A</u>	\$ N/A
Sales Tax	\$ 535.43
Dealer Documentary Service Fees (Documentary fees are not required by the state of Washington.)	\$ 50.00
Total Cash Sale Price	\$ 6613.69 (1)

2 Total Downpayment =

Trade-In _____	
(Year) (Make) (Model)	
Gross Trade-In Allowance	\$ N/A
Less Payoff Made By Seller	\$ N/A
Equals Net Trade In	\$ N/A
+ Cash	\$ 1500.00
+ Other <u>N/A</u>	\$ N/A
(If total downpayment is negative, enter "0" and see 4H below)	\$ 1500.00 (2)

3 Unpaid Balance of Cash Price (1 minus 2) \$ 5113.69 (3)

4 Other Charges Including Amounts Paid to Others on Your Behalf (Seller may keep part of these amounts):

4. Cost of Optional Credit Insurance Paid to

Other Optional Insurance

N/A N/A
 Type of Insurance Term

Premium \$ N/A

Insurance Company Name N/A
 Home Office Address N/A

N/A N/A
 Type of Insurance Term

Premium \$ N/A

Insurance Company Name N/A
 Home Office Address N/A

Disability	\$	N/A	\$	N/A	
Other Optional Insurance Paid to Insurance Company or Companies	\$	N/A	\$	N/A	
Total Insurance Paid to Insurance Companies	\$	N/A	\$	N/A	
C Official Fees Paid to Government Agencies					
to N/A for N/A	\$	N/A	\$	N/A	
to N/A for N/A	\$	N/A	\$	N/A	
to N/A for N/A	\$	N/A	\$	N/A	
D Optional Gap Contract					
E Government Taxes Not Included in Cash Price					
F Government License and/or Registration Fees					
LICENSE					
Government Certificate of Title Fees	\$	25.00	\$	0.00	
Total Official Fees Paid to Government Agencies	\$	25.00	\$	0.00	
H Other Charges (Seller must identify who is paid and describe purpose)					
to N/A for Prior Credit or Lease Balance	\$	N/A	\$	N/A	
to N/A for N/A	\$	N/A	\$	N/A	
to N/A for N/A	\$	N/A	\$	N/A	
to N/A for N/A	\$	N/A	\$	N/A	
to N/A for N/A	\$	N/A	\$	N/A	
to N/A for N/A	\$	N/A	\$	N/A	
Total Other Charges and Amounts Paid to Others on Your Behalf	\$	0.00	\$	0.00	
I Amount Financed (3 plus 4)					
				\$	44,100 (4)
				\$	5,137.60 (5)

Your decision to buy or not buy this vehicle depends on the insurance provided. It will not be provided unless you sign and agree to pay the extra cost. I want the insurance checked above. We will apply for this insurance on your behalf.

X
Buyer Signature _____ Date _____

X
Co-Buyer Signature _____ Date _____

THIS INSURANCE DOES NOT INCLUDE INSURANCE FOR BODILY INJURY LIABILITY, PUBLIC LIABILITY, OR PROPERTY DAMAGE LIABILITY.

Returned Check Charge: If any check you give us is dishonored, you will pay a charge of the lesser of \$40 or the face amount of the check if we make written demand that you do so.

OPTIONAL GAP CONTRACT: A gap contract (debt cancellation contract) is not required to obtain credit and will not be provided unless you sign below and agree to pay the extra charge. If you choose to buy a gap contract, the charge is shown in Item 4D of the Itemization of Amount Financed. See your gap contract for details on the terms and conditions it provides. It is a part of this contract.

Term _____ Name of Gap Contract _____

I want to buy a gap contract.
Buyer Signs X

OPTION: You pay no finance charge if the Amount Financed, Item 5, is paid in full on or before _____ Year. SELLER'S INITIALS _____

NO COOLING OFF PERIOD

State law does not provide for a "cooling off" or cancellation period for this sale. After you sign this contract, you may only cancel it if the seller agrees or for legal cause. You cannot cancel this contract simply because you change your mind. This notice does not apply to home solicitation sales.

The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge.

HOW THIS CONTRACT CAN BE CHANGED. This contract contains the entire agreement between you and us relating to this contract. Any change to this contract must be in writing and we must sign it. No oral changes are binding. Buyer Signs X Co-Buyer Signs X
If any part of this contract is not valid, all other parts stay valid. We may delay or refrain from enforcing any of our rights under this contract without losing them. For example, we may extend the time for making some payments without extending the time for making others.
You authorize us to obtain information about you, or the vehicle you are buying, from the state motor vehicle department or other motor vehicle registration authorities.
See back for other important agreements:

NOTICE TO BUYER: (a) Do not sign this contract before you read it or if any spaces intended for the agreed terms, except as to unavailable information, are blank. (b) You are entitled to a copy of this contract at the time you sign it. (c) You may at any time pay off the full unpaid balance due under this contract, and in so doing you may receive a partial rebate of the finance charge. (d) The finance charge does not exceed 20.00 % (must be filled in) per annum computed monthly.

You agree to the terms of this contract. You confirm that before you signed this contract, we gave it to you, and you were free to take it and review it. You confirm that you received a completely filled-in copy when you signed it.

Buyer Signs X Date 03/20/09 Co-Buyer Signs X Date _____
Co-Buyers and Other Owners — A co-buyer is a person who is responsible for paying the entire debt. An other owner is a person whose name is on the title to the vehicle but does not have to pay the debt. The other owner agrees to the security interest in the vehicle given to us in this contract.

Other owner signs here X Address _____
Seller signs EVERETT CHEVROLET Date 03/20/09 By X Title SA

Seller assigns its interest in this contract to _____ (Assignee) under the terms of Seller's agreement(s) with Assignee.
 Assigned with recourse **RELIABLE CREDIT** Assigned without recourse Assigned with limited recourse

EVERETT CHEVROLET By _____ Title SA

AW FORM NO. 002-WA (REV. 12/07) U.S. PATENT AND TRADEMARK OFFICE
©2007 The Republic and Republic Company. TO ORDER: call 1-800-368-3688 or 1-800-368-3689
This document is not intended to be used as a contract. It is for informational purposes only. Please refer to the terms, conditions and legal notices on the back of this document.

FILE COPY

4303

Curt D. Beffert
 2010 14th St
 4303 14th St, Erie, PA 16575
 (814) 833-9271

DATE: 2/28/09

\$10,250.00 DOLLARS

FOR: *State of PA*

AMOUNT PAID: *10,250.00*

AMOUNT DUE: *10,250.00*

BY: *Curt D. Beffert*

⑆ 25000024⑆ 8769 960⑆ 4303

BANK OF AMERICA
 2300 17TH ST N.E.
 SUITE 1000, FORT WASHINGTON, PA 19003

NOTES: *FRONT OF 3678*
CHALK 4303

RECEIPT

DATE: 2-28-09 NO. 098237

RECEIVED FROM: *Curt Beffert*

ADDRESS: _____

FOR: *State 8846B* \$ *10,250.00*

AMT. OF ACCOUNT PAID	HOW PAID		
	CASH	CHECK	MONEY ORDER
		<input checked="" type="checkbox"/>	

BY: *[Signature]*

©2001 BANK OF AMERICA, N.A.

NOTES

RECEIPT

DATE 3/5/09 NO. 098234

RECEIVED FROM William Ruffin

ADDRESS _____ \$ 2250

FOR SK# 9283A OL# 3650

CK# 223

ACCOUNT		HOW PAID	
AMT. OF ACCOUNT		CASH	
AMT. PAID		CHECK	<input checked="" type="checkbox"/>
BALANCE DUE		MONEY ORDER	

BY [Signature]

©2001 IMPACT 1111 1111

WILLIAM M. RUFFIN
9315 220 ST. SW
EDMONDS, WA 98020

SK# 9283A OL# 3650

19-7078/3250
1811688020

223

DATE 3/5/09

PAY TO THE ORDER OF Everett Chevrolet

Two thousand two hundred fifty dollars & 00/100 \$ 2250

Washington Mutual
Washington Mutual Bank
Edmonds Financial Center
126 Third Avenue S.E.
Edmonds, WA 98020

[Signature]

1811688020

SIMPLE FINANCE CHARGE

Dealer Number _____ Contract Number _____

Buyer Name and Address (Including County and Zip Code) ANDREA H GATCHET 21527 73RD PL W APT 1 EVERETT WA 98026 SNOHOMISH	Co-Buyer Name and Address (Including County and Zip Code) WILLIAM M RUFFIN 21527 W 73RD PLACE APT 1 EVERETT WA 98026 SNOHOMISH	Creditor-Seller (Name and Address) EVERETT CHEVROLET 7300 EVERGREEN WAY EVERETT WA 98203
---	---	--

You, the Buyer (and Co-Buyer, if any), may buy the vehicle below for cash or on credit. By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract. You agree to pay the Creditor - Seller (sometimes "we" or "us" in this contract) the Amount Financed and Finance Charge in U.S. funds according to the payment schedule below, as explained in section 1 on the back. The Truth-in-Lending Disclosures below are part of this contract.

New/Used/Demo	Year	Make and Model	Odometer	Vehicle Identification Number	Primary Use For Which Purchased
USED	2004	BUICK RAINIER CX	55560	5GAE13P942199513	<input checked="" type="checkbox"/> personal, family or household <input type="checkbox"/> business <input type="checkbox"/> agricultural

FEDERAL TRUTH-IN-LENDING DISCLOSURES				
ANNUAL PERCENTAGE RATE <small>The cost of your credit as a yearly rate.</small>	FINANCE CHARGE <small>The dollar amount the credit will cost you.</small>	Amount Financed <small>The amount of credit provided to you or on your behalf.</small>	Total of Payments <small>The amount you will have paid after you have made all payments as scheduled.</small>	Total Sale Price <small>The total cost of your purchase on credit, including your down payment of</small>
19.99 %	\$ 3234.80	\$ 13667.00	\$ 21901.80	\$ 21901.80
Your Payment Schedule Will Be:				
Number of Payments	Amount of Payments	When Payments Are Due		
50	365.43	Monthly beginning: 04/19/2009		
Or As Follows:				
Late Charge. If payment is not received in full within 10 days after it is due, you will pay a late charge of \$ 5 or 5 % of the part of the payment that is late, whichever is greater. Prepayment. If you pay off all your debt early, you will not have to pay a penalty. Security Interest. You are giving a security interest in the vehicle being purchased. Additional Information: See this contract for more information including information about nonpayment, default, any required repayment in full before the scheduled date and security interest.				

Insurance. You may buy the physical damage insurance this contract requires (see back) from anyone you choose subject to our approval of your choice as the law allows. You are not required to buy any other insurance to obtain credit.

If any insurance is checked below, policies or certificates from the named insurance companies will describe the terms and conditions.

Check the insurance you want and sign below:

Optional Credit Insurance

Credit Life; Buyer Co-Buyer Both
 Credit Disability (Buyer Only)

Premium:

Credit Life \$ _____ N/A _____

Credit Disability \$ _____ N/A _____

Insurance Company Name _____

N/A

Home Office Address _____ N/A _____

Credit life insurance and credit disability insurance are not required to obtain credit. Your decision to buy or not to buy credit life insurance and credit disability insurance will not be a factor in the credit approval process. They will not be provided unless you sign and agree to pay the extra cost. If you choose this insurance, the cost is shown in item 4A of the Itemization of Amount Financed. Credit life insurance is based on your original payment schedule. This insurance may not pay all you owe on this contract if you make late payments. Credit disability insurance does not cover any increase in your payment or in the number of payments. Coverage for credit life insurance and credit disability insurance ends on the original due date for the last payment unless a different term for the insurance is shown below.

ITEMIZATION OF AMOUNT FINANCED

1 Cash Sale Price

Vehicle Cash Price	\$ 10997.00
Other <u>BEO OVERHEAD TO: EVERETT CHEVROLET</u>	\$ 51.80
Other <u>N/A</u>	\$ N/A
Other <u>N/A</u>	\$ N/A
Other <u>N/A</u>	\$ N/A
Sales Tax	\$ 731.85
Dealer Documentary Service Fee (Documentary fees are not required by the state of Washington.)	\$ 50.00
Total Cash Sale Price	\$ 11829.85 (1)

2 Total Downpayment =

Trade-in <u>1999 JEEP GRAND CHEROK</u>	
(Year) (Make) (Model)	
Gross Trade-In Allowance	\$ 2834.81
Less Payoff Made By Seller	\$ 6762.96
Equals Net Trade In	\$ -3928.15
+ Cash	\$ 2250.00
+ Other <u>N/A</u>	\$ N/A
(If total downpayment is negative, enter "0" and see 4H below)	\$ 0.00 (2)

3 Unpaid Balance of Cash Price (1 minus 2) **\$ 11829.85 (3)**

4 Other Charges Including Amounts Paid to Others on Your Behalf (Seller may keep part of these amounts):

A Cost of Optional Credit Insurance Paid to

Other Optional Insurance

N/A Type of Insurance N/A Term

Premium \$ _____ N/A _____

Insurance Company Name _____

N/A

Home Office Address _____ N/A _____

N/A

N/A Type of Insurance N/A Term

Premium \$ _____ N/A _____

Insurance Company Name _____

N/A

Home Office Address _____ N/A _____

D. Optional Gap Contract	\$	N/A
E. Government Taxes Not Included in Cash Price	\$	N/A
F. Government License and/or Registration Fees	\$	150.00
LICENSE		
G. Government Certificate of Title Fees	\$	0.00
Total Official Fees Paid to Government Agencies	\$	150.00
H. Other Charges (Seller must identify who is paid and describe purpose)		
to WACHOVIA DEALER for Prior Credit or Lease Balance	\$	1678.15
to N/A for N/A	\$	N/A
to N/A for N/A	\$	N/A
to N/A for N/A	\$	N/A
to N/A for N/A	\$	N/A
to N/A for N/A	\$	N/A
Total Other Charges and Amounts Paid to Others on Your Behalf	\$	1678.15 (1)
5. Amount Financed (3 plus 4)	\$	13667.00 (5)

Buyer Signature _____ Date _____

THIS INSURANCE DOES NOT INCLUDE INSURANCE FOR BODILY INJURY LIABILITY, PUBLIC LIABILITY, OR PROPERTY DAMAGE LIABILITY.

Returned Check Charge: If any check you give us is dishonored, you will pay a charge of the lesser of \$40 or the face amount of the check if we make written demand that you do so.

OPTIONAL GAP CONTRACT: A gap contract (debt cancellation contract) is not required to obtain credit and will not be provided unless you sign below and agree to pay the extra charge. If you choose to buy a gap contract, the charge is shown in item 4D of the Itemization of Amount Financed. See your gap contract for details on the terms and conditions it provides. It is a part of this contract.

Term _____ Mos.

Name of Gap Contract N/A

I want to buy a gap contract.

Buyer Signs X _____

OPTION: You pay no finance charge if the Amount Financed, item 5, is paid in full on or before _____ Year. SELLER'S INITIALS _____

NO COOLING OFF PERIOD

State law does not provide for a "cooling off" or cancellation period for this sale. After you sign this contract, you may only cancel it if the seller agrees or for legal cause. You cannot cancel this contract simply because you change your mind. This notice does not apply to home solicitation sales.

The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this contract and retain its right to receive a part of the Finance Charge.

HOW THIS CONTRACT CAN BE CHANGED: This contract contains the entire agreement between you and us relating to this contract. Any change to this contract must be in writing and we must sign it. No oral changes are binding. Buyer Signs X _____ Co-Buyer Signs X _____

If any part of this contract is not valid, all other parts stay valid. We may delay or refrain from enforcing any of our rights under this contract without being bound. For example, we may extend the time for making some payments without extending the time for making others.

You authorize us to obtain information about you or the vehicle you are buying, from the state motor vehicle department or other motor vehicle registration authorities.

See back for other important agreements.

NOTICE TO BUYER: (a) Do not sign this contract before you read it or if any spaces intended for the agreed terms, except as to unavailable information, are blank. (b) You are entitled to a copy of this contract at the time you sign it. (c) You may at any time pay off the full unpaid balance due under this contract, and in so doing you may receive a partial rebate of the finance charge. (d) The finance charge does not exceed 19.99 % (must be filled in) per annum computed monthly.

You agree to the terms of this contract. You confirm that before you signed this contract, we gave it to you, and you were free to take it and review it. You confirm that you received a completely filled-in copy when you signed it.

Buyer Signs X Andrew H. Hackett Date 03/05/09 Co-Buyer Signs X W. W. R. Date 03/05/09

Co-Buyers and Other Owners - A co-buyer is a person who is responsible for paying the entire debt. An other owner is a person whose name is on the title to the vehicle but does not have to pay the debt. The other owner agrees to the security interest in the vehicle given to us in this contract.

Other owner signs here X _____ Address _____

Seller signs EVERETT CHEVROLET Date 03/05/09 By X [Signature] Title FAT

Seller assigns its interest in this contract to _____ (Assignee) under the terms of Seller's agreement(s) with Assignee.

Assigned with recourse **CAPITAL ONE AUTO FINANCE** Assigned without recourse Assigned with limited recourse

EVERETT CHEVROLET By [Signature] FAT

72700

WMTA SK# 9515A
EVERETT CHEUROLET
7308 EVERGREEN WAY
EVERETT, WA 98203
425-355-6690

BATCH: 295
5-8-L-E-S-D-8-8-1-1
72559842
88088278487

REF: 8981
CD TYPE: VISA
TR TYPE: PURCHASE
DATE: MAR 89, 99 17:14:24

TOTAL \$1508.00

ACCT: 448945483477729 EXP: 02/11
HOLD: 808219
NAME: FELIPE N WMTA

CARDHOLDER ACKNOWLEDGES RECEIPT OF GOODS AND/OR SERVICES IN THE AMOUNT OF THE TOTAL SHOWN HEREON AND AGREES TO PERFORM THE OBLIGATIONS SET FORTH BY THE CARDHOLDER'S AGREEMENT WITH THE ISSUER

THANK YOU
Felipe N WMTA
MERCHANT COPY

WMTA SK# 9515A
EVERETT CHEUROLET
7308 EVERGREEN WAY
EVERETT, WA 98203
425-355-6690

BATCH: 295
5-8-L-E-S-D-8-8-1-1
72559842
88088278487

REF: 8981
CD TYPE: VISA
TR TYPE: PURCHASE
DATE: MAR 89, 99 17:18:13

TOTAL \$815.69

ACCT: 448945483807591 EXP: 08/11
HOLD: 888814
NAME: BILLY E WILLOPAGES

CARDHOLDER ACKNOWLEDGES RECEIPT OF GOODS AND/OR SERVICES IN THE AMOUNT OF THE TOTAL SHOWN HEREON AND AGREES TO PERFORM THE OBLIGATIONS SET FORTH BY THE CARDHOLDER'S AGREEMENT WITH THE ISSUER

THANK YOU
Billy E Willopages
MERCHANT COPY

THIS IS AN UNFLOORED USED UNIT. C/S
 PAID ALL IN CASH, FIVE \$1000 WAS AS A ~~MAXIMUM~~ PAYMENT
 PAID TO HOLD UNIT IN 3/19/09. THE BALANCE \$4200
 WAS PAID AT TIME OF DELIVERY LATE ON 3/20/09

[Signature]
 5/20/09

RECEIPT DATE 3-20-09 NO. 098246

RECEIVED FROM ROGER SRIBODHANA

ADDRESS 1627 50th DR SE
 EVERETT WA 98203

FOR 90133A \$20 GMS SAFARI 11A \$1000.00

AMOUNT PAID	HOW PAID	
	CASH	CHEQUE
1000.00		

BY *[Signature]*

©2001 BUNZEL © 81808

NOTES

CASH
 DON # 3680

RECEIPT DATE 3-20-09 NO. 098248

RECEIVED FROM Roger K. SRIBODHANA

ADDRESS 1627 50th DR SE
 EVERETT WA \$4200.00

FOR PAYMENT IN FULL ON SAFARI 11A 90133A

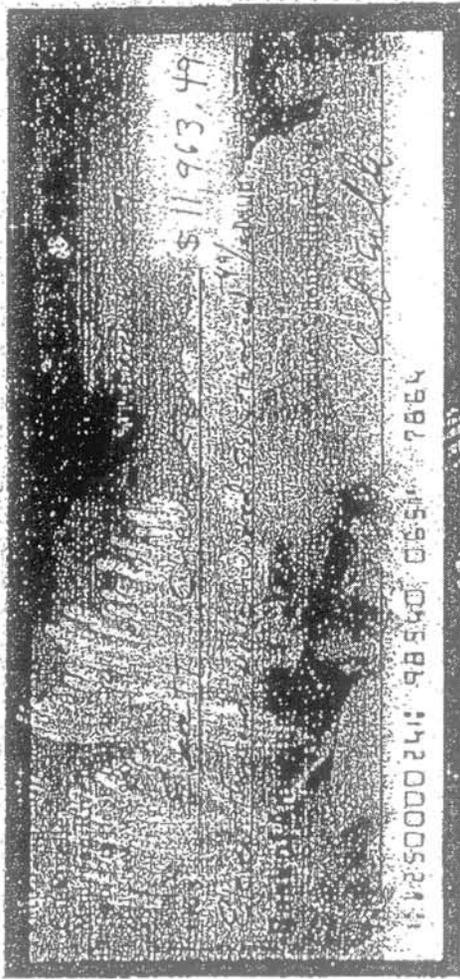
AMOUNT PAID	HOW PAID	
	CASH	CHEQUE

BY *[Signature]*

©2001 BUNZEL © 81808

NOTES

CASH
 DON # 3680



Odometer Disclosure / Title* Extension Statement
Release of Interest by Registered Owner

*(PLEASE SEE PAGE 2 FOR COMPLETE INSTRUCTIONS AND EXPLANATION OF ASTERISK)

LICENSE NUMBER 267RT0	YEAR 2004	NAME CHEVROLET	SERIES/MODEL TYPE CHEV CAVALIER	VEHICLE IDENTIFICATION NUMBER 1G1JC12F047184185
NAME OF STATE OR COUNTRY IN WHICH FIRST TITLED				TITLE NUMBER (See explanation)

FEDERAL REGULATION AND STATE LAW REQUIRE THAT YOU STATE THE MILEAGE IN CONNECTION WITH THE TRANSFER OF OWNERSHIP. FAILURE TO COMPLETE ODOMETER STATEMENT OR PROVIDING A FALSE STATEMENT MAY RESULT IN FINES AND/OR IMPRISONMENT.

DISCLOSURE BY REGISTERED OWNER
DISCLOSURE BY VEHICLE DEALER ONLY
REASSIGNMENT BY VEHICLE DEALER ONLY
RELEASE OF INTEREST BY REGISTERED OWNER

I certify, to the best of my knowledge, that the ODOMETER READING, as shown below, (CHECK ONE)

NO TENTHS 1. is the ACTUAL MILEAGE of the vehicle
 2. the mileage stated is in EXCESS OF ITS MECHANICAL LIMITS
 3. the odometer reading is NOT THE ACTUAL MILEAGE

ODOMETER READING (in miles) _____ Date of Transfer _____

TRANSFEREE / BUYER: unless licensed dealer, must transfer title within 15 days of sale.
 I/we warrant this Title and certify that the vehicle described herein has been sold to the following:

Signature of TRANSFEREE / BUYER _____ Signature of TRANSFEROR / SELLER _____
 HANDPRINTED Name of TRANSFEREE / BUYER _____ HANDPRINTED Name of TRANSFEROR / SELLER _____

Address of TRANSFEREE / BUYER _____ Address of TRANSFEROR / SELLER _____

WARNING - ODOMETER DISCREPANCY SEE PAGE 2

I certify, to the best of my knowledge, that the ODOMETER READING, as shown below, (CHECK ONE)

NO TENTHS 1. is the ACTUAL MILEAGE of the vehicle
 2. the mileage stated is in EXCESS OF ITS MECHANICAL LIMITS
 3. the odometer reading is NOT THE ACTUAL MILEAGE

ODOMETER READING (in miles) 59880 Date of Transfer 03/31/2009

Signature of TRANSFEREE / BUYER Judy E. Mitts Signature of TRANSFEROR / SELLER Chip Brookhysen
 HANDPRINTED Name of TRANSFEREE / BUYER JUDY E MITTS HANDPRINTED Name of TRANSFEROR / SELLER EVERETT CHEVROLET

Address of TRANSFEREE / BUYER 1011 129TH ST SW F-204 EVERETT WA 98204 Address of TRANSFEROR / SELLER 7300 EVERGREEN WAY EVERETT WA 98203

Address of TRANSFEREE / BUYER _____ Address of TRANSFEROR / SELLER _____

BUYING DEALER'S STATE LICENSE NUMBER (if applicable) _____ SELLING DEALER'S STATE LICENSE NUMBER 1806

WARNING - ODOMETER DISCREPANCY SEE PAGE 2

I certify, to the best of my knowledge, that the ODOMETER READING, as shown below, (CHECK ONE)

NO TENTHS 1. is the ACTUAL MILEAGE of the vehicle
 2. the mileage stated is in EXCESS OF ITS MECHANICAL LIMITS
 3. the odometer reading is NOT THE ACTUAL MILEAGE

ODOMETER READING (in miles) _____ Date of Transfer _____

Signature of TRANSFEREE / BUYER _____ Signature of TRANSFEROR / SELLER _____
 HANDPRINTED Name of TRANSFEREE / BUYER _____ HANDPRINTED Name of TRANSFEROR / SELLER _____

Address of TRANSFEREE / BUYER _____ Address of TRANSFEROR / SELLER _____

BUYING DEALER'S STATE LICENSE NUMBER (if applicable) _____ SELLING DEALER'S STATE LICENSE NUMBER _____

LIENHOLDER OF TRANSFEREE / BUYER (IF APPLICABLE) TO BE RECORDED AND SHOWN ON NEW TITLE

LIENHOLDER Name _____ LIENHOLDER Address _____

THIS RELEASE OF INTEREST MAY BE USED IN LIEU OF A RELEASE ON A TITLE.

I/we release all interest in the above described vehicle. This release must be signed by all registered owners.

NOTARIZATION/CERTIFICATION FOR RELEASE OF INTEREST

State of Washington _____ Signed _____
 County of SNOHOMISH _____ Signed or attested before me on 03/31/2009

Notary's Name (PRINTED or STAMPED) _____
 Title _____ Dealer No. OR AND: County/Office No. OR Notary Expiration Date _____

NOTE: THIS DOCUMENT IS A PART OF A WASHINGTON CERTIFICATE OF TITLE, AND SHOULD BE ATTACHED TO THE CERTIFICATE OF TITLE. UNAUTHORIZED PRINTING OR REPRODUCTION OF THIS DOCUMENT IS PROHIBITED. IF ALTERED IN ANY WAY, CONTACT YOUR NEAREST LICENSE AGENT.

D.O.L. COPY

92-7933766

JUDY E. MITTS
 1011 129TH VIEW DR., #F-26
 EVERETT, WA 98201

18-8140/220
 DATE 3-31-09

PAY TO THE ORDER OF Everett Chevrolet \$ 7,727.58

more than just money **BECCA**
 P.O. Box 97050
 Seattle, WA 98124-0750
 206-527-3300
 www.becca.org

MEMO Cavalier-RES Judy Mitts

132508140313574773963102382



WASHINGTON STATE DEPARTMENT
LICENSING

VEHICLE CERTIFICATE OF OWNERSHIP APPLICATION
Certificate of Fact for Address Verification

F E E S

Please Type or Print Plainly

PLATE OR TPO 32B-VH7	COLOR #1 GRAY	COLOR #2 LAREDO	VEHICLE IDENTIFICATION (VIN) NUMBER 1J4CW58NXC776875	FILING
MOYR 1999	PWR G	USE JEEP	MAKE GRAND CHEROK	MODEL ID
CYCLE ENGINE OR MOTOR HOME NUMBER	FLEET CODE	EQUIPMENT #	MO REG	REG EXP DATE
DECLARED GWT	MONTH GWT	GWT EXP	MILEAGE	CODE
SPECIAL OPTIONS <input type="checkbox"/> DAY <input type="checkbox"/> NFM <input type="checkbox"/> Native American <input type="checkbox"/> Joint Tenancy With Right Of Survivorship			COUNTY OF RESIDENCE	PURCHASE PRICE
<input type="checkbox"/> Leased <input type="checkbox"/> Bonded <input type="checkbox"/> Reg Only			<input type="checkbox"/> No Title Issued <input type="checkbox"/> NON-ROADWORTHY	TAX JURISDICTION
Washington State primary residence street address or Washington State principal place of business street address is required on the vehicle record (WAC 308-56A-030). For exceptions to this rule, see form TD-420-004.			TAX RATE	
For more than two Registered or Legal Owners, please attach additional applications.			8.9	
NEW REGISTERED			USE TAX EXEMPT: Private automobile was purchased and used by me in another state for a minimum of 90 days while I was a bona fide resident, before I entered Washington on (Must be used in WA for personal and family transportation only.)	
NAME Last	First	Middle Initial	GIFT: Donor previously paid Washington State sales/use tax.	
STAKE SHAWN T			INHERITANCE: Washington sales/use tax paid by testator. Transferred to SPOUSE.	
Washington State primary residence Street Address (IF AN INDIVIDUAL) OR Washington State principal place of business Street Address (IF A BUSINESS)			Sole to INDIAN IN INDIAN COUNTRY. Notarized statement is attached.	
11805 29TH ST NE			ARBITRATION	
ADDRESS CONTINUED LAKE STEVENS WA 98258			SALES/USE TAX	
MAILING ADDRESS (IF DIFFERENT THAN RESIDENCE ADDRESS) OR EXCEPTION ADDRESS			LICENSE SERVICE	
FIRST OWNER'S WASHINGTON DRIVERS LICENSE, ID CARD OR UBI NUMBER STAKEST133DJ			REPLACEMENT PLATE	
SECOND OWNER'S WASHINGTON DRIVERS LICENSE, ID CARD OR UBI NUMBER			LPG	
NEW LEGAL OWNER			AQUATIC WEED	
NAME Last	First	Middle Initial	LOCAL OPTION	
SAME AS ABOVE.			TRAUMA	
ADDRESS			REPLACEMENT TAB	
ADDRESS CONTINUED			PENALTY	
FIRST OWNER'S WASHINGTON DRIVERS LICENSE, ID CARD OR UBI NUMBER			OUT OF STATE	
SECOND OWNER'S WASHINGTON DRIVERS LICENSE, ID CARD OR UBI NUMBER			OTHER	
DEALER'S REPORT OF SALE I certify that this information is correct. The vehicle is clear of encumbrances except as shown. Any required sales tax has been collected.			TOTAL FEES & TAX	
WA DLR NO.	DEALER NAME	DATE OF SALE	SUBAGENT FEE	
EVERETT CHEVROLET	DEALER'S ALIEN REGISTRATION			

Anyone who knowingly makes a false statement may be guilty of a felony under state law and upon conviction shall be punished by a fine, imprisonment or both. I declare under penalty of perjury under the laws of the State of Washington that the information I have provided on this form is true and correct.

X Shawn Stake
Registered Owner Signature Date Signed 09/30/2009 Piece Signed (such as City or County) SNOHOPISH Position, if signing for a business

NOTARIZATION / CERTIFICATION

State of Washington
County of _____
Signed or attested before me on _____

by _____
Printed Name of Person Signing Document Signature

Notary's Name (PRINTED or STAMPED) _____
Title _____
Notary / Agent

Dealer No. OR
AND: County / Office No. OR
Notary Expiration Date _____

TO 420-001 VEHICLE CERT OF OWNERSHIP APPL (RV105)0A/W
WSADA FORM # 33
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NOTES

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AMT. PAID	CHECK <input type="checkbox"/>
BALANCE DUE	MONEY ORDER <input type="checkbox"/>

BY [Signature]

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APP. F

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SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

GMAC, a Delaware corporation,

Plaintiff,

vs.

EVERETT CHEVROLET, INC., a Delaware
corporation; and JOHN REGGANS and JANE
DOE REGGANS and their marital community,

Defendants.

) No. 08-2-10683-5

) DECLARATION OF JEFFREY BEAVER IN
) OPPOSITION TO GMAC'S MOTION FOR
) SUMMARY JUDGMENT

I, Jeffrey Beaver, hereby declare and state as follows:

1. I am one of the attorneys representing Defendants in this matter. I am over the age of 18 years, make this declaration based on personal knowledge and am otherwise competent to testify.

2. Appended hereto as Exhibit 1 is a true and correct copy of the Declaration of John Reggans in Support of Defendants' Response in Opposition to Temporary Restraining Order and Motion to Dismiss filed in this case on January 12, 2009.

3. Appended hereto as Exhibit 2 is a true and correct copy of the Declaration of John Reggans in Support of Motion to Hold Plaintiff in Contempt for Violation of Restraining Order and Motion to Modify Restraining Order filed in this case on February 4, 2009.

DECLARATION OF JEFFREY BEAVER
IN OPPOSITION TO GMAC'S MOTION
FOR SUMMARY JUDGMENT -- 1

EXHIBIT 4

HEARING DATE AND TIME: August 3, 2009 at 9:45 a.m. (Eastern Time)
OBJECTION DEADLINE: July 28, 2009 at 4:00 p.m. (Eastern Time)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re : Chapter 11 Case No.
: :
GENERAL MOTORS CORP., *et al.*, : 09-50026 (REG)
: :
Debtors. : (Jointly Administered)
: :
-----X

DECLARATION OF JOHN B. REGGANS III IN OPPOSITION TO DEBTORS'
MOTION FOR REJECTION OF EXECUTORY
CONTRACT AND UNEXPIRED LEASES WITH DEALER EVERETT
CHEVROLET, INC.

JOHN B. REGGANS III declares:

1. I am the President of Everett Chevrolet, Inc. (hereinafter "ECI" or "Everett Chevrolet"), a Chevrolet dealer located at 7300 Evergreen Way, Everett, Washington, dealer No. 20 on the list of dealer contracts (Exhibit A to the Debtors' motion) General Motors Corporation ("GM") and its affiliated debtors have moved to reject pursuant to 11 U.S.C. § 365. The dealership stopped using the name "Everett Chevrolet-Geo" when GM dropped the Geo. This declaration is made in opposition to the Debtors' motion to reject. I have firsthand knowledge of all matters stated herein and am competent to testify about them.

2. I graduated from Western Michigan University with a degree in Business Administration. I have been a GM dealer for 14 years. Since 1996 I have been a successful Dealer Principal of ECI. Originally I acquired the dealership through a capital investment by Motors Holding, a division of General Motors, which I paid off in full in 2 years 10 months, several years sooner than the 7.5 year pro-forma upon which Motors Holding made the investment. Dealership performance has earned us four Profit Enhancement Program (PEP) Awards from GM in 1997, 1999, 2004, and 2006. This award is based on the highest percent of net profit of sales group for the year.

3. The exceptional sales performance of ECI was recognized in other ways by other business groups. In April 2008 I was elected to serve on the Board of Directors for the Seattle Chevrolet Local Market Association (LMA). Black Enterprise Magazine named me one of the Top 100 Auto Dealers 12 consecutive years from 1997 – 2008. Since 2001 I have been a member of the Board of Directors of the General Motors Minority Dealers Association (GMMDA) and chairman of the GMMDA Scholarship Committee. I was also a member of the Board of Directors of the National Association of Minority Automobile Dealers (NAMAD) for 2006-07. I am a member of the National Automobile Dealer Association (NADA) and state and local dealer associations.

4. Despite the rapid downturn of the economy in general and GM in particular, in 2007 ECI was No. 2 in retail car sales for Chevrolet in the Seattle Zone, which includes 35 dealers (186 cars sold). The dealership is located in Everett, a city of 101,800 residents, and only 25 miles north of Seattle with a population of 602,000. ECI has ranked near the top in 2008 in all important categories of PDS (Purchase and Delivery Score) and SSS (Service Satisfaction Score). In December 2008 ECI ranked above the GM goals in PDS and SSS.

5. Based on our proven track record of sales performance for over 12 years, GM's decision to reject ECI as a dealer is not a rational exercise of business judgment. Although the Debtors claim that rejection is based on a quantitative "Dealership Performance Score" calculated as part of its "Dealership Evaluation Process," they admit the factors considered were both "subjective" and "objective." Motion at 8. GM has not provided its dealer evaluation analysis of ECI to the dealership so that we could participate and have a fair opportunity to be heard and challenge any erroneous data or conclusions in the analysis. The rejection process utilized by GM violates the terms of its dealership contract with ECI and violates the dealer termination laws of the State of Washington codified at R.C.W. 46.96.010 *et. seq.* As explained below, there is an issue of fact regarding the credibility of the Debtors' self-serving assertions of good faith exercise of business judgment in rejecting ECI as a dealer.

6. GM admits that if its decision to reject ECI is based on "bad faith, or whim or caprice," it cannot be sustained by the Court. Motion at 16. There is substantial evidence of bad faith and irrationality in the Debtors' decision to reject ECI as a dealer.

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Bad Faith

7. ECI recently completed a three and a half week replevin hearing against General Motors Acceptance Corporation ("GMAC"), the financing arm of GM that was claiming a default by the ECI dealership and demanding repayment of \$6.3 million, as well as the immediate closure of the dealership and repossession of all vehicle inventory collateral by GMAC.

8. On April 10, 2009, Judge Eric Z. Lucas of the Snohomish County Superior Court ruled against GMAC on all claims, making several express findings of "bad faith" by GMAC. A true and correct copy of Judge Lucas's oral decision ("Verbatim Report of Proceedings") in GMAC v. Everett Chevrolet, Inc., et al. Snohomish County Superior Court Cause No. 08-2-10683-5 is attached hereto as Exhibit A (hereinafter referred to as "RP"). A true and correct copy of Judge Lucas's order dated April 10, 2009 is attached hereto as Exhibit B. The Court found no breach of the Wholesale Security Agreement by ECI, or any other wrongdoing by ECI. The Superior Court is allowing ECI to pursue tort and contract damages from GMAC for its wrongful termination of the floorplan line of credit and interference with the dealership.

9. The swiftness of GMAC's efforts to close down ECI is demonstrated by the following timetable:

- On July 31, 2008, GMAC demanded a \$800,000 capital injection to the dealership by no later than October 31, 2008, along with a personal guaranty by me as additional security. See Exhibit C attached hereto. Even though ECI was not in breach of the flooring agreement, GMAC threatened that failure to provide either of these would result in suspension or termination of ECI's credit line.

- On October 16, 2008, GMAC advised that “due to current market conditions” it unilaterally suspended its obligation to make credit line advances to ECI and raised the interest rate on outstanding advances. See letter attached as Exhibit D. If I did not agree to the change, GMAC threatened to terminate my credit line and demand full payment of the credit line by November 30, which amounted to approximately \$778,000.
- On November 25, 2008, GMAC threatened that unless I provided a personal guaranty and arranged a capital injection of \$300,000 to the dealership by November 30, it would suspend or terminate the credit lines. See letter attached as Exhibit E.
- On December 8, 2008, although ECI was not in default or past due on any obligations, GMAC suspended our flooring plan. See letter attached as Exhibit F. GMAC notified GM “to remit to GMAC all accounts owed to the Dealership.” See attached Ex. F., page 1.
- On or around December 15, 2008, GMAC terminated ECI’s flooring plan and gave me 3 months to find a new lender to pay back the \$6.3 million GMAC credit line in full. See letter attached as Exhibit G.
- On December 19, 2008, GMAC declared ECI in default and demanded full payment of the flooring plan, a sum amounting to \$6,367,294.89, and threatened to take possession of all Dealership property and vehicles subject to its security agreement. See letter attached as Exhibit H.
- On December 31, 2008, GMAC filed a replevin action in Snohomish County Superior Court to obtain possession of all vehicle inventory, accounts, equipment, receivables and other personal property covered by its security agreement with ECI. Falsely claiming that ECI was out of

trust for failing to pay GMAC an “estimated” \$206,806.18 for vehicles sold or leased, GMAC obtained an ex parte temporary restraining order (“TRO”)¹ preventing ECI from selling any cars, and basically shutting us down for two weeks until the order was modified at a hearing on January 14 to allow ECI to sell cars and remit proceeds to GMAC. This was extremely harmful to ECI. The TRO was finally dissolved on April 10, 2009 after a lengthy evidentiary replevin hearing conducted March 17 – April 10, 2009.

10. Among Judge Lucas’s findings in the replevin action, he ruled that GMAC:

- a. Unreasonably delayed responding to dealer requests for funding for the purchase of the dealership land. GMAC’s reasons for refusing to fund were unreasonable and lacked credibility. “From a business standpoint, GMAC’s position is not reasonable.” RP at 5: 8-9. This unreasonableness was not an “isolated occurrence,” but indicative of a “pattern of behavior” by GMAC. RP 5 at 13-15.
- b. In demanding new and additional securitization measures on July 31, 2008,² GMAC attempted to mask GMAC’s ulterior motive of termination “by justifying GMAC’s actions based on credit trends and performance.” RP at 7:14-15. These, the Court found, were false justifications intended to mislead the dealership by “manipulating and withholding information.” RP at 7:25 - 8:1.

¹ A true and correct copy of the December 31, 2008 TRO obtained ex parte by GMAC is attached hereto as Exhibit P.

² A true and correct copy of GMAC’s July 31, 2008 letter, referred to by Judge Lucas, is attached hereto as Exhibit C.

- c. Failing to share with the dealership GMAC's "very sophisticated financial analysis" of Everett Chevrolet; setting targets without justification; setting deadlines without notice or justification; demanding a personal guaranty without justification. RP at 8:5-15.
- d. GMAC credit managers Vick and Smith were "not credible" witnesses. RP at 6:7, 9:16 and 11:9 ("total lack of credibility").
- e. GMAC dealt dishonestly, unreasonably, unfairly and in bad faith with Everett Chevrolet, keeping a "hidden agenda" and failing to disclose material facts to the dealer, including its intention to cease doing business with ECI in the future. RP at 11:12; 11:23-25; 17:6-11 & 19-22; 18:8-12; and 20:14-15. Using "false targets" that GMAC knew the dealership could not achieve, GMAC "manufactured a default" by Everett Chevrolet. RP at 19:13-15. "The goal of the team from GMAC in this case was to shut down the Dealer." RP at 18:11 - 19:13. "Given the totality of GMAC's actions, this is the only conclusion this Court can come to." RP at 19:16-17.
- f. GMAC imposed a three-day remit requirement that was "arbitrary and not commercially reasonable." RP at 14:15-16.
- g. In December 2008, GMAC prevented Everett Chevrolet from accessing funds to finance sales, thus preventing the dealer from reaching sales targets imposed by GMAC. RP at 16:17 - 17:8. Not only did GMAC freeze the open account with GM, shut the business down by TRO, and send demand notices to financing institutions, GMAC's actions were calculated to prevent Everett Chevrolet from

closing a deal on January 9, 2009 with GM's Motors Holding to provide \$2.5 million in working capital. *Id.*; RP at 19:7-10.

- h. "The actions taken by GMAC to assault the Dealer's working capital were designed to put him out of business, not merely to protect collateral." RP at 19:22-25.
- i. "The law only requires GMAC to be honest with regard to its intentions and not attempt to manufacture defaults, put pressure on a business to fail, or block other contract opportunities. All these things were done in this case, and all are acts of bad faith." RP at 20:1-6.
- j. "ECI, under Mr. Reggans, has been profitable every year from 1996 until 2007. The Dunn & Bradstreet report filed as Exhibit #92 indicates that his high year sales were approximately \$40 million dollars." RP at 3:4-7.
- k. "ECI sold \$19 million dollars by October 2008. With these sales, that if he had cut back his sales efforts and lowered his break-even point, he could have made a profit, but GMAC was pushing him to do just the opposite in order to engineer default. This constitutes bad faith." RP at 20:14 – 21:19.
- l. "Here, GMAC aligned all forces in order to make the Dealer fail." RP at 19:13 – 20:14. "GMAC breached the contract by violating the Covenant of Good Faith and Fair Dealing. The request for replevin is denied." RP at 21:22-24.

11. Judge Lucas also dissolved the January 14, 2009 restraining order, finding no breach or other default by ECI that would sustain GMAC's replevin claims. Since

Judge Lucas's ruling, GMAC has appealed to the Court of Appeals seeking emergency injunctions barring ECI from any further vehicle sales, or to reimpose the injunction lifted by the superior court. GMAC claims it had no duty to act in good faith. Twice the appeals court has denied GMAC's motions for emergency injunction. Through the barrage of litigation, GMAC is seeking to bury ECI with litigation and attorney's fees to divert my time, energy and resources away from running a successful dealership.

Retaliation/Bad Faith

12. Since August 2007, I negotiated with GMAC to finance a purchase of real estate where ECI operates in Everett. In a meeting with GMAC branch manager Greg Moffitt, I discussed my plan to acquire the dealership property and utilize the equity to generate working capital for the dealership. Mr. Moffitt supported the plan and requested documentation for GMAC to review.

13. The dealership property is owned by a GM subsidiary called Argonaut Holdings, Inc. When I acquired 100% of the dealership in 1999, the option to purchase the building and land on which the dealership was located was an essential part of my deal with GM. I originally exercised the option to purchase in 1999, but the sale did not close because a large capital improvement construction project was not completed and GM was slow about providing details on "contingencies" that would affect the purchase price.

14. After meetings with GM, I confirmed in writing my exercise of the option to purchase in November 2007 at a price of \$4.9 million as provided by contract. See letter attached as Exhibit I. Based on a market appraisal, the purchase would generate \$1 million in equity which I could use as additional working capital for the dealership. The sale was originally set to close by December 31, 2007.

15. Two – three weeks later (in early December, 2007) however, GM repudiated the sales deal, informing me that it would not honor my option to purchase. In a letter dated December 12, 2007, Troy Freeman, Project Manager for Worldwide Real Estate Western Region at GM's Economic Development and Enterprise Services wrote that my options had expired. See attached Exhibit J. I referred the matter to my attorney to demonstrate that the option to purchase had not expired.

16. By e-mail dated March 6, 2008, attached hereto as Exhibit K, GM's David Fredrickson informed me for the first time that "...GM Worldwide Real Estate intends to pursue the opportunity to offer the property for sale to the Tenant [ECI], however, at this time is unable to do so due to the constraints imposed by the [General Motors] Corporation's initiative for AHI [Argonaut Holdings, Inc.] to sell these properties as part of a large portfolio sale." I wrote a reply back to Mr. Frederickson to inform him that I did not agree with his account of the discussion. See attached Exhibit L.

17. If the dealership property was sold to a third party charging market rents, ECI's monthly rent of \$24,000 would increase to \$62,000. Compared with a monthly purchase mortgage payment of approximately \$40,000 if ECI bought the property, it would make no financial sense for ECI to stay in business on the property if it were sold to a third party. Because of the urgency of avoiding a nearly 50% increase in rents and losing the equity in the property, it was imperative that the deal close soon.

18. Eventually, after several meetings with Mr. William Powell, an African-American Vice President of Industry and Dealer Affairs at GM in Detroit, differences were resolved with Argonaut and GM. Mr. Powell said "a deal is a deal" -- GM supports its dealers and would recognize my option to purchase the dealership property. A new Purchase and Sale Agreement was signed in May, 2008 for me to acquire the property from Argonaut Holdings at a price of \$5.1 million. Earnest money of \$50,000 was paid

to Argonaut on May 30, 2008. The purchase was to be financed by GMAC, which over the course of a few months unilaterally changed the deal to raise the interest rate from 12 to 15%, and then required \$1.2 million in cash down.

19. With Mr. Powell's assistance, the deal came together with GM, through its affiliate Motors Holding, a GM dealer development program that also provides assistance to minority dealers, to provide up to \$3 million to ECI, with \$1.2 million of the money to be applied to cash required to buy the dealership property.

20. Around the time that the land sale was being finalized in May - June 2008, GMAC began making unreasonable financial demands that it knew were not feasible, as found by Judge Lucas in his April 10, 2009 oral ruling (Ex. A, RP at 6-8, 10-11). GMAC demanded that I put in an additional \$800,000 of working capital into the dealership by October 31, 2009 and that I provide a Personal Guaranty of all obligations of the ECI dealership to GMAC. See July 31, 2008 letter of M. Jerry Vick (Exhibit C hereto). After 11 profitable years in the car business, and not in default with GMAC or GM, I declined to sign the personal guaranty. However, I did offer to seek funds to provide additional working capital into the dealership, and that was being arranged through the Motors Holding investment.

21. Although GMAC managers told me several times that GMAC would finance the land purchase deal, Mr. Vick of GMAC announced in May, 2008 that GMAC would not finance the land purchase. Judge Lucas found that GMAC's refusal to finance the land sale was unreasonable and done in bad faith. Ex. A, RP at 4-5. GMAC's actions to impede the land purchase and place unreasonable demands on the dealership had the effect of stopping ECI's land deal so that GM and Argonaut could proceed with a sale to a third-party, implementing the same strategy of refusal to sell that Mr. Frederickson of GM revealed in his March 6, 2008 email to me (Exhibit K hereto). The people at GM's

Worldwide Real Estate department and Argonaut who had initially opposed the sale were unhappy that the deal was going forward and they appeared to have manufactured a way to block the sale by using GMAC to close us down. Because of the close connection between GM and GMAC, GMAC would not have backed away from the land purchase financing deal without GM's participation in the decision. GM used GMAC's bad faith tactics as a way to avoid selling the dealership property to me.

22. At a meeting with William Powell and Joe Chrzanowski, head of GM's Motors Holding division, on August 28, 2008, Mr. Powell confirmed that GM would invest to recapitalize the ECI dealership. I provided them a copy of GMAC's July 31, 2009 demand letter for \$800,000 (Exhibit C hereto). We discussed the need for GM to provide ECI with sufficient funds to satisfy GMAC's demand before the October 31 deadline. After passing a pre-investment audit by GM, GM advanced ECI only \$500,000 on October 5, 2008 under a pre-investment agreement, of which \$270,825 was paid to GMAC, and the rest went towards paying other critical ECI obligations.

23. The \$500,000 was \$300,000 less than the \$800,000 capital injection demanded by GMAC, and less than what GM indicated would be available in our August 28 meeting. In addition, when the closing papers were presented for my review on October 3, two days before closing, GM demanded a personal guaranty which had not been previously offered or discussed. I was under duress and felt I had no choice but to sign it to make sure the \$500,000 and the additional investment would be funded.

24. Shortly after the \$500,000 was provided by GM, I spoke to Jim Madaras, Portfolio Manager for Motors Holding at GM, about why the pre-investment amount was less than the \$800,000 previously discussed and agreed upon. At that time in October, 2008 GMAC was pressuring me to put more capital into the dealership, or else it would shut the business down. When I spoke to Jim Madaras about GMAC's demand, he said

"hold GMAC off." Mr. Madaras told me if we needed additional funding, "just make a request." Mr. Madaras retired from GM's Motors Holding division on October 31, 2008 and was replaced by Ruby Henderson.

25. When I asked GM Motors Holding to expedite the investment money, Ruby Henderson said they didn't have the money and needed more time to close on the \$2.5 million investment. When I told her I needed the money – an additional \$300,000 right away– to satisfy GMAC and stay in business, she said there was no more money available at that time. The Pre-Investment Agreement indicated that Motors Holding would not provide me with investment funds to enable me to pay \$1.2 million cash down payment required to purchase the dealership property from Argonaut Holdings. However, because GM understood this meant I couldn't exercise my option to purchase the land, GM/Motors Holding agreed to hold the rent to its current rate at \$24,000 per month and not implement a rent escalation clause in the lease agreement.

26. Nevertheless, on May 1, 2009, I received a letter from GM's attorneys demanding \$674,977 in delinquent rent based on a retroactive adjustment in addition to the \$24,000 monthly rent ECI had been paying going back to January 2007. See attached Exhibit M. If the deal to purchase the dealership property had gone forward, the back rent would have been forgiven as arranged by GM and agreed to by Argonaut Holdings. See attached Exhibit N. But because the sale did not close due to Motors Holding not funding the additional investment and GMAC refusing to finance the purchase, GM/Argonaut Holdings proceeded with recalculating an escalation of ECI's rent backdated to January 2007.

27. On December 5, 2008 I made a request to Ms. Henderson for \$540,537 from Motors Holding to pay current and due expenses of \$358,715 as well as \$175,000 in payroll and taxes due December 2008 and January 2009. She informed me a few days

later that they didn't have more money to loan, and my December 5 request for funds had been denied by the investment committee.

28. At the end of October 2008, after William Powell retired as Vice-President of Dealer & Industrial Affairs, ECI lost its only advocate at GM. GM abruptly stopped supporting ECI's deal and began to work with GMAC to put me out of business. In November 2008 Clarence Oliver, GM's Director of Motors Holding Field Operations – Public Companies & Strategic Investments, told me that several people at GM resented my "going over their heads" to get support from William Powell on the land purchase deal and Motors Holding funding and that I "didn't go through the proper channels." He told me that with William Powell gone, "there is no support for this deal." In the weeks that followed, GM sought to postpone the closing date on the Motors Holding investment and would not permit an earlier closing in order to relieve heightened financial pressure exerted by GMAC.

29. When GMAC suspended our floorplan on December 9, 2008, without notice GM unilaterally froze ECI's open account within two days, and refused to disburse funds to ECI. The open account is the way GM pays ECI for dealer rebates, incentives, warranty, and the like. Normally, the account is \$20-30,000 at any given time, but because GM froze the account at GMAC's mere request within two business days, money accumulated in the account that remained unavailable to ECI. Typically, it takes no more than 10 days to resolve a problem with GM regarding a frozen account and to have the account unfrozen. In this case, however, GM wrongfully refused to unfreeze the open account and would not disburse funds to ECI without GMAC approval.

30. In December 2008 I asked the GM regional dealer support manager, Rick Sitek, to identify the person from GMAC who told GM to freeze ECI's open account. He asked me if I was recording the phone conversation. When I answered that the call was

not being recorded, but that others were present in the room with me, Mr. Sitek abruptly hung up the phone and never called back. As of July 2, 2009, there is still \$261,254 in the open account that GM controls and refuses to disburse to ECI.

31. In late January, 2009 we requested that GM release \$80,000 from the open account to provide much needed working capital for the dealership. On February 3, 2009 Rick Sitek informed ECI by e-mail that "I found out that GMAC has invoked their assignment on the account, so the release of funds will be in a check that will be sent to GMAC." GM provided the \$80,000 check payable to ECI directly to GMAC at its request and GMAC cashed our check without ECI's participation or consent. During the replevin hearing, Judge Lucas found this action unreasonable and ordered GMAC to pay the \$80,000 proceeds into the registry of the court, and later ordered the entire funds disbursed to ECI.

GM Pulls Out of Investment

32. By letter dated January 23, 2009, attached hereto as Exhibit O, GM provided written notice that it refused to proceed with the \$2.5 million investment in ECI based on nondisclosure of "pending actions...as of the date of this Agreement," claimed as a breach of the October 9, 2008 pre-investment agreement. This was a pretext for GM's breach. There were only two "pending actions." One was the GMAC action, which has been extensively referenced above. The other was a very small, even routine, claim known as the "Gardner" action, filed in Snohomish County Superior Court under Case No. 08-2-07242-6 against ECI and Ford Motor Co. It involved a breach of warranty claim by a customer who purchased a used Ford truck from ECI and believed that the engine had a problem – of which problem ECI had no knowledge. Nevertheless, on its own initiative ECI, through its attorneys, reported the Gardner action to GM's auditor, Henry & Horne, PLC, by letter dated December 1, 2008. GM never requested details

from ECI or its attorneys about the Gardner action. Ford Motor Co. was primarily liable because the express warranty was Ford's. ECI decided upon a nuisance-value settlement of the Gardner claim for \$3,000 in mediation and was dismissed from the case. In short, the Gardner action was not a legitimate basis for GM to refuse to follow through on its investment agreement with ECI.

33. The only other reason cited by GM for refusing to invest in ECI was the mere filing of replevin action by GMAC in December 2008, which GM determined was conclusive evidence that investment in ECI was not a "commercially reasonable business investment," although ECI passed two audits: the first pre-investment audit by Motors Holding (no irregularities found) and a second audit by an independent auditor/CPA, Henry Horne, for Motors Holding for due diligence (no irregularities found) and Judge Lucas found that GMAC acted dishonestly and in bad faith to close ECI down. GM's decision not to proceed with the deal was made unilaterally without discussions with or requests for information from ECI. Because GM assumed the good faith veracity of each and every allegation made by GMAC against ECI, and presumed every doubt against ECI without a due diligence investigation, the facts indicate that GM and GMAC were working together, conspiring in bad faith to close down ECI. Since GM relied on GMAC's actions, GMAC's bad faith must also be imputed to GM. Not only did GM refuse to invest further in ECI, in February 2009 GM demanded repayment of the \$500,000 investment made to ECI in October, 2009. Within weeks after Judge Lucas's ruling against GMAC on April 10, 2009, GM sent notice to ECI on May 14, 2009 of its intention not to renew its contractual relationship with ECI beyond October 2010. By continually siding with GMAC against ECI, despite express findings of bad faith by a judge, GM has demonstrated its steadfast and unreasoning loyalty to its financial ally,

GMAC, regardless of ECI's proven track record of Chevrolet sales performance and trust in GM. This is wrong and devastating to ECI, its employees, me and my family.

34. GM tried to use the GMAC dispute as a pretext to avoid its commitment to invest \$2.5 million in ECI. GM's actions deprived me of the opportunity to pursue other options such as sale of the dealership to interested third parties. Although I had a valid Sales and Service Agreement at the time, no disputes and had not expressed any desire to sell the dealership, I was approached by one interested dealer who said he had discussed purchasing my dealership with GM's zone manager. This was a surprise to me since I had no interest in selling at the time.

35. Since GM's decision to reject ECI as a dealer is tainted by bad faith (its own as well as the judicially-established bad faith of GMAC), the Court should not allow GM to reject ECI's dealer contract. The Court is requested to require the assumption of the ECI dealer contract and order the New GM to recognize ECI as a Chevrolet dealer on an ongoing basis with terms as favorable as other renewed dealers permitted to sell cars in the State of Washington under a Participation Agreement with terms and conditions approved by the Washington State Attorney General. This is the only relief that fairly restores the dealership rights that ECI enjoyed before the bad faith efforts of GMAC, acting in concert with GM, to shut ECI down and put us out of business.

36. Even though Judge Lucas ruled in ECI's favor on all issues and found GMAC acted in bad faith, GM has furnished no vehicles to ECI since December 9, 2008, the date when GMAC suspended ECI's line of credit. Without claiming any default by ECI and without prior notice or any opportunity to be heard, GM unilaterally prevented ECI from ordering new vehicles in the computer order system and rescinded all existing orders in the system. In this manner, GM acted in concert with GMAC to close our business down by preventing us from ordering cars.

37. GM is rejecting ECI's contract as retaliation for standing up to GMAC's bad faith tactics and defeating their wrongful collection actions in litigation. Further discovery by deposition and requests for production is likely to show that GMAC and GM conspired to close down ECI and take away my dealership by improper means. GMAC would not have taken such aggressive action to shut down ECI, a Chevrolet dealer for over 12 years, without the advance knowledge and consent, if not active participation, of GM.

Sales Damaged by Bad Faith Actions of GM and GMAC

38. ECI sold 346 new vehicles and 608 used vehicles for calendar year 2008. In 2007, 531 new vehicles and 955 used vehicles were sold at ECI. After December 2008 until the present, ECI has financially suffered as a result of the wrongful actions of GMAC in trying to shut ECI down.

39. Even after Snohomish County Superior Court injunction was dissolved on April 10, 2009, and ECI has not breached any agreement with GMAC or GM, GMAC wrongfully refuses to return to ECI titles to vehicles that were not floorplanned by GMAC. The titles to these vehicles represent approximately \$270,000 in used vehicles that are a liquid asset just like cash to ECI because the vehicles can be sold to wholesale or retail buyers at any time. Without those titles, ECI cannot sell the vehicles and GMAC further squeezes the ECI dealership financially.

40. Among our staff of 14 employees, we have technicians who are qualified to support the Chevrolet line make. At the peak of sales, ECI employed 80 persons.

Racial Discrimination

41. I have continuously stood up for dealer rights in the various associations I belong to. I am a member of the National Association of Minority Automobile Dealers ("NAMAD"), and was on the NAMAD Board of Directors from 2006-07. As an

African-American member and director, I have been an advocate for minority dealers' rights. I participated in promoting NAMAD's 15% program, which tries to obtain commitments from major car manufacturers to increase the number of minority owned dealers to at least 15 percent of all active dealers. Rick Wagoner, the President of GM at the time, was asked by NAMAD to support the 15% program. On behalf of GM, he refused to commit to the 15% program.

Detrimental Effect of Contract Rejection if Granted

42. Elimination of the line make – Chevrolet cars and trucks – will financially damage the dealership to the extent that it must close all operations and let all employees go. Since ECI is a single point Chevrolet dealership and sells no other lines (GM denied my requests to sell Cadillac or Mazda lines), there would be no cars to sell. I have personally committed all my resources to developing the ECI dealership at its present location. The Chevrolet dealership is my main livelihood and source of income. Without continuation of my dealership with GM, I will have no business to generate income with. ECI's dealership is located in a viable market in Everett with customers located throughout Western Washington. In all likelihood, there will continue to be a Chevrolet dealer in Everett. Since I have built up the Everett dealership for the past 12 and a half years, and know the market here and have considerable good will in the community, I am in the best position to operate the dealership going forward.

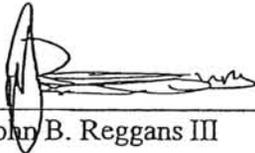
43. The dealership and I enjoy an excellent reputation and the highest goodwill in the community. If the Rejection Motion is granted, ECI's Chevrolet business will be destroyed, its customer good will lost, and employees let go.

44. ECI costs GM nothing to continue as a dealer. Through its franchise agreement with GM, ECI pays the total costs of operation, including but not limited to: inventory, parts, tools, salaries, and plant costs. There would be no benefit to the

Debtors' estate for GM to reject ECI's contract. In fact, rejection would produce a detriment to the debtor estates by eliminating the No. 2 leading seller of Chevrolet cars in the Seattle-Everett area (2007). GM sales will be harmed when ECI customers buy cars from other manufacturers. At a time when GM is struggling to regain market share, terminating a successful Chevrolet dealer who has the closest relationship with buyers is self-defeating.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED AND DATED this 27th day of July, 2009 at Kirkland, Washington.



John B. Reggans III

APP. G

1 covenant of good faith and dealing to apply, you have to
2 apply it to an express terms of the contract.

3 So what's your view on that?

4 MR. BEAVER: The way they went about terminating
5 or suspending the line of credit, the demand letters that
6 were sent to all of the other lenders in the neighborhood
7 and in the region that GMAC contacted, telling the banks
8 to rescind, and in fact Everett Chevrolet never got those
9 lenders back. Does the Court understand what I'm talking
10 about?

11 THE COURT: Yes, I do, I totally do.

12 MR. BEAVER: That rescission, yes, and its
13 relationship with Everett Chevrolet over all.

14 THE COURT: Well, I can tell that you read my
15 decision, but still, I don't think you identified a
16 contract provision that you could argue that GMAC
17 violated.

18 So --

19 MR. BEAVER: I would just simply have to say,
20 your Honor, I did not read that requirement out of
21 Badgett.

22 THE COURT: Okay.

23 MR. BEAVER: In the context of what we have
24 going on in Badgett and the issue of standing on its
25 contractual rights.

1 THE COURT: I think what it says in Badgett is
2 that -- I'll just read the paragraph that I think is
3 relevant here. It says, "that there is in every contract
4 an implied duty of good faith and fair dealing. This duty
5 obligates the parties to cooperate with each other, so
6 each may obtain the full benefit of performance. However
7 the duty of good faith does not extend to obligate a party
8 to accept a material change in the terms of its contract,
9 rather it requires only that the parties performance in
10 good faith the obligations imposed by their agreement.

11 MR. BEAVER: I don't get out of that, I did read
12 that, and I don't get out of that the requirement that you
13 must cite to a specific contractual term. What we have
14 here, and I think it applies to that quotation, is you
15 don't have a situation where the bank is simply standing
16 on its contractual rights. You have a -- we have a
17 situation where the bank is actively involved in
18 concealment of setting these false targets again, the
19 800,000, the personal guarantee and the assault on the
20 dealership's capital. But what's going on at this point
21 is they are looking to get Mr. Reggans on the hook so they
22 can get more money.

23 It doesn't have anything to do with the existing
24 contractual terms, it is seeking a change in the
25 contractual relationship.

APP. H

FILED

FEB 18 2009

SONYA KIKASKI
SNOHOMISH COUNTY CLERK
EX-OFFICIO CLERK OF COURT

RECEIVED

FEB 23 2009

STOEL RIVES LLP

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SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

GMAC, a Delaware Corporation,

Plaintiff,

vs.

EVERETT CHEVROLET, INC., a
Delaware Corporation; and JOHN
REGGANS and JANE DOE REGGANS
and their marital community,

Defendants.

No. 08-2-10683-5

ANSWER, AFFIRMATIVE DEFENSES
AND COUNTERCLAIMS

COMES NOW Defendants Everett Chevrolet, Inc. ("Everett Chevrolet"), John
Reggans and Jane Doe Reggans and their marital community, and in answer to
Plaintiff's Petition and Motion for Show Cause Hearing for Prejudgment Delivery to
Plaintiff, Defendants Everett Chevrolet and John Reggans reply as follows:

I. ANSWER

1.1 Everett Chevrolet denies the allegation that at the time GMAC initiated this
action, Everett Chevrolet was in default of its wholesale financing agreement.

COPY

1 1.2 Everett Chevrolet denies that its actions caused a breach of the wholesale
2 floorplan agreements.

3 1.3 If a default occurred, any default was caused by GMAC's bad faith and/or
4 interference with Everett Chevrolet's business.

5 1.4 Everett Chevrolet denies owing the amount asserted by GMAC, but admits
6 being a party to the financing agreement, that GMAC has a security interest, and admits
7 that GMAC has demanded full payment of the financing agreement.
8

9 1.5 Everett Chevrolet admits that it has not tendered payment in response to
10 GMAC's demand for full acceleration and payment due to the acts of GMAC which
11 caused a breach of the wholesale floorplan agreements.

12 1.6 It is denied the Plaintiff has superior title or right to possession of the
13 personal property.

14 1.7 The Declaration of John Reggans in support of Defendant's Response in
15 Opposition to Temporary Restraining Order and Motion to Dismiss, along with the
16 attached Exhibits to said Declaration, is hereinafter incorporated by reference.
17

18 1.8 The Defendants deny any and all allegations not specifically admitted
19 above. In addition, Defendants deny that Plaintiff is entitled to the relief sought.

20 **II. AFFIRMATIVE DEFENSES**

21 FURTHER ANSWERING Plaintiff's Petition and Motion for Show Cause
22 Hearing for Prejudgment Delivery to Plaintiff by way of affirmative defenses, Everett
23 Chevrolet and John Reggans allege as follows:
24
25

1 2.1 Failure to State a Claim. Plaintiff's Petition and Motion for Show Cause
2 Hearing for Prejudgment Delivery to Plaintiff fails to state a claim upon which relief can
3 be granted.

4 2.2 Denial of Liability. Jane Doe Reggans is not obligated to GMAC under
5 any of the wholesale floorplan agreements, she has no position of employment with
6 Everett Chevrolet, and she is not a corporate officer of Everett Chevrolet.

7 2.3 Assumption of Risk. Plaintiff's alleged damage and injury was a result of
8 risk and dangers voluntarily and knowingly assumed by the Plaintiff. Plaintiff's
9 assumption of the risk reduces any recovery by Plaintiff against Defendants in an action to
10 be established at trial.

11 2.4 Negligence. At the time and place alleged in Plaintiff's Complaint, the
12 Plaintiff so carelessly and negligently conducted itself that it contributed directly and
13 proximately to its own alleged injuries and damages. Plaintiff's contributory negligence
14 reduces any recovery against Defendants in an amount to be determined at trial.

15 2.5 Estoppel in Pais. Plaintiff is estopped from asserting that Defendants
16 breached the wholesale financing agreement because:

17 a) On or about December 10, 1996, Everett Chevrolet entered into a
18 floorplan agreement with General Motors Acceptance Corporation.

19 b) The floorplan agreement provided for the dealer financing of new
20 vehicles manufactured by General Motors for the purpose of supplying Everett
21 Chevrolet with new vehicle inventory and used vehicles for retail sales to the
22 public.
23
24
25

1 c) Attached hereto are true and correct copies of the following
2 documents which in part provide for the wholesale floorplan financing: **Exhibit A**
3 – Wholesale Security Agreement; **Exhibit B** – Amendment to Wholesale Security
4 Agreement; and **Exhibit C** – Agreement Amending the Wholesale Security
5 Agreement and Conditionally Authorizing the Sale of New Floorplan Vehicles on
6 a Delayed Payment Privilege Basis.
7

8 d) On or before December 5, 2008, employees for GMAC arrived at
9 the dealership and demanded payment for 15 specified vehicles which GMAC
10 indicated had been sold and payment allegedly was due.

11 e) On or about December 5, 2008, the dealership determined that only
12 10 vehicles were due for payment to GMAC. GMAC subsequently agreed that
13 GMAC was in error and that the dealership's determination that only 10 vehicles
14 were due for payment to GMAC by the dealership was correct.
15

16 f) During the morning of December 18, 2008, employees of GMAC
17 arrived at the dealership for the purpose of conducting a floorplan audit and the
18 audit was performed.

19 g) On or about December 18, 2008 at approximately 5:20 p.m.,
20 employees of GMAC demanded payment in the amount of \$206,000.00, but the
21 GMAC employees could not specify or identify any specific vehicle sales that
22 would justify the payment by the dealership to GMAC in the stated amount.
23 GMAC demanded that payment could only be submitted in the form of a certified
24 check.
25

1 h) Prior to GMAC making its demand of \$206,000.00 on December
2 18, 2008, the dealership notified GMAC at approximately 5:15 p.m. that Everett
3 Chevrolet's bank (U.S. Bank of Washington, Everett Branch) had closed due to a
4 snow storm.

5 i) Everett Chevrolet was unable to submit a certified check to GMAC
6 because Everett Chevrolet's bank had closed prior to GMAC making its demand of
7 \$206,000.00 at approximately 5:20 p.m.

8 j) John Reggans discussed with the GMAC employees the unfair
9 demand for \$206,000.00 which was submitted by GMAC without any
10 documentation or verification for the bill and GMAC's employees agreed that their
11 demand was unfair to the dealership because there was no specific documentation
12 that would justify the payment of \$206,000.00 to GMAC.

13 k) On or about December 19, 2008, GMAC employees arrived at the
14 dealership and notified said dealership that based upon the dealership's failure to
15 pay the \$206,806.18, GMAC demanded immediate payment of the new and used
16 vehicle inventory totaling \$6,367,294.89. A true and correct copy of the demand
17 letter is attached hereto and marked **Exhibit D**.

18 l) The actions of GMAC as referred to in this pleading are believed to
19 have been committed in bad faith and in breach of the wholesale floorplan and
20 security agreement.

21 2.6 Defendant Everett Chevrolet would now suffer damages if Plaintiff were
22 allowed to pursue this action against Defendant for breach of the wholesale security
23
24
25

1 agreements, because Plaintiff in fact breached the wholesale security agreements thereby
2 causing damage to the Defendants by the bad faith conduct of Plaintiff.

3 2.7 For the further purpose of preserving affirmative defenses pending
4 discovery and further evaluation of Plaintiff's claims, Defendants also allege Plaintiff's
5 claims are barred by affirmative defenses set forth in CR 8.

6
7 **III. COUNTERCLAIMS**

8 COME NOW Defendants Everett Chevrolet, John Reggans and Jane Doe
9 Reggans, and for Counterclaims against Plaintiff allege as follows:

10 **3.1 Parties.**

11 3.1.1 Everett Chevrolet, Inc. is a Delaware corporation authorized to do
12 business in the State of Washington. Everett Chevrolet has been an authorized Chevrolet
13 dealer since 1998.

14 3.1.2 John Reggans is an individual who is the President of Everett
15 Chevrolet, Inc. and operates said business sin Everett, Washington.

16 3.1.3 Jane Doe Reggans, also known as Carmen Reggans, is the wife of
17 John Reggans. However, she has no involvement with Everett Chevrolet, Inc.

18 3.1.4 GMAC is a Delaware corporation doing business in Snohomish
19 County, Washington.

20
21 **3.2 Venue and Jurisdiction.**

22 This Court has jurisdiction over the parties and the subject matter of this
23 litigation. Venue is proper under RCW 4.12.025.

1 3.3 **First Cause of Action – Breach of Contract by Wrongful Acceleration**
2 **of Wholesale Financing Agreement.**

3 Paragraphs 2.5(a) through 2.5(l) are incorporated by reference.

4 3.4 **Second Cause of Action – Breach of Duty of Good Faith and Fair**
5 **Dealing.**

6 Paragraphs 2.5(a) through 2.5(l) are incorporated by reference.

7 3.5 **Third Cause of Action – Tortious Interference with Business**
8 **Expectancies.**

9 3.5.1 Paragraphs 2.5(a) through 2.5(l) are incorporated by reference.

10 3.5.2 GMAC has damaged Everett Chevrolet's business by submitting
11 notices to all of Everett Chevrolet's retail financing banks demanding payment to be
12 directly forwarded to GMAC as opposed to the standard procedure of said retail financing
13 banks forwarding payment to Everett Chevrolet.
14

15 3.5.3 As a result of said financing institutions receiving the letters from
16 GMAC, said banks notified Everett Chevrolet to immediately cease forwarding retail
17 transactions to them for financing. Even after GMAC retracted said assignment letters, the
18 residual damage from the initial sending of said letter remains.
19

20 3.5.4 As a result of GMAC's actions, the dealership was virtually unable
21 to sell any significant amount of vehicles necessary to maintain the normal operation of the
22 dealership and normal sales volume and has permanently damaged the dealership. The
23 dealership's drastic decrease in sales volumes resulting in experienced sales staff and
24
25

1 4.5 For leave to amend these pleadings to conform to evidence produced at
2 trial; and

3 4.6 For such other and further relief as this Court may deem just and equitable.

4 DATED this 18th day of February, 2009.

5 MARSH MUNDORF PRATT SULLIVAN
6 + MCKENZIE, P.S.C.

7
8 
9 Karl F. Hausmann, WSBA #21006
Attorneys for Defendants

10
11 
12 William J. Wheeler, Pennsylvania Bar No. 22443
Admitted *Pro Hac Vice* in Washington
Attorneys for Defendants

13
14 CERTIFICATE OF MAILING

15 I hereby certify that I caused the foregoing document to be served on the
16 following named persons on the date indicated below by mailing to said persons a true
17 copy thereof, contained in a sealed envelope, addressed to said persons at their last
18 known addresses indicated below:

18 Dianna Caley
19 ADORNO YOSS CALEY DEHKHODA
& QADRI
20 2340 130th Avenue NE, #D-150
Bellevue, WA 98005

21 DATED: February 18, 2009.

22
23 
24 Diana S. Foss

25 S:\Clients\Everett Chevrolet, Inc.\Answer, Aff Def & Counterclaim (Whicler).doc

ANSWER, AFFIRMATIVE DEFENSES AND
COUNTERCLAIMS - 9

MARSH MUNDORF PRATT SULLIVAN
+ MCKENZIE, P.S.C.
16504 9TH AVENUE S.E., SUITE 203
MILL CREEK, WA 98012
(425) 742-4545 FAX: (425) 745-6060

EXHIBIT A

WHOLESALE SECURITY AGREEMENT

To: General Motors Acceptance Corporation (GMAC)

In the course of our business, we acquire new and used cars, trucks and chassis ("Vehicles") from manufacturers or distributors. We desire you to finance the acquisition of such vehicles and to pay the manufacturers or distributors therefor.

We agree upon demand to pay to GMAC the amount it advances or is obligated to advance to the manufacturer or distributor for each vehicle with interest at the rate per annum designated by GMAC from time to time and then in force under the GMAC Wholesale Plan.

We also agree that to secure collectively the payment by us of the amounts of all advances and obligations to advance made by GMAC to the manufacturer, distributor or other sellers, and the interest due thereon, GMAC is hereby granted a security interest in the vehicles and the proceeds of sale thereof ("Collateral") as more fully described herein.

The collateral subject to this Wholesale Security Agreement is new vehicles held for sale or lease and used vehicles acquired from manufacturers or distributors and held for sale or lease, and all vehicles of like kind or types now owned or hereafter acquired from manufacturers, distributors or sellers by way of replacement, substitution, addition or otherwise, and all additions and accessions thereto and all proceeds of such vehicles, including insurance proceeds.

Our possession of the vehicles shall be for the purpose of storing and exhibiting same for retail sale in the regular course of business. We shall keep the vehicles brand new and we shall not use them illegally, improperly or for hire. GMAC shall at all times have the right of access to and inspection of the vehicles and the right to examine our books and records pertaining to the vehicles.

We agree to keep the vehicles free of all taxes, liens and encumbrances, and any sum of money that may be paid by GMAC in release or discharge thereof shall be paid to GMAC on demand as an additional part of the obligation secured hereunder. We shall not mortgage, pledge or loan the vehicles and shall not transfer or otherwise dispose of them except as next hereinafter more particularly provided. We shall execute in favor of GMAC any form of document which may be required for the amounts advanced to the manufacturer, distributor or seller, and shall execute such additional documents as GMAC may at any time request in order to confirm or perfect title or security in the vehicles. Execution by us of any instrument for the amount advanced shall be deemed evidence of our obligation and not payment therefor. We authorize GMAC or any of its officers or employees or agents to execute such documents in our behalf and to supply any omitted information and correct patent errors in any document executed by us.

We understand that we may sell and lease the vehicles at retail in the ordinary course of business. We further agree that as each vehicle is sold, or leased, we will, faithfully and promptly remit to you the amount you advanced or have become obligated to advance on our behalf to the manufacturer, distributor or seller, with interest at the designated rate per annum then in effect under the GMAC Wholesale Plan. The GMAC Wholesale Plan is hereby incorporated by reference.

GMAC's security interest in the vehicles shall attach to the full extent provided or permitted by law to the proceeds, in whatever form, of any retail sale or lease thereof by us until such proceeds are accounted for as aforesaid, and to the proceeds of any other disposition of said vehicles or any part thereof.

In the event we default in payment under and according to this agreement, or in due performance or compliance with any of the terms and conditions hereof, or in the event of a proceeding in bankruptcy, insolvency or receivership instituted by or against us or our property, or in the event that GMAC deems itself insecure or said vehicles are in danger of misuse, loss, seizure or confiscation, GMAC may take immediate possession of said vehicles, without demand or further notice and without legal process; for the purpose and in furtherance thereof, we shall, if GMAC so requests, assemble said vehicles and make them available to GMAC at a reasonable convenient place designated by it, and GMAC shall have the right, and we hereby authorize and empower GMAC, to enter upon the premises, wherever said vehicles may be and remove same. We shall pay all expenses and reimburse GMAC for any expenditures, including reasonable attorney's fees and legal expenses, in connection with GMAC's exercise of any of its rights and remedies under this agreement.

In the event of repossession of the vehicles by GMAC, then the rights and remedies applicable under the Uniform Commercial Code shall apply.

Any provision hereof prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its duly authorized representative this

10 day of Dec 19 96.

Witness and Attest:

Becky [Signature]

Accepted

GENERAL MOTORS ACCEPTANCE CORPORATION

By: [Signature] Asst. Treas. Its Authorized Agent

Everett Chevrolet-Gen. Inc. Dealer's Name

By: [Signature] Its: President

7300 Evergreen Way, Everett, WA 98205 Address of Dealer

P. O. Box 3517 Seattle, WA 98124 Address

GMAC 172 Pub. in U.S.A. DOM 11-02

EXHIBIT B

AMENDMENT TO WHOLESALE SECURITY AGREEMENT

This agreement, effective the date set forth below, amends the Wholesale Security Agreement dated 10 Dec., 1996, executed by and between the undersigned dealer ("Dealer") and General Motors Acceptance Corporation ("GMAC"), and any other amendment thereto (the "Wholesale Security Agreement").

RECITALS

Whereas, pursuant to the terms and conditions of the Wholesale Security Agreement, GMAC has agreed to finance the purchase of new and used vehicles which the Dealer acquires from manufacturers and distributors; and

Whereas, from time to time Dealer acquires new and used vehicles from other sellers, including, without limitation, auctioneers, dealers, merchants, customers, brokers, leasing and rental companies, and other suppliers (the "Sellers") which vehicles Dealer desires GMAC to finance (the "Other Vehicles");

Whereas, GMAC is willing to finance Dealer's acquisition of the "Other Vehicles", pursuant to the terms and conditions of the Wholesale Security Agreement and this amendment thereto.

AGREEMENT

Now THEREFORE, in consideration of the premises, Dealer and GMAC agree as follows:

- 1) The Wholesale Security Agreement is hereby amended so that the word "vehicles" as used throughout the Wholesale Security Agreement, shall -- in addition to the description contained therein -- mean and include all Other Vehicles which GMAC elects to finance for Dealer from time to time (the "Other Vehicle Advances").
- 2) Upon request from GMAC, Dealer shall provide it with satisfactory evidence of the identity, ownership, value, source, status, and other information concerning the Other Vehicles in connection with Other Vehicle Advances, including completion of the GMAC Floor Plan Advice Form (GMAC 178-1).
- 3) GMAC may deliver the proceeds from Other Vehicle Advances directly to Dealer or Sellers.
- 4) For all intents and purposes, the Wholesale Security Agreement remains in full force and effect, including, without limitation, that
 - a) Dealer agrees upon demand to pay to GMAC the amount it advances or is obligated to advance for each of the Other Vehicles at a rate of interest per annum designated by GMAC from time to time and then in force; and
 - b) Any and all credit lines provided by GMAC to Dealer are expressly subject to the written terms of the Wholesale Security Agreement, including this amendment, and are discretionary in that they may be modified, suspended or terminated at GMAC's election; and
 - c) To further secure all of the obligations which Dealer now or hereafter owes to GMAC pursuant to the Wholesale Security Agreement, Dealer grants to GMAC a security interest in each of the Other Vehicles now owned or hereafter acquired by Dealer, and any and all additions, replacements, substitutions and accessions pertaining thereto, and the proceeds thereof.

IN WITNESS WHEREOF, GMAC and Dealer have caused this agreement to be executed and delivered by its duly authorized representatives effective the 10 day of Dec, 1996.

General Motors Acceptance Corporation
 By: Paul C. Stewart
 Paul C. Stewart
 Title: Assistant Treasurer

Everett Chevrolet-Geo, Inc.
 By: President
 Title: President

EXHIBIT C

**AGREEMENT AMENDING THE WHOLESALE SECURITY
AGREEMENT AND CONDITIONALLY AUTHORIZING
THE SALE OF NEW FLOOR PLAN VEHICLES ON A
DELAYED PAYMENT PRIVILEGE BASIS**

This Agreement is made and executed by and between the undersigned dealer ("Dealer") and General Motors Acceptance Corporation ("GMAC") effective the date set forth below.

WHEREAS, Dealer previously, or simultaneous with the execution of this Agreement, executed and delivered to GMAC a Wholesale Security Agreement, by which, among other things, (a) GMAC provides wholesale floor plan financing of motor vehicles for Dealer, and Dealer agrees to promptly pay to GMAC the actual amount financed, as each such financed motor vehicle is sold or leased by Dealer (the "Vehicle Amount Financed"); and (b) GMAC consents to Dealer selling and leasing such financed motor vehicles at retail in the ordinary course of business (the "Routine Disposition of Vehicles"); and

WHEREAS, Dealer has requested the privilege of delaying payment of the Vehicle Amount Financed in the limited instances where such financed motor vehicles are sold by Dealer to a purchaser for whom both Dealer and GMAC have agreed to a delayed payment period (the "Delayed Payment Privilege"); and

WHEREAS, Dealer and GMAC may have previously executed an Agreement for the Delayed Payment Privilege for New Floor Plan Units, which the parties hereby intend be superseded by this Agreement for all such transactions arising on or after the effective date hereof; and

WHEREAS, Dealer and GMAC desire and intend hereby to retain, in full force and effect, the validity, enforceability and relative priority of GMAC's security interest in any and all such financed motor vehicles as are sold or leased by Dealer pursuant to the Delayed Payment Privilege, notwithstanding GMAC's prior consent to the Routine Disposition of Vehicles, unless and until GMAC receives the Vehicle Amount Financed under the terms and conditions as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises, the covenants herein set forth, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, Dealer and GMAC hereby agree as follows:

1. The aforementioned Wholesale Security Agreement and any and all documents, plans, instruments or agreements relating, modifying, substituting or attendant thereto, executed between Dealer and GMAC are hereby amended in form and substance by inserting therein the following language as a separate and distinct paragraph:

"Notwithstanding anything contained herein to the contrary, Dealer (i.e., we) agrees that GMAC's security interest in any and all vehicles sold or leased, more than one Vehicle per individual transaction, to a customer, and in which the full payment thereof by cash or on a properly perfected retail instalment contract or other security agreement, basis is not made contemporaneous with the delivery of such Vehicles by Dealer (the "Delayed Payment Vehicles"), shall remain in full force and effect in such Delayed Payment Vehicles and shall not be relinquished, extinguished, released or terminated as a consequence of such sale or lease unless and until the customer makes payment; therefore directly to GMAC or jointly to Dealer and GMAC. Moreover, Dealer is expressly prohibited and shall not have any express, implied or apparent authority to sell, lease, transfer or otherwise dispose of any Delayed Payment Vehicles unless and until the express written permission of GMAC is first obtained, and then such authority shall be, in each and every instance, limited to the terms and conditions of such permission; it being further agreed that the terms of this paragraph shall not be altered, modified, supplemented, qualified, waived or amended by reason of any agreement (unless in writing executed by Dealer and GMAC), or by the course of performance, course of dealing, or usage of trade by Dealer and GMAC, of either of them.

2. Any previously executed Agreement for the Delayed Payment Privilege for New Floor Plan Units between Dealer and GMAC is superseded by the terms and conditions of this Agreement for all Delayed Payment Privilege transactions arising on or after the effective date thereof.

3. Dealer shall advise GMAC of each and every potential transaction in which Dealer requests GMAC to grant the Delayed Payment Privilege, and the period of time for which the Delayed Payment Privilege is being requested. Such request shall be made of GMAC in writing and on a form of the type and kind provided by GMAC from time to time. GMAC's consent, if any, to the request must be obtained prior to the sale, lease, transfer or delivery of any vehicles proposed by Dealer to be disposed by the Delayed Payment Privilege (the "Delayed Payment Privilege Vehicles").

4. GMAC's consent to the Dealer's request for disposition of Delayed Payment Privilege Vehicles shall be further subject and contingent upon the following additional terms and conditions:

- (a) GMAC may, in its sole and exclusive discretion limit the number of Vehicles, amount outstanding and terms and conditions for which the Delayed Payment Privilege is requested by Dealer.
- (b) GMAC may, in its sole and exclusive discretion withdraw, cancel, or suspend the Delayed Payment Privilege at anytime and for any reason upon a ten-day advance written notice and immediately if Dealer is in default of any agreement which Dealer has with GMAC; provided, however, that such withdrawal, cancellation or suspension shall not effect the rights, interests and duties under this Agreement prior thereto.

- (c) Dealer shall complete, execute and deliver to GMAC, immediately upon the delivery of Delayed Payment Privilege Vehicles, a form of the type and kind provided by GMAC from time to time (the "Delivery Schedule").
- (d) Dealer shall immediately pay GMAC the Vehicle Amount Financed upon the earliest of (i) demand by GMAC; or (ii) receipt of the amount due from the disposition of each of the Delayed Payment Privilege Vehicles; or (iii) the "Purchaser Payment Date" set forth on the applicable Delivery Schedule.
- (e) Dealer shall obtain from the person acquiring the Delayed Payment Privilege Vehicle a duly authorized and executed acknowledgement from the Purchaser confirming that the terms of sale include the continuation of GMAC's security interest in the Delayed Payment Privilege Vehicles. The acknowledgement shall be in writing and on a form of the type and kind provided by GMAC from time to time, which shall be delivered to GMAC prior to any sale, lease, transfer or delivery of any Delayed Payment Privilege Vehicle to such person (the "Acknowledgement of Purchaser").
- (f) The grant and exercise of the Delayed Payment Privilege by Dealer shall in no way extinguish, release or terminate GMAC's security interest in the Delayed Payment Privilege Vehicles unless and until the conditions described in the amending paragraph set forth in paragraph 1 of this Agreement and the aforesaid Acknowledgement of Purchaser are first fulfilled, which shall then and thereafter continue in the proceeds thereof.

5. GMAC shall have no duty or obligation to examine, review or consider the creditworthiness of any proposed or actual customer of Dealer for which Dealer seeks GMAC's consent to the Delayed Payment Privilege and any such examination, review or consideration by GMAC shall be for its sole and exclusive use and purposes; the Dealer expressly agreeing that any receipt or reliance on such information from GMAC would be gratuitous and unreasonable, respectively.

8. Dealer's obligation to pay GMAC for the Vehicle Amount Financed shall be absolute, unconditional and primary, notwithstanding (a) GMAC consenting to the Delayed Payment Privilege; or (b) default in the payment or acquisition terms by the customer of the Dealer for Delayed Payment Privilege Vehicles, or that of any of customer's surety, guarantor, co-obligor or lender; or (c) rejection or revocation of acceptance of any Delayed Payment Privilege Vehicles by such customer; or (d) the acceptance by GMAC of any assignment or proceeds from any Delayed Payment Privilege Vehicles; provided, however, that nothing in this paragraph is intended to permit payment to GMAC of any more than the greater of (i) the Vehicle Amounts Financed or (ii) the value of GMAC's security interest in the Delayed Payment Privilege Vehicles.

7. Upon demand by GMAC, Dealer shall provide GMAC with an assignment of all right, title and interest of the Dealer in and to the accounts, contract rights, sale proceeds or any other interest Dealer may then or thereafter have in the Delayed Payment Privilege Vehicle. Said assignment shall be for the purpose of additional security only and shall be on a form of the type and kind provided by GMAC from time to time.

6. GMAC may take such actions as it deems appropriate to assure and enforce compliance with this Agreement, including requesting, for audit purposes, verification from Dealer's customers the fact of delivery, possession, and amount, date and circumstances of payment of any Delayed Payment Privilege Vehicles, and the notification to appropriate persons of any security interest, assignment or other claim in the Delayed Payment Privilege Vehicles of GMAC.

In witness whereof the parties hereto execute this agreement the 10 day of Dec, 1986.

GENERAL MOTORS ACCEPTANCE CORPORATION
 By [Signature]
 Its ASST. PRES.
 (Title)

Everett Chevrolet-Geo, Inc.
 (Dealer's Name)
 By [Signature]
 Its President
 (Title)

EXHIBIT D

GMAC FINANCIAL SERVICES

5208 Tennyson Parkway, Suite 120
Plano, TX 75024
800-343-4541 Ext. 2050

SENT VIA FEDERAL EXPRESS AND EMAIL TO JOHN.R@EVCHEV.COM

December 19, 2008

Everett Chevrolet, Inc.
Mr. John Reggans
7300 Evergreen Way
Everett, WA 98203

Re: **Everett Chevrolet, Inc.
NOTICE OF DEFAULT
DEMAND FOR PAYMENT**

Dear Mr. Reggans:

You are hereby notified that Everett Chevrolet, Inc. ("Dealership") is in default under its wholesale financing agreements with GMAC for failure to pay GMAC \$206,806.18 for vehicles upon their sale or lease.

As a result, GMAC hereby demands that the Dealership immediately remit payment of all amounts owed to GMAC under its wholesale credit line, currently in the following amounts:

(A) Principal Amount of Vehicles Financed by GMAC (Includes the \$206,806.18)	\$ 5,602,460.32
(B) Interest Charges through November 30, 2008	\$ 26,834.57
(C) Revolving Line of Credit Principal Balance	\$ 738,000.00
TOTAL AMOUNT DEMANDED	\$ 6,367,294.89

This demand for payment is made without prejudice to any other amounts now or hereafter owing by the Dealership to GMAC, including, without limitation, interest accruing from and after the date of this letter, and obligations arising under the GMAC Wholesale Plan.

If the Dealership fails to make payment as demanded, GMAC may take possession of all Dealership property in which it has a security interest, including, without limitation, all of the motor vehicles financed by GMAC for the Dealership. In this respect, the Dealership may be asked to assemble and present for retaking by GMAC such collateral. GMAC reserves the right to exercise any other remedy it may have pursuant to law or contract.

Sincerely,

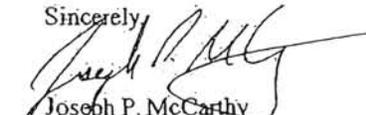

Joseph P. McCarthy
Director Commercial Lending

Exhibit D

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STOEL RIVES LLP

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SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

GMAC, a Delaware corporation,)	No. 08-2-10683-5
)	
Plaintiff,	)	EVERETT CHEVROLET'S ANSWER
	)	AFFIRMATIVE DEFENSES AND
vs.	)	COUNTERCLAIMS
)	
EVERETT CHEVROLET, INC., a Delaware)	
corporation; and JOHN REGGANS and JANE)	
DOE REGGANS and their marital community,)	
)	
Defendants.)	

COME NOW Defendants, and each of them, by and through their counsel of record and in Answer to Plaintiff's Amended Complaint against Everett Chevrolet, Inc., allege as follows:

I. PARTIES

1. In Answer to Paragraph 1, Defendants Admit that GMAC was at all relevant times a Delaware corporation qualified to do business in Snohomish County, Washington, and that GMAC was formerly known as, and was the successor in interest to, General Motors Acceptance Corporation, a Delaware corporation. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 1 and, therefore, Deny the same.

2. In Answer to Paragraph 2, Defendants Admit that Everett Chevrolet, Inc. ("ECI") is qualified to do business in Snohomish County, Washington and that ECI was located at 730 Evergreen Way, Everett, Washington 98203. Defendants Deny the remaining allegation of

EVERETT CHEVROLET'S ANSWER
AFFIRMATIVE DEFENSES AND
COUNTERCLAIMS -- 1

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1 Paragraph 2. By way of further Answer, Defendants allege that ECI no longer does business in
2 the State of Washington as it has been shut down and driven out of business by wrongful the
3 actions of GMAC together with the actions of others affiliated with GMAC.

4 II. JURISDICTION AND VENUE

5 3. Defendants Admit that jurisdiction and venue are proper in Snohomish County,
6 but Deny the remaining allegation of said Paragraph 3.

7 III. FACTS

8 4. In Answer to Paragraph 4, Defendants Admit that GMAC provided ECI with
9 wholesale floorplan financing and a revolving line of credit, and that over the years GMAC
10 provided ECI with substantial financing under the floorplan and revolving line of credit.
11 Defendants Deny the remaining allegations of said Paragraph 4. By way of further Answer,
12 Defendants allege that the referenced floorplan financing agreement and the line of credit
13 agreement are the best evidence of their terms and speak for themselves. Defendants Deny the
14 remaining allegation of said Paragraph 4.

15 5. In Answer to Paragraph 5, Defendants Admit to granting GMAC a security
16 interest pursuant to the terms of various agreements including a Wholesale Security Agreement,
17 Amendment to Wholesale Security Agreement, and Agreement Amending the Wholesale
18 Security Agreement and Conditionally authorizing the Sale of New Floorplan Vehicles on a
19 Delayed Payment Privilege Basis. These agreements are the best evidence of their terms and
20 speak for themselves. Defendants Deny the remaining allegations of said Paragraph 5.

21 6. In Answer to Paragraph 6, Defendants allege that the floorplan financing
22 documents are the best evidence of their terms and speak for them selves. By way of further
23 Answer Defendants Deny the remaining allegations of said Paragraph 6.

24 7. In Answer to Paragraph 7, Defendants Admit that in late 2007 GMAC increased
25 ECI's revolving line of credit from a credit limit of \$500,000.00 to \$800,000.00, and that in early
26 2008 ECI reported monthly operating losses. Defendants further Admit that in or about July

1 2008, GMAC demanded that ECI's principal, John Reggans, make a target cash injection of
2 \$800,000.00 into ECI as additional capital and sign a personal guarantee or face the suspension
3 and/or termination of GMAC's financing. By way of further Answer, Defendants allege that
4 when the offer/demand for the target injection was made in July 2008, it was a not a valid offer
5 that would result in staving off the suspension and/or termination of GMAC's financing.
6 Defendants Deny the remaining allegations of said paragraph 7.

7 8. In Answer to Paragraph 8, Defendants Admit that its April 2008 financial
8 statement showed a loss of \$163,042 year to date and that it had incurred monthly operating
9 losses. Defendants Deny the remaining allegation of said Paragraph 8.

10 9. In Answer to Paragraph 9, Defendants Admit that in mid to late December 2008,
11 GMAC first suspended and the next day terminated its financing of ECI and immediately
12 demanded payment. Defendants Deny the remaining allegations of said Paragraph 9. By way of
13 further answer, Defendants allege that any default was the direct result of and caused by
14 GMAC's bad faith, fraud, misrepresentation, tortious interference with ECI's business relations,
15 and unfair business practices.

16 10. In Answer to Paragraph 10, Defendants Admit that GMAC made a demand for
17 payment upon ECI and Deny the remaining allegations of said Paragraph 10.

18 11. In Answer to Paragraph 11, Defendants Deny the same. By way of further
19 answer, Defendants allege that any default was the direct result of and caused by GMAC's bad
20 faith, fraud, misrepresentation, tortious interference with ECI's business relations, and unfair
21 business practices.

22 12. In Answer to Paragraph 12, Defendants Admit that GMAC has discontinued
23 lending to ECI, has demanded payment from ECI, and has demanded possession of collateral.
24 Defendants Deny the remaining allegations of said Paragraph 12. By way of further answer,
25 Defendants allege that GMAC's action were a wrongful working capital assault on ECI designed
26 to manufacture a default, to destroy ECI, and to drive ECI out of business.

EVERETT CHEVROLET'S ANSWER
AFFIRMATIVE DEFENSES AND
COUNTERCLAIMS -- 3

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1 13. In Answer to Paragraph 13, Defendants Deny the same.

2 14. In Answer to Paragraph 14, Defendants Deny the same.

3 15. In Answer to Paragraph 15, Defendants Deny the same.

4 **IV. FIRST CAUSE OF ACTION: BREACH OF CONTRACT**

5 16. In Answer to Paragraph 16, Defendants re-allege and incorporate herein their
6 answers to Paragraphs 1 through 15 above.

7 17. In Answer to Paragraph 17, Defendants Admit that it entered into a wholesale
8 floorplan financing agreement, but Deny the remaining allegations of said Paragraph 17.

9 18. In Answer to Paragraph 18, Defendants allege that the wholesale floorplan
10 financing contract is the best evidence of its terms and speaks for itself and, therefore, Denies the
11 allegations of said Paragraph 18.

12 19. In Answer to Paragraph 19, Defendants Admit that GMAC has made a demand
13 for payment, has terminated its financing relationship with ECI, has demanded to take possession
14 of collateral and that ECI has not tendered payment in response to GMAC's demand for
15 payment. Defendants Deny the remaining allegations of said Paragraph 19.

16 20. In Answer to Paragraph 20, Defendants Deny the same.

17 21. In Answer to Paragraph 21, Defendants Deny the same.

18 22. In Answer to Paragraph 22, Defendants Admit to entering into a wholesale
19 floorplan financing agreement. By way of further answer, Defendants allege that the
20 contract/agreement is the best evidence of its terms and speaks for itself. Defendants are without
21 knowledge or information sufficient to form a belief as to the truth or falsity of the remaining
22 allegations of said Paragraph 22 and, therefore, Deny the same.

23 **V. SECOND CAUSE OF ACTION: ENFORCEMENT OF SECURITY INTEREST AND**
24 **REPLEVIN**

25 23. In Answer to Paragraph 23, Defendants re-allege and incorporate herein their
26 answers to Paragraphs 1 through 22 above.

1 expansion of ECI's revolving line of credit with GMAC from \$500,000.00 to \$800,000.00
2 through Jerry Vick—GMAC's branch manager. The expansion of the revolving line of credit
3 was granted.

4 6. At the end of 2007, ECI requested that GMAC help finance the purchase of the
5 real estate that ECI leased from a wholly owned subsidiary of General Motors Corporation
6 known as Argonaut. This real estate purchase was critical to ECI's profitability as it was about to
7 face a substantial increase in its lease payments of approximately 50%. ECI made it clear that
8 the purchase and sale needed to close by December 31, 2007. GMAC failed to respond to the
9 request until May 2008 with its refusal to finance. The declination was communicated verbally
10 and not in writing. GMAC's stated reason for declining to finance the real estate purchase was
11 ECI's lack of positive cash flow notwithstanding that GMAC had recently increased ECI's
12 revolving line of credit and that the collateral for the real estate financing was extremely valuable
13 property along Highway 99 in Everett. GMAC's stated reason for declining to finance was false
14 and denied ECI the opportunity to pursue other opportunities in a timely manner.

15 7. On June 10, 2008, GMAC through Jerry Vick, met with ECI during which GMAC
16 requested Mr. Reggans personal guarantee. Mr. Reggans refused to give a personal guarantee.

17 8. On July 31, 2008, some 50 days later, Mr. Vick wrote a letter purportedly
18 recounting the topic discussed during the June 10, 2008 meeting. In this letter Mr. Vick stated
19 that because of ECI's operating losses for the first quarter of 2008, GMAC required that ECI
20 obtain an \$800,000.00 cash injection or capital contribution, that Mr. Reggans give his personal
21 guarantee and that ECI continue to make prompt and faithful payments. GMAC set a deadline of
22 October 31, 2008 for the cash injection and personal guarantee. GMAC further stated that if the
23 cash injection did not occur and if Mr. Reggans failed to give his personal guarantee, then
24 GMAC would suspend or terminate ECI's wholesale credit lines. Additional terms were added
25 as conditions for continuing the wholesale credit lines including a \$500 per audit charge, change
26 to the revolving line of credit terms setting a principal reduction payment of \$10,000.00 per

EVERETT CHEVROLET'S ANSWER
AFFIRMATIVE DEFENSES AND
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1 month. No deadline date was discussed during the June 10th meeting and was first mentioned in
2 the July 31st letter—approximately 50 days after the June meeting. The delay between the June
3 and the end of July letter misled ECI and deprived Mr. Reggans from making the maximum use
4 of his time, by misleading him, by manipulating information, by withholding information, and by
5 resting on a stated reservation of GMAC rights.

6 9. Notwithstanding the stated October 31, 2008 deadline, that deadline and the
7 conditions necessary to maintain the wholesale credit lines were no longer valid at the time they
8 were made in July 2008. This fact was withheld from ECI.

9 10. During the June to August 2008 time frame GMAC was engaged in a detailed
10 financial analysis of ECI's business yet failed to disclose this fact to ECI. GMAC knew that ECI
11 could not meet GMAC's manufactured goals and false targets. GMAC set targets without
12 rational justification. The July 31st letter and its requirements were false targets designed to
13 create the bases for an ECI default. This conduct was designed by GMAC to undertake an
14 assault on ECI's working capital and to manufacture a default, and to drive ECI out of business
15 while knowing that Motor's Holding was prepared to invest \$2.5 million in ECI.

16 11. GMAC knew that the either target injection of \$800,000.00 could not be met, or
17 even if it were met it would not bring ECI into compliance with the undisclosed 3 to 1 debt
18 equity ration established during the sophisticated financial analyses of ECI that GMAC was
19 undertaking.

20 12. GMAC informed ECI that it needed to sell more cars to meet GMAC's goals, that
21 ECI needed to reduce inventory, and required the payment of the \$500 audit charge, the \$10,000
22 per month principal reduction, and suspended ECI's revolving line of credit and increased the
23 interest rate from Libor plus 300 basis points to Libor plus 600 basis points. In addition, GMAC
24 required a \$170,000 inventory reduction charge, a charge that had no basis in ECI's contract with
25 GMAC.

1 13. In early November 2008, ECI requested that GMAC floor or finance
2 unencumbered new and used vehicles. GMAC refused this request. Then in December 2008,
3 GMAC allowed flooring after its audits revealed that ECI was out of trust and its floorplan had
4 been suspended. This action was contrary to GMAC's own rules and policies that no flooring
5 would be allowed after a floorplan has been suspended. This conduct in December allowed
6 GMAC to obtain more of ECI's assets and at the same time harmed ECI by moving him closer to
7 a manufactured default.

8 14. In December, GMAC arbitrarily imposed on ECI a three-day remit rule for
9 payments of the floorplan. This conduct forced ECI to fund the GMAC floorplan payment out of
10 working capital rather than out of the sales proceeds from cars.

11 15. On October 16, 2008, GMAC unilaterally suspended its obligation to make credit
12 line advances to ECI and raised the interest rate on outstanding advances. GMAC threatened that
13 it would terminate ECI's credit line and would demand full payment of the credit line of
14 \$778,000.00 by November 25, 2008.

15 16. On November 8, 2008, GMAC threatened that unless Mr. Reggans give his
16 personal guarantee and obtain a capital injection of \$300,000.00 by November 30, 2008, GMAC
17 would suspend or terminate ECI's credit lines.

18 17. On December 8, ECI was not in default and was not past due on any of its
19 obligations. Nonetheless, GMAC suspended ECI's flooring plan. GMAC notified General
20 Motors to "remit to GMAC all accounts owed to [ECI]." Also in December GMAC notified
21 ECI's retail financing banks similarly demanding payment be made directly to GMAC as
22 opposed to ECI with result that ECI was no longer permitted to forward retail sales transactions
23 to the banks for financing.

24 18. On or about December 15, 2008, GMAC terminated ECI's flooring plan and gave
25 ECI three months to find a new lender and to pay back the approximately \$6.3 million GMAC
26 credit line.

1 19. On December 19 2008 GMAC declared ECI in default and demanded full
2 payment of the flooringplan, a sum in the approximate amount of \$6.3 million, and threatened to
3 take possession of all ECI assets subject to the GMAC security agreement. On December 31,
4 2008, GMAC filed a replevin action falsely claiming that ECI was out of trust for failing to pay
5 GMAC an estimated \$206,000.00 for vehicles sold or leased.

6 20. On or before December 5, 2008, employees from GMAC arrived at ECI's place of
7 business and demanded payment for 15 specified vehicles which GMAC claimed had been sold
8 and that payment for the sales allegedly was due.

9 21. On or about December 5, 2008, ECI determined that GMAC was entitled to
10 payment for only 10 vehicles. GMAC agreed subsequently that it had been in error and agreed
11 that it was entitled to payment for only 10 vehicles as asserted by ECI.

12 22. On the morning of December 18, 2008, GMAC employees arrived at ECI's place
13 of business to conduct a floorplan audit and completed said floorplan audit.

14 23. On or about December 18, 2008 shortly after 5:00 p.m. ECI notified GMAC that
15 ECI's bank (U.S. Bank of Washington) had closed its offices due to an unusual snow storm in
16 the Puget Sound region.

17 24. On the same day shortly after 5:15 p.m. in the midst of snow storm GMAC
18 employees arrived at ECI's place of business and demanded payment from ECI in the amount of
19 \$206,000.00 in certified funds. The GMAC employees could neither specify nor identify the
20 vehicle sales that would justify ECI's payment of the \$206,000 to GMAC.

21 25. ECI was unable to obtain certified funds as its bank had closed for the day prior to
22 receiving the demand from GMAC.

23 26. ECI's principal, John Reggans, discussed with the GMAC employee(s) making
24 the demand the unfair nature of the demand in that it was made without documentation or
25 verification of any kind. The GMAC employee(s) agreed that the demand was unfair and
26 without specific documentation sufficient to justify the payment of the \$206,000.00 demand.

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1 35. GMAC's actions are believed to be and, therefore, are alleged to be unfair,
2 deceptive, fraudulent, wrongful, in bad faith, and constitute unfair business practices under RCW
3 Chapter 19.86 and otherwise.

4 36. As a direct and proximate result of GMAC's actions ECI has been damaged in an
5 amount to be proven at trial, but believed to be in excess of \$7 million.

6 CIVIL CONSPIRACY

7 37. Defendants reallege Paragraphs 1-36 of these counterclaims as though fully set
8 forth herein.

9 38. Together with Jerry Vick, Michelle Smith, General Motors Corporation and others
10 GMAC combined to and conspired to make an assault on ECI's working capital, drive ECI out of
11 business and otherwise breach its contracts with ECI and tortuously interfere with ECI's
12 contracts with others and its business expectancies.

13 39. The conduct of GMAC in combining with others without disclosure of relevant
14 information contrary to GMAC's duty of good faith and fair dealing amounts to an unlawful civil
15 conspiracy.

16 40. ECI has been, and continues to be, directly and proximately damaged by GMAC's
17 actions constituting civil conspiracy in an amount to be proven at trial, but believed to be in
18 excess of \$7 million.

19 TORTIOUS INTERFERENCE

20 41. Defendants reallege Paragraphs 1-40 of these counterclaims as though fully set
21 forth herein.

22 42. ECI had existing valid contracts and expectancies with its financing banks and
23 General Motors (including the pending investment by General Motors of \$2.5 million). GMAC
24 had knowledge of these contracts, relationships and expectancies. GMAC intentionally
25 interfered with those contractual relationships and expectancies inducing or causing termination
26

1 of those relationships. GMAC interfered with those relationships and expectancies for an
2 improper purpose and used improper means.

3 43. ECI has been damaged in its business by GMAC's submission of notices to all of
4 ECI's retail financing banks and General Motors Corporation demanding payment to be directly
5 forwarded to GMAC as opposed to the standard procedure of said retail financing banks and
6 General Motors in forwarding payments to ECI.

7 **FRAUD AND/OR NEGLIGENT MISREPRESENTATION**

8 44. Defendants reallege Paragraphs 1-43 of these counterclaims as though fully set
9 forth herein.

10 45. GMAC's conduct in failing to disclose relevant and material facts to ECI
11 throughout the period June 2008 through December 2008 constitutes a representation or
12 misrepresentation the falsity of which was known by GMAC. The failure to disclose was
13 intentionally or negligently designed by GMAC to induce ECI's reliance and subsequent
14 conduct. ECI, in fact reasonably relied on the representations or misrepresentations to its
15 detriment and damage. GMAC's conduct in failing to disclose constitutes Fraud and/or negligent
16 misrepresentation.

17 46. As a direct and proximate result of AGMAC's fraud and/or negligent
18 misrepresentation ECI has been damaged in an amount to be proven at trial, but believed to be in
19 excess of \$7 million.

20
21 **WHEREFORE**, having fully Answered Plaintiff's Complaint and having set forth
22 Counterclaims against Plaintiff, Defendants pray for judgment against Plaintiff as follows:

- 23 1. For judgment dismissing Plaintiff's Complaint.
24 2. For damages against Plaintiff in an amount to be proven at trial, but believed to be
25 in excess of \$7 million.
26 3. For an award of costs and disbursements herein.

EVERETT CHEVROLET'S ANSWER
AFFIRMATIVE DEFENSES AND
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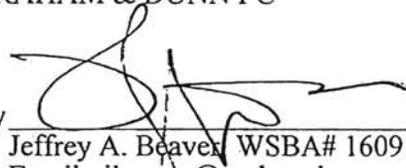
4. For an award of attorney's fees.

5. For such other and further relief as the court deems just and equitable.

DATED this 28th day of November, 2011.

GRAHAM & DUNN PC

By



Jeffrey A. Beaver WSBA# 16091
Email: jbeaver@grahamdunn.com
Attorneys for Everett Chevrolet, Inc.

EXHIBIT A

AMENDMENT TO WHOLESALE SECURITY AGREEMENT

This agreement, effective the date set forth below, amends the Wholesale Security Agreement dated 10 Dec. 1976, executed by and between the undersigned dealer ("Dealer") and General Motors Acceptance Corporation ("GMAC"), and any other amendment thereto (the "Wholesale Security Agreement").

RECITALS

Whereas, pursuant to the terms and conditions of the Wholesale Security Agreement, GMAC has agreed to finance the purchase of new and used vehicles which the Dealer acquires from manufacturers and distributors; and

Whereas, from time to time Dealer acquires new and used vehicles from other sellers, including, without limitation, auctioneers, dealers, mechanics, customers, brokers, leasing and rental companies, and other suppliers (the "Sellers") which vehicles Dealer desires GMAC to finance (the "Other Vehicles");

Whereas, GMAC is willing to finance Dealer's acquisition of the "Other Vehicles", pursuant to the terms and conditions of the Wholesale Security Agreement and this amendment thereto.

AGREEMENT

Now THEREFORE, in consideration of the premises, Dealer and GMAC agree as follows:

- 1) The Wholesale Security Agreement is hereby amended so that the word "vehicles" as used throughout the Wholesale Security Agreement, shall - in addition to the description contained therein - mean and include all "Other Vehicles" which GMAC elects to finance for Dealer from time to time (the "Other Vehicle Advances").
- 2) Upon request from GMAC, Dealer shall provide it with satisfactory evidence of the identity, ownership, value, source, status, and other information concerning the Other Vehicles in connection with Other Vehicle Advances, including completion of the GMAC Floor Plan Advice Form (GMAC 178-1).
- 3) GMAC may debit the proceeds from Other Vehicle Advances directly to Dealer or Seller.
- 4) For all intents and purposes, the Wholesale Security Agreement remains in full force and effect, including, without limitation, that
 - a) Dealer agrees upon demand to pay to GMAC the amount it advances or is obligated to advance for each of the Other Vehicles at a rate of interest per annum designated by GMAC from time to time and then in force; and
 - b) Any and all credit lines provided by GMAC to Dealer are expressly subject to the written terms of the Wholesale Security Agreement, including this amendment, and are discretionary in that they may be modified, suspended or terminated at GMAC's election; and
 - c) To further secure all of the obligations which Dealer now or hereafter owes to GMAC pursuant to the Wholesale Security Agreement, Dealer grants to GMAC a security interest in each of the Other Vehicles now owned or hereafter acquired by Dealer, and any and all additions, replacements, substitutions and accessions pertaining thereto, and the proceeds thereof.

IN WITNESS WHEREOF, GMAC and Dealer have caused this agreement to be executed and delivered by its duly authorized representatives effective the 10 day of Dec., 1976.

General Motors Acceptance Corporation

By: Paul C. Stewart
Paul C. Stewart

Title: Assistant Treasurer

Everett Chevrolet-Geo, Inc.

By: [Signature]

Title: President

GMAC Form W-178A
(5/76)

WHOLESALE SECURITY AGREEMENT

To: General Motors Acceptance Corporation (GMAC)

In the course of our business, we acquire new and used cars, trucks and chassis ("Vehicles") from manufacturers or distributors. We desire you to finance the acquisition of such vehicles and to pay the manufacturers or distributors therefor.

We agree upon demand to pay to GMAC the amount it advances or is obligated to advance to the manufacturer or distributor for each vehicle with interest at the rate per annum designated by GMAC from time to time and then in force under the GMAC Wholesale Plan.

We also agree that to secure collectively the payment by us of the amount of all advances and obligations to advance made by GMAC to the manufacturer, distributor or other seller, and the interest due thereon, GMAC is hereby granted a security interest in the vehicles and the proceeds of sale thereof ("Collateral") as more fully described herein.

The collateral subject to this Wholesale Security Agreement is new vehicles held for sale or lease and used vehicles acquired from manufacturers or distributors and held for sale or lease, and all vehicles of like kinds or types now owned or hereafter acquired from manufacturers, distributors or sellers by way of replacement, substitution, addition or otherwise, and all additions and accessions thereto and all proceeds of such vehicles, including insurance proceeds.

Our possession of the vehicles shall be for the purpose of storing and exhibiting same for retail sale in the regular course of business. We shall keep the vehicles brand new and we shall not use them illegally, improperly or for hire. GMAC shall at all times have the right of access to and inspection of the vehicles and the right to examine our books and records pertaining to the vehicles.

We agree to keep the vehicles free of all taxes, liens and encumbrances, and any sum of money that may be paid by GMAC in release or discharge thereof shall be paid to GMAC on demand as an additional part of the obligation secured hereunder. We shall not mortgage, pledge or loan the vehicles and shall not transfer or otherwise dispose of them except as said hereafter more particularly provided. We shall execute in favor of GMAC any form of document which may be required for the amount advanced to the manufacturer, distributor or seller, and shall execute such additional documents as GMAC may at any time request in order to confirm or perfect title or security in the vehicles. Execution by us of any instrument for the amount advanced shall be deemed evidence of our obligation and not payment therefor. We authorize GMAC or any of its officers or employees or agents to execute such documents in our behalf and to supply any omitted information and correct patent errors in any document executed by us.

We understand that we may sell and lease the vehicles at retail in the ordinary course of business. We further agree that as each vehicle is sold or leased, we will, faithfully and promptly remit to you the amount you advanced or have become obligated to advance on our behalf to the manufacturer, distributor or seller, with interest at the designated rate per annum then in effect under the GMAC Wholesale Plan. The GMAC Wholesale Plan is hereby incorporated by reference.

GMAC's security interest in the vehicles shall attach to the full extent provided or permitted by law to the proceeds, in whatever form, of any retail sale or lease thereof by us until such proceeds are accounted for as aforesaid, and to the proceeds of any other disposition of said vehicles or any part thereof.

In the event we default in payment under and according to this agreement, or in our performance or compliance with any of the terms and conditions hereof, or in the event of a proceeding in bankruptcy, insolvency or receivership instituted by or against us or our property, or in the event that GMAC deems itself insured or said vehicles are in danger of misuse, loss, misuse or confiscation, GMAC may take immediate possession of said vehicles, without demand or further notice and without legal process; for the purpose and in furtherance thereof, we shall, if GMAC so requests, assemble said vehicles and make them available to GMAC at a reasonable convenient place designated by it, and GMAC shall have the right, and we hereby authorize and empower GMAC, to enter upon the premises, wherever said vehicles may be and remove same. We shall pay all expenses and reimburse GMAC for any expenditures, including reasonable attorney's fees and legal expenses, in connection with GMAC's exercise of any of its rights and remedies under this agreement.

In the event of repossession of the vehicles by GMAC then the rights and remedies applicable under the Uniform Commercial Code shall apply.

Any provision hereof prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its duly authorized representative this

10 day of Dec 19 96

Witness and Attest:

[Signature]

Accepted GENERAL MOTORS ACCEPTANCE CORPORATION By: [Signature] Asst. Treas. In Authorized Agent

Everett Chevrolet-Cad. Inc. Dealer's Name

By: [Signature] President

7300 Ryegreen Way Everett WA 98202 Address of Dealer

P. O. Box 3517 Seattle, WA 98175 Address

GMAC 070 (Rev. 10-89)
Printed in U.S.A. 2008 7-04

**AGREEMENT AMENDING THE WHOLESALE SECURITY
AGREEMENT AND CONDITIONALLY AUTHORIZING
THE SALE OF NEW FLOOR PLAN VEHICLES ON A
DELAYED PAYMENT PRIVILEGE BASIS**

This Agreement is made and executed by and between the undersigned dealer ("Dealer") and General Motors Acceptance Corporation ("GMAC") effective the date set forth below.

WHEREAS, Dealer previously, or simultaneous with the execution of this Agreement, executed and delivered to GMAC a Wholesale Security Agreement, by which, among other things, (a) GMAC provides wholesale floor plan financing of motor vehicles for Dealer, and Dealer agrees to promptly pay to GMAC the actual amount financed, as each such financed motor vehicle is sold or leased by Dealer (the "Vehicle Amount Financed"); and (b) GMAC consents to Dealer selling and leasing such financed motor vehicles at retail in the ordinary course of business (the "Routine Disposition of Vehicles"); and

WHEREAS, Dealer has requested the privilege of delaying payment of the Vehicle Amount Financed in the limited instances where such financed motor vehicles are sold by Dealer to a purchaser for whom both Dealer and GMAC have agreed to a delayed payment period (the "Delayed Payment Privilege"); and

WHEREAS, Dealer and GMAC may have previously executed an Agreement for the Delayed Payment Privilege for New Floor Plan Units, which the parties hereby intend be superseded by this Agreement for all such transactions arising on or after the effective date hereof; and

WHEREAS, Dealer and GMAC desire and intend hereby to retain, in full force and effect, the validity, enforceability and relative priority of GMAC's security interest in any and all such financed motor vehicles as are sold or leased by Dealer pursuant to the Delayed Payment Privilege, notwithstanding GMAC's prior consent to the Routine Disposition of Vehicles, unless and until GMAC receives the Vehicle Amount Financed under the terms and conditions as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises, the covenants herein set forth, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, Dealer and GMAC hereby agree as follows:

1. The aforementioned Wholesale Security Agreement and any and all documents, plans, instruments or agreements relating, modifying, substituting or amendatory thereto, executed between Dealer and GMAC are hereby amended in form and substance by inserting therein the following language as a separate and distinct paragraph:

Notwithstanding anything contained herein to the contrary, Dealer (i.e., we) agrees that GMAC's security interest in any and all vehicles sold or leased, more than one Vehicle per individual transaction, to a customer, and in which the full payment thereof by cash or on a properly perfected retail installment contract or other security agreement, basis is not made contemporaneous with the delivery of such Vehicles by Dealer (the "Delayed Payment Vehicles"), shall remain in full force and effect in such Delayed Payment Vehicles and shall not be relinquished, extinguished, released or terminated as a consequence of such sale or release unless and until the customer makes payment, therefore directly to GMAC or jointly to Dealer and GMAC. Moreover, Dealer is expressly prohibited and shall not have any express, implied or apparent authority to sell, lease, transfer or otherwise dispose of any Delayed Payment Vehicles unless and until the express written permission of GMAC is first obtained, and then such authority shall be, in each and every instance, limited to the terms and conditions of such permission; it being further agreed that the terms of this paragraph shall not be altered, modified, supplemented, qualified, waived or amended by reason of any agreement (unless in writing executed by Dealer and GMAC), or by the course of performance, course of dealing, or usage of trade by Dealer and GMAC, or either of them.

2. Any previously executed Agreement for the Delayed Payment Privilege for New Floor Plan Units between Dealer and GMAC is superseded by the terms and conditions of this Agreement for all Delayed Payment Privilege transactions arising on or after the effective date thereof.

3. Dealer shall advise GMAC of each and every potential transaction in which Dealer requests GMAC to grant the Delayed Payment Privilege, and the period of time for which the Delayed Payment Privilege is being requested. Such request shall be made of GMAC in writing and on a form of the type and kind provided by GMAC from time to time. GMAC's consent, if any, to the request must be obtained prior to the sale, lease, transfer or delivery of any vehicles proposed by Dealer to be disposed by the Delayed Payment Privilege (the "Delayed Payment Privilege Vehicles").

4. GMAC's consent to the Dealer's request for disposition of Delayed Payment Privilege Vehicles shall be further subject and contingent upon the following additional terms and conditions:

- (a) GMAC may, in its sole and exclusive discretion limit the number of Vehicles, amount outstanding and terms and conditions for which the Delayed Payment Privilege is requested by Dealer.
- (b) GMAC may, in its sole and exclusive discretion withdraw, cancel or suspend the Delayed Payment Privilege at any time and for any reason upon a ten-day advance written notice and immediately if Dealer is in default of any agreement which Dealer has with GMAC; provided, however, that such withdrawal, cancellation or suspension shall not affect the rights, interests and duties under this Agreement prior thereto.

- (c) Dealer shall complete, execute and deliver to GMAC, immediately upon the delivery of Delayed Payment Privilege Vehicles, a form of the type and kind provided by GMAC from time to time (the "Delivery Schedule").
- (d) Dealer shall immediately pay GMAC the Vehicle Amount Financed upon the earliest of (i) demand by GMAC; or (ii) receipt of the amount due from the disposition of each of the Delayed Payment Privilege Vehicles; or (iii) the "Purchaser Payment Date" set forth on the applicable Delivery Schedule.
- (e) Dealer shall obtain from the person acquiring the Delayed Payment Privilege Vehicle a duly authorized and executed acknowledgement from the Purchaser confirming that the terms of sale include the continuation of GMAC's security interest in the Delayed Payment Privilege Vehicles. This acknowledgement shall be in writing and on a form of the type and kind provided by GMAC from time to time, which shall be delivered to GMAC prior to any sale, lease, transfer or delivery of any Delayed Payment Privilege Vehicle to such person (the "Acknowledgement of Purchaser").
- (f) The grant and exercise of the Delayed Payment Privilege by Dealer shall in no way extinguish, release or terminate GMAC's security interest in the Delayed Payment Privilege Vehicles unless and until the conditions described in the amending paragraph set forth in paragraph 1 of this Agreement and the aforesaid Acknowledgement of Purchaser are first fulfilled, which shall then and thereafter continue in the proceeds thereof.

5. GMAC shall have no duty or obligation to examine, re-view or consider the creditworthiness of any proposed or actual customer of Dealer for which Dealer seeks GMAC's consent to the Delayed Payment Privilege and any such examination, review or consideration by GMAC shall be for its sole and exclusive use and purposes; the Dealer expressly agreeing that any receipt or reliance on such information from GMAC would be gratuitous and unreasonable, respectively.

6. Dealer's obligation to pay GMAC for the Vehicle Amount Financed shall be absolute, unconditional and primary, notwithstanding (a) GMAC's consent to the Delayed Payment Privilege; or (b) default in the payment or acquisition terms by the customer of the Dealer for Delayed Payment Privilege Vehicles, or that of any of customer's surety, guarantor, co-obligor or lender; or (c) rejection or revocation of acceptance of any Delayed Payment Privilege Vehicles by such customer; or (d) the acceptance by GMAC of any assignment or proceeds from any Delayed Payment Privilege Vehicles; provided, however, that nothing in this paragraph 6 is intended to permit payment to GMAC of any more than the greater of (i) the Vehicle Amounts Financed or (ii) the value of GMAC's security interest in the Delayed Payment Privilege Vehicles.

7. Upon demand by GMAC, Dealer shall provide GMAC with an assignment of all right, title and interest of the Dealer in and to the accounts, contract rights, sale proceeds or any other interest Dealer may then or thereafter have in the Delayed Payment Privilege Vehicles. Said assignment shall be for the purpose of additional security only and shall be on a form of the type and kind provided by GMAC from time to time.

8. GMAC may take such actions as it deems appropriate to assure and enforce compliance with this Agreement, including requesting, for audit purposes, verification from Dealer's customers the fact of delivery, possession, and amount, date and circumstances of payment of any Delayed Payment Privilege Vehicles, and the notification to appropriate persons of any security interest, assignment or other claim in the Delayed Payment Privilege Vehicles of GMAC.

In witness whereof the parties hereto execute this agreement the 10 day of Dec, 1996.

GENERAL MOTORS ACCEPTANCE CORPORATION

By Paul C. Stewart
 its Asst. Treas.
 (Title)

Everett Chevrolet-Cadillac, Inc.
 (Dealer's Name)

By [Signature]
 its President
 (Title)

EXHIBIT B

GMAC FINANCIAL SERVICES

5208 Tennyson Parkway, Suite 120
Plano, TX 75024
800-343-4541 Ext. 2050

SENT VIA FEDERAL EXPRESS AND EMAIL TO JOHNRR@EVCHEV.COM

December 19, 2008

Everett Chevrolet, Inc.
Mr. John Reggans
7300 Evergreen Way
Everett, WA 98203

Re: Everett Chevrolet, Inc.
NOTICE OF DEFAULT
DEMAND FOR PAYMENT

Dear Mr. Reggans:

You are hereby notified that Everett Chevrolet, Inc. ("Dealership") is in default under its wholesale financing agreements with GMAC for failure to pay GMAC \$206,806.18 for vehicles upon their sale or lease.

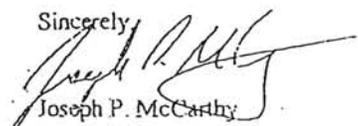
As a result, GMAC hereby demands that the Dealership immediately remit payment of all amounts owed to GMAC under its wholesale credit line, currently in the following amounts:

(A) Principal Amount of Vehicles Financed by GMAC (Includes the \$206,806.18)	\$ 5,602,460.32
(B) Interest Charges through November 30, 2008	\$ 26,834.57
(C) Revolving Line of Credit Principal Balance	\$ 738,000.00
TOTAL AMOUNT DEMANDED	\$ 6,367,294.89

This demand for payment is made without prejudice to any other amounts now or hereafter owing by the Dealership to GMAC, including, without limitation, interest accruing from and after the date of this letter, and obligations arising under the GMAC Wholesale Plan.

If the Dealership fails to make payment as demanded, GMAC may take possession of all Dealership property in which it has a security interest, including, without limitation, all of the motor vehicles financed by GMAC for the Dealership. In this respect, the Dealership may be asked to assemble and present for retaking by GMAC such collateral. GMAC reserves the right to exercise any other remedy it may have pursuant to law or contract.

Sincerely,


Joseph P. McCarthy
Director Commercial Lending

APP. I

Hearing Date: December 16, 2001
Hearing Time: 1:00 p.m.

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STOEL RIVES LLP

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SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

<p>GMAC, a Delaware corporation,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>EVERETT CHEVROLET, INC., a Delaware corporation; and JOHN REGGANS and JANE DOE REGGANS and their marital community,</p> <p style="text-align: center;">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>No. 08-2-10683-5</p> <p>EVERETT CHEVROLET'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT</p>
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I. INTRODUCTION

This is not the first time the issues raised in Plaintiff's Motion for Summary Judgment have been before this court. At a minimum, the same issues were before Hon. Eric Z. Lucas back on March 17, 2009 on the first day of the 3-week replevin show cause hearing and again on April 10, 2009 (the last day of the hearing). Judge Lucas consistently held in this case that the duty of good faith and fair dealing governed the parties' dealings with each other: "The law has not yet acknowledged a general requirement of full disclosure of all relevant facts in all business relationships. However, it is clear from these cases that the duty to disclose relevant information to a contractual party can arise as a result of the transaction itself within the parties' general obligation to deal in good faith." Liebergesell v. Evans, 93 Wn.2d 881, 893 (1980) (cited and quoted by Judge Lucas in his oral ruling following trial April 10, 2009, Verbatim Report of Proceedings pages 17-18.)

EVERETT CHEVROLET'S OPPOSITION
TO MOTION FOR SUMMARY
JUDGMENT -- 1

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Seattle, Washington 98121-1128
(206) 624-8300/Fax: (206) 340-9599

1 Judge Lucas found that the conduct of GMAC constituted bad faith and a breach of the implied
2 covenant of good faith and fair dealing in violation of the UCC and common law. April 10, 2009
3 Verbatim Report of Proceedings, page 18. At its worst, GMAC's conduct amounts to fraudulent
4 concealment designed to commit an assault against ECI's capital and drive ECI out of business, and
5 at best a tortious interference with ECI's contracts and business expectancies neither or which
6 GMAC was privileged to do. And either of which constitutes bad faith.

7 Attempting to avoid the consequences of extreme bad faith, GMAC has painted an
8 incomplete and inaccurate picture regarding the underlying facts and the specific claims decided by
9 the trial court. GMAC treats this complex bad faith case as a simple demand note case by focusing
10 attention only on part of the contract instead of reading together all of its provisions, including its
11 default contingencies. The Wholesale Security Agreement is neither a demand note nor a negotiable
12 instrument under the UCC. It is without question that under Washington common law and our
13 provisions of the UCC, GMAC had a duty to act in good faith in performing or enforcing a contract.
14 GMAC went well beyond that. It manipulated information, acted dishonestly, assaulted the dealer's
15 working capital, and manufactured a default in order to shut down Everett Chevrolet's business.
16 Verbatim Report of Proceedings, April 10,, 2009, pages 11-13, 17-19.

17 GMAC cannot circumvent its duty of good faith by relying upon demand note cases like
18 *Allied*, where its bad faith conduct was designed to prevent the dealer's performance and trigger
19 default. Moreover, it cannot rely on an expansion of *Badgett* to relieve GMAC of its good faith
20 duties in this setting.

21 GMAC's claims cannot be viewed in a vacuum and without regard to equitable principles of
22 estoppel, fraud, duress, and coercion. GMAC's acts of bad faith and concealment caused EC to
23 sustain major financial damages.

24 II. STANDARD FOR GRANTING SUMMARY JUDGMENT

25 Summary judgment should be granted if there is no genuine issue as to any material fact
26 and the moving party is entitled to judgment as a matter of law. CR 56(c). The purpose of

EVERETT CHEVROLET'S OPPOSITION
TO MOTION FOR SUMMARY
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1 summary judgment is to avoid a useless trial where there is no issue of material fact. *LaPlante v.*
2 *State*, 85 Wn.2d 154, 158, 531 P.2d 299 (1975). “The facts and all reasonable inferences
3 therefrom must be considered in the light most favorable to the nonmoving party.” *Baum v.*
4 *Burrington*, 119 Wn. App 36, 79 P.3d 456 (2003), *Cox v. Malcolm*, 60 Wn.App. 894, 897, 808
5 P.2d 758 (1992). Initially, the burden is on the moving party to show that there is no genuine
6 issue of material fact and that she is entitled to a judgment as a matter of law. It is only where
7 the moving party meets this burden that the burden shifts to the non-moving party to show that
8 there is a genuine issue of material fact. “Contract interpretation is normally a question of fact
9 for the fact finder.” *Spradlin Rock Products, Inc. v. Public Utility District No.1 of Grays Harbor*
10 *County*, 2001 WL 5161848 (Wn. App. Div. 2 2011)(citing *Berg v. Hudeman*, 115 Wn.2d 67,
11 663, 801 P.2d 222 (1990)).

12 III. ARGUMENT AND ANALYSIS

13 A. GMAC Breached its Duty of Good Faith Under the Uniform Commercial 14 Code and Common Law

15 The cornerstone of this case is GMAC's duty to act in good faith in the performance and
16 enforcement of the financing agreements between the parties. Under common law and the UCC,
17 the duty of good faith permeates every aspect of the contractual relationship.

18 1. Good Faith Duties Apply to the Performance and Enforcement of 19 the Contract Between GMAC and ECI

20 Under our common law there is an implied duty of good faith and fair dealing in every contract
21 which imposes upon the parties a duty to cooperate with each other so that each may obtain the
22 full benefit of performance. *Metropolitan Park Dist. of Tacoma v. Griffith*, 106 Wn.2d 425, 437,
23 723 P.2d 1093 (1986); *Lonsdale v. Chesterfield*, 99 Wn.2d 353, 357, 662 P.2d 385 (1983); *Miller*
24 *v. Othello Packers, Inc.*, 67 Wn.2d 842,844,410 P.2d 33 (1966). Our pattern jury instruction
25 recognizes this imposition:

26 A duty of good faith and fair dealing is implied in every contract. This duty requires

1 the parties to cooperate with each other so that each may obtain the full benefit of
2 performance. However, this duty does not require a party to accept a material change
3 in the terms of [his] [her] [its] contract.

4 WPI 302.11 Implied Duty of Good Faith and Fair Dealing. The *comments* to this instruction
5 recognize the prohibition of interfering with another parties' performance and the requirement
6 that the "parties perform in good faith the the obligations imposed by their agreement." 6A
7 WAPAC WPI 302.11 .

8 The Uniform Commercial Code imposes an obligation of good faith in the performance
9 or enforcement of every contract or duty. RCW 62A.1-203.¹ Good faith is defined as "honesty in
10 fact in the conduct of the transaction concerned." RCW 62A.1-201(19).² The Washington
11 Supreme Court declared that the requirement of good faith is the single most important concept
12 intertwined throughout the UCC. *Schroeder v. Fageol Motors, Inc.*, 86 Wn.2d 256, 262,544 P.2d
13 20 (1975).

14 Good faith is a basic obligation that is required in the performance and enforcement of all
15 agreements or duties under the Uniform Commercial Code.³ The good faith obligation arises by
16 law and may not be disclaimed even by express agreement of the parties. RCW 62A.1-102(3).
17 The principle of good faith functions to protect the contractual expectations of the parties to a
18

19 _____
20 ¹ RCW 62A.1-203 states: "Every contract or duty within this Title imposes an obligation of good faith in its
21 performance or enforcement."

22 ² Under Articles 3 and 9 of the UCC, "good faith" also means honesty in fact and the observance of reasonable
23 commercial standards of fair dealing. See RCW 62A.3-103(a)(4); RCW 62A.9A-102(a)(43).

24 ³ See RCW 62A.1-203 comment (1994): "This section sets forth a basic principle running throughout this Act... that
25 in commercial transactions good faith is required in the performance and enforcement of all agreements or duties.
26 Particular applications of this general principle appear in specific provisions of the Act such as the option to
accelerate at will (§ 1-208) ... The concept, however, is broader than any of these illustrations and applies generally,
as stated in this section, to the performance or enforcement of every contract or duty.

1 contract when one of them exercises discretion in the performance of its obligations.⁴

2 Judge Lucas found, under the totality of the circumstances, that GMAC's conduct
3 constituted bad faith, including GMAC actions intended to mislead EC and force the dealership
4 out of business, Verbatim Report of Proceedings ("VR"), April 10, 2009, pages 17-19. GMAC's
5 bad faith conduct interfered with the dealership's ability to perform contractual obligations to
6 GMAC and others. GMAC was required to exercise good faith and act in a commercially
7 reasonable manner. See, RCW 62A.9-102(43).⁵

8 Under *Liebergessell v. Evans*, 93 Wn.2d 881, 613 P.2d 1170 (1980), GMAC was required
9 to disclose relevant facts to ECI within its general obligation to deal in good faith. VR page
10 18:11-16. GMAC's failure to disclose material facts constituted a breach of the implied duty of
11 good faith and fair dealing. VR 18: 17- VR 19: 11. GMAC withheld information concerning its
12 true targets, while at the same time pressuring ECI to achieve stated targets by increasing sales,
13 but depriving EC of the working capital needed to reach the targets. VR 18:23-VR 19:3; 22:10-
14 13; 15-19.

15 The trial court's reliance on *Liebergessell*, although not exclusive, related to GMAC's bad
16 faith conduct as a whole and not limited to any single act. VR 20:16-17. GMAC did not conduct
17 itself honestly, had a hidden agenda with a goal to shut down the dealership, and manufactured a
18
19

20 ⁴ See Burton, *Good Faith Performance of a Contract Within Article 2 of the Uniform Commercial Code*, 67 Iowa L.
21 Rev. 1, 20-21 (1981).

22
23 ⁵ Professor Summers identifies several categories of bad faith in contract performance, including evasion of the spirit
24 of the deal, abuse of a power to specify terms, abuse of a power to determine compliance, and interference with or
25 failure to cooperate in the other party's performance. See: Summers, "*Good Faith*" in *General Contract Law and the*
26 *Sales Provisions of the Uniform Commercial Code*", 54 Va. L. Rev. 195,232-43 (1968). GMAC evaded the spirit of
the financing agreement by providing false targets and manufacturing a default by the dealer. GMAC imposed
financing requirements that were not contained in the contract, arbitrarily determined compliance, and interfered with
ECI's business.

1 default. VR 20:8-19. GMAC did not have a contractual right to shut down the dealership and put
2 ECI out of business. VR 20:18-19.

3 Thus, the conduct complain of does not deal solely with GMAC's decision or judgment
4 to call on the loan or in its making a demand. Acceleration of EC's floor plan obligation was
5 only part of the conduct constituting bad faith. In any event, default accelerations are subject to
6 good faith duties under RCW 62A.1-208; *Brown v Avemco*, 603 F.2d 1367 (9th Cir. 1979).⁶ An
7 'at will' acceleration clause can only be exercised based on a good faith belief of payment or
8 performance being impaired. RCW 62A.1-208.⁷

9
10 **2. Good Faith Duties Apply to GMAC's Collection and Repossession**
11 **Actions Under Article 9 of the UCC**

12 The financing agreement between GMAC and EC falls within the scope of Article 9.
13 UCC §9-109 emphasizes that all security interests, "regardless of form," are included in the basic
14 scope of Article 9. *See White and Summers*, Uniform Commercial Code, Practitioner Treatise
15 Series (5th and 6th Ed. 2000) The enforcement of security interests and default remedies are
16 governed by Article 9.

17
18 GMAC asserted a security interest in EC's assets and attempted to repossess vehicles by
19 replevin. GMAC argues, however, its actions to force a default, enforce the security interest, and
20

21
22 ⁶ In *Brown v Avemco*, the Ninth Circuit Court of Appeals held that the UCC imposes a good faith requirement on the
23 exercise of default provisions, such as due-on-sale clauses. The option to foreclose or accelerate following a specific
24 default may be exercised only if the lender has a good faith belief that the loan is insecure. *Brown v Avemco*, 603
25 F.2d at 1375.

26 ⁷ RCW 62A.1-203 also limits opportunities to accelerate following breach of the default provision to circumstances
in which the secured creditor honestly believes that default impairs the prospects for payment or performance by the
debtor.

1 repossess vehicles are not governed by Article 9 because the contract is a demand note. GMAC
2 disregards the nature of the default contingencies that are applicable to repossession in the
3 contact. GMAC's disclaimer of any duty to exercise good faith directly conflicts with the good
4 faith duties governing secured creditors under Article 9 and UCC §1-203.
5

6 Principles of good faith underlie the entire Uniform Commercial Code, including the
7 provisions of Article 9. *Central Soya Company, Inc. v S.S. Bundric*, 137 Ga.App. 63, 222 S.E.
8 852 (1975). A secured creditor's lack of good faith can alter the rights or priorities which would
9 otherwise be determined by Article 9 provisions. *Thompson v United States*, 408 F.2d 1075 (8th
10 Cir. 1969); *Lane v. John Deere Co.*, 767 S.W.2d 138 (Tenn. 1989) (good faith limitation under
11 VCC § 1-208 bars a creditor from using acceleration as a means of abuse).
12

13 Bad faith conduct can prevent a secured creditor from exercising collection rights under
14 Article 9 or render the creditor liable for damages. *Limor Diamonds, Inc., v. D 'Oro by*
15 *Christopher Michael, Inc.*, 558 F.Supp. 709 (S.D.N.Y. 1983) (interest of secured creditor acting
16 in bad faith in seizing collateral would be subordinated to seller's unperfected interest); *Mitchell*
17 *v. Ford Motor Credit Company*, 688 P.2d 42 (Okla. 1984) (creditor's gross negligence
18 accompanied by bad faith supported a conversion claim for wrongful repossession of collateral).
19

20 It is undeniable that GMAC's rights and remedies as a secured creditor, including
21 repossession of vehicles, are subject to good faith duties under Article 9. GMAC violated its
22 duty of good faith by manipulating ECI and setting up a default to trigger collection and
23 enforcement actions.
24
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26

EVERETT CHEVROLET'S OPPOSITION
TO MOTION FOR SUMMARY
JUDGMENT -- 7

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1 **3. The KMC and Reid Cases Are Persuasive Authority Supporting a**
2 **Duty of Good Faith Under the UCC and Common Law**

3 While treating this case as a simple demand note collection, GMAC has ignored well-
4 reasoned cases supporting a conclusion that GMAC is obligated to act in good faith in its
5 dealings with ECI.

6 In *K.M.C. Co., Inc. v Irving Trust Co.*, 757 F.2d 752 (6th Cir 1985), the Sixth Circuit
7 Court of Appeals held that, despite a demand provision in the loan agreement, Irving Trust had a
8 good faith obligation to notify KMC before it discontinued funding a line of credit. *Id* at 759.
9 The court rejected Irving Trust's argument that a good faith notice requirement was inconsistent
10 with its rights to repayment on demand. Citing the Ninth Circuit case of *Brown v. Avemco*, KMC
11 held that a demand provision, like a general insecurity or specific default clause, is subject to a
12 good faith standard of reasonableness and fairness. *Id* at 759.
13

14 A similar decision was reached by the First Circuit Court of Appeals in *Reid v Key Bank*
15 *a/Southern Maine, Inc.*, 821 F.2d 9 (5th Cir. 1987), where a credit line was terminated without an
16 attempt to negotiate with the borrower. The District Court affirmed the jury's finding that the
17 lender had not acted in good faith. The Court of Appeals upheld an award of compensatory
18 damages to the borrower due to the lender's violation of the credit agreement, discrimination, and
19 failure to comply with Article 9 of the UCC.
20

21 The *Reid* court held that even though the note contained a demand provision and the
22 security agreement contained default provisions, the agreement could not be terminated "at the
23 whim of the parties". *Id.* at 14. Rather, the right of termination or acceleration was subject to the
24 duty of good faith under VCC §1-203. *Id.* at 14-15. The loan documents defeated neither the
25
26

1 legal obligation nor the reasonable expectation that the contract be performed in good faith. *Id.*
2 at 14.

3
4 While not cited in its motion here, *Solar Motors, Inc. v First National Bank of Chadron*,
5 545 N.W.2d 714 (Neb. 1996), has been pivotal to GMAC's past arguments and ECI expects that
6 the case may be raised in Reply. *Solar Motors* is a rarely cited Nebraska case where the court
7 ignored the acceleration clause and just assumed that the floor plan note was a demand note.⁸ In
8 view of the *Solar* court's misinterpretation of the contract, its statement that *KMC* and *Reid*
9 represent a minority view is flawed. More importantly, GMAC went much further than making a
10 demand for payment by adopting a culture of deception and by engaging in the pattern of
11 chicanery.
12

13 *KMC* and *Reid* stand for the proposition that good faith duties apply to a lender's dealings
14 with its borrower, and its termination of financing despite the existence of demand provisions in
15 loan documents. GMAC was required to act in good faith in the performance and enforcement of
16 its financing agreements with ECI. Instead, GMAC's coercive actions interfered with the dealer's
17 ability to conduct business and meet its contractual obligations. GMAC has submitted no
18 authority for using a demand provision to eliminate a duty of good faith, where the lender's bad
19 faith conduct is intended to create default and force the dealer out of business.
20
21
22
23

24 ⁸ Most courts would find that the floor plan note in *Solar Motors*, while providing for payment on
25 demand, was not a pure demand note but was a demandable note. *See* Nation, *Solar Motors, Inc.*

1 **4. GMAC's Bad Faith Conduct and Attempted Repossession of Vehicles**
2 **Extend Far Beyond Making a Simple Demand**

3 This case arose not only from GMAC's accelerated demand for payment, but also from
4 GMAC's concerted efforts to contrive default, shut down ECI's business and repossess vehicles.
5 Demands for payment were just one aspect of GMAC's pattern of bad faith conduct.

6 **a. The Wholesale Security Agreement is Not a Demand Note**

7 GMAC's erroneously contends that the Wholesale Security Agreement is a demand note.
8 Under RCW 62A.3-108, a promise is "payable on demand" if it states that it is payable on
9 demand or at sight (or otherwise indicates that it is payable at the will of the holder), or (2) does
10 not state any time of payment.

11 A "demand note" is payable immediately on the date of its execution; that is, it is due
12 upon delivery thereof. *Allied Sheet Metal Fabricators v. Peoples Nat'l Bank*, 10 Wn.App. 530,
13 537, 518 P.2d 734, 738 (1974). An instrument is payable immediately if no time is fixed and no
14 contingency is specified upon which payment is to be made. *Id.*

15 Although the Wholesale Security Agreement contains demand language, it is not a
16 demand note as is defined in either RCW 62A.3-108 or the *Allied* case. The agreement requires
17 the dealership's repayment of sums advanced by GMAC for floor plan financing. A payment
18 obligation did not exist at the time of execution or delivery of the instrument. Due to the nature
19 of floor plan financing, the contract does not state the amount owed or interest rate. The parties
20 of floor plan financing, the contract does not state the amount owed or interest rate. The parties
21 of floor plan financing, the contract does not state the amount owed or interest rate. The parties
22 of floor plan financing, the contract does not state the amount owed or interest rate. The parties

23
24
25 Notes, 113 *Banking Law Journal*, Vol. 113, No.8, 815. This was clear from the instrument itself
26 and the conduct of the parties reported in the decision.

1 amended the "payable on demand" provision when the Wholesale Security Agreement was
2 executed on December 10, 1996, as GMAC had not advanced funds.

3
4 The Delayed Payment Amendment conditionally authorized payments for the sale of new
5 floor planned vehicles on a delayed payment privilege basis. Until December, 2008, GMAC
6 required payment within three business days after sale. The three business day payment term was
7 not contained in either the Wholesale Security Agreement or the Delayed Payment Amendment.
8 Pursuant to the Delayed Payment Amendment, and under the three-business day remit rule
9 imposed by GMAC, ECI was not required to pay floor plan amounts on demand. Therefore,
10 GMAC is estopped now from asserting that the agreement is a demand note due to its prior
11 inconsistent statements and actions in implementing the delayed payment privilege.⁹
12

13 The demand language itself ("upon demand pay") indicates that the obligation to pay
14 floor plan advances is only "demandable." *See Banking Law Journal*, Vol. 113, No.8, 815. In
15 demandable notes, an actual demand for payment is required prior to maturity. Because a
16 demandable note requires the holder to make an actual demand for payment, there is an act to
17

18
19 _____
20 ⁹ The requisites of an equitable estoppel include: (a) an admission, statement, or act inconsistent
21 with the claim afterward asserted (e.g., GMAC's requiring payment within three business days);
22 (b) action by the other party on the faith of such admission, statement, or act (e.g., GMAC
23 alleging the agreement is a demand note); and (c) injury to such other party from allowing the
24 first party to contradict such admission, statement, or act (e.g., requiring cashier's check on sale
25 date changes payment terms and causes financial hardship on ECI. *Bignold v. King County*, 65
26 Wn.2d 817, 399 P.2d 611 (1965).

1 which the obligation of good faith under UCC § 1-203 applies. In making the actual demand and
2 setting the repayment date, the holder exercises significant discretion regarding performance of a
3 material contract term.

4
5 Moreover, the Wholesale Security Agreement contains default contingencies. The
6 contract states that GMAC may repossess vehicles upon the occurrence of enumerated events of
7 default: (1) default in payment; (2) default in performance or compliance with other terms and
8 conditions; (3) bankruptcy insolvency or receivership; or (4) insecurity on the part of GMAC. As
9 in *Coffee v. GMAC*, 5 F.Supp.2d 1365 (S.D. Ga. 1998),¹⁰ the demand and default provisions were
10 contained in the same wholesale security agreement. The contract was deemed a hybrid with
11 payment, performance, security and enforcement terms.

12
13 Unlike several cases cited by GMAC, the Wholesale Security Agreement cannot be
14 construed as a demand note because the agreement (1) requires loan advances, (2) does not state
15 a fixed amount, (3) was not immediately due upon execution, (3) was amended to grant a delayed
16 payment privilege for a remit period that is not included in any contract; (4) requires a call for
17 acceleration of payment; and (5) contains demand language that conflicts with GMAC's three-
18 business day remit rule.

19
20 **b. The Wholesale Security Agreement is Not a "Negotiable
Instrument" Under RCW 62A.3-1 04**

21 The Wholesale Security Agreement does not meet the requirements of a "negotiable
22 instrument" under Article 3 of the UCC. A negotiable instrument requires an unconditional
23 promise or order to pay a fixed amount of money (with or without interest or other charges
24

25
26 ¹⁰ *Coffee* was argued extensively before Judge Lucas.

1 described in the promise or order), which: (1) is payable to bearer or to order at the time it is
2 issued or first comes into possession of a holder; (2) is payable on demand or at a definite time;
3 and (3) the promise or order must not state any undertaking or instruction by the issuer to do any
4 act in addition to the payment of money. RCW 62A.3-104(a).
5

6 The Wholesale Security Agreement fails the "unconditional promise" test under RCW
7 62A.3-106(a)(i).¹¹ The contract does not contain an unconditional promise to pay a fixed amount
8 of money because it contains this express condition to ECI's payment obligation: "GMAC's
9 payment of the amounts of all advances and obligations to advance." GMAC's right to demand
10 payment from ECI is contingent upon its payment of advances in compliance with floor plan
11 financing obligations.
12

13 The Wholesale Security Agreement does not contain a fixed amount to be paid or state
14 the applicable interest rate. Rights and obligations with respect to the promise to pay are stated
15 in other writings, including the Delayed Payment Amendment.¹² GMAC imposed financing
16 conditions and charges that are not contained in any written contract, including several arbitrary
17
18
19
20

21 ¹¹ RCW 62A.3-106(a)(i) provides that a promise or order is "unconditional" unless it states (i) an express condition
22 to payment, (ii) that the promise or order is subject to or governed by another writing, or (iii) that rights or
23 obligations with respect to the promise or order are stated in another writing. RCW 62A.3-106.

24 ¹² The Wholesale Security Agreement also refers to GMAC Wholesale Plan is referenced in but
25 has not been introduced in the litigation.
26

1 and commercially unreasonable terms.¹³ It is incongruous for GMAC to assert that the payments
2 are definite and fixed in the Wholesale Security Agreement, but also demand payment for
3 charges that are not even included in the contract.

4
5 The Wholesale Security Agreement is not a negotiable instrument. Nor did the parties
6 agree that the determination of rights and obligations under the writing would be governed by
7 Article 3. See RCW 62A.3-104, Comment 2, paragraph 4; RCW 62A.1-1 02(2)(b). In any event,
8 Article 3 incorporates the same definition of good faith that applies generally to contract
9 performance under RCW 62A.1-203. See RCW 62A. 1-1 03 (a)(4) ("Good faith" means honesty
10 in fact and the observance of reasonable commercial standards of fair dealing). If, as GMAC
11 argues, the Wholesale Security Agreement is a negotiable instrument under Article 3, and the
12 agreement falls under Article 9, then both parties are required to perform and enforce their
13 contractual obligations in good faith.¹⁴

14
15 **c. GMAC's Reliance Upon *Allied* and Other Demand Note Cases to**
16 **Excuse Bad Faith Conduct is Misplaced**

17 GMAC relies heavily on the *Allied* to repudiate a duty to act in good faith. Yet *Allied* is
18 factually distinguishable and underscores the differences between the GMAC agreement and a
19 typical demand note. The loans in *Allied* were made under demand promissory notes. The
20

21
22 ¹³ GMAC's arbitrary and commercially unreasonable terms include, without limitation, its
23 increased interest rate due to undefined "market conditions" and inventory reduction charges.

24
25 ¹⁴ Article 9 governs if there is a conflict between Article 3 and Article 9. See RCW 62A.3-1 02(b). Thus, GMAC
26 cannot escape good faith duties under by calling the contract a negotiable instrument under Article 3.

1 demand notes did not contain default or repossession provisions. *Allied*, 10 Wn.App. at 535.

2 The GMAC agreement is surely not a demand promissory note.¹⁵

3
4 Instead of construing the entirety of the Wholesale Security Agreement, GMAC relies
5 upon *Allied* to assert that the very nature of demand provisions permits call at any time with or
6 without reason. Neither *Allied*, nor the cases GMAC cited for the same proposition,¹⁶ construe a
7 demand provision within a security agreement with default contingencies. *Allied* and the simple
8 demand note cases addressed disputes over extensions of financing, without a lender's bad faith
9 conduct of the magnitude of GMAC's conduct here. GMAC's bad faith actions, its manipulation
10 of the dealer's financial capacity, and its attempt to remove ECI's franchise from the market went
11 far beyond making a simple demand.

12
13 GMAC also relies upon *Centerre Bank of Kansas City v. Distributors, Inc.* 705 S. W.2d
14 42 (Mo. Ct. App. 1985) and *Fulton National Bank v. Willis Denny Ford, Inc.* 154 Ga. App. 846,
15 269 S.E.2d 916 (1980), two cases seeming to hold that the duty of good faith is reduced to
16 governing only gaps in an agreement. Like *Allied*, *Centerre* and *Fulton* are distinguishable
17 because they involved calls on simple demand notes containing no additional conditions, and
18 without the complexities of GMAC's floor plan financing.

19
20 The *Fulton* and *Centerre* cases fail to recognize the basic principle that the good faith
21 obligation reaches the "performance and enforcement of all agreements or duties." RCW 62A.1-

22
23 _____
24 ¹⁵ Similar to *Allied*, the *Badgett* case involved a note that contained a demand promise, without default and
repossession provisions like those in the Wholesale Security Agreement.

25 ¹⁶ See cases cited in Petitioner's Motion at p. 12, footnote 31.

1 203 Comment (emphasis added).¹⁷ The good faith obligations that apply under UCC § 1-203 are
2 limited to contract "performance and enforcement" in order to preclude its applicability to
3 contract negotiations. See RCW 62A.1-203. Therefore, the duty arises by law from a contract
4 within the scope of the UCC and cannot apply to the period before it was formed.¹⁸ This
5 limitation is explicitly recognized in § 1-203 by precluding contract negotiations from the scope
6 of the duty of good faith. As a result, the demand of payment on a note is inseparable from the
7 enforcement of the debtor's performance of the contract (the duty to pay) and is subject to the
8 obligation of good faith.¹⁹

9
10
11 **d. The *Coffee* Case Supports the Application of Good Faith Duties to
GMAC's Performance and Enforcement Actions**

12 The U.S. District Court's decision in *Coffee v. GMAC*, 5 F.Supp.2d 1365 (S.D. Ga. 1998),
13 provides compelling support for the conclusion that GMAC's contract performance and
14 enforcement actions are subject to a duty of good faith. The *Coffee* case is also on point as the
15 court properly interpreted a GMAC wholesale security agreement containing both demand
16 language and default contingencies.
17

18
19
20
21 ¹⁷ Both courts took the position that § 1-203 would add a term (a good faith limitation) to the contract that was not
expressly included or intended by the parties. *Centerre*, 705 S.W.2d at 48.

22 ¹⁸ The debtors in *Centerre* did not deny there was a demand note and knew that the lenders could call the note at
anytime. *Centerre*, 705 S.W.2d at 48. The obligation of good faith arises by law regardless of the parties' intent. See
23 RCW 62A.1-203(3).

24 ¹⁹ Citing *Fulton*, *Centerre* held that UCC § 1-203 did not apply because a good faith defense to the call for payment
of a demand note "transcends the performance or enforcement of a contract...." *Centerre*, 705 S.W.2d at 48.
25 However, *Centerre* fails to explain why calling a demand note does not relate to the performance or enforcement of
the contract and overlooks the fact that the lender must call the note in order to place the debtor in default. Thus,
26 *Centerre* applied an unjustifiably restrictive construction of UCC § 1-203.

1 In *Coffee*, an automobile dealership sued GMAC alleging that the lender improperly
2 administered and wrongfully terminated the dealership's line of credit. The GMAC wholesale
3 security agreement included a demand provision, as well as granting GMAC the right to
4 terminate the agreement upon the occurrence of certain default contingencies. *Coffee*, 5
5 F.Supp.2d at 1372. GMAC argued that the contract was a demand note, precluding the dealer's
6 assertion of wrongful termination claims. On motions for summary judgment, the District Court
7 ruled that the lender was contractually obligated to advance funds up to the stated amount and
8 could not terminate the line of credit at will. Whether one of the contractually specified
9 contingencies allowing termination had occurred was a fact issue that precluded summary
10 judgment. Viewed in the context of GMAC's claims here, and reading the contract as a whole,
11 the agreement cannot be construed as a simple demand note. GMAC's actions in manufacturing
12 a default before it terminated financing and pursued repossession contradict the demand note
13 arguments raised by GMAC in this appeal. GMAC acted like a default was necessary.

14
15
16 The court's analysis in *Reid*, which also involved claims for wrongful termination of
17 financing, is equally applicable to GMAC's attempt to repossess vehicles. The *Reid* court
18 declared that "it would be illogical to construe an agreement, providing for repayment or default
19 in the event of certain contingencies, as permitting the creditor, in the absence of the occurrence
20 of those contingencies, to terminate the agreement without any cause whatsoever. *Reid*, 821 F.2d
21 at 14. "Under such a construction, the enumerated conditions would be rendered meaningless."

22
23 *Id.*²⁰

24
25
26 ²⁰ In *Reid*, the Court of Appeals observed that although the note granted the bank the right to repayment on demand,
the demand provision should not be considered as an integrated contract as to the time term. Moreover, the fact that
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1 Similarly, the default contingencies in the Wholesale Security Agreement here would be
2 rendered meaningless if GMAC is allowed to repossess vehicles without a default. The contract
3 is not a simple demand note or an integrated agreement as to time for payment. Therefore, the
4 duty of good faith applies to contract performance and enforcement by both parties. Here,
5 GMAC failed to comply with RCW 62A.9A-102(a)(43), as it did not act in good faith or meet
6 commercially reasonable standards.
7

8 **e. The *Badgett* Case Does Not Negate GMAC's Good Faith Duties in the**
9 **Performance and Enforcement of the Contract**

10 GMAC argues that a good faith requirement adds an additional term to a demand note
11 and, therefore, is contrary to *Badgett*. GMAC focuses on the holding in *Badgett* that there is no
12 "free floating duty of good faith". *Badgett v. Sec. State Bank*, 116 Wn.2d 563,807 P.2d 356
13 (1991).

14 *Badgett* is not controlling authority because it addressed an implied duty of good faith,
15 without ruling on the statutory duty of good faith under the UCC. See RCW 62A.9A-102(a)(43)
16 (adopted in 2001). The *Badgett* court held that proposals to modify the loan were part of the
17 negotiation process and required further meeting of the minds of the parties, unlike in our case
18 where there were existing duties to performance within the contract. See *Badgett*, 116 Wn.2d at
19 574.
20

21 In our case, GMAC committed numerous acts of bad faith in violation of the Washington
22 Uniform Commercial Code. Under Article 9, secured creditors are required to exercise "good
23

24
25 the note and security agreement contained default provisions did not mean that the agreement "could simply be
26 terminated at the whim of the parties." Rather, the right of termination or acceleration was subject to the duty of
good faith. *Reid*, 821 F.2d at 14 ("the documents establishing the loan defeat neither the legal obligation nor the
justifiable expectation of the parties that the contract be performed in good faith").

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1 faith," which is defined as "honesty in fact and the observance of reasonable commercial
2 standards of fair dealing." RCW 62A.9A-102(a)(43).

3 *Badgett* dealt with an affirmative expansion of a duty of good faith by requiring
4 cooperation in accomplishing a desired outcome which had not previously been agreed upon—a
5 negotiation. The *Badgett* court stated that this expansion of the existing duty of good faith
6 created obligations in addition to those intended by the parties within the contract, and was like a
7 free-floating duty of good faith which was unattached to the underlying legal document. *Badgett*,
8 116 Wn.2d at 570. GMAC was required to act in good faith in the performing and enforcing the
9 financing contracts.
10

11 Judge Lucas called out numerous instances of bad faith that interfered with the
12 dealership's business and its ability to perform obligations under the floor plan financing
13 arrangement. Unlike the *Badgett* case, GMAC's bad faith conduct went far beyond violations of
14 the "free floating" duty of good faith, by violating specific statutory duties of honesty in fact and
15 the observance of reasonable commercial standards of fair dealing. GMAC's bad faith was
16 connected to the contract terms, as GMAC interfered with EC's business operations and ability to
17 perform under the contract. To find bad faith under those circumstances does not expand
18 GMAC's duties to include affirmative acts of cooperation.
19
20

21 While *Badgett* construed the duty to cooperate with respect to future financing
22 arrangement as a free floating duty of good faith, the decision cannot be extended to bad faith
23 conduct which hinders the dealership's contract performance. Our law requires GMAC to be
24 honest with regard to its intentions and not attempt to manufacture defaults, put pressure on a
25 business to fail, or block other contract opportunities. This kind of conduct constitutes bad faith
26

1 and should not be considered business as usual for a lender. GMAC did not follow reasonable
2 commercial standards of fair dealing in performing the contract.

3 GMAC cannot use *Badgett* to justify actions completely outside the realm of good faith
4 and commit affirmative acts of bad faith—and even fraudulent concealment. Otherwise, there
5 would be no limitation on a lender's decision to create a default and accelerate, and engage in
6 conduct designed to interfere with the borrower's performance. GMAC has cited no case that
7 vests unlimited discretion in a lender to actively engage in bad faith conduct to impair the
8 borrower's performance and force the closure of its business.

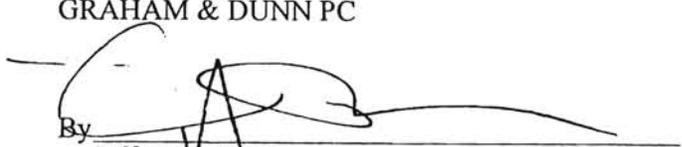
9 Here there are a multitude of facts which raise genuine issues. As such, GMAC is not
10 entitled to summary judgment.

11
12
13 **CONCLUSION**

14 For the foregoing reasons, ECI asks this court to deny GMAC's Motion for Summary
15 Judgment to Dismiss Everett Chevrolet's Bad Faith Claims.

16 DATED this 5th day of December, 2011.

17
18 GRAHAM & DUNN PC

19
20 By 

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APP. J

1 THE COURT: All right. We are back on the record
2 in the matter of GMAC versus Everett Chevrolet. And
3 this morning's hearing was scheduled to talk about the
4 motion to amend the complaint. I've sort of changed
5 this agenda. I'm going to give you my ruling. So
6 here we go.

7 This matter has come before the Court for hearing
8 from March 17th, 2009 to April 10th, 2009. The Court
9 has heard and reviewed trial testimony, all exhibits,
10 the memorandum of counsel, the records and the files
11 herein. It is therefore ordered, adjudged and
12 decreed as follows:

13 And these are my Findings of Fact.

14 Owner, John Reggans, has been operating Everett
15 Chevrolet Inc. (Henceforth ECI) successfully in the
16 City of Everett since 1996. He started in this
17 business with an 80 percent investment from Motor's
18 Holding, a division of General Motors Company and a
19 twenty percent match of his own.

20 The program he engaged in with Motor's Holding
21 enabled the junior investor to buy out the larger
22 company interest in a certain amount of time.

23 The pro forma plan for Mr. Reggans was to
24 accomplish this task in 3.5 years. His actual
25 performance was better. He acquired one hundred

1 percent ownership in 1999, after only two years and
2 nine months. This acquisition was achieved solely
3 through dealer profits.

4 ECI, under Mr. Reggans, has been profitable every
5 year from 1996 to 2006. The Dunn and Bradstreet
6 report filed as exhibit number 92 indicates that his
7 high year sales were approximately 40 million dollars.

8 During the late 90's Mr. Reggans testified that he
9 averaged new car sales of 70 a month from 1996 to
10 1999. In 1999, a new Chevy dealership, Speedway
11 Chevrolet, opened up as a direct competitor. After
12 this, his new car sales dropped, but he still managed
13 to average about 40 to 60 new cars sold a month.

14 In 1999, he received a working capital loan from
15 GMAC in the amount of \$500,000, and repaid it in full
16 in five years. He has had revolving line of credit
17 with GMAC since 1999, with payment terms of interest
18 only. This continued until July 2008, when GMAC
19 unilaterally demanded principal reduction payments of
20 \$10,000 a month in addition to interest.

21 Mr. Reggans testified that in 2006 ECI earned
22 \$700,000 in net profit. However, after 2006, the car
23 industry began to decline. His 2007 net profit was
24 only about \$28,000.

25 In September of 2007, Mr. Jerry Vick became GMAC

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1 branch manager for the Pacific Northwest. When Mr.
2 Vick was asked on direct examination if there were any
3 credit issues in 2007, he indicated, yes, that ECI
4 needed to expand its revolving line of credit from
5 \$500,000 to \$800,000.

6 The request was made directly between Mr. Reggans
7 and Mr. Vick. There was no problem granting this
8 request at that time. At the end of 2007, Mr.
9 Reggans also requested of Mr. Vick that GMAC help
10 finance the purchase of real estate the firm was
11 leasing. Mr. Reggans saw this as critical to the
12 profitability of his business because he was facing a
13 dramatic increase in lease payments and this was a
14 proactive action on his part.

15 The purchase of the property would avoid an
16 escalation in lease payments of nearly fifty percent.
17 Mr. Reggans made clear that this deal had to close by
18 December 31st, 2007. GMAC did not respond until May
19 of 2008. The response was a decline and was verbally
20 delivered by Mr. Vick. GMAC did not respond to this
21 request in writing.

22 On direct examination, Mr. Vick indicated that the
23 reason for the decline was no positive cash flow.
24 However, the April financial statement loss was the
25 first quarter loss of the year. Plus GMAC had just

D

1 increased the revolving line of credit.

2 Lastly, the collateral is extremely valuable real
3 estate on Highway 99, Evergreen Way in Everett. The
4 property was appraised. The unrebutted testimony is
5 that the sales price was one million dollars under the
6 appraisal, as such, the Court does not find Mr. Vick's
7 answer at trial to be credible.

8 From a business standpoint, GMAC's position is not
9 reasonable. From the facts presented, GMAC appears
10 to have been dragging its feet. This delay, rather
11 than swift rejection, denies the dealer the
12 opportunity to pursue other options in a timely
13 manner. As an isolated occurrence, this fact is not
14 important. But it is important if it is a pattern of
15 behavior.

16 The April ECI financial statement showed a year to
17 date loss of \$163,042. This led to a meeting between
18 Mr. Vick and Mr. Reggans on June 10th. Mr. Vick
19 testified that the meeting basically covered all the
20 items later memorialized in his letter of July 31st,
21 2008, which is exhibit number 1. Mr. Reggans disputed
22 this vehemently in his testimony, indicating that the
23 meeting was dominated by a request for his personal
24 guarantee and that virtually none of the other topics
25 in Mr. Vick's subsequent letter were communicated in

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1 this meeting. This raises a very serious issue of
2 credibility.

3 In his court testimony, Mr. Vick indicated that he
4 could not recall Mr. Reggans' response to raising
5 these very serious issues, particularly to the request
6 for the \$800,000 cash injection. The Court finds that
7 Mr. Vick's testimony is simply not credible.

8 In the letter, Mr. Vick indicates that because of
9 the losses, ECI will need a cash injection of
10 \$800,000, Mr. Reggans's personal guarantee and
11 continue to pay promptly and faithfully. A deadline
12 was set at October 31st, 2008 to achieve these goals
13 and if that they were not achieved, GMAC promised to
14 "suspend or terminate" the dealer's wholesale credit
15 lines. After these conditions were set, a few more
16 were added.

17 One was a charge of \$500 per audit.

18 And number two was the change in the revolving line
19 of credit setting a principal reduction payment of
20 \$10,000 a month.

21 This letter is copied to Michelle Smith and her
22 only. The Court also finds it incredible that a
23 letter of this magnitude would be sent almost fifty
24 days after the meeting.

25 In the world of finance, sixty days is a lifetime.

1 A concerned dealer would certainly want these fifty
2 days in order to meet the conditions set. Here, GMAC
3 deprived the Dealer of his time to adjust, another
4 indication of delay.

5 By his own testimony, Mr. Vick did not mention the
6 deadline in his meeting, only in the letter. The
7 entire scenario, as reported by Mr. Vick, lacks
8 credibility.

9 This letter has been construed in many different
10 ways, but in business this is known as a drop dead
11 letter. The author is communicating to the reader
12 that the relationship is over and it is just a matter
13 of time before the end. However, this letter
14 attempts to mask this intent by justifying GMAC's
15 actions based on credit trends and performance. But
16 at this point in the year, there were no trends as
17 yet. All high overhead businesses show losses at the
18 beginning of the year until they reached their break
19 even point in sales later in the year. This is
20 common knowledge. If this had been the subject of
21 oral conversation over lunch, there is no question, in
22 this Court's view, given Mr. Reggans' wide ranging
23 contacts, that he would have had a different posture.

24 But GMAC deprived him of the opportunity to make
25 the maximum use of his time by misleading him, by

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2 on a reservation of its rights. This fifty days
3 becomes a critical point later in the year.

4 What Mr. Reggans did not know is that GMAC was
5 undertaking a very sophisticated financial analysis on
6 his firm. He did not know that a metric was being
7 applied to him. Ms. Smith testified that he needed
8 to show a debt to equity ratio of three to one, yet
9 this was never told to him, even though GMAC knew they
10 had analyzed his April debt to equity ratio at over
11 9.73 to 1. There was no proof by GMAC that the cash
12 injection of \$800,000 was based on achieving this
13 three to one debt to equity ratio.

14 And in fact, Ms. Smith testified that she knew he
15 could not make this target in July because he had
16 continued to lose money. When Mr. Reggans did inject
17 \$500,000 into his business in October hoping this
18 would convince GMAC to lift the personal guarantee
19 condition, he still could only achieve a debt to
20 equity ratio of 18 to 1.

21 On questioning by the Court, Ms. Smith admitted
22 that the target cash injection of \$800,000 was no
23 longer valid in July when it was requested in writing.
24 And they did not tell him it was no longer valid. She
25 calculated that a total cash injection of \$800,000 by

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1 the October deadline, given the increased losses,
2 would only get him to a debt to equity ratio of 10.73

3 to 1, when the metric is 3 to 1. She knew that ECI
4 could not meet GMAC goals.

5 According to GMAC, both Mr. Vick and Ms. Smith
6 engaged in detailed financial discussions with Mr.
7 Reggans about the performance of his business, yet not
8 once did they share the financial analysis with him.
9 Targets were set without any justification.
10 Deadlines were set without any notice or
11 justification. When he inquired why he was asked for
12 his personal guarantee after 12 years of doing
13 business with GMAC, he was told vaguely that it was
14 not uncommon. That was a quote, not uncommon, and
15 that "not every dealer" had to do it.

16 Ms. Smith was also not a credible witness. By her
17 own testimony she has 25 years in the business and a
18 Masters in business administration. Yet she could
19 not derive the formulas from simply reviewing the
20 financial information on instruments she has
21 purportedly used for years. She could not glean the
22 formulas without a formula handbook or a cheat sheet
23 and she could not give the Court ECI's breakeven point
24 in total sales, only in units per month. For a high
25 level unit manager, this is simply not credible.

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1 However, it is credible if her primary job is
2 collections and shutting down companies. This does
3 not require a high level financial analysis. And she
Page 9

4 testified that she was just "promoted" to high risk
5 manager. This is a credit collection term. In other
6 businesses it's called special credits. This is a
7 division of a firm that a client goes to when all
8 credit is about to be cancelled and all debts called
9 due.

10 Proof of this collection attitude is her response
11 to Mr. Reggans when he asked her why he needed to have
12 a personal guarantee. She said he has to have some
13 "skin in the game." This Court found this comment to
14 be highly insulting. It is not only insulting to a
15 person who has earned his ownership via hard work and
16 profit over a 12 year period, it is insulting based on
17 her explanation that a "personal guarantee shows level
18 of commitment." That's a quote. In the credit world
19 this is a false statement. Every single business
20 person in the world knows what a personal guarantee
21 means. It means the lowest credit rating for a
22 business. It means the business has no value. This
23 is why the personal guarantee is required, so that the
24 lender can take your house if the business fails to
25 pay its debts. In this case, it is not true that the

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1 business had no value. Motor's Holding, after its
2 own due diligence, was prepared to invest 2.5 million
3 dollars in this business. This casts doubt on the
4 requirement for a personal guarantee.

5 Most small business people start with a personal
6 guarantee and struggle to escape this risk by building
7 the net worth of their business. For her to say this
8 in court under oath shows her lack of respect for the
9 Court, and her total lack of credibility. But it does
10 reveal her motivation. Clearly, this explanation to
11 the Court and to Mr. Reggans is the first real proof
12 of a GMAC hidden agenda.

13 Surprisingly, Mr. Pedram Davoudpour did testify
14 credibly. When the Court asked him why these actions
15 were taking place, he candidly indicated that there
16 were "red flags in the file."

17 When I asked him to identify what he read in the
18 file that was a red flag, he indicated that the letter
19 of July 31st, 2008 was the red flag. Mr. Davoudpour
20 was not using the occurrences of November or December
21 or August to impose the restrictions on ECI that he
22 was responsible for implementing, he was relying on
23 the July letter. Mr. Davoudpour's testimony affirms
24 for the Court that the requirements in the July letter
25 were false targets and were designed to create the

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1 basis for ECI's default.

2 The hidden agenda that is taking place here is a
3 working capital assault on ECI designed to manufacture
4 a default.

5 First, a target for cash injection is set that can
Page 11

6 either not be reached, or if it is reached, will not
7 bring ECI into compliance with the policy metric of a
8 3 to 1 debt equity ratio.

9 Next is a communication to ECI that the break even
10 is units and that he needs to sell more units to meet
11 GMAC's goals. ECI is also told that they need to
12 reduce inventory. When the Court asked Ms. Smith what
13 this meant, she said, "sell more cars."

14 Next is the \$500 audit charge.

15 Then there is the \$10,000 monthly principal
16 reduction charge.

17 Then the revolving line of credit is suspended,
18 exhibit 69, while at the same time the interest rate
19 is increased from Libor plus 300 basis points to Libor
20 plus 600, an increase of one hundred percent.

21 Ms. Smith testified that all past credit decisions
22 were purportedly based on ECI's performance, but this
23 one in her letter is thinly based "market condition",
24 without indicating what metric in the market is being
25 used, without any stated relation to a specific market

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1 condition or contract term. This seems to be just an
2 arbitrary action, which is not commercially
3 reasonable.

4 Next is the inventory reduction charged billed at
5 over \$170,000. This pre payment has no basis in the
6 contract. See exhibit number 3 where it says "As
Page 12

7 each vehicle is sold or leased, we will faithfully and
8 promptly remit." It comes directly out of working
9 capital without being earned. The calculation of the
10 sum has no metric and appears totally arbitrary. It
11 appears to assume depreciation of a vehicle that is
12 not being used when all depreciation rules are based
13 on use. It is even generally known that you value a
14 car based on mileage used, so this charge appears
15 arbitrary and as such is not commercially reasonable.

16 Then there is the November refusal to floor
17 unencumbered new and used vehicles at the Dealer's
18 request when it would have had maximum positive effect
19 on the Dealer in response to the Dealer's efforts to
20 be proactive and anticipate his problems.

21 Followed by that decision is the one in December to
22 allow flooring after audits found ECI to be Out of
23 Trust. This action violated GMAC's own rule as
24 testified by Ms. Smith that no flooring would be done
25 once the floorplan was suspended.

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1 But in the December case, the flooring helps GMAC
2 by obtaining more of ECI's assets, and harms the
3 Dealer because only his earlier proactive approach
4 would have enabled him to avoid the Out of Trust
5 position.

6 The three day business day remit rule in this
7 context is used to assault working capital. when the

8 business most needs flexibility, the rule is strictly,
9 if not arbitrarily, enforced. This rule is not a
10 contract term, and it is not uniform among dealers.
11 Some have a five business day remit rule. And there
12 was no testimony in the record concerning how it was
13 applied or who got three and who got five.

14 If it's not based on contract or a clearly
15 articulated policy, it is arbitrary and not
16 commercially reasonable.

17 The sales date determined by GMAC is arbitrary.
18 Pedram Davoudpour testified that when there was a
19 dispute about sales dates then they would negotiate it
20 with the Dealer. However, it was clear from the
21 testimony that there would be no negotiating with Mr.
22 Vick or Mr. Ted Modrzejwski. The date is applied in
23 an arbitrary manner because cars are considered sold
24 before the deal closes and is funded. Even known
25 unwinds are included in the audits as due and payable.

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1 This is a working capital assault, because it then
2 requires the Dealer to fund the GMAC floorplan payment
3 out of his working capital rather than out of the
4 sale. A Dealer with a five day remit will have a
5 distinct advantage here over one who has a three day
6 remit. And this is not commercially reasonable
7 because it's not based in any contract term and not on
8 any clearly articulated policy.

9 Audits taking place on a daily basis also assault
10 working capital. All the employees who testified
11 indicated that the daily audits interfered with their
12 performance. They testified that it reduced sales.
13 Inefficient performance diminishes working capital
14 because employees must be paid who are not achieving
15 peak performance. Mr. Jaffee testified that GMAC was
16 on site interfering with the business operation from
17 November 14th, 2008 until he left on January 28th,
18 2009. He testified that during this time, "there was
19 not one day when they were not physically on the
20 premises." This is not commercially reasonable
21 behavior. He testified that customers overheard their
22 conversations when they would come into his office and
23 demand information. This testimony is contrary to
24 GMAC witnesses who said they were polite and asked
25 employees to step out. This creates a credibility

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1 question that this Court resolves against GMAC.

2 On December 4th, exhibit 56, demand on the open
3 account was made severely impacting not only working
4 capital, but the Dealer's cash position by diverting
5 and freezing these critical funds.

6 On December 15th GMAC demanded payment on all
7 credit lines with a deadline of March 13th.

8 And then surprisingly, on December 19th, just four
9 days later, GMAC demanded immediate payment of all

10 credit lines referenced in the letter December 15th,
11 2008. These two actions coming within days of each
12 other do not make sense unless they are intended to
13 stop his investment from Motor's Holding.

14 On December 30th GMAC acquired a Temporary
15 Restraining Order that shut the business down for two
16 weeks.

17 Demand notices went to financing institutions and
18 this assault stopped all financing of sales until
19 relief was granted by the Court January 15, 2009.

20 It is un rebutted that Mr. Reggans had a
21 pre-investment contract, exhibit number 109, in place
22 that would have provided an equity cash injection into
23 his business by Motor's Holding in the amount of 2.5
24 million dollars and which was due to close on January
25 9th, 2009. It is un rebutted that Mr. Vick and Ms.

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1 Smith of GMAC, and others, knew this contract was
2 pending. With this deal, Mr. Reggans would again be a
3 junior investor in his business. However, it is also
4 undisputed that an equity investment of 2.5 million
5 dollars, just days away, would have solved all of
6 ECI's credit problems with GMAC. Motor's Holding, in
7 its refusal to close, cited this lawsuit as a basis
8 for denial.

9 Okay. So here is my analysis, and this is a
10 quote.

11 "The law has not yet acknowledged a general
12 requirement of full disclosure of all relevant facts
13 in all business relationships but the duty to disclose
14 relevant information to contractual party can arise as
15 a result of transaction itself within the parties'
16 general obligation to deal in good faith."

17 This is from Liebergesell vs. Evans 93 Wash.2d 881.
18 And the quote is from 893. It's a 1980 case.

19 By failing to disclose the debt to equity ratio and
20 other aspects of GMAC's sophisticated financial
21 analysis, GMAC was able to create a false target for
22 the Dealer and mislead ECI about its future actions.

23 GMAC withheld information on its true targets and
24 metrics, while at the same time pushing the Dealer to
25 achieve the stated targets by trying to increase

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1 sales, while at the same time deliberately depriving
2 the Dealer of the working capital needed to reach the
3 stated targets and/or goals set for him by GMAC. By
4 so doing, GMAC leads the Dealer to behave in a way
5 that is beneficial to GMAC but detrimental to the
6 Dealer. These facts were never disclosed. These
7 facts were at all times relevant to their relationship
8 and this Court finds that GMAC had a duty to disclose
9 them. As such, failure to disclose these facts
10 constitutes a breach of the implied covenant of good
11 faith and fair dealing.

12 In a slow market there are two ways to break-even
13 and reach a favorable debt to equity ratio. One is to
14 increase sales but the other is to reduce overhead,
15 which will reduce the firm's ability to sell.
16 Revealing the debt to equity ratio and other parts of
17 the financial analysis could make this determination
18 to reduce possible. To discuss break even analysis
19 only in units and only in increasing unit sales hides
20 this fact. Lower sales in the current climate was not
21 good for GMAC. GMAC pushed the Dealer to perform when
22 he could have reduced his efforts to obtain
23 profitability, but this would have increased his
24 inventory. Ms. Smith testified that he needed to
25 "sell more cars" to succeed. Clearly, in the current

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1 market, with all of his competitors, hers is a
2 specious conclusion.

3 The U.C.C. defines good faith in RCW 62A.9A-102(43)
4 as follows:

5 "Good faith means honesty in fact and the
6 observance of a reasonable commercial standards of
7 fair dealing."

8 In the instant case, GMAC did not conduct itself
9 honestly. There was a hidden agenda throughout the
10 time from when Mr. Vick took control until the
11 catastrophic demands in December. The goal of the
12 team from GMAC in this case was to shut down the

13 Dealer. The mechanism was to set a false target that
14 could not be achieved and by so doing manufacture a
15 default.

16 Given the totality of GMAC's actions, this is the
17 only conclusion this Court can come to. This was a
18 hidden agenda. GMAC does not have a contractual right
19 to shut down the Dealer and put him out of business.
20 GMAC may withdraw their financing, but they must do so
21 in a commercially reasonable manner. This was not
22 done in this case. The actions taken by GMAC to
23 assault the Dealer's working capital were designed to
24 put him out of business, not merely to protect
25 collateral. If GMAC had disclosed that it did not

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1 want to do business with ECI in the future openly and
2 honestly, then he would have had recourse to
3 alternatives. But instead the Dealer was led to
4 believe his past good relationship with GMAC still
5 existed all the while secret actions were taking
6 place, which damaged his ability to perform, and these
7 actions escalated during 2008. In fact, the actions
8 of December 15th and 19th seemed designed to block his
9 financing from Motor's Holding, which closing date was
10 less than thirty days away.

11 If he had the fifty days from June 10th to July
12 31st, he may have been able to close that deal despite
13 the efforts of GMAC. Here, GMAC aligned all forces in
Page 19

14 order to make the Dealer fail. Such actions are not
15 commercially necessary or reasonable. This case is
16 the perennial problem of a false target, otherwise
17 known as "hiding the ball". If ECI had known that it
18 could never achieve the goals GMAC had set, then it
19 would have been free to pursue other options.

20 Now, GMAC quoted the case of Badgett. I am not
21 going to give the cite. But Badgett is not on point
22 because it deals with an affirmative expansion of a
23 duty of good faith by requiring cooperation. Here no
24 such expansion is contemplated or required. ECI and
25 this Court does not require GMAC to cooperate in any

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1 venture. The law only requires GMAC to be honest with
2 regard to its intentions and not attempt to
3 manufacture defaults, put pressure on a business to
4 fail, or block other contract opportunities. All
5 these things were done in this case, and all are acts
6 of bad faith.

7 The Dealer in this case has a right to know how he
8 is being evaluated. Failure to disclose this amounts
9 to having to take a test without knowing what the
10 problems are to be solved. He was constantly given
11 partial financial information and encouraged to turn
12 his inventory when doing just the opposite would have
13 made him profitable.

14 ECI sold 19 million dollars by October of 2008.

15 With these sales, that if he had cut back his sales
16 efforts and lowered his break-even point, he could
17 have made a profit, but GMAC was pushing him to do
18 just the opposite in order to engineer default. This
19 constitutes bad faith.

20 So the conclusions of law are that this Court has
21 jurisdiction in this matter.

22 GMAC breached the contract by violating the
23 Covenant of Good Faith and Fair Dealing.

24 The request for replevin is denied.

25 And I think consistent with that, the motion to

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1 amend the complaint is also denied.

2 I don't think we need to talk about it.

3 Anybody have anything else they want to say?

4 MR. GLOWNEY: What is the Court going to do with
5 the TRO?

6 THE COURT: Well, I think that means it's over.

7 Mr. Hausmann?

8 MR. HAUSMANN: I agree, I think it was just in
9 place between the time of the inception of the case
10 and this ruling on replevin, so I think it's
11 distinguished by definition.

12 MR. WHEELER: Your Honor --

13 MR. GLOWNEY: Is the Court treating this as the
14 final ruling in this case?

15 THE COURT: The Court is treating this as the
Page 21

16 final ruling in this case.

17 MR. WHEELER: Your Honor, taking that into
18 consideration, we would request that there be a hold
19 on the bond so that we could pursue monetary damages
20 against GMAC on that bond.

21 THE COURT: I will grant that.

22 MR. GLOWNEY: Is that going to be in this case or
23 some different case?

24 THE COURT: I am not sure.

25 MR. GLOWNEY: I'm just trying to understand, if you

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1 are saying that this case is finished, then where is
2 he pursuing this claim?

3 THE COURT: well, I thought about this to a
4 certain extent, because I know that this matter is
5 going to continue in some form. I am not quite sure
6 how. What I'm going to do is I'm going to retain
7 jurisdiction in this case for any post hearing motions
8 that relate to this replevin action.

9 And if you think that the bond relates to that, go
10 ahead and make your motion.

11 MR. HAUSMANN: Your Honor, I think just to -- for
12 interest of full explanation we do have a counterclaim
13 pending, and it has a claim for damages.

14 And I just don't -- I am not -- I'm still
15 processing your decision, I am not sure how we should
16 approach that issue through here.

17 THE COURT: The rest of the trial?

18 MR. HAUSMANN: Yes, well you just mentioned this
19 was a final decision.

20 THE COURT: On the replevin motion.

21 MR. WHEELER: So should we file a motion for -- as
22 for readiness to proceed against the bond for the
23 monetary damages on the counterclaim?

24 THE COURT: I am not quite sure I understand that
25 either.

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1 MR. WHEELER: We have a counterclaim against GMAC
2 for monetary damages. The bond was submitted by GMAC
3 so that in the event the replevin action was decided
4 against GMAC --

5 THE COURT: Oh, is it a replevin bond?

6 MR. HAUSMANN: It is a replevin bond.

7 MR. GLOWNEY: It is.

8 MR. WHEELER: It is. So in the event that that
9 decision was rendered against GMAC and the Dealer
10 could prove damages, the Dealer could pursue a claim
11 against that bond.

12 THE COURT: I'm just doing this off the top of my
13 head, I hadn't thought about this part. I would
14 expect that would be the second step of this action,
15 the proceeding against the bond.

16 MR. GLOWNEY: Wouldn't it be a trial on monetary
17 damages? I don't quite understand what proceeding

18 against the bond is --

19 THE COURT: Well, the bond is replevin bond and
20 the decision on the replevin has been made.

21 MR. HAUSMANN: Just to confuse things a little bit
22 more. The first action was an injunction. What GMAC
23 filed was a replevin bond before Judge Allendoerfer.
24 We argued that was not the right type of bond. Judge
25 Allendoerfer said it's a bond, it's sufficient. I

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1 don't want to paraphrase what he said, but arguably he
2 said that was a bond to insure from damages that
3 flowed from the injunction, which I think might be a
4 different species of damages or species of claim, than
5 a replevin bond and the damages related to the
6 replevin.

7 THE COURT: Okay. What I contemplated was that
8 there was this replevin show cause action and then
9 once the decision was made here, then the other issue
10 would proceed to trial.

11 MR. HAUSMANN: Okay.

12 THE COURT: That's what I contemplated.

13 MR. HAUSMANN: Right.

14 THE COURT: But there might be some -- what I was
15 thinking about last night, is there may be need in
16 going from that step to the trial, there may be some
17 need for other types of motions, depending on the
18 ruling of this hearing, to facilitate a smooth

19 transition. And off on the top of my head, I couldn't
20 think of anything, but that might have been because it
21 was 3:30 in the morning and I couldn't process all
22 that well then.

23 But I think that there are probably some things
24 that probably need to be done, so I will retain
25 jurisdiction for the post hearing motions. I will not

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1 retain jurisdiction for the trial, that has to go back
2 to presiding to be assigned out for trial. And that
3 trial will be on damages.

4 MR. GLOWNEY: So the injunction is lifted?

5 THE COURT: The injunction is lifted.

6 MR. GLOWNEY: So when they sell cars what do they
7 do?

8 MR. HAUSMANN: They are still contractually bound.

9 MR. WHEELER: We will pay the floorplan amount.

10 MR. GLOWNEY: Then we have \$700,000 in
11 delinquencies.

12 MR. WHEELER: The delinquencies were caused as a
13 result of your action.

14 MR. GLOWNEY: And the 130 under the TRO, we don't
15 need to debate that here, but that's a question.

16 THE COURT: I understand that is not a neat and
17 tidy situation, okay. But I can't resolve all the
18 problems at this point.

19 MR. GLOWNEY: I just want to be clear, the

20 injunction is lifted or not.

21 THE COURT: It is lifted.

22 MR. HAUSMANN: Thank you, your Honor.

23 MR. WHEELER: Thank you, your Honor.

24 THE COURT: So I'm not quite sure what you all
25 want to do in terms of an order, but in an hour I'm

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1 going to be heading over to juvenile court.

2 Mr. Hausmann, you know where juvenile court is.

3 MR. HAUSMANN: Yes.

4 THE COURT: If you need me to sign something today,
5 I will be available over there.

6 MR. WHEELER: Yes, we do.

7 THE COURT: You just need to go over there and
8 speak with the court coordinator.

9 MR. HAUSMANN: That's down at Denny.

10 THE COURT: Have you been there lately? Just go
11 in the main front entrance, once you go through the
12 metal detector and all that, there is a little booth.

13 MR. HAUSMANN: Kiosk.

14 THE COURT: Yes, kiosk, and just ask them. I will
15 either be in courtroom one after three o'clock, or I
16 will be upstairs in staffing.

17 MR. GLOWNEY: Are you going to prepare an order or
18 do you want me to --

19 MR. HAUSMANN: We will work together.

20 MR. GLOWNEY: We need to get it entered today.

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THE COURT: Anything else?

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MR. GLOWNEY: I don't think so.

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THE COURT: Thank you. Court will be in recess.

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APP. K



2 of 4 DOCUMENTS

GMAC, *Petitioner*, v. EVERETT CHEVROLET, INC., ET AL., *Respondents*.

No. 68374-8-I

COURT OF APPEALS OF WASHINGTON, DIVISION ONE

2012 Wash. App. LEXIS 2032

August 16, 2012, Decided
August 16, 2012, Filed

PRIOR HISTORY: *GMAC v. Everett Chevrolet, Inc.*,
158 Wn. App. 1004, 2010 Wash. App. LEXIS 2335
(2010)

2306, 2010 WL 4010113, review denied, 171
Wn2d 1007 (2011).

JUDGES: [*1] **AUTHOR:** Cox, J., Appelwick, J., El-
lington, J.

This court's prior opinion sets forth much of the fac-
tual and [*2] procedural history of this case. We only
repeat what is necessary to decide whether we should
again grant discretionary review in this case.

OPINION**ORDER GRANTING DISCRETIONARY REVIEW**

GMAC seeks discretionary review of the trial court's
denial of its motion for summary judgment. GMAC has
demonstrated that discretionary review of the decision is
proper. Accordingly, we grant discretionary review.¹

GMAC provided financing for Everett Chevrolet,
Inc. (EC) to purchase new and used vehicles. EC was to
make payments as it sold vehicles. EC granted GMAC a
security interest in the vehicles and the vehicles' sales
proceeds to secure payment of the financing.

As this court stated in its prior opinion, the core
document reflecting this financial relationship between
the parties is the Wholesale Security Agreement dated
December 10, 1996. The parties amended this agree-
ment, in writing, from time to time. But the core terms
and conditions have remained basically the same.

1 We grant, in part, GMAC's Motion to Strike
Supplemental Authority Submitted by Everett
Chevrolet and Request for Sanctions, dated June
5, 2012. We disregard the supplemental authority
that Everett Chevrolet provided by letter dated
June 1, 2012. That authority is an unpublished
decision from Maryland, whose court rules pro-
vide that such decisions do not have either prece-
dential or persuasive authority under *MD. RULES*
1-104(a). We deny the request for sanctions.

Among the terms and conditions to which the parties
agreed are the following:

This is the second time this case has been before this
court on discretionary review. In 2010, we granted re-
view, reversed the trial court's order denying GMAC's
request for replevin, and remanded with directions to
grant replevin and for further proceedings.²

[EC] agree[s] *upon demand* to pay to
GMAC the amount it advances or is obli-
gated to advance to the manufacturer or
distributor for each vehicle with interest at
the rate per annum designated by GMAC
from time to time and then in force under
the GMAC Wholesale Plan.³

2 *GMAC v. Everett Chevrolet, Inc.*, noted at
158 Wn. App. 1004, 2010 Wash. App. LEXIS

3 (Emphasis added.)

EC's financial position began to deteriorate in 2007 when its car sales stagnated. Thereafter, the parties communicated to each [*3] other their respective concerns about the situation. EC sought, among other things, additional funds from GMAC. GMAC provided some additional funds and also sought various things from EC in order to minimize loss.

By December 2008, GMAC decided that its only recourse was to terminate the financing relationship of the parties. By letter dated December 19, 2008, GMAC exercised its option under the Wholesale Security Agreement and made demand for all amounts then due under the financing arrangement between the parties. The amount then due exceeded \$6,367,000 in unpaid principal plus accrued and unpaid interest.

This litigation followed. GMAC initially sought to enforce its rights as a secured creditor, seeking replevin. A three week evidentiary hearing on this request took place in March 2009. Notwithstanding the security interest in the vehicles and the proceeds of sales granted by EC to GMAC in the Wholesale Security Agreement, as amended, the trial court denied GMAC's request for replevin.

GMAC sought discretionary review, and a commissioner of this court granted that first request in June 2010. A panel of this court then reversed the trial court's denial of replevin and remanded with [*4] directions that the trial court grant GMAC's replevin request. The panel did not reach the merits of the underlying dispute between the parties in view of the limited nature of a show cause hearing on replevin.

On remand, GMAC amended its pleadings to request a judgment and other relief against EC. EC asserted various affirmative defenses and counterclaims. Among the counterclaims is a claim of "bad faith." ⁴ GMAC moved for summary dismissal of the bad faith counterclaim. The trial court denied the motion. In doing so, the court incorporated its oral decision, which specified the bases for denial of the motion, into its written order.

⁴ Everett Chevrolet's Answer Affirmative Defenses and Counterclaims dated November 28, 2011, at 11.

GMAC seeks discretionary review for a second time. Specifically, it seeks review of the trial court's denial of its motion for summary judgment.

DISCRETIONARY REVIEW

Discretionary review of a superior court decision is available only under *Rule of Appellate Procedure (RAP) 2.3*. Specifically, *RAP 2.3(a)* permits review of any act of

the superior court not appealable as a matter of right. *RAP 2.3(b)* specifies the considerations governing our acceptance of review [*5] as follows:

(1) The superior court has committed an obvious error which would render further proceedings useless;

(2) The superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act;

(3) The superior court has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by an inferior court or administrative agency, as to call for review by the appellate court; or

(4) The superior court has certified, or all the parties to the litigation have stipulated, that the order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation.

Here, the denial of summary judgment is an interlocutory order that is not appealable as a matter of right. GMAC claims a right to discretionary review under *RAP 2.3(b)(1) through (3)*. We consider *RAP 2.3(b)(2)* and need not reach the other arguments that GMAC makes.

Probable Error and Limitation of Freedom to Act

Denial of a motion for summary judgment [*6] is generally not an appealable order under *RAP 2.2(a)*. "An order denying summary judgment is interlocutory in nature and 'not a final judgment for the claim still remains pending trial. The issue can be reviewed after trial in an appeal from final judgment.'" ⁵

⁵ *DGHI, Enter. v. Pacific Cities, Inc.*, 137 Wn.2d 933, 949, 977 P.2d 1231 (1999) (quoting *Rodin v. O'Beirn*, 3 Wn. App. 327, 332, 474 P.2d 903 (1970)).

While discretionary review of such orders is not ordinarily granted, ⁶ under *RAP 2.3(b)(2)*, it may be granted where "[t]he superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act. . . ."

6 *DGHI*, 137 Wn.2d at 949 (citing *Sea-Pac Co. v. United Food & Commercial Workers Local Union 44*, 103 Wn.2d 800, 801-02, 699 P.2d 217 (1985)). But see *Muir v. Council 2 Wash. State Council of Cnty. & City Emp.*, 154 Wn. App. 528, 531, 225 P.3d 1024 (2009) (defendant's motion for summary judgment denied and discretionary review of that motion granted by this court); *Rivas v. Overlake Hosp. Med. Ctr.*, 164 Wn.2d 261, 266, 189 P.3d 753 (2008) (defendant's motion for summary judgment denied [*7] and discretionary review of that motion granted).

We begin our analysis by putting in context the claims of the parties. There does not appear to be any substantial dispute that EC borrowed money from GMAC that it has not repaid. The sums are substantial--over \$6,360,000 at the time of GMAC's demand letter of December 19, 2008. EC disputes GMAC's right to the proceeds of sales of vehicles and other collateral that EC pledged to GMAC to secure payment of this financing.

The present question is whether the trial court committed probable error in denying summary judgment on EC's bad faith claim against GMAC. That claim, among others, is designed to either reduce or eliminate payment of the substantial sums borrowed from GMAC under the Wholesale Security Agreement, as amended.

GMAC first argues that a demand obligation is not limited by a claim of bad faith. We agree.

Allied Sheet Metal Fabricators, Inc. v. Peoples National Bank of Washington,⁷ on which GMAC chiefly relies, sets forth the governing principles of law. There, Peoples provided financing to Allied's fabricating plant business.⁸ The obligation was evidenced by demand notes, which were secured by pledges of accounts receivable [*8] and other collateral.⁹ The bank decided to collect the total accrued debt owed by Allied and setoff funds in the company's checking accounts at the bank against the debt.¹⁰ The bank also made demand for the remaining unpaid balance of the demand notes after application of the setoffs to the debt.¹¹

7 10 Wn. App. 530, 518 P.2d 734 (1974).

8 *Id.* at 531.

9 *Id.*

10 *Id.*

11 *Id.* at 531-32.

Allied sued the bank for damages, claiming these actions were wrongful.¹² Specifically, Allied claimed that the bank had no right to either demand payment on the notes or offset the bank accounts against the debt.¹³ It claimed that the bank's actions in enforcing its rights in

this way were a violation of good faith.¹⁴ The trial court granted Peoples' motion for summary judgment dismissal.¹⁵

12 *Id.* at 532-33.

13 *Id.* at 534.

14 *Id.* at 536 n.5.

15 *Id.* at 534.

On appeal, this court affirmed.¹⁶ In doing so, this court focused on the nature of the relationship of the parties evidenced by the loan documents.¹⁷ Specifically, this court stated:

We are persuaded that the trial court, based upon the undisputed facts, correctly interpreted the nature of the agreement between the parties, and that agreement is expressed on the face [*9] of the demand notes. In short, the provisions of the security agreement are irrelevant and simply not applicable to the actions of Peoples challenged by Allied, because such actions were based on the uncontroverted terms of the demand notes.¹⁸

16 *Id.* at 536.

17 *Id.* at 534-36.

18 *Id.* at 534-35.

Our court commissioner addressed this same point in granting discretionary review in June 2009 at the first request of GMAC. In the ruling granting review, the commissioner discussed *Allied* and noted that it had been followed by the Missouri Court of Appeals in *Centerre Bank of Kansas City, N.A. v. Distributor's, Inc.*¹⁹ The facts of that case are similar to this one.

19 705 S.W.2d 42 (Mo. Ct. App. 1985).

As the commissioner's ruling stated, *Centerre Bank* discussed whether the duty of good faith imposed any obligations on the holder of a demand note.²⁰ That court stated:

Demand instruments are recognized by [Missouri law] and under [Missouri law], a cause of action accrues against the maker of a demand instrument on its date or its date of issue. The good faith requirement of [Missouri's version of *RCW 62A.1-203*] is in the performance or enforcement of a contract or duty. *The imposition of a good faith* [*10] *defense to*

the call for payment of a demand note transcends the performance or enforcement of a contract and in fact adds a term to the agreement which the parties had not included. The additional term would be that the note is not payable at any time demand is made but only payable when demand is made if such demand is made in good faith. The parties by the demand note did not agree that payment would be made only when demand was made in good faith but agreed that payment would be made whenever demand was made. Thus [Missouri's version of RCW 62A.1-203] has no application because it does not relate to the performance or enforcement of any right under the demand note but in fact would add an additional term which the parties did not agree to.²⁰

20 *Id.* at 47-48.

21 *Id.* (emphasis added).

The question of good faith in the context of commercial loans was also at issue in *Badgett v. Security State Bank*.²² There, the Badgetts executed a loan agreement and promissory note in the face amount of \$1,050,000, which were secured by livestock and other collateral.²³ Negotiations over payment of the loan ensued. The Badgetts asked the bank to accept partial payment of the debt and deferral of a [*11] portion of the payments due.²⁴ They then made a proposal that the bank officer took to the loan committee.²⁵ The committee rejected the proposal.²⁶ The borrowers later stopped making payments.²⁷

22 *116 Wn.2d 563, 807 P.2d 356 (1991).*

23 *Id.* at 566.

24 *Id.*

25 *Id.* at 566-67.

26 *Id.* at 567.

27 *Id.*

The Badgetts then sued the bank for damages, claiming the bank had unreasonably refused permission for them to participate in a federal government program that they believed would have been advantageous to them.²⁸ The bank sued to collect the unpaid and delinquent debt.²⁹ The trial court granted the bank's motion for summary judgment dismissing the claim.³⁰

28 *Id.*

29 *Id.*

30 *Id.* at 567-68.

On appeal, Division Two of this court reversed.³¹ The court held there were genuine issues of material fact whether the course of dealing of the parties had created a good faith obligation on the part of the bank to consider the borrowers' proposals to pay the debt.³²

31 *Id.* at 568.

32 *Id.*

The supreme court granted the bank's petition for review and reversed Division Two.³³ The court held that there is an implied duty of good faith and fair dealing in every contract.³⁴ But the duty neither obligates a party to accept a material [*12] change in the terms of the contract nor does it inject substantive terms into the parties' contract.³⁵ In short, there is no "free floating" obligation of good faith in a contract.³⁶

33 *Id.* at 568, 574.

34 *Id.* at 569.

35 *Id.*

36 *Id.* at 570.

In *Badgett*, the supreme court also rejected the argument that *Liebergesell v. Evans*³⁷ required a different result.³⁸ Rather, the court stated that that case only stood for the proposition that the "duty to disclose relevant information to a contractual party [during negotiation] can arise as a result of the transaction itself with the parties' general obligation to deal in good faith."³⁹

37 *93 Wn.2d 881, 613 P.2d 1170 (1980).*

38 *Badgett, 116 Wn.2d at 570 n.2.*

39 *Id.* (alterations in original) (quoting *Liebergesell, 93 Wn.2d at 893*).

We conclude from these cases that there is no duty of good faith imposed on one who has a demand instrument to avoid exercising the right to demand payment of the obligation. These cases make this clear, and we see no reason to depart from either their reasoning or result. There was no duty of good faith requiring GMAC to refrain from exercising its right to demand payment.

EC makes two arguments to avoid the effect on this case [*13] of these controlling authorities. Neither argument is persuasive.

First, EC argues that the Wholesale Security Agreement, as amended, that is the core financing document between the parties, is not a demand promissory note.⁴⁰ This is true, but it is also irrelevant.

40 Response to Motion for Discretionary Review at 13-14.

The analyses in *Allied* and *Badgett* did not depend on whether the demand feature was in a promissory note or in some other instrument. Rather, the analyses depended on the right of the holder of the instrument to demand immediate payment. EC does not contend that the security agreement that it signed lacks a demand provision. It clearly does. Nor does it argue that this demand provision is functionally or legally different from one in a note. It is not. Finally, it does not argue that it misunderstood the import of such a feature in the security agreement in this case. Thus, the factual distinction of what instrument contains the demand feature--security agreement or promissory note--is not material for purposes of our analysis in this case.

Second, EC contends that GMAC's "bad faith was connected to the contract terms [between the parties]. . . ." ⁴¹ On this basis, it claims [*14] that *Badgett* does not apply.

41 *Id.* at 15-16.

It is noteworthy that EC does not identify the particular contract term or terms that serve as the basis for the alleged breach of the duty of good faith. This is significant because *Badgett* is quite clear in stating that a particular term must serve as the basis for the claim. ⁴²

42 *Badgett*, 116 Wn.2d at 570.

Here, as we already discussed, the demand feature in the security agreement cannot serve as a basis for the bad faith claim. And a search of the briefing of EC fails to reveal any other contract term on which it relies to satisfy *Badgett's* requirement that such a claim must be tied to a particular contract provision. Because EC fails to identify either in its briefing or any other part of the record that has been supplied to us a specific term on which it relies for its claim, we reject this argument.

EC also relies upon *Coffee v. General Motors Acceptance Corp.* ⁴³ That case is distinguishable.

43 5 F. Supp. 2d 1365 (S.D. Ga. 1998).

There, the plaintiffs sued their lender, GMAC, alleging that GMAC restricted and adjusted their credit limit in violation of their security agreement and the bad faith provision of the federal Automobile Dealers' [*15] Day in Court Act. ⁴⁴ The court denied summary judgment, holding that there were genuine issues of material fact whether, in restricting the line of credit under the contract's default provisions, GMAC acted in good faith, as defined by the federal act. ⁴⁵

44 *Id.* at 1369-70.

45 *Id.* at 1381.

Coffee is not helpful. First, there is no assertion here of a claim under that act, which addresses dealings with automobile franchises. Second, nothing in that Georgia case addresses the right of a secured creditor in Washington to exercise its right to demand payment under *Allied* and *Badgett*. Finally, in denying GMAC's motion for summary judgment in *Coffee*, the court differentiated between two provisions of the loan documents. The court stated "while GMAC was entitled to demand payment of the *advances* it made pursuant to the line of credit at any time, it could not *terminate* the line of credit in the absence of one of the specific events of default. . . ." ⁴⁶ In this case, there is no contention of any differentiation between the demand and termination rights of GMAC under this Wholesale Security Agreement. For these reasons, *Coffee* is not persuasive.

46 *Id.* at 1377.

GMAC argues that the trial court improperly [*16] denied summary judgment on a basis not argued below. Specifically, GMAC argues that the trial court "invented a violation [of the duty of good faith], seizing upon a provision buried in the 'Fleet Sales Amendment,' a contract provision never pled or argued by EC as a basis for its bad faith claim." ⁴⁷ According to the record, the court first announced this theory following oral argument of the parties on the summary judgment motion.

47 Motion for Discretionary Review at 14-15.

First, we have searched the briefing below submitted in support of and in opposition to the motion for summary judgment. We find no reference to this contract provision for purposes of this motion. Second, we do not have a full report of proceedings for the oral argument on the motion that occurred on January 5, 2012. But GMAC represents to this court that EC did not argue this provision on which the judge relied in his oral decision. EC does not deny this assertion. Thus, it appears that the judge first raised this theory and did so without giving either party notice or the opportunity to be heard on it before ruling.

Turning to the provision on which the judge relied, it states as follows:

8. GMAC may take such [*17] actions as it deems appropriate to assure and enforce compliance with this Agreement. Including requesting, for audit purposes, verification from Dealer's customers the fact of delivery, possession, and amount, date and circumstances of payment of any Delayed Payment Privilege Vehicles, and the notification to appropriate persons of any security interest, assignment or other

claim in the delayed Payment Privilege Vehicles of GMAC. ⁴⁸

48 *Id.* at Appendix H, Exhibit C.

In reading the oral decision of the judge, it appears he used this provision as a basis for identifying what he considered were actions in which GMAC directly involved itself "in the management or operations of Everett Chevrolet." ⁴⁹ According to the court, this theory of lender liability was evidenced, among other things, by GMAC setting targets for cash injection, communicating to EC that it needed to sell more units, charging \$500 for auditing, charging \$10,000 for principal reduction, suspending the line of credit in October (before making demand for payment), refusing to "floor unencumbered new and used vehicles at EC's request," and other matters. ⁵⁰

49 *Id.* at Appendix B, Trial Court's Oral Ruling (Jan. 5, 2012) at 51.

50 *Id.* [*18] at Appendix B, Trial Court's Oral Ruling (Jan. 5, 2012) at 51-55.

The plain language of provision number 8 entitles GMAC to "enforce compliance with this Agreement," including, without limitation, payment of all sums due on demand. One could read the word "including" in the second sentence of this provision nonrestrictively so as not to limit GMAC's rights to those specifically enumerated in that sentence. But even if one does so, none of the examples that the judge identified appear to be properly

characterized as "involvement in management." Rather, each seems to be more properly characterized as a request that EC was free to either accept or disregard. In any event, each example is far less onerous to EC than the action taken in *Allied*, where Peoples exercised set-offs against Allied's bank accounts when that bank demanded payment of its loan. ⁵¹ And yet this court held that doing so in that case was not wrongful and was fully consistent with that bank's right to demand payment. ⁵²

51 *Allied*, 10 Wn. App. at 531.

52 *Id.* at 534-35.

Thus, the judge's new theory appears to violate the rule of *Badgett* and the other cases we discussed previously. This new theory appears to be nothing more than [*19] the imposition of a "free floating" duty of good faith on the contract of the parties.

Having determined that the trial court has committed probable error, we address the second question under *RAP 2.3(b)(2)*. That is whether the decision of the trial court "substantially limits the freedom of [GMAC] to act." For the reasons that we just explained, we conclude that this provision is satisfied. The denial of summary judgment under these circumstances has substantially limited GMAC's ability to establish by summary judgment a proper adjudication of this counterclaim of bad faith.

We grant discretionary review for further proceedings in this court.

Done this 16th day of August 2012.

Cox, J., Appelwick, J., Ellington, J.

R. Ex. 1



July 31, 2008

Mr. John Reggans, President
Everett Chevrolet, Inc.
7300 Evergreen Way
Everett, WA 98203

Dear Mr. Reggans:

Thank you for meeting with me on June 10, 2008 to discuss a number of concerns GMAC has with the unsatisfactory credit base, operating trends and wholesale performance of Everett Chevrolet, Inc. (the "Dealership"). This letter serves to confirm our discussion.

Based on an analysis of the Dealership's operating trends, repayment capacity and available security, GMAC is unable to increase the limit of the Dealership's Revolving Line of Credit or extend a working capital loan to the Dealership.

Further, the deteriorating operating trends and credit base of the Dealership and its poor wholesale performance increase GMAC's credit risk associated with the Dealership's account. In order to continue the financing arrangement between the Dealership and GMAC and to help mitigate GMAC's credit risk, GMAC requires, at a minimum, the following:

- By no later than October 31, 2008, an unencumbered capital injection of \$800,000 must be made into the Dealership.
- By no later than October 31, 2008, the personal guaranty of John Reggans of all obligations of the Dealership to GMAC must be provided to GMAC as additional security.
- As always, the Dealership must remit payments for vehicles "faithfully and promptly" upon their sale or lease, as required by the Dealership's Wholesale Security Agreement with GMAC, and strictly comply with all provisions of the Wholesale Security Agreement.

If the Dealership is unwilling or unable to comply with the above requirements, GMAC may suspend or terminate the Dealership's wholesale credit lines.

In addition, pursuant to the Dealership's Revolving Line of Credit Agreement with GMAC, in addition to interest charges, GMAC will bill the Dealership a minimum principal payment of \$10,000 each month.

Additionally, as we discussed, in accordance with the terms and conditions of the Dealership's Wholesale Security Agreement, effective August 1, 2008, GMAC will assess a fee of \$500.00 on audits ("Audit Fee"). The Audit Fee will appear on the Dealership's wholesale billing statement or a separate billing. GMAC, in its sole discretion, may waive the Audit Fee if the results of the audit reflect wholesale payoff delays of less than 25%.

You are reminded that:

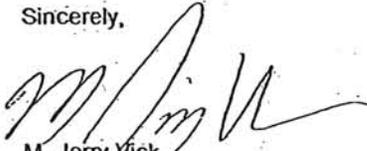
1. Audit results are for GMAC's use and will not necessarily be shared with you or the Dealership. Audit results may not be relied upon by third parties without GMAC's prior written consent.
2. Audit results do not constitute business, investment, financial, or other advice from GMAC to you or the Dealership.
3. Audits are based on information provided by the Dealership, and GMAC relies on the accuracy and completeness of such information in completing audits. GMAC does not ordinarily verify the accuracy or completeness of such information.

4. Audits conducted by GMAC do not create a fiduciary or other trust relationship between the Dealership and GMAC.
5. GMAC is not liable for any loss or damage incurred by you or the Dealership arising out of or related to any Dealership audit.

Nothing in this letter constitutes or should be construed as a waiver by GMAC of any of its rights or remedies under any of the Dealership's agreements with GMAC or applicable law, such rights being expressly reserved. Notwithstanding the foregoing, the Dealership's wholesale credit lines are expressly subject to the terms of the agreements under which they were extended. They are discretionary lines of credit and may be modified, suspended or terminated at GMAC's election, in its sole discretion.

Should you have any questions or comments, please do not hesitate to call me.

Sincerely,



M. Jerry Vick
Branch Manager

cc: R. Michele Smith, GMAC

R. Ex. 2

SECURITY AGREEMENT

In order to induce General Motors Acceptance Corporation (GMAC) to extend or continue credit to the undersigned dealership ("Dealer"), and in consideration of the future extension or continuation of such credit, the undersigned Dealer hereby grants GMAC a security interest in the following property of Dealer ("Collateral"):

1. *In all of Debtor's accounts, chattel paper, documents, instruments, general intangibles, contract rights and leases and leasehold interest, now existing or hereafter arising, and in all proceeds thereof; and*
2. *In all of Debtor's inventory, including vehicles, new and used, equipment, parts and materials used or consumed in Debtor's business, either now owned or hereafter acquired, and wherever located, either in possession of the Debtor, a warehouseman, a bailee, or any other person and all products thereof and all proceeds thereof; and*
3. *In all Debtor's equipment, including machinery, office equipment, fixtures and trade fixtures, together with all parts, fittings, accessories, special tools, renewals or replacement of all or any part thereof, either now owned or hereafter acquired and wherever located and all proceeds thereof.*

The Collateral subject to the security interest granted to GMAC hereunder secures the payment of any and all liabilities or obligations of Dealer to GMAC, matured or unmatured, now existing or hereafter arising, absolute or contingent, and whether created by Dealer as maker, endorser, drawer, guarantor or in any other capacity.

Dealer shall protect and secure the Collateral. Dealer will keep the Collateral free of taxes, liens or encumbrances and any sums which may be paid by GMAC, in its discretion, in release and discharge thereof shall be paid by Dealer to GMAC upon demand. Dealer will not sell, transfer or otherwise dispose of Collateral other than in the ordinary course of Dealer's business. GMAC shall have the right to inspect the Collateral and Dealer's books and records related thereto.

In the event Dealer defaults under any obligation due GMAC, or if the Collateral is in danger of misuse, loss, seizure or confiscation, GMAC may take immediate possession of the Collateral without demand or further notice, and without legal process. In furtherance thereof, Dealer shall, if GMAC so requests, assemble the Collateral and make it available to GMAC at a reasonable place designated by GMAC. GMAC shall have the right, and Dealer hereby authorizes and empowers GMAC to enter upon the premises wherever the Collateral may be and remove same, in accordance with applicable law. Dealer shall pay all expenses and reimburse GMAC for any expenditures, including reasonable attorney's fees and legal expenses, in connection with GMAC's exercise of any of its rights and remedies hereunder. In the event of such repossession by GMAC, in addition to the rights specified herein, all the rights and remedies afforded GMAC by applicable law shall apply.

The invalidity of any provisions of this Agreement shall not affect the validity of any other provision. This Agreement benefits GMAC, its successors and assigns, and binds the Dealer and its successors and assigns. This Agreement shall be governed by the laws of the State of Washington.

Executed this 15th day of June 1999.

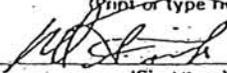
General Motors Acceptance Corporation

Everett Chevrolet-Geo, Inc.

(Dealer)

By: Wayne Fink

(Print or type name)


(Signature)

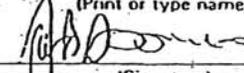
Title: Assistant Secretary

Address: 13810 SE Eastgate Way

Bellevue, WA 98005

By: John Reggans

(Print or type name)


(Signature)

Title: President

Address: 7300 Evergreen Way

Everett, WA 98203

R. Ex. 3

WHOLESALE SECURITY AGREEMENT

To: General Motors Acceptance Corporation (GMAC)

In the course of our business, we acquire new and used cars, trucks and chassis ("Vehicles") from manufacturers or distributors. We desire you to finance the acquisition of such vehicles and to pay the manufacturers or distributors therefor.

We agree upon demand to pay to GMAC the amount it advances or is obligated to advance to the manufacturer or distributor for each vehicle with interest at the rate per annum designated by GMAC from time to time and then in force under the GMAC Wholesale Plan.

We also agree that to secure collectively the payment by us of the amounts of all advances and obligations to advance made by GMAC to the manufacturer, distributor or other sellers, and the interest due thereon, GMAC is hereby granted a security interest in the vehicles and the proceeds of sale thereof ("Collateral") as more fully described herein.

The collateral subject to this Wholesale Security Agreement is new vehicles held for sale or lease and used vehicles acquired from manufacturers or distributors and held for sale or lease, and all vehicles of like kinds or types now owned or hereafter acquired from manufacturers, distributors or sellers by way of replacement, substitution, addition or otherwise, and all additions and accessions thereto and all proceeds of such vehicles, including insurance proceeds.

Our possession of the vehicles shall be for the purpose of storing and exhibiting same for retail sale in the regular course of business. We shall keep the vehicles brand new and we shall not use them illegally, improperly or for hire. GMAC shall at all times have the right of access to and inspection of the vehicles and the right to examine our books and records pertaining to the vehicles.

We agree to keep the vehicles free of all taxes, liens and encumbrances, and any sum of money that may be paid by GMAC in release or discharge thereof shall be paid to GMAC on demand as an additional part of the obligation secured hereunder. We shall not mortgage, pledge or loan the vehicles and shall not transfer or otherwise dispose of them except as next hereinafter more particularly provided. We shall execute in favor of GMAC any form of document which may be required for the amounts advanced to the manufacturer, distributor or seller, and shall execute such additional documents as GMAC may at any time request in order to confirm or perfect title or security in the vehicles. Execution by us of any instrument for the amount advanced shall be deemed evidence of our obligation and not payment therefor. We authorize GMAC or any of its officers or employees or agents to execute such documents in our behalf and to supply any omitted information and correct patent errors in any document executed by us.

We understand that we may sell and lease the vehicles at retail in the ordinary course of business. We further agree that as each vehicle is sold, or leased, we will, faithfully and promptly remit to you the amount you advanced or have become obligated to advance on our behalf to the manufacturer, distributor or seller, with interest at the designated rate per annum then in effect under the GMAC Wholesale Plan. The GMAC Wholesale Plan is hereby incorporated by reference.

GMAC's security interest in the vehicles shall attach to the full extent provided or permitted by law to the proceeds, in whatever form, of any retail sale or lease thereof by us until such proceeds are accounted for as aforesaid, and to the proceeds of any other disposition of said vehicles or any part thereof.

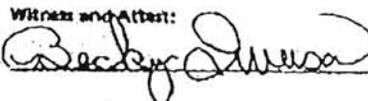
In the event we default in payment under and according to this agreement, or in our performance or compliance with any of the terms and conditions hereof, or in the event of a proceeding in bankruptcy, insolvency or receivership instituted by or against us or our property, or in the event that GMAC deems itself insecure or said vehicles are in danger of misuse, loss, seizure or confiscation, GMAC may take immediate possession of said vehicles, without demand or further notice and without legal process; for the purpose and in furtherance thereof, we shall, if GMAC so requests, assemble said vehicles and make them available to GMAC at a reasonable convenient place designated by it, and GMAC shall have the right, and we hereby authorize and empower GMAC, to enter upon the premises wherever said vehicles may be and remove same. We shall pay all expenses and reimburse GMAC for any expenditures, including reasonable attorney's fees and legal expenses, in connection with GMAC's exercise of any of its rights and remedies under this agreement.

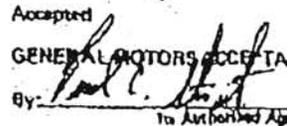
In the event of repossession of the vehicles by GMAC, then the rights and remedies applicable under the Uniform Commercial Code shall apply.

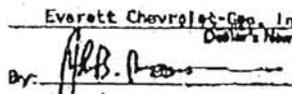
Any provision hereof prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its duly authorized representative this

10 day of Dec 1996.

Witness and Attest:


Accepted
GENERAL MOTORS ACCEPTANCE CORPORATION
By:  Asst. Treas.
To Authorized Agent

Everett Chevrolet-Cad. Inc.
Dealer's Name
By: 
His: President
7300 Evergreen Way, Everett, WA 98203
Agent of Dealer

P. O. Box 3517 Seattle, WA 98174
Address
GMAC 178
File in U.S.A. Form 11-02

R. Ex. 6

AMENDMENT TO WHOLESALE SECURITY AGREEMENT

This agreement, effective the date set forth below, amends the Wholesale Security Agreement dated 10 Dec., 1996, executed by and between the undersigned dealer ("Dealer") and General Motors Acceptance Corporation ("GMAC"), and any other amendment thereto (the "Wholesale Security Agreement").

RECITALS

Whereas, pursuant to the terms and conditions of the Wholesale Security Agreement, GMAC has agreed to finance the purchase of new and used vehicles which the Dealer acquires from manufacturers and distributors; and

Whereas, from time to time Dealer acquires new and used vehicles from other sellers, including, without limitation, auctioneers, dealers, merchants, customers, brokers, leasing and rental companies, and other suppliers (the "Sellers") which vehicles Dealer desires GMAC to finance (the "Other Vehicles");

Whereas, GMAC is willing to finance Dealer's acquisition of the "Other Vehicles", pursuant to the terms and conditions of the Wholesale Security Agreement and this amendment thereto.

AGREEMENT

Now THEREFORE, in consideration of the premises, Dealer and GMAC agree as follows:

- 1) The Wholesale Security Agreement is hereby amended so that the word "vehicles" as used throughout the Wholesale Security Agreement, shall -- in addition to the description contained therein -- mean and include all Other Vehicles which GMAC elects to finance for Dealer from time to time (the "Other Vehicle Advances").
- 2) Upon request from GMAC, Dealer shall provide it with satisfactory evidence of the identity, ownership, value, source, status, and other information concerning the Other Vehicles in connection with Other Vehicle Advances, including completion of the GMAC Floor Plan Advice Form (GMAC 178-1).
- 3) GMAC may deliver the proceeds from Other Vehicle Advances directly to Dealer or Sellers.
- 4) For all intents and purposes, the Wholesale Security Agreement remains in full force and effect, including, without limitation, that
 - a) Dealer agrees upon demand to pay to GMAC the amount it advances or is obligated to advance for each of the Other Vehicles at a rate of interest per annum designated by GMAC from time to time and then in force; and
 - b) Any and all credit lines provided by GMAC to Dealer are expressly subject to the written terms of the Wholesale Security Agreement, including this amendment, and are discretionary in that they may be modified, suspended or terminated at GMAC's election; and
 - c) To further secure all of the obligations which Dealer now or hereafter owes to GMAC pursuant to the Wholesale Security Agreement, Dealer grants to GMAC a security interest in each of the Other Vehicles now owned or hereafter acquired by Dealer, and any and all additions, replacements, substitutions and accessions pertaining thereto, and the proceeds thereof.

IN WITNESS WHEREOF, GMAC and Dealer have caused this agreement to be executed and delivered by its duly authorized representatives effective the 10 day of Dec., 1996.

General Motors Acceptance Corporation

By: Paul C. Stewart
Paul C. Stewart

Title: Assistant Treasurer

Evvett Chevrolet-Geo. Inc.

By: [Signature]

Title: President

GMAC Form W-176A
(5/91)

R. Ex. 7

GMAC 870 (Rev. 10-80)
Printed in U.S.A. 7024 7-04

**AGREEMENT AMENDING THE WHOLESALE SECURITY
AGREEMENT AND CONDITIONALLY AUTHORIZING
THE SALE OF NEW FLOOR PLAN VEHICLES ON A
DELAYED PAYMENT PRIVILEGE BASIS**

This Agreement is made and executed by and between the undersigned dealer ("Dealer") and General Motors Acceptance Corporation ("GMAC") effective the date set forth below.

WHEREAS, Dealer previously, or simultaneous with the execution of this Agreement, executed and delivered to GMAC a Wholesale Security Agreement, by which, among other things, (a) GMAC provides wholesale floor plan financing of motor vehicles for Dealer, and Dealer agrees to promptly pay to GMAC the actual amount financed, as each such financed motor vehicle is sold or leased by Dealer (the "Vehicle Amount Financed"); and (b) GMAC consents to Dealer selling and leasing such financed motor vehicles at retail in the ordinary course of business (the "Routine Disposition of Vehicles"); and

WHEREAS, Dealer has requested the privilege of delaying payment of the Vehicle Amount Financed in the limited instances where such financed motor vehicles are sold by Dealer to a purchaser for whom both Dealer and GMAC have agreed to a delayed payment period (the "Delayed Payment Privilege"); and

WHEREAS, Dealer and GMAC may have previously executed an Agreement for the Delayed Payment Privilege for New Floor Plan Units, which the parties hereby intend be superseded by this Agreement for all such transactions arising on or after the effective date hereof, and

WHEREAS, Dealer and GMAC desire and intend hereby to retain, in full force and effect, the validity, enforceability and relative priority of GMAC's security interest in any and all such financed motor vehicles as are sold or leased by Dealer pursuant to the Delayed Payment Privilege, notwithstanding GMAC's prior consent to the Routine Disposition of Vehicles, unless and until GMAC receives the Vehicle Amount Financed under the terms and conditions as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises, the covenants herein set forth, and for other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, Dealer and GMAC hereby agree as follows:

1. The aforementioned Wholesale Security Agreement and any and all documents, plans, instruments or agreements relating, modifying, substituting or amending thereto, executed between Dealer and GMAC are hereby amended in form and substance by inserting therein the following language as a separate and distinct paragraph:

Notwithstanding anything contained herein to the contrary, Dealer (i.e., we) agrees that GMAC's security interest in any and all vehicles sold or leased, more than one Vehicle per individual transaction, to a customer, and in which the full payment thereof by cash or on a properly perfected retail installment contract or other security agreement basis is not made contemporaneous with the delivery of such Vehicles by Dealer (the "Delayed Payment Vehicles"), shall remain in full force and effect in such Delayed Payment Vehicles and shall not be relinquished, extinguished, released or terminated as a consequence of such sale or release unless and until the customer makes payment, therefore directly to GMAC or jointly to Dealer and GMAC. Moreover, Dealer is expressly prohibited and shall not have any express, implied or apparent authority to sell, lease, transfer or otherwise dispose of any Delayed Payment Vehicles unless and until the express written permission of GMAC is first obtained, and then such authority shall be, in each and every instance, limited to the terms and conditions of such permission; it being further agreed that the terms of this paragraph shall not be altered, modified, supplemented, qualified, waived or amended by reason of any agreement (unless in writing executed by Dealer and GMAC), or by the course of performance, course of dealing, or usage of trade by Dealer and GMAC, of either of them.

2. Any previously executed Agreement for the Delayed Payment Privilege for New Floor Plan Units between Dealer and GMAC is superseded by the terms and conditions of this Agreement for all Delayed Payment Privilege transactions arising on or after the effective date thereof.

3. Dealer shall advise GMAC of each and every potential transaction in which Dealer requests GMAC to grant the Delayed Payment Privilege, and the period of time for which the Delayed Payment Privilege is being requested. Such request shall be made of GMAC in writing and on a form of the type and kind provided by GMAC from time to time. GMAC's consent, if any, to the request must be obtained prior to the sale, lease, transfer or delivery of any vehicles proposed by Dealer to be disposed of by the Delayed Payment Privilege (the "Delayed Payment Privilege Vehicles").

4. GMAC's consent to the Dealer's request for disposition of Delayed Payment Privilege Vehicles shall be further subject and contingent upon the following additional terms and conditions:

- (a) GMAC may, in its sole and exclusive discretion limit the number of Vehicles, amount outstanding and terms and conditions for which the Delayed Payment Privilege is requested by Dealer.
- (b) GMAC may, in its sole and exclusive discretion withdraw, cancel or suspend the Delayed Payment Privilege at anytime and for any reason upon a ten-day advance written notice and immediately if Dealer is in default of any agreement which Dealer has with GMAC; provided, however, that such withdrawal, cancellation or suspension shall not affect the rights, interests and duties under this Agreement prior thereto.

- (b) Dealer shall complete, execute and deliver to GMAC, immediately upon the delivery of Delayed Payment Privilege Vehicles, a form of the type and kind provided by GMAC from time to time (the "Delivery Schedule").
- (c) Dealer shall immediately pay GMAC the Vehicle Amount Financed upon the earliest of (i) demand by GMAC; or (ii) receipt of the amount due from the disposition of each of the Delayed Payment Privilege Vehicles; or (iii) the "Purchaser Payment Date" set forth on the applicable Delivery Schedule.
- (e) Dealer shall obtain from the person acquiring the Delayed Payment Privilege Vehicle a duly authorized and executed acknowledgement from the Purchaser confirming that the terms of sale include the continuation of GMAC's security interest in the Delayed Payment Privilege Vehicles. The acknowledgement shall be in writing and on a form of the type and kind provided by GMAC from time to time, which shall be delivered to GMAC prior to any sale, lease, transfer or delivery of any Delayed Payment Privilege Vehicle to such person (the "Acknowledgement of Purchaser").
- (f) The grant and exercise of the Delayed Payment Privilege by Dealer shall in no way extinguish, release or terminate GMAC's security interest in the Delayed Payment Privilege Vehicles unless and until the conditions described in the amending paragraph set forth in paragraph 1 of this Agreement and the aforesaid Acknowledgement of Purchaser are first fulfilled, which shall then and thereafter continue in the proceeds thereof.

5. GMAC shall have no duty or obligation to examine, review or consider the creditworthiness of any proposed or actual customer of Dealer for which Dealer seeks GMAC's consent to the Delayed Payment Privilege and any such examination, review or consideration by GMAC shall be for its sole and exclusive use and purposes; the Dealer expressly agreeing that any receipt or reliance on such information from GMAC would be gratuitous and unreasonable, respectively.

6. Dealer's obligation to pay GMAC for the Vehicle Amount Financed shall be absolute, unconditional and primary, notwithstanding (a) GMAC's consent to the Delayed Payment Privilege; or (b) default in the payment or acquisition terms by the customer of the Dealer for Delayed Payment Privilege Vehicles, or that of any of customer's surety, guarantor, co-obligor or lender; or (c) rejection or revocation of acceptance of any Delayed Payment Privilege Vehicles by such customer; or (d) the acceptance by GMAC of any assignment or proceeds from any Delayed Payment Privilege Vehicles; provided, however, that nothing in this paragraph is intended to permit payment to GMAC of any more than the greater of (i) the Vehicle Amounts Financed or (ii) the value of GMAC's security interest in the Delayed Payment Privilege Vehicles.

7. Upon demand by GMAC, Dealer shall provide GMAC with an assignment of all right, title and interest of the Dealer in and to the accounts, contract rights, sale proceeds or any other interest Dealer may then or thereafter have in the Delayed Payment Privilege Vehicle. Said assignment shall be for the purpose of additional security only and shall be on a form of the type and kind provided by GMAC from time to time.

8. GMAC may take such actions as it deems appropriate to assure and enforce compliance with this Agreement, including requesting, for audit purposes, verification from Dealer's customers the fact of delivery, possession, and amount, date and circumstances of payment of any Delayed Payment Privilege Vehicles, and the notification to appropriate persons of any security interest, assignment or other claim in the Delayed Payment Privilege Vehicles of GMAC.

In witness whereof the parties hereto execute this agreement the 10 day of Dec, 1976.

GENERAL MOTORS ACCEPTANCE CORPORATION
 By Paul C. Stewart
 its ASST. PRES.
 (Title)

Everett Chevrolet, Inc.
 (Dealer's Name)
 By [Signature]
 its President
 (Title)

R. Ex. 8

REVOLVING LINE OF CREDIT AGREEMENT

I.

THE PARTIES

This Revolving Line of Credit Agreement (the "Agreement") is made effective the 16 day of OCTOBER, 2000), by and between General Motors Acceptance Corporation ("GMAC"), a Delaware corporation, with its principal place of business at 200 Renaissance Center, Detroit, Michigan 48265, and EVERETT CHEVROLET-GEO, INC., a DELAWARE CORPORATION, with its principal place of business located at 7300 EVERGREEN WAY, EVERETT, WASHINGTON 98203 ("Borrower").

II.

THE RECITALS

- A. WHEREAS, GMAC is in the business of providing, among other things, various credit accommodations for use in assisting periodic cash flow needs and capital requirements; and
- B. WHEREAS, Borrower has requested, and GMAC is willing to provide, certain credit and finance accommodations in the form of a discretionary revolving line of credit to assist Borrower with cash flow needs and capital requirements (the "Line of Credit"), but only in accordance with the terms and conditions of this Agreement.

III.

THE AGREEMENT

NOW, THEREFORE, in consideration of the premises and the mutual promises herein contained, the sufficiency of which is hereby acknowledged, GMAC and Borrower hereby agree as follows:

- 1. The Line of Credit. Subject to all the terms and conditions of this Agreement, GMAC hereby establishes a discretionary revolving line of credit for the Borrower. The limits and availability of the revolving line of credit shall be determined by GMAC from time to time in its sole and absolute discretion and will be based upon, among other things, Borrower's financial condition and status, value of collateral pledged as security for the Line of Credit, and Borrower's performance of its obligations hereunder and under other agreements with GMAC.
 - (a) The Purpose. The Line of Credit shall be used by the Borrower to assist Borrower in the periodic cash flow needs of its dealership or cash or capital needs of its related dealerships or its related business entities.

- (b) Limitation and Availability. GMAC will notify Borrower at least monthly of the amounts available to Borrower hereunder. Notification shall be made by way of a monthly billing statement (the "Billing Statement"). Although, if circumstances dictate, GMAC may in its discretion notify Borrower of changes in availability by e-mail or fax or verbally, in person or by phone, with a courtesy confirmation in writing. Borrower may also obtain information regarding the amount of Borrower's account balance and the amount available to Borrower hereunder at GMAC's dealer loan website located at the following URL: www.gmacdealerloans.com ("Website"). Borrower shall not rely or cause a third party to rely on such information contained in the Website. Borrower agrees that at no time shall advances taken by Borrower under paragraph (c) below exceed the availability; provided, however, that if advances exceed availability for any reason, the excess amount shall be deemed to be part of the Line of Credit for all intents and purposes under this Agreement. Unless Borrower notifies GMAC in writing of any objection to any monthly Billing Statement (specifically describing the basis of such objection) within thirty (30) days after the date thereof, the Billing Statement shall (absent manifest error) be deemed final, binding and conclusive upon Borrower in all respects as to all matters reflected therein. Only those items expressly objected to in such notice shall be deemed to be disputed by Borrower.
- (c) Advances. Borrower may obtain advances (the "Credit Line Advances") available hereunder by (1) making a request in writing to GMAC at the Field Support Office that does business with Borrower or (2) by utilizing GMAC's electronic access system at the Website. The procedures, restrictions and instructions regarding Borrower's use of such electronic access system as modified from time to time, are posted on the Website (the "Account Terms of Access"), and if Borrower uses the electronic access system, Borrower agrees to comply with those Account Terms of Access. Credit Line Advances will be transferred by GMAC to Borrower's pre-designated account via Automated Clearing House ("ACH") deposit. Upon GMAC's request, Borrower will provide written confirmation to GMAC of any on-line request for a Credit Line Advance within five (5) calendar days.
- (d) Repayment. In addition to any other amounts Borrower agrees to pay and is obligated to pay GMAC as herein set forth, Borrower shall promptly and forthwith repay to GMAC the Credit Line Advances plus any accrued interest, as follows:
- (i) Permissive Payment. The Credit Line Advances may be prepaid in whole or in part at the option of the Borrower and without premium or penalty.
- (ii) Mandatory Repayment of Credit Line Advances.
- (A) The amount, if any, at a minimum, indicated on a Billing Statement as may be sent to Borrower by GMAC, payable by the due date shown on such statement.

- (B) That amount of the total Credit Line Advances which exceeds the availability set forth in the most current Billing Statement, or other means of notification provided by GMAC, must be immediately paid by Borrower to GMAC.
- (C) If demanded, the full amount of the Credit Line Advances plus accrued interest must be paid immediately upon demand by GMAC.
- (iii) Principal Repayments Via ACH Withdrawal. Principal repayments shall be made by Borrower designating the amount to be repaid at the Website. The repayments will be withdrawn from Borrower's pre-designated account via Automated Clearing House ("ACH") withdrawal.
- (e) Credit Line Availability Fee. Prior to the initial Credit Line Advance and annually thereafter, on the anniversary date of this agreement, Borrower shall pay to GMAC a credit line availability fee equal to ONE HUNDRED TWENTY-FIVE ONE THOUSANDS percent (0.125%) of the then approved Line of Credit.
- (f) Interest. The Credit Line Advances shall bear interest on the principal amount of and from the date of each advance to the date of repayment in full of the Credit Line Advances. Only one interest rate will apply to the Credit Line Advances at any given time. The rate of interest on the Credit Line Advances will be 300 basis points (one basis point equals one hundredth of one percent) above the previous month's average of the 30-Day LIBOR rate (as hereinafter defined). Such previous month's average of the 30-Day LIBOR rate as of the date of this Agreement is SIX AND SIXTY-TWO ONE HUNDREDS percent (6.62%). Upon each subsequent increase or decrease in the previous month's average of the 30-Day LIBOR rate, the rate of interest shall be increased or decreased by the same amount as the increase or decrease in the previous month's average of the 30-Day LIBOR rate, effective on the first day of the next monthly interest billing period. In no event shall the applicable interest rate exceed the maximum permitted by law.

The rate of interest in effect as of the date of this Agreement and applicable to the first monthly billing hereunder is NINE AND SIXTY-TWO ONE HUNDREDS percent (9.62%). The rate of interest applicable to any successive monthly billing period shall be 300 basis points above the previous month's average of the 30-Day LIBOR rate applicable as of the billing date.

Interest shall be calculated on the basis of a 360-day year for the number of actual days outstanding. Interest shall be billed by GMAC monthly as part of the Billing Statement and shall be due and payable as instructed therein. In no event shall the interest provided for herein exceed the maximum permitted by law, which the parties recognize may change from time to time. If acceleration or other events cause the interest contracted for, charged or received to be in excess of the lawful maximum,

Borrower will receive credits so that the interest will comply with the law and in no event will the interest contracted for, charged or received exceed the legal maximum.

This rate will not be subject to any Wholesale Incentive Plan reductions, which may be currently applicable to other outstanding loans.

The 30-Day LIBOR rate is defined as follows: The per annum rate of interest offered for 30-day deposits in U.S. Dollars for each day of a billing period that appears on the Telerate Screen page 3750 (British Banker's Association LIBOR setting) at approximately 11:00 a.m., London time. The 30-day LIBOR rate applicable to any day on which no rate is published will be the rate last quoted prior to such day. Previous month's average LIBOR rate will be based on the 30-day LIBOR quotes for the calendar days beginning on the 26th of the month prior to the previous month and ending with the 25th of the previous month.

Notwithstanding the foregoing, for purposes of determining the previous month's average of the 30-Day LIBOR rate of interest under this Agreement, the previous month's average of the 30-Day LIBOR rate shall be considered 2.00% per annum if the previous month's average of the 30-Day LIBOR rate established at any time is a figure which is less than 2.00% per annum.

It is understood that GMAC will retain the wholesale account of EVERETT CHEVROLET-GEO, INC. so long as the loan remains outstanding. If the wholesale account is transferred to another financing source, GMAC may, at its option, (a) declare the loan balance due and payable, or (b) increase the rate of this loan to 400 basis points above the then current previous month's average of the 30-day LIBOR rate (as defined herein). In no event shall the applicable interest rate exceed the maximum permitted by law.

- (g) Interest Payments. Interest as shown on the monthly Billing Statement will be withdrawn by GMAC from Borrower's pre-designated account on the due date designated in the monthly Billing Statement or within five (5) days after the due date (at GMAC's discretion), via Automated Clearing House ("ACH") withdrawal. Borrower will maintain sufficient funds in the account to cover the ACH withdrawals for interest.

2. Security Interest and Collateral Assignment. To secure (i) the prompt and complete payment of the Credit Line Advances, (ii) the payment and performance of any and all obligations and duties of Borrower of any and all other debts, obligations or duties of Borrower to GMAC now existing or hereafter arising by this Agreement, whether direct or indirect, absolute or contingent, or otherwise, Borrower hereby pledges, assigns and grants to GMAC a security interest in the following property and assets (the "Collateral"):

In all of Borrower's accounts, chattel paper, documents, instruments, general intangibles, contract rights and leases and leasehold interest, now existing or hereafter arising, and in all proceeds thereof; and

In all of Borrower's inventory, including vehicles, new and used, equipment, parts and materials used or consumed in Debtor's business, either now owned or hereafter acquired, and wherever located, either in possession of the Debtor, a warehouseman, a bailee, or any other person and all products thereof and all proceeds thereof; and

In all Borrower's equipment, including machinery, office equipment, fixtures and trade fixtures, together with all parts, fittings, accessories, special tools, renewals or replacement of all or any part thereof, either now owned or hereafter acquired and wherever located and all proceeds thereof.

Borrower shall execute and deliver to GMAC one or more agreements, documents, and financing statements, in form and substance satisfactory to GMAC, as may be required by GMAC to grant and maintain a valid, perfected first lien or security interest in the Collateral.

3. Handling of Collateral. With respect to the Collateral, Borrower shall:
- (a) maintain, secure and protect it from diminution in value; and
 - (b) keep it free and clear of the claims, liens, mortgage, pledge, encumbrances, security interests and rights of all others; and
 - (c) permit GMAC full and complete access to it in order to inventory, inspect and audit it, including review of Borrower's books and records pertaining thereto; and
 - (d) insure it against all risks in such amounts and with a carrier and deductibles acceptable to GMAC. Such insurance policy shall name GMAC as loss payee, to the extent of its interests therein and shall contain a cancellation provision only upon thirty (30) days prior written notice to GMAC.
 - (e) have good and marketable title to all of it.
4. Rights and Remedies of GMAC. Upon the occurrence of any of the following: (a) a default by Borrower in the payment, performance or observance of any obligation or covenant under this Agreement, or under any other agreement now or hereafter entered into with GMAC; (b) the institution of a proceeding in bankruptcy, receivership or insolvency by or against Borrower or its property; (c) GMAC deems itself insecure based on knowledge of any event, occurrence, circumstance or fact not directly caused by GMAC, which in the reasonable judgment of GMAC will have a material adverse effect on the Collateral, or on the collection by GMAC under any guaranty of the obligations of Borrower hereunder or if any substantial portion of Collateral is in danger of misuse, loss, seizure or confiscation; GMAC may take immediate possession of Collateral without demand or further notice and without legal process. In furtherance thereof, Borrower shall, if GMAC so requests, assemble Collateral and make it available to GMAC at a reasonable,

convenient place designated by GMAC. GMAC shall have the right, and Borrower hereby authorizes and empowers GMAC, to enter upon the premises wherever Collateral may be and remove same. In addition, GMAC shall have the right to exercise one or more of the following remedies:

- (i) institute proceedings to collect all or a portion of the Credit Line Advances, and any accrued or unpaid interest, and to recover a judgment for the same and to collect upon such judgment out of any property of the Borrower wherever situated;
 - (ii) to offset and apply any monies, credits or other proceeds of property of Borrower that has or may come into possession or under the control of GMAC against any amount owing by Borrower to GMAC;
 - (iii) sell or lease the Collateral, or any portion thereof, after five days' written notice at public or private sale for the account of the Borrower.
 - (iv) demand return of all checks issued to Borrower.
5. **Limit of Liability.** GMAC shall use its best efforts in handling the Automated Clearing House ("ACH") Credit Line Advance and ACH principal repayment and interest payment processes, but shall not be liable to Borrower, except for acts or omissions by GMAC which constitute gross negligence or willful neglect. In no event shall GMAC be liable for any delay in transmitting ACH Credit Line Advances or ACH principal repayments or interest payments due to equipment, communication or electronic failures or any other cause beyond GMAC's reasonable control. In any and all events, the liability of GMAC shall not exceed an amount equal to the actual dollar amount of the processing entries which are the subject of the claim and there shall be no liability of GMAC for incidental, consequential or punitive damages.
6. **Termination.** This Agreement is effective until terminated upon the earlier of any event described in subparagraph 4(a), 4(b) or 4(c), or thirty days after receipt of written notice of termination sent by either party to the other. All rights and remedies of GMAC or duties and obligations of Borrower extant upon termination of this Agreement shall continue in full force and effect until all obligations are paid in full.
7. **Suspension.** GMAC may, in its sole and absolute discretion and judgment, increase, decrease, change, or suspend its obligation to make Advances under the Line of Credit.
8. **Notice and Waivers.** The Borrower agrees, if this Agreement is placed in the hands of an attorney for collection, to pay reasonable legal fees whether suit be brought or not and then through trial and all levels of appeals and to pay all costs of collection as permitted by law. The Borrower hereby waives notice of presentment, presentment, notice of dishonor, and demand. The Borrower further waives rights to trial by jury of any and all matters relating in any way to this instrument to the extent permitted by law. The Borrower

acknowledges that they have consulted with counsel regarding this section, and each and every other section of this instrument.

9. Rights and Remedies Not Waived. No course of dealing between the Borrower and GMAC or any failure or delay on the part of GMAC in exercising any rights or remedies hereunder shall operate as a waiver of any rights or remedies of GMAC and no single or partial exercise of any rights or remedies hereunder shall operate as a waiver or preclude the exercise of any other rights or remedies hereunder.
10. Complete Agreement. Except as otherwise provided or referred to herein, there are no other agreements or understandings, either oral or in writing, between the parties affecting this Agreement or relating to any of the subject matters covered by this Agreement. No agreement between GMAC and Borrower which relates to matters covered herein, and no change in, addition to (except the filling in of blank lines), or erasure of any printed portion of this Agreement will be binding unless it is approved in a written agreement executed by a duly authorized representative of each party.
11. Severability. Any provision hereof prohibited by law shall be ineffective to the extent of such prohibitions without invalidating the remaining provisions hereof.
12. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the location of Borrower's principal place of business.

NOTICE IS HEREBY GIVEN THAT ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON STATE LAW.

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its duly authorized representative effective the date first above written.

GENERAL MOTORS ACCEPTANCE
CORPORATION ("GMAC")

By: 
Its: Asst. Treas.

EVERETT CHEVROLET-GEO, INC.
("BORROWER")

By: 
Its: President

R. Ex. 9

GMAC Financial Services

5208 Tennyson Parkway, Ste 120
Plano, TX 75024
800-343-4541

BRANCHES THROUGHOUT
THE WORLD

EXECUTIVE OFFICES
DETROIT

November 25, 2008

SENT VIA EMAIL AND FACSIMILE ON NOVEMBER 25, 2008

Mr. John Reggans
Everett Chevrolet, Inc.
7300 Evergreen Way
Everett, WA 98203

RE: Everett Chevrolet, Inc. ("Dealership")

Dear Mr. Reggans:

This letter confirms the conversation between you and GMAC on November 21, 2008 regarding the Dealership's failure to meet all of the requirements as stipulated in a letter sent to you by GMAC dated July 30, 2008. In that letter, GMAC required the following in order to continue the financing arrangements between the Dealership and GMAC:

- By no later than October 30, 2008, an unencumbered capital injection of \$800,000 must be made into the Dealership.
- By no later than October 30, 2008, the personal guaranty of John Reggans of all obligations of the Dealership to GMAC must be provided to GMAC as additional security.
- As always, the Dealership must remit payment for vehicles "faithfully and promptly" upon their sale or lease, as required by the Dealership's Wholesale Security Agreement with GMAC, and strictly comply with all provisions of the Wholesale Security Agreement.

As of the date of this letter:

- GMAC has received unencumbered funds in the amount of \$500,000.
- The personal guaranty of John Reggans of all obligations of the Dealership to GMAC has not been received.
- The Dealership has not remitted payment for vehicles "faithfully and promptly" upon their sale of lease, as required by the Dealership's Wholesale Security Agreement with GMAC, as proven on four separate wholesale inventory audits completed on August 22, 2008 (17 out of 22 sampled vehicles), September 4, 2008 (7 out of 16 vehicles sampled), September 23, 2008 (9 out of 15 vehicle sampled), and October 27, 2008 (5 out of 13 vehicles sampled).

As discussed, despite the fact that GMAC's requirements have not been fully met, GMAC is agreeable to temporarily continue the Dealership's credit line if the following requirements are met by November 30, 2008:

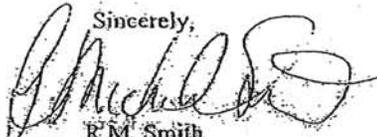
- The personal guaranty of John Reggans of all obligations of the Dealership to GMAC (document enclosed for signature).
- An unencumbered capital injection of \$300,000.00 into the Dealership.

If the Dealership is unwilling or unable to comply with the above requirements, GMAC may suspend or terminate the Dealership's wholesale credit lines.

Nothing in this letter constitutes or should be construed as a waiver of any of GMAC's rights or remedies under applicable law or under the Dealership's agreements with GMAC, all of which are expressly reserved.

Notwithstanding the foregoing, the Dealership's credit line is subject to the agreements under which it was extended. GMAC financing is demand financing of a discretionary nature and thus may be modified, suspended or terminated at GMAC's election, in its sole, absolute discretion.

Sincerely,



R.M. Smith
Operations Manager

R. Ex. 10



12-9-08

GMAC, please floor the following new units to Everett Chevrolet, Inc.'s floor plan; dealer #0585

Year	Model	VIN	310 Amount	Flooring %	FP Amount
2009	Silverado	105096	\$32,682.13	97%	\$31,701.67
2009	Silverado	104723	\$32,570.03	97%	\$31,592.93
2009	Silverado	108076	\$31,150.73	97%	\$30,216.21
2009	Silverado	116477	\$33,990.28	97%	\$32,970.57
2009	Cobalt	135500	\$18,044.65	97%	\$15,563.31
2009	HHR	557610	\$19,624.80	97%	\$19,036.06
2009	HHR	538226	\$19,161.60	97%	\$18,586.75

Attached invoices.

After flooring the above units, apply the proceeds to the following floor planned units:

VIN:	FP Amount:
802742 ✓	\$17,975.00
117580 ✓	\$13,895.00
245065 ✓	\$26,619.23
J01629 ✓	\$12,595.00
300916 ✓	\$27,295.00
135330 ✓	\$31,375.68
375480 ✓	\$10,068.75
202620 ✓	\$7,195.00
256554 ✓	\$26,779.88
268217 *	\$18,595.00
114711 *	\$30,728.90
116654 *	\$8,595.00
158878 *	\$19,695.00
267072 *	\$17,195.00

Paid down to \$12726.⁰⁴ remaining balance; along w/ * units to be paid off w/ attached check of \$93.5k.

Terry Cady

GMAC 000679
CONFIDENTIAL

7300 EVERGREEN WAY • EVERETT • WASHINGTON • 98203 • PHONE (425) 355-6690

R. Ex. 13

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IN THE SUPERIOR COURT OF WASHINGTON
COUNTY OF SHOHOMISH

GMAC, A Delaware Corporation

PLAINTIFF,

Vs.

EVERETT CHEVROLET, a Delaware
corporation, and JOHN REGGANS
and JANE DOE REGGANS and
their marital community

DEFENDANTS.

No. 08-2-10683-5

RESTRAINING ORDER

This matter came before the Court on January 14th, 2009, on
GMAC (hereinafter GMAC) Motion for a Temporary Restraining Order
against Defendants Everett Chevrolet and John Reggans & Jane Doe
Reggans (hereinafter Defendants) and Order to Show Cause.
Defendants received notice of the hearing by phone, facsimile
and electronic message on December 31, 2008.

RESTRAINING ORDER -1

Adorno Yoss Caley Dehhoda & Qadri
2340 130th Ave NE #D-260
Bellevue, WA 98005
(425) 869-4040 Fax (425) 869-4050

1 The Court heard oral argument of counsel for the GMAC and
2 counsel for the Defendants. The Court considered the pleadings
3 filed in this action and the following evidence including the
4 Declaration of GMAC Officer, Mr. Pedram Davoudpour and the
5 supporting conversion worksheet. Furthermore, GMAC has already
6 posted a bond with court in the amount of \$2,000,000.
7

8 Based on the argument of counsel and the evidence
9 presented, the Court finds that the GMAC is in danger of losing
10 their property and their remedies under the security agreement
11 signed by both parties and the Court finds that the Temporary
12 Restraining Order entered on December 31, 2008 provided remedies
13 that were too restrictive upon the Defendants. For the reasons
14 set forth above, IT IS HEREBY ORDERED:
15

16 1. GMAC's motion is granted with modification as outlined
17 below.

18 2. Defendants (with the exception of Mrs. Carmen Reggans)
19 their agents, servants, employees, and all persons in active
20 concert and participation with Defendants who receive actual
21 notice of this order, are enjoined from encumbering or
22 concealing any of the vehicles or other property in which the
23 GMAC has a security interest.
24
25

1 3. Defendants shall immediately make available to
 2 Plaintiff all records of vehicle sales as well as buyer orders,
 3 sales contracts, service agreements, and bank records and cash
 4 journals.

5 4. Defendants (with the exception of Mrs. Carmen Reggana)
 6 their agents, servants, employees, and all persons are enjoined
 7 from removing, ejecting, or forcibly evicting GMAC's personnel,
 8 employees, agents, and or collateral specialist agents. GMAC
 9 shall have access to the dealership at a location designated by
 10 the dealer principal and access to all records where records can
 11 be reviewed. GMAC shall not interfere with sales. *The GMAC*
 12 *Representative shall remain in the corner office with full access to the dealership.*

13 5. GMAC shall post a bond with the court in the amount of
 14 ~~\$786,623.00~~ *\$857,000.00* for the payment of costs and damages which may be
 15 incurred by any party found to be wrongfully restrained by this
 16 order.

17 6. ~~Everett Chevrolet shall post a bond with the court in~~
 18 ~~the amount of \$786,623.00 for the payment of costs and damages~~
 19 ~~which may be incurred by any party found to be wrongfully~~
 20 ~~restrained by this order.~~

21 7. This temporary restraining order shall expire January
 22
 23 22, 2009.
 24
 25

1 7. Vehicles may be sold with the understanding that GMAC
 2 shall receive the proceeds, with the exception of sales tax, of
 3 warranty contracts and service contracts and dealer shall
 4 receive eighty percent (80%) sales profit per vehicle
 5 transaction.

6
 7 8. GMAC shall honor dealers sales release privilege that
 8 was in place prior to December 5, 2008.

9 9. Cash sales proceeds are due immediately.

10 10. ~~Dealership's parts account shall be fully reinstated~~
 11 ~~and removed from C.O.D. status.~~

12 11. Dealership shall hold all ~~titles~~, keys and ~~titles~~.

13 11a. GMAC will hold title and MSO's.

14 12. Dealership will not sell any vehicle for sales

15 proceeds less than GMAC floorplanned amount.

16 12a. Dealer shall provide access to the storage in Mukilteo + bring
 17 ~~Dated January 14, 2009~~

18 back the vehicles currently not on the lot.

19 13. This order shall be enforced for all vehicles currently on
 20 the lot that may have been contracted for previously.

Judge *J. H. [Signature]*

1/14/09

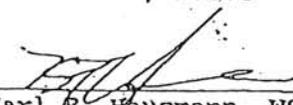
21 Presented by:
 22 Adorno Yoss Caley Dehkoda & Qadri

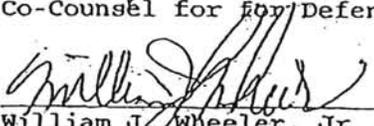
23 
 24 ~~Ramina Dehkoda-Stroke, WSBA #23412~~
 25 Attorney for Plaintiff GMAC

Ramina Dehkoda-Stroke
 WSBA #31136

1 Copy Received and Approved for Entry:

2 MARSH MUNDORF PRATT SULLIVAN
3 + MCKENZIE, P.S.C

4 
5 Karl F. Hausmann, WSBA #21006
6 Co-Counsel for Defendants

7 
8 William J. Wheeler, Jr., Esq.
9 Pennsylvania Bar No. 22443
Co-Counsel for Defendants

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RESTRAINING ORDER -5

Adorno Yoss Caley Dehkhoda & Qadri
2340 130th Ave NE #D-150
Bellevue, WA 98005
(425) 869-4040 Fax (425) 869-4050

R. Ex. 14

AUDIT ACTION ITEMS FOR DEALERSHIP

Dealership Name: EVERETT CHEV.

Contact at Dealer: TERRY CADY

Date of the Audit: 12-16-08 Release Period: 3

Primary Dealer #: 90893/0585

OPEN WHOLESALE:

	VIN	Customer Name	Date Sold	Due Date	SC Date	# of Days Delay	Comments
1	116753	u DORN	12/14	12/18			
2	136239	u BARNES	12/12	12/17			
3	169341	N LEE SCHWAB CHEV	12/15	12/18			
4	175631	N P. GARDY	12/14	12/18			
5	191295	N WESCH	12/14	12/18			
6	219221	u T. ANDERSON	12/13	12/18			
7	226372	u PENA	12/13	12/18			
8	237294	u NORTON	12/15	12/18			
9	260087	N CONYER	12/13	12/18			
10	323759	N JERRY BRUNN CHEV	12/14	12/18			
* 11	518114	u FERNANDEZ	2/11	12/16	12/15		PA WITH CASAFER LK.
12	A620374	BURNARDOS	12/18	12/18			
13							
14							
15							

OPEN DEMO:

	VIN	Comments
1	119542	NEED TO PLACE IN DEMO BROOKLYN EX
2	181653	136681 USED AS SHUTTLE - NEED IN DEMO
3	145643	NEED TO PUT IN DEMO - PARTS
4	241441	NEED TO PUT IN DEMO - PARTS
5	265639	NEED TO PUT IN DEMO - PARTS

OPEN DLR TRADE:

	VIN	Comments
1		
2		
3		
4		
5		

MISCELLANEOUS (e.g. auction units, titles, insurance claims, etc...)

	VIN	Comments
1	017614	UNIT IN STORAGE FOR J. REGGAN
2	131658	UNIT IN STORAGE FOR J. REGGAN
3	222350	J. REGGAN K. S. EN. OR HAS IN STORAGE
4	299228	J. REGGAN K. S. EN. OR HAS IN STORAGE
5	A28840	J. REGGAN DEMO
6		
7		
8		
9		
10		

Auditor: [Signature]

Received by Dealer: Terry Cady

Date: 12-16-08

R. Ex. 23

PURPOSE/REMITTER: EVERETT C. ROLET



CASHIER'S CHECK

No. 3374500611

93-38
929

DATE: DECEMBER 09, 2008

PAY NINETY THREE THOUSAND FIVE HUNDRED FIFTY SEVEN DOLLARS AND 00 CENTS

\$ 93,557.00

TO THE ORDER OF: GMAC

Location: 3374 S EVERETT ALBERTSONS

U.S. Bank National Association
Minneapolis, MN 55480

NON NEGOTIABLE

AUTHORIZED SIGNATURE

085 - 908 93
CLC
Payoff
085 0585 -

THIS DOCUMENT HAS AN ARTIFICIAL WATERMARK PRINTED ON THE BACK. THE FRONT OF THE DOCUMENT HAS A MICRO-PRINT BORDER. ABSENCE OF THESE FEATURES WILL INDICATE A COPY.



CASHIER'S CHECK

No. 3374500611

93-38
929

DATE: DECEMBER 09, 2008

PAY NINETY THREE THOUSAND FIVE HUNDRED FIFTY SEVEN DOLLARS AND 00 CENTS

\$ 93,557.00

TO THE ORDER OF: GMAC

PURPOSE/REMITTER: EVERETT CHEVROLET

Location: 3374 S EVERETT ALBERTSONS

U.S. Bank National Association
Minneapolis, MN 55480

AUTHORIZED SIGNATURE

⑈ 3374500611⑈ ⑆ 092900383⑆ 150080235297⑈

GMAC 000680
CONFIDENTIAL

R. Ex. 32

EVERETT CHEVROLET

TO: GMAC

Please floor the following units onto Everett Chevrolet, Inc.'s floor plan: Dealer number 0585

	Year	Model	VIN	AWV*	Flooring %	FP Amount	Mileage
✓ 80670MI	2008	Express Van	118982	\$20,037.50	80%	\$16,030.00	5
✓ D9667T	2007	Sonata	259944	\$10,300.00	70%	\$7,210.00	30,687
✓ 9664AT	2003	Jetta	076903	\$7,650.00	70%	\$5,355.00	54,086
✓ 9591A KTR	2006	M6	M34583	\$10,000.00	70%	\$7,000.00	40,865
✓ 9619AT	2007	Colorado	197284	\$12,900.00	70%	\$9,030.00	24158
✓ 80417AT	2008	Canyon	161952	\$13,100.00	70%	\$9,170.00	16,945
✓ D9660T	2003	Sante Fe	484123	\$6,700.00	70%	\$4,690.00	65,963
✓ 80232AT	2006	Silverado	204140	\$12,000.00	70%	\$8,400.00	29,712
✓ 9624AT	2004	RX300	063997	\$18,000.00	70%	\$12,600.00	52,335
✓ 80372AT	2004	Rendezvous	589343	\$7,500.00	70%	\$5,250.00	51,264
✓ 80412C1	2004	Taurus	196429	\$5,500.00	70%	\$3,850.00	51518
✓ 90046BT	2004	Impala	214968	\$9,000.00	70%	\$6,300.00	75575
✓ D9665T	2006	Mustang	265922	\$10,250.00	70%	\$7,175.00	25,230
✓ 9614AT	2004	S60	347398	\$14,200.00	70%	\$9,940.00	48,700

Further, please apply the proceeds and cashiers check in the amount of \$88,756.61 to pay off the following floor plan units:

VIN:	OSB:	
227340	\$31,641.45	80365
009398	\$16,792.50	80412B
127454	\$12,895.00	D9679
140568	\$22,800.80	80131
178438	\$25,317.83	90073
212665	\$34,157.03	80207
755513	\$6,030.00	C9682
133991	\$27,056.25	80621A
220150	\$9,488.75	90046A
365622	\$14,595.00	L9596

Terry Cady

88 754.61

GMAC 003087
CONFIDENTIAL



7300 Evergreen Way
Everett WA 98203

PHONE (425) 355-6690
Toll Free (800) 628-4161
www.everettchevrolet.com

R. Ex. 52

Everett Chevrolet Sold out of Trust Worksheet - 1/7/09

VIN	FP AMOUNT	SELL DATE	DUE DATE
219221	\$5,606.25	12/13/08	12/18/08
260087	\$24,786.90	12/13/08	12/18/08
222212	\$9,281.25	12/13/08	12/18/08
323759	\$17,899.35	12/14/08	12/18/08
116753	\$9,095.00	12/14/08	12/18/08
181295	\$37,508.43	12/14/08	12/18/08
237294	\$15,195.00	12/14/08	12/18/08
A62037	\$10,068.75	12/15/08	12/18/08
169341	\$42,379.50	12/15/08	12/18/08
233157	\$31,095.15	12/16/08	12/19/08
015652	\$12,780.00	12/16/08	12/19/08
210880	\$6,695.00	12/16/08	12/19/08
239757	\$24,224.85	12/16/08	12/19/08
223208	\$37,038.43	12/17/08	12/22/08
215641	\$7,595.00	12/19/08	12/24/08
218126	\$40,384.20	12/20/08	12/26/08
107642	\$14,895.00	12/22/08	12/26/08
317734	\$23,883.58	12/23/08	12/29/08
197097	\$22,008.95	12/23/08	12/29/08
239255	\$24,224.85	12/23/08	12/29/08
A55133	\$14,887.50	12/23/08	12/29/08
182006	\$10,237.50	12/24/08	12/30/08
243132	\$36,021.78	12/24/08	12/30/08
238294	\$37,606.40	12/26/08	12/31/08

140658	\$9,895.00	12/27/08	01/02/09
188989	\$47,895.55	12/29/08	01/02/09
191791	\$44,227.40	12/29/08	01/02/09
239513	\$24,224.85	12/30/08	01/05/09
222523	\$25,751.55	12/30/08	01/05/09
273424	\$19,417.10	12/30/08	01/05/09
124749	\$19,867.00	01/01/09	01/07/09
171189	\$24,853.33	01/01/09	01/07/09
145673	\$47,244.40	01/06/09	01/09/09

33	\$778,774.80	Total Due	
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\$171,820.43 Due 12/18/08
\$74,795.00 Due 12/19/08
\$37,038.43 Due 12/22/08
\$7,595.00 Due 12/24/08
\$55,279.20 Due 12/26/08
\$85,004.88 Due 12/29/08
\$46,259.28 Due 12/30/08
\$37,606.40 Due 12/31/08
\$102,017.95 Due 01/02/09
\$69,393.50 Due 01/05/09
\$44,720.33 Due 01/07/09
\$47,244.40 Due 01/09/09

R. Ex. 54

Summary Report Everett Chevrolet

As of March 20, 2009

FLOOR PLAN INVENTORY				
	Units	Principal Amount Owed	Valuation*	Variance
Repurchase Units (New) (1)	74	\$1,818,191.19	\$1,818,191.19	\$0.00
Non Repurchase Units (New) (2)	34	\$1,118,146.18	\$776,851.00	(\$341,295.18)
Unknown (New)	1	\$54,433.88	\$54,433.88	\$0.00
<i>Subtotal - New -</i>	<i>109</i>	<i>\$2,990,771.25</i>	<i>\$2,649,476.07</i>	<i>(\$341,295.18)</i>
Used (3)	72	\$669,129.69	\$738,350.00	\$69,220.31
Total	181	\$3,659,900.94	\$3,387,826.07	(\$272,074.87)

SOLD OUT OF TRUST (SOT)				
New	23	\$476,423.12	\$0.00	(\$476,423.12)
Used	13	\$131,685.16	\$0.00	(\$131,685.16)
Total:	36	\$608,108.28	\$0.00	(\$608,108.28)

LOANS				
Revolving Line of Credit (4)		\$708,000.00	\$424,348.85	(\$283,651.15)
Total		\$708,000.00	\$424,348.85	(\$283,651.15)

IN TRANSIT				
New (5)	22	\$674,629.80	\$674,629.80	\$0.00
Total		\$674,629.80	\$674,629.80	\$0.00

Total Obligation:		\$5,650,639.02		
Total Obligation Less In Transit vs. Collateral Value		\$4,976,009.22	\$3,812,174.92	(\$1,163,834.30)

Collateral Value Explanation

1) New Inventory (Repurchase Units): Collateral value is 1:1 (Obligation:Collateral Value) based on repurchase guidelines established by GM (2008 and 2009 model-year units less than 300 miles that were invoiced after September 1, 2007).

2) New Inventory (Non-Repurchase Units): Collateral value is based on average wholesale value established by GMAC auction value(s) based on make, model, condition, and miles of each unit.

3) Used Inventory (Floored): is based on Black Book "Clean" Wholesale Value as of 3-12-09.

4) Revolving Line of Credit: Collateral value is based on the following tangible assets of Everett Chevrolet, Inc. as reported on the January 31, 2009 Operating Report: Parts and Accessories of \$399,558 (scaled 60%); Equipment of \$13,302 and Fixtures of \$122,869 (scaled 85%) and Black Book Value of non-floored used inventory at Dealership, as of 3-20-09, of \$244,100 (no scaling). Asset scaling is based on nation-wide GMAC scaling guides for liquidating like assets.

5) In Transit units are assumed to be fully repurchased by GM.

Everett Repurchasable New Vehicle Inventory

March 11, 2009

VIN	Year	Model	Note Date	Days OS	Current OSB	Valuation	Mileage*
1GCEK14C48Z238659	2008	SILVERADO	03/04/08	371	\$24,224.85	\$24,224.85	6
1GCEK14C28Z238420	2008	SILVERADO	03/04/08	371	\$24,224.85	\$24,224.85	7
1GCEK14C68Z238033	2008	SILVERADO	03/04/08	371	\$24,224.85	\$24,224.85	11
1GCEK14C28Z237896	2008	SILVERADO	03/04/08	371	\$24,224.85	\$24,224.85	14
3GNEC12J08G245596	2008	AVALANCHE	03/18/08	357	\$32,412.48	\$32,412.48	28
1GCDT33E388221283	2008	COLORADO	06/05/08	278	\$25,209.00	\$25,209.00	33
1GNFK16328J225657	2008	K1500	04/04/08	340	\$53,142.70	\$53,142.70	47
2CNDL037186309069	2008	EQUINOX	03/30/08	345	\$29,240.73	\$29,240.73	70
1G1ZJ57748F296064	2008	MALIBU	07/15/08	238	\$26,402.60	\$26,402.60	72
1GCGG25C781118982	2008	EXPRESS VAN	12/11/08	89	\$16,030.00	\$16,030.00	80
1GCDT13E288174381	2008	COLORADO	05/05/08	309	\$24,891.53	\$24,891.53	100
1G1ZH57BX8F294710	2008	MALIBU	08/28/08	194	\$21,816.03	\$21,816.03	198
1GNFK16398R167130	2008	K1500	12/31/08	476	\$49,331.03	\$49,331.03	258
1G1ZJ577X8F266938	2008	MALIBU	06/12/08	271	\$26,033.28	\$26,033.28	295
1GCHK53609F114097	2009	SILVERADO	11/03/08	127	\$44,950.60	\$44,950.60	4
1GCGG25C091120266	2009	EXPRESS VAN	10/24/08	137	\$24,343.93	\$24,343.93	4
1G1ZG57B59F194244	2009	MALIBU	11/30/08	100	\$21,714.33	\$21,714.33	5
1G1ZG57B594197818	2009	MALIBU	11/14/08	116	\$21,714.33	\$21,714.33	5
KL1TD66E59B381179	2009	AVEO	10/31/08	130	\$12,181.08	\$12,181.08	5
1GNFK26389J108009	2009	K1500	10/09/08	152	\$51,341.83	\$51,341.83	6
1GCHK59K29E114256	2009	SILVERADO	11/03/08	127	\$36,461.65	\$36,461.65	6
1GCGG25C691134091	2009	EXPRESS VAN	11/21/08	109	\$24,343.93	\$24,343.93	7
1G1ZH57B794201588	2009	MALIBU	11/18/08	112	\$22,765.58	\$22,765.58	7
KL1TD66E89B309862	2009	AVEO	07/20/08	233	\$15,117.23	\$15,117.23	7
KL1TD66E39B378376	2009	AVEO	10/31/08	130	\$12,181.08	\$12,181.08	7
KL1TD66EX9B379024	2009	AVEO	10/30/08	131	\$12,265.63	\$12,265.63	7

KL1TD66E89B393679	2009	AVEO	11/19/08	111	\$12,181.08	\$12,181.08	7
KL1TD66E59B396877	2009	AVEO	11/14/08	116	\$12,181.08	\$12,181.08	7
KL1TD66E59B396930	2009	AVEO	11/19/08	111	\$12,181.08	\$12,181.08	7
1G1AK18H597135700	2009	COBALT	08/29/08	193	\$15,621.65	\$15,621.65	8
KL1TG66E39B310456	2009	AVEO	07/21/08	232	\$16,236.30	\$16,236.30	8
1GCEK29J69Z145219	2009	SILVERADO	12/02/08	98	\$31,549.93	\$31,549.93	9
1G1ZJ57B19F186515	2009	MALIBU	11/14/08	116	\$25,317.83	\$25,317.83	9
KL1TG66E39B311204	2009	AVEO	07/20/08	233	\$16,320.85	\$16,320.85	9
KL1TD66E79B320593	2009	AVEO	07/28/08	225	\$13,693.23	\$13,693.23	9
KL1TD66EX9B401605	2009	AVEO	11/19/08	111	\$12,181.08	\$12,181.08	9
1G1AK18H097130243	2009	COBALT	08/22/08	200	\$15,621.65	\$15,621.65	10
1GNFK13099R149271	2009	TAHOE K1500	11/21/08	109	\$39,091.63	\$39,091.63	10
1G1ZH57B194193276	2009	MALIBU	11/06/08	124	\$23,275.58	\$23,275.58	11
KL1TD66E59B378590	2009	AVEO	10/17/08	144	\$12,181.08	\$12,181.08	11
2CNDL33F796211593	2009	EQUINOX	08/28/08	194	\$24,863.38	\$24,863.38	12
1GCGG25C891122718	2009	EXPRESS VAN	10/28/08	133	\$24,343.93	\$24,343.93	13
1G1AK18H597137107	2009	COBALT	08/29/08	193	\$15,621.65	\$15,621.65	14
1GCEK29J59Z136544	2009	SILVERADO	11/20/08	110	\$31,061.18	\$31,061.18	15
3GNFK32009G144652	2009	AVALANCHE	11/24/08	106	\$49,004.75	\$49,004.75	15
KL1TG66E19B310455	2009	AVEO	07/20/08	233	\$16,236.30	\$16,236.30	15
2G1WB57N991174601	2009	IMPALA	10/06/08	155	\$23,179.68	\$23,179.68	16
KL1TG66E99B308209	2009	AVEO	07/18/08	235	\$16,570.05	\$16,570.05	17
1GNEV33D49S110453	2009	TRAVERSE	10/28/08	133	\$44,240.38	\$44,240.38	18
1GNDT33S492111876	2009	TRAILBLAZER	10/16/08	145	\$30,089.35	\$30,089.35	20
KL1TD66E59B308829	2009	AVEO	07/20/08	233	\$15,201.78	\$15,201.78	21
KL1TD66E19B304082	2009	AVEO	07/29/08	224	\$15,117.23	\$15,117.23	22
KL1TD66E09B320533	2009	AVEO	07/27/08	226	\$13,693.23	\$13,693.23	22
1G1ZG57B69F172897	2009	MALIBU	10/23/08	138	\$21,714.33	\$21,714.33	23

KL1TD66E29B306035	2009	AVEO	07/18/08	235	\$15,117.23	\$15,117.23	24
KL1TD66E39B320591	2009	AVEO	07/28/08	225	\$13,693.23	\$13,693.23	25
3GNCA13B19S557610	2009	HHR	12/09/08	91	\$19,036.06	\$19,036.06	26
1GCHK59K69E118620	2009	SILVERADO	11/17/08	113	\$36,461.65	\$36,461.65	28
KL1TG66E59B308322	2009	AVEO	07/21/08	232	\$16,570.05	\$16,570.05	28
1G1ZG57BX9F165404	2009	MALIBU	10/15/08	146	\$21,714.33	\$21,714.33	29
1G1ZJ57B79F175423	2009	MALIBU	10/29/08	132	\$25,317.83	\$25,317.83	29
KL1TG66E99B308324	2009	AVEO	07/20/08	233	\$16,570.05	\$16,570.05	31
KL1TG66E49B311258	2009	AVEO	07/21/08	232	\$16,320.85	\$16,320.85	54
KL1TG66E19B311203	2009	AVEO	07/21/08	232	\$16,320.85	\$16,320.85	69
1GCCS199898123218	2009	COLORADO	12/10/08	160	\$19,825.00	\$19,825.00	82
3GCCA85B69S538226	2009	HHR	12/09/08	91	\$18,586.75	\$18,586.75	86
1GNER33D69S104710	2009	TRAVERSE	10/13/08	148	\$41,000.13	\$41,000.13	89
1G1ZJ577894189063	2009	MALIBU	10/31/08	130	\$27,468.33	\$27,468.33	117
1G1AP18X197125867	2009	COBALT	08/20/08	202	\$23,470.38	\$23,470.38	120
1GNEV23D79S116578	2009	TRAVERSE	11/11/08	119	\$33,760.05	\$33,760.05	144
1GCEK29049Z105096	2009	SILVERADO	12/09/08	91	\$31,701.67	\$31,701.67	224
3GCEK23319G116477	2009	SILVERADO	12/09/08	91	\$32,970.57	\$32,970.57	239
3GNCA13B09S505921	2009	HHR	09/25/08	207	\$18,997.45	\$18,997.45	282
1G1YY26E885132179	2008	CORVETTE	05/30/08	284	\$73,927.48	\$73,927.48	7

TOTAL: \$1,818,191.19 \$1,818,191.19

UNITS: 74 74

* Mileage as of March 11, 2009;

Everett Non-Repurchasable New Vehicle Inventory

March 11, 2009

VIN	Year	Model	Note Date	Days OS	Current OSB	Wholesale Value (1)	Mileage
1G1A558H997135500	2009	COBALT	12/09/08	91	\$15,563.31	\$10,345.00	329
2CNDL63F396229221	2009	EQUINOX	11/03/08	127	\$29,813.20	\$20,127.00	336
1GCEK29JX9Z104723	2009	SILVERADO	12/09/08	91	\$31,592.93	\$23,485.00	409
1GNEV23D89S104570	2009	TRAVERSE	10/12/08	149	\$39,603.08	\$30,079.00	423
1GNEV23D89S119179	2009	TRAVERSE	11/20/08	110	\$39,603.08	\$30,073.00	479
1GCEK29J19Z108076	2009	SILVERADO	12/09/08	91	\$30,216.21	\$23,485.00	534
1GNFK23089J101734	2009	TAHOE K1500	08/22/08	200	\$46,557.18	\$32,656.00	545
1G1ZJ57B99F177044	2009	MALIBU	10/30/08	131	\$25,555.83	\$18,768.00	638
1GNEV23D79S108562	2009	TRAVERSE	10/24/08	157	\$39,182.33	\$29,140.00	801
1GNEV23D19S122912	2009	TRAVERSE	11/25/08	105	\$33,258.55	\$29,890.00	1167
1G1ZK57718F181287	2008	MALIBU	09/04/08	187	\$25,414.93	\$19,388.00	1309
1G1YY36U975125527	2007	CORVETTE	08/17/07	571	\$51,612.60	\$40,651.00	1859
1G1A558H097190112	2009	COBALT	11/05/08	140	\$16,681.90	\$10,444.00	2052
3GNFK12Y97G320797	2007	AVALANCHE	05/07/08	307	\$44,242.78	\$30,090.00	2214
1GCEC14X78Z315475	2008	SILVERADO	09/13/08	212	\$19,291.45	\$15,138.00	2625
1G1ZG57B29F159600	2009	MALIBU	10/28/08	133	\$20,864.43	\$15,459.00	3148
KL1TG66E49B310384	2009	AVEO	11/06/08	232	\$16,236.30	\$10,474.00	3698
KL1TG66E79B308323	2009	AVEO	11/06/08	233	\$16,570.05	\$10,479.00	4015
1G1AM18B187261623	2008	COBALT	11/06/08	350	\$21,708.65	\$11,031.00	4407
1G1ZK577184204675	2008	MALIBU	06/18/08	265	\$26,029.68	\$19,123.00	4702
1G1ZK577284194383	2008	MALIBU	02/19/08	422	\$27,187.18	\$19,420.00	4799
1G1ZJ57748F279328	2008	MALIBU	10/14/08	147	\$23,618.43	\$17,053.00	4811
2CNDL537186037037	2008	EQUINOX	10/25/07	502	\$28,410.51	\$18,679.00	4970
KL1TD66E69B306037	2009	AVEO	11/06/08	235	\$15,117.23	\$9,658.00	5061
1GNET13H882243132	2008	TRAILBLAZER	09/17/08	174	\$36,021.76	\$26,264.00	5424
1GNFK13098R183855	2008	TAHOE K1500	05/07/08	307	\$49,163.25	\$38,054.00	6944
1G1YY32G435109620	2003	CORVETTE	03/14/05	1457	\$33,624.08	\$21,900.00	45171*
1GCES14HX58116906	2005	SSR	11/18/04	1573	\$39,829.55	\$22,800.00	25554*
1G1YY34U455122440	2005	CORVETTE	04/13/05	1427	\$47,246.28	\$29,400.00	26743*
1G1YY26E365120874	2006	CORVETTE	01/11/07	789	\$61,745.25	\$41,500.00	18798*
3GCEC14Z26G241445	2006	SILVERADO	04/06/06	1069	\$17,978.98	\$7,500.00	60488*
1GNET13H862299228	2006	TRAILBLAZER	01/11/07	789	\$35,829.38	\$16,100.00	34678*
1G1YY26E575126189	2007	CORVETTE	05/07/08	750	\$63,391.38	\$44,700.00	16184*
3GNFK12Y18G222350	2008	AVALANCHE	09/26/08	396	\$49,384.43	\$33,500.00	15060**

TOTAL \$1,118,146.18 \$776,851.00
UNITS 34

Variance in OSB vs. Wholesale Value

(\$341,295.18)

(1) Wholesale Average is based on market research and data obtained from actual remarketing of vehicles and GMAC SmartAuction and GMAC SmartLane (Auction).

*Actual miles on these units were not obtained due to the model year being beyond GM's repurchase policy. Miles used are Wholesale Averages based on year of vehicle

**While the model year falls into the repurchase guidelines, the vehicle miles are likely beyond GM's repurchase guidelines as the unit is being used as a demo by the Dealer Principal

Everett Unknown If Repurchasable New Vehicle Inventory

March 11, 2009

VIN	Year	Model	Note Date	Days OS	Current OSB	Mileage
1G1YY36W685131658	2008	CORVETTE	08/15/08	207	\$54,433.88	Unit not on lot: previously in Mukiteo.

TOTAL: \$54,433.88
UNITS: 1

Everett Used Inventory Valuation

Valuations as of 3-12-09

VIN	Year	Model	Note Date	Days OS	Current OSB	Black Book*
1C3EL56R26N213547	2006	SEBRING	09/04/08	188	\$9,756.00	\$7,600.00
1C3LC46K18N113589	2008	SEBRING	06/30/08	254	\$12,600.00	\$11,000.00
1D4HB38N34F111694	2004	DURANGO	04/28/08	317	\$7,678.25	\$7,675.00
1D7HL48N13S301201	2003	DAKOTA	08/20/08	203	\$8,606.25	\$8,425.00
1D7HU18D44J237309	2004	RAM TRUCK	04/11/08	334	\$9,956.50	\$9,975.00
1FAFP55S84G196429	2004	TAURUS	12/11/08	90	\$3,500.00	\$5,450.00
1FMYU60E23UA37680	2003	EXPLORER	07/16/08	238	\$5,381.25	\$6,300.00
1G1AK18F387195021	2008	COBALT	11/24/08	107	\$8,095.00	\$9,350.00
1G1AK52F757634782	2005	COBALT	07/16/08	238	\$5,643.75	\$5,750.00
1G1AL18F687114994	2008	COBALT	11/24/08	107	\$7,795.00	\$10,200.00
1G1AL55F367622008	2006	COBALT	10/28/08	134	\$6,581.25	\$7,600.00
1G1AL55F567602293	2006	COBALT	06/11/08	273	\$7,795.00	\$7,600.00
1G1AL58F887215641	2008	COBALT	11/25/08	106	\$7,595.00	\$10,200.00
1G1ND52J03M654435	2003	MALIBU	11/12/08	313	\$3,159.25	\$4,200.00
1G1ND52J13M655058	2003	MALIBU	11/12/08	313	\$3,159.25	\$4,200.00
1G1ND52J33M655191	2003	MALIBU	11/12/08	313	\$3,159.25	\$4,200.00
1G1ND52J43M654938	2003	MALIBU	11/12/08	313	\$3,159.25	\$4,200.00

1G1ND52J53M654575	2003	MALIBU	11/12/08	313	\$3,159.25	\$4,200.00
1G1ND52J83M654537	2003	MALIBU	11/12/08	313	\$3,159.25	\$4,200.00
1G1ZG57B98F213506	2008	MALIBU	11/28/08	103	\$11,500.00	\$13,850.00
1G1ZT58N58F111091	2008	MALIBU	06/19/08	265	\$12,500.00	\$11,700.00
1G2MB33B36Y000129	2006	SOLSTICE	05/08/06	1,038	\$18,562.00	\$13,650.00
1G6DW677950122677	2005	STS	06/11/08	273	\$16,040.00	\$14,550.00
1G8AY12P95Z128831	2005	ION	11/13/08	118	\$7,162.50	\$8,400.00
1GBJG31R821145643	2002	EXPRESS CUTA	07/30/08	224	\$7,875.00	\$7,800.00
1GCCS136968269363	2006	COLORADO	10/28/08	134	\$10,218.75	\$13,450.00
1GCCS19H238253431	2003	S TRUCK	10/28/08	134	\$4,406.25	\$6,400.00
1GCDT19E178197284	2007	COLORADO	12/11/08	90	\$9,030.00	\$13,075.00
1GCEC14V23Z265639	2003	SILVERADO	07/30/08	224	\$6,506.25	\$7,450.00
1GCEC14X87Z161552	2007	SILVERADO	01/17/08	419	\$9,551.50	\$12,275.00
1GCEK19B56Z107642	2006	SILVERADO	09/22/08	170	\$14,895.00	\$14,800.00
1GCEK19V73E286036	2003	SILVERADO	10/28/08	134	\$8,362.50	\$10,400.00
1GCES14HX5B120468	2005	SSR	07/02/08	252	\$23,895.00	\$21,450.00
1GCES14P04B106939	2004	SSR	07/30/08	224	\$13,500.00	\$18,525.00
1GNDS13S982140635	2008	TRAILBLAZER	04/25/08	320	\$12,366.00	\$15,000.00
1GNDT13S172226372	2007	TRAILBLAZER	11/06/08	180	\$12,095.00	\$13,950.00
1GNDT13S252231819	2005	TRAILBLAZER	10/28/08	134	\$7,237.50	\$10,625.00

1GNDT13SX62255478	2006	TRAILBLAZER	11/13/08	118	\$8,793.75	\$11,800.00
1GNDV23L16D172616	2006	UPLANDER	10/22/08	140	\$6,595.00	\$8,500.00
1GNDV33107D136681	2007	UPLANDER	11/14/07	483	\$16,056.00	\$12,375.00
1GTDT19EX88161952	2008	CANYON	12/11/08	90	\$9,170.00	\$14,350.00
1GTEK19ZX6Z213260	2006	SIERRA	06/16/08	268	\$15,725.00	\$14,700.00
1J8GR48K98C119542	2008	GRAND CHEROK	06/04/08	280	\$14,850.00	\$16,875.00
1N4BL11D95N491059	2005	ALTIMA	07/01/08	253	\$10,593.75	\$12,200.00
1YVHP80D765M34583	2006	6	12/11/08	90	\$7,000.00	\$9,700.00
1ZVFT80N365265922	2006	MUSTANG	12/11/08	90	\$7,175.00	\$10,750.00
2FMDA58453BA47185	2003	WINDSTAR	09/18/08	174	\$5,756.25	\$6,275.00
2G1WD58CX89136639	2008	IMPALA	11/06/08	170	\$15,995.00	\$17,800.00
3A8FY48B88T104114	2008	PT CRUISER	03/25/08	351	\$9,360.00	\$9,250.00
3G5DB03E14S589343	2004	RENDEZVOUS	12/11/08	90	\$4,410.00	\$8,200.00
3GNDA13D16S640164	2006	HHR	11/13/08	118	\$7,781.25	\$7,900.00
3VWRF81K86M640688	2006	JETTA	09/17/08	175	\$12,318.75	\$11,000.00
3VWSK69M03M002986	2003	JETTA	11/13/08	118	\$6,356.25	\$6,150.00
3VWVH69M53M076903	2003	JETTA	12/11/08	90	\$5,355.00	\$6,850.00
4A4MN21S07E077276	2007	ENDEAVOR	04/11/08	334	\$11,019.75	\$11,750.00
5GZCZ63435S801231	2005	VUE	03/19/08	357	\$9,028.25	\$9,900.00
5NPEU46F87H259944	2007	SONATA	12/11/08	90	\$7,000.00	\$9,750.00

JA3AJ26E67U017614	2007	LANCER	06/02/08	282	\$8,437.00	\$8,500.00
JN1AZ34D66M310022	2006	350Z	08/14/08	209	\$16,575.00	\$13,450.00
JTHBA30GX45025614	2004	ES330	09/18/08	174	\$12,768.75	\$13,100.00
JTJHA31U840063997	2004	RX330	12/11/08	90	\$12,250.00	\$17,050.00
KL1TD66637B709043	2007	AVEO	10/23/08	139	\$5,795.00	\$7,500.00
KM8SC13D43U484123	2008	SANTAFE	12/11/08	90	\$4,690.00	\$6,700.00
KMHCM36C28U062097	2008	ACCENT	07/21/08	233	\$8,250.00	\$7,550.00
KNADC125556400466	2005	RIO	11/20/08	111	\$3,075.00	\$3,700.00
KNDMB233576107467	2007	SEDONA	04/11/08	334	\$10,074.75	\$9,200.00
SAJDA42C72NA28840	2002	XK8	05/07/08	391	\$20,384.00	\$15,300.00
WDBUF65183A168471	2003	MERCEDES BEN	10/28/08	134	\$13,125.00	\$14,600.00
WWWPD63B03P357967	2003	PASSAT	10/28/08	134	\$6,712.50	\$6,550.00
YS3FD59Y461143730	2006	93	10/20/08	142	\$13,695.00	\$13,000.00
YV1RH52Y642347398	2004	S60	12/11/08	90	\$8,822.94	\$15,900.00
YV1RS612552469725	2005	S60	11/20/08	111	\$8,493.75	\$10,500.00
Total:					\$669,129.69	\$738,350.00

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* Blackbook value used is average wholesale "clean" without options.

Everett Chevrolet Sold out of Trust Worksheet - 3/20/09

VIN	NU	FP AMOUNT	SELL DATE	DUE DATE	COMMENTS
169341	N	\$9,705.07	12/15/08	12/18/08	Sold to Lee Johnson Chevy, applied proceeds of \$500 rec'd from wholesaler unit 222629 on 2/19; also applied remaining proceeds of \$16.82 for unit 083481 on 2/19 after applying \$1,500 to VIN 181295 which had open balance of \$1,483.18. On 2/23, rec'd SC of \$21,957.99 for non floored VIN 181518; used proceeds to pay off balance due of \$2,300.38 for VIN 552083; left remaining proceeds of \$19,657.61; applied to this unit. 2/24 rec'd proceeds for unit 247462, non-floored unit, for \$12,500; applied proceeds to this unit.
210880	U	\$6,695.00	12/16/08	12/19/08	Sold to Simpson
233157	N	\$31,095.15	12/16/08	12/19/08	DT to Bill Pierre
239757	N	\$24,224.85	12/16/08	12/19/08	Sold to Bill McCurley Chevy
015652	U	\$12,780.00	12/16/08	12/19/08	Sold to Glover
223208	N	\$37,038.43	12/17/08	12/22/08	Sold to San Marino Rentals and Leasing
222212	U	\$9,281.25	12/19/08	12/24/08	Sold to Buzard
218126	N	\$40,384.20	12/20/08	12/26/08	Sold to Seaview Chevy
197097	N	\$22,008.95	12/23/08	12/29/08	Sold to Bass
239255	N	\$24,224.85	12/23/08	12/29/08	Sold to Dwayne Lane Chev
317734	N	\$23,883.58	12/23/08	12/29/08	Sold to C Speck Motors
A55133	U	\$14,887.50	12/23/08	12/29/08	Sold to Ross
182006	U	\$10,237.50	12/24/08	12/30/08	Sold to M. Collins
238294	N	\$37,606.40	12/26/08	12/31/08	Sold to Gilchrist Chevy
140658	U	\$9,895.00	12/27/08	01/02/09	Sold to Wostrel
182603	N	\$23,438.38	12/29/08	01/02/09	Sold to Masciotra
188989	N	\$47,895.55	12/29/08	01/02/09	Sold to Lamil Connections, Inc.
222523	N	\$25,751.55	12/30/08	01/05/09	Sold to Frontier Chevrolet - GMAC Financed Dealer - Check trade (chk sent to Everett 12/30/08; copy in file).
239513	N	\$24,224.85	12/30/08	01/05/09	Sold to Cha
273424	N	\$19,417.10	12/30/08	01/05/09	Sold to Lee Johnson Chevy
114531	N	\$5,074.44	01/02/09	01/07/09	Sold to McKeen; rec'd SC on 2/9/09 for \$15,427.53. Orig OSB was \$20,501.97; leaves open WS of \$5,074.44.
124749	U	\$19,867.00	01/01/09	01/07/09	Sold to Danitschek
171189	N	\$24,853.33	01/01/09	01/07/09	Sold to Palm
803936	U	\$1,756.91	01/02/09	01/07/09	Sold to Jennings: Received check (dated 1/5/09) for \$13,838.09 from Tesoro NW Fed CU; balance for \$1,756.91 remains open.
179865	N	\$7,763.41	01/05/09	01/08/09	Sold to Siern (D and K). Buyers order date is 1/5/09; Org OSB of \$50,608; received dealer check for \$29,224.42 on 1/21/09; remaining OSB of \$21,382.58; 1/27/09: Applied pre 1-14 retail lender funds plus funds from non-floored proceeds of VIN 423251 plus some retail lender proceeds.
299259	N	\$5,602.83	01/15/09	01/15/09	Sold to Tulmark; cash deal; due immediately. Dir received customer check for \$24,539.14; submitted dealer check to GMAC for \$18,793.87; remaining WS balance of \$5,602.83.
294212	N	\$1,046.94	01/17/09	01/17/09	Sold to Budmats; cash deal; due immediately. Dir received customer check for \$26288.26; submitted dealer check to GMAC for \$23,137.16 on 1/19/09; remaining WS balance of \$1,046.94.
204676	N	\$15,429.35	01/17/09	01/23/09	Sold to Burgess; Rec'd SC for \$10,383.15 on 1/22/09; remaining balance of \$15,429.35; Sold to Burgess; financed through Cib.
325966	N	\$4,813.36	01/26/09	01/26/09	Sold to Gasline Mechanical, Inc; cash deal; as of 1/27 GMAC has not rec'd funds. 1/28: rec'd \$14,201.84 via SC; remaining WS balance of \$4,813.36.
104954	N	\$17,292.43	01/26/09	01/29/09	Sold to Oberg; financed through JP Morgan; contract amount \$13,574.67; 1/29 rec'd SC amount for \$12,796.92; leaves remaining WS balance of \$ 17,292.43.

115599	N	\$3,648.12	02/02/09	02/02/09	Sold to O'Mack; cash deal due immediately; dealership received a check for \$42,815.52 from customer. Rec'd SC on 2/4/09 for 36,735.38; WS balance of \$3,648.12 remains open, org OSB of \$40,383.40
214968	U	\$5,250.00	03/09/09	03/09/09	Sold to R. Deblasi; cash deal; dlr rec'd cash on 3/9/09 from customer; as of 3/10/09 proc'd not rec'd.
109063	U	\$15,413.25	03/10/09	03/13/09	Sold to Christensen; financed deal.
183808	U	\$10,678.00	03/13/09	03/13/09	Sold to Eiford; buyers order dated 03/11/09, however, sales date determined to be 03/13/09 by auditor; cash deal: Dealer received Navy FCU check for full amount on 03/13/09.
351042	U	\$4,818.75	03/13/09	03/13/09	Sold to M. Tucker; Cash deal; as of 3/16/09 proceeds not received.
321033	U	\$10,125.00	03/14/09	03/14/09	Sold to R. Jackson; cash deal; dlr rec'd check from customer (Navy Federal) on 3/14/09; as of 3/20/09, no payment rec'd.

Updates:

	\$608,108.28	Total Due	
	\$9,705.07	Due 12/18/08	
	\$74,795.00	Due 12/19/08	
<u>Past Due:</u>	\$37,038.43	Due 12/22/08	
\$608,108.28	\$9,281.25	Due 12/24/08	
<u>Due Today or Future:</u>	\$40,384.20	Due 12/26/08	
	\$85,004.88	Due 12/29/08	
	\$10,237.50	Due 12/30/08	
<u>Total Due:</u>	\$37,606.40	Due 12/31/08	
\$608,108.28	\$81,228.93	Due 01/02/09	
	\$69,393.50	Due 01/05/09	
	\$51,551.68	Due 01/07/09	
	\$7,763.41	Due 01/08/09	
	\$5,602.83	Due 01/15/09	
	\$1,046.94	Due 1/17/09	
	\$15,429.35	Due 01/23/09	
	\$4,813.36	Due 01/26/09	
	\$17,292.43	Due 01/29/09	
	\$3,648.12	Due 02/02/09	
	\$5,250.00	Due 03/09/09	
	\$30,910.00	Due 03/13/09	
	\$10,125.00	Due 03/14/09	

NOTE: DUE DATES ARE BASED ON 3 DAY RELEASE PERIOD (FOR ALL UNITS SOLD PRIOR TO 1-14-09). CASH DEALS SOLD AFTER 1-14-09 ARE DUE IMMEDIATELY AND FINANCED DEALS HAVE 3 DAY RELEASE PERIOD.

TOTAL "Left-Over" Monies held in 27-1:
\$0.00

"Left-Over" Monies held in 27-1 from Retail Lenders Only:
\$0.00

TOTAL Shortage of Wholesale Payoffs:
\$64,728.17

Funds Received from GM Open Accounts:
\$80,000 rec'd 2/9/2009; applied towards VINs; 219221, 237294, 260087, 323759, A62037. ALL PIF.
Remaining funds of \$6,443.75 applied towards VIN 116753.
**\$80,000 sent to the court on 3/9/09.

GENERAL MOTORS DEALER OPERATING REPORT

BUSINESS UNIT		Financial Analyst's Capabilities Through Systems		UH NO						
1	DEALER "BAC" CODE			1	1					
2	1191504	DEALER NAME	EVERETT CHEVROLET	2	2					
3		ADDRESS	7300 EVERGREEN WAY	3	3					
4	FROM JAN 2009	CITY & STATE	EVERETT WA 98203	4	4					
5	THRU JAN 2009			5	5					
ASSETS		NO.	AMOUNT	LIABILITIES						
7	C CASH ON HAND	202	500	A CASH IN BANK CREDIT BALANCE	202	148650				
8	A CASH IN BANK	202		C ACCOUNTS PAYABLE - TRADE CREDITORS	200	225156				
9	S CONTRACTS IN TRANSIT	205	68477	C ACCOUNTS RECEIVABLE CREDIT BALANCE	209	3970				
10	S SECURITIES	200		C CUSTOMER DEPOSITS	203	6500				
11				C WARRANTY CLAIMS ADVANCE	205					
12	U TOTAL CASH AND CONTRACTS	(LINES 7 THRU 10)	68977	C NOTES PAYABLE - NEW VEHICLES & DEPOS	210	4412257				
13	R NET CUSTOMER RECEIVABLES	207	962510	C *MORIG DELAYED PAYMENT - ACCT 318						
14	R FACTORY RECEIVABLES	201	103405							
15	R DUE FROM FINANCE COMPANIES	208	4682	C NOTES PAYABLE - USED VEHICLES	211	877769				
16	R WARRANTY CLAIMS	209	6498	C NOTES PAYABLE - LEASE & RENTAL UNITS	212					
17	R INC. COMMISSIONS RECEIVABLE	204		C NOTES PAYABLE - OTHER	218					
18										
19	U TOTAL RECEIVABLES	(LINES 13 THRU 17)	1077095	C INTEREST PAYABLE	220	75303				
20	N DEMONSTRATORS (PAGE 2, LINE 20)	5	161715	C SALARIES, WAGES & COMM. PAYABLE	214	137450				
21	N NEW CARS (PAGE 1, LINE 20)	59	1294766	C INSURANCE PAYABLE	222	13642				
22	N NEW TRUCKS (PAGE 2, LINE 20)	64	2026314	C PAYROLL TAXES PAYABLE	223	22020				
23	N NEW MEDIUM DUTY TRUCKS (PAGE 1, LINE 20)	238		C SALES TAXES PAYABLE	216	38751				
24	V OTHER AUTOMOTIVE	239		C OTHER TAXES PAYABLE	225	8782				
25	E USED CARS (PAGE 1, LINE 20)	57	788780	C *MORIG DUES PAYABLE	217					
26	A USED TRUCKS (PAGE 1, LINE 20)	57	863353	C EMPLOYEE'S INCENTIVES/BOONUSES PAYABLE	219					
27	S PARTS AND ACCESSORIES	210	399558	E OWNERS BONUSES PAYABLE	221					
28	S TIRES	203		D RETIREMENT BENEFITS PAYABLE	224	1808				
29	O OIL, OIL AND GREASE	214	7970	S OTHER PAYABLES	227					
30	R PAINT AND BODY SHOP MATERIALS	215								
31	J SUBLET REPAIRS	206	998	TOTAL CURRENT LIABILITIES	(LINES 210 THRU 227)	5648353				
32	E WORK IN PROCESS - LABOR	217	1652	C OTHER RESERVES	232					
33	S OTHER	212								
34	T MISC. ASSETS RECEIVED IN TRADE	213		O LONG TERM DEBT	234	1362399				
35	S TOTAL LIQ. RESERVE	100	491135	O DEFERRED INCOME TAXES	235					
36	S TOTAL INVENTORIES	(LINES 20 THRU 29)	5051971	S TOTAL	(LINES 210 THRU 235)	7210752				
37	O PREPAID EXPENSES:									
38	T TAXES	210								
39	H INSURANCE	211								
40	H OTHER	214	439837							
41	U TOTAL CURRENT ASSETS	(LINES 12, 19, 20 THRU 39)	6637680							
42	V A ENGINEERING CARS & TRUCKS	216		TOTAL LIABILITIES	(LINES 210 THRU 235)	7210752				
43	K G LEASE & RENTAL CARS & TRUCKS (PAGE 1, LINE 40)	217		NET QUALIFIED LTD. \$						
44	O T LEASE & RENTAL ACCUMULATED DEP.			WDRG. DEALER		-81737				
45	U TOTAL CURRENT AND WORKING ASSETS	(LINES 41 THRU 43)	6637680	CAP. STANDARD - \$						
FIXED ASSETS				CORPORATION TYPE:						
46	U LAND	200		PROFIT OR LOSS SUMMARY						
47	U BLDGS. & IMPROV.	201		U TOTAL NEW	RET. NEW	RET. USED	PROFIT LOSS	NET WORTH	NO.	AMOUNT
48	U LEASE HOLDS	17995	2613	15382						
49	U II - HARDWARE	1381	688	693						
50	U II - SOFTWARE									
51	U M & S EQUIPMENT	210685	200224	10461						
52	U P & A EQUIPMENT	31717	28876	2841						
53	U FURN. & FIXTURES	449484	326615	122869						
54	U COMPANY VEHICLES	347397	249774	97623						
55	U OTHER									
56	U TOTALS (LINES 46-54)	1058659	808790	249869						
57	*MORIG. VEHICLES - CARS	8	TRUCKS	4						
58	A LIFE INSURANCE - CASH VALUE	201								
59	R NOTES & ACCOUNTS RECEIVABLE - OFFICERS	202								
60	R NOTES & ACCOUNTS RECEIVABLE - OTHER	204								
61	R OTHER INVESTMENTS & MISC. ASSETS	205		106666						
62										
63	U TOTAL OTHER ASSETS	(LINES 58 THRU 62)	106666							
64	U TOTAL ASSETS	(LINES 41 THRU 64)	6994415							
				PROFIT OR LOSS						
				TOTAL NET WORTH						
				TOTAL LIABILITIES & NET WORTH						

TOTAL OPERATION EXPENSE ANALYSIS

LN	NO	DESCRIPTION	Q1	Q2	Q3	Q4	YTD	Q1	Q2	Q3	Q4	YTD
1		NET SALES	654670	88510		654670	88510	436744		436744	217926	217926
2		GROSS PROFIT/MARGIN	97455	5733	1489	97455	5733	18573	4	18573	4	78882
3		EXPENSES										
4	11	WAGES & SALARIES	19336	198	1137	19336	198	1137	19336	104		19336
5	12	DELIVERY EXPENSE	3918	40	230	3918	40	230	3918	21		3918
6	13	POLICY WORK - VEHICLES	556	7	39	556	7	39	556	4		556
7		TOTAL VARIABLE	23910	245	1406	23910	245	1406	23910	129		23910
8	14	SALARIES - OWNERS	19200	197	293	19200	197	293	9500	52		9500
9	15	SALARIES - SUPERVISION	36387	373	556	36387	373	556	24839	34		24839
10	16	SALARIES - CLERICAL	8158	84	125	8158	84	125	3737	20		3737
11	17	OTHER SALARIES AND WAGES	27616	283	422	27616	283	422	1890	10		1890
12	18	ABSENTEE COMPENSATION	5000	51	76	5000	51	76	1572	9		1572
13	19	BONUSES - SUPERVISION										
14	20	TAXES - FEDERAL	16489	169	252	16489	169	252	5435	29		5435
15	21	EMPLOYEE BENEFITS	14370	147	219	14370	147	219	5511	30		5511
16	22	RETIREMENT BENEFITS										
17		TOTAL EMPLOYMENT	127220	1305	1943	127220	1305	1943	52784	284		52784
18	23	COMPANY VEHICLE EXPENSE	4105	42	63	4105	42	63	562	3		562
19	24	OFFICE SUPPLIES & EXPENSES	1114	11	17	1114	11	17	596	4		596
20	25	OTHER SUPPLIES	3823	34	51	3823	34	51	673	4		673
21	26	E-COMMERCE ADVERTISING FEES	18015	185	275	18015	185	275	18015	97		18015
22	27	ADVERTISING	9474	97	145	9474	97	145	4871	26		4871
23	28	ADVERTISING RESERVES										
24	29	CONTRIBUTIONS										
25	30	PROPERTY TAXES & SERVICE	244	3	4	244	3	4			244	
26	31	INFORMATION TECHNOLOGY SERVICES	15024	154	229	15024	154	229	6792	37		6792
27	32	OUTSIDE SERVICES (OTHER)	41050	421	627	41050	421	627	31790	171		31790
28	33	TRAVEL & ENTERTAINMENT										
29	34	REPAIRS & MAINTENANCE	10246	105	157	10246	105	157	5332	29		5332
30	35	LEGAL & AUDITING EXPENSE	37640	385	575	37640	385	575	18820	101		18820
31	36	TELEPHONE	4317	44	66	4317	44	66	2791	15		2791
32	37	TRAINING EXPENSE	6882	69	102	6882	69	102	6828	36		6828
33	38	INTEREST - FLOORPLAN	24276	249	371	24276	249	371	24276	131		24276
34	39	INTEREST - FLOORPLAN CREDIT										
35	40	INTEREST - MORTGAGE	5108	52	78	5108	52	78	2554	14		2554
36	41	INSURANCE - INVENTORY										
37	42	BANK FEE EXPENSE										
38	43	FREIGHT, POSTAGE & SHIPPING	3883	40	59	3883	40	59	1952	11		1952
39	44	MISCELLANEOUS EXPENSE	150	2	2	150	2	2			150	
40		TOTAL GENERAL EXPENSES	184551	1895	2821	184551	1895	2821	125752	777		125752
41	45	DEPRECIATION - EQUIPMENT	24120	247	358	24120	247	358	12060	65		12060
42	46	AMORTIZATION - LEASEHOLDERS										
43	47	REPAIRS - REAL ESTATE	284	3	4	284	3	4	132	1		132
44	48	DEPRECIATION BUILDINGS & IMPROVEMENTS										
45	49	TAXES - REAL ESTATE										
46	50	DEPRECIATION BUILDINGS & IMPROVEMENTS	3176	33	49	3176	33	49	1588	9		1588
47	51	INTEREST - MORTGAGES										
48	52	UTILITIES	11434	117	175	11434	117	175	5778	31		5778
49	53	PROPERTY TAXES	39014	400	596	39014	400	596	19558	105		19558
50	54	INSURANCE - OTHER	3806	39	58	3806	39	58	2190	12		2190
51	55	TAXES - OTHER	4209	43	64	4209	43	64	2959	16		2959
52	56	REPAIRS - EQUIPMENT	421	4	6	421	4	6	40			40
53	57	DEPRECIATION - EQUIPMENT	6293	65	96	6293	65	96	2927	16		2927
54	58	EQUIPMENT RENTAL	577	6	9	577	6	9	248	1		248
55		TOTAL FIXED OVERHEAD	54320	557	830	54320	557	830	27922	150		27922
56		TOTAL FIXED OVERHEAD (NET)	666191	3759	5594	666191	3759	5594	206458	12		206458
57		TOTAL OPERATING EXPENSES	390101	4003	5959	390101	4003	5959	230368	240		230368
58		OPERATING PROFIT (LOSS)	-292546	-3003	-4470	-292546	-3003	-4470	-211795	-140		-211795
59		NET ADDITIONS & DEDUCTIONS	4902	50	75	4902	50	75				
60		NET PROFIT (LOSS)	-287744	-2953	-4395	-287744	-2953	-4395				
61		BONUSES - EMPLOYEES										
62		BONUSES - OWNERS										
63		NET PROFIT (LOSS) (NET)	-287744	-2953	-4395	-287744	-2953	-4395				
64		INCOME TAXES										
65		NET PROFIT (LOSS) (GROSS)	-287744	-2953	-4395	-287744	-2953	-4395				

VARIABLE OPERATIONS - DEPARTMENT PROFITABILITY

LN	LN	LN	LN	LN	LN	LN	LN	LN	LN	LN	LN	LN
NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
1	NET SALES	253246	253246	169097	169097	615	615	13786	13786			
2	GROSS PROFIT/LOSS	14593	14593	14556	14556	-70	-70	-10606	-10606			
3	EXPENSES											
4	VEHICLE SALES/REPAIRS	9657	9657	9679	9679			1073	1073			
5	DELIVERY EXPENSE	1179	1179	2739	2739							
6	POLICY WORK - VEHICLES	109	109	547	547							
7	TOTAL VARIABLE	10945	10945	12965	12965			1210	1210			
8	SALARIES - OTHER	4800	4800	4800	4800			68	68			
9	SALARIES - SUPERVISION	11789	11789	13050	13050							
10	SALARIES - CLERICAL	1823	1823	1914	1914							
11	OTHER SALARIES AND WAGES	486	486	1404	1404							
12	ABSENTEE COMPENSATION	836	836	836	836							
13	INCENTIVES - SUPERVISION											
14	TAXES - PAYROLL	2730	2730	2705	2705							
15	EMPLOYEE BENEFITS	2678	2678	2933	2933							
16	RETIREMENT BENEFITS											
17	TOTAL PERSONNEL	25142	25142	27642	27642							
18	COMPANY VEHICLE EXPENSE	281	281	281	281							
19	OFFICE SUPPLIES & EXPENSES	381	381	315	315							
20	OTHER SUPPLIES	788	788	1441	1441							
21	E-COMMERCE ADVERTISING FEES	6205	6205	11810	11810							
22	ADVERTISING	2048	2048	2823	2823							
23	ADVERTISING REBATES							917	917			
24	CONTRIBUTIONS											
25	POLICY WORK - PARTS & SERVICE											
26	INFORMATION TECHNOLOGY SERVICES	3301	3301	3491	3491							
27	OUTSIDE SERVICES (OTHER)	14866	14866	16924	16924							
28	TRAVEL & ENTERTAINMENT											
29	MEMBERSHIP DUES & PUBLICATIONS	2666	2666	2666	2666							
30	LEGAL & AUDITING EXPENSE	9410	9410	9410	9410							
31	TELEPHONE	1363	1363	1428	1428							
32	DINING EXPENSE	4561	4561	2067	2067							
33	INTEREST - FLOORPLAN	20031	20031	4245	4245							
34	INTEREST - FLOORPLAN CREDIT							2226	2226			
35	INTEREST - NOTES PAYABLE (OTHER)	1277	1277	1277	1277							
36	INSURANCE - INVENTORY											
37	BAD DEBT EXPENSE											
38	FREIGHT, POSTAGE & SHIPPING	976	976	976	976							
39	MISCELLANEOUS EXPENSE											
40	TOTAL SEMI-FIXED	66598	66598	59154	59154							
41	RENT	6030	6030	6030	6030							
42	AMORTIZATION - LEASEHOLDS											
43	REPAIRS - REAL ESTATE	66	66	66	66							
44	DEPRECIATION/MAINTENANCE & IMPROVEMENTS											
45	TAXES - REAL ESTATE											
46	INSURANCE - BUILDING & IMPROVEMENTS	794	794	794	794							
47	INTEREST - MORTGAGES											
48	UTILITIES	2828	2828	2950	2950							
49	DEPRECIATION - EQUIPMENT	9718	9718	9840	9840							
50	INSURANCE - OTHER	1274	1274	916	916							
51	TAXES - OTHER	1797	1797	1462	1462							
52	REPAIRS - EQUIPMENT	20	20	20	20							
53	DEPRECIATION - EQUIPMENT	1466	1466	1461	1461							
54	EQUIPMENT RENTAL	124	124	124	124							
55	TOTAL FIXED	14399	14399	1352	1352							
56	TOTAL FIXED OVERHEAD	10613	10613	10031	10031							
57	TOTAL EXPENSES	11708	11708	11328	11328							
58	DEPARTMENT PROFIT/LOSS	10239	10239	1987	1987	-70	-70	-10606	-10606			
59	FINANCE EXPENSE & PROVISION FOR DUBIOUS ACCOUNTS	-2580	-2580	-802	-802							
60	PROVISION OF E&A											
61	EXPENSES	10497	10497	10675	10675	-70	-70					
62	ADJUSTMENTS TO INCOME											
63	BAD DEBTS RECOVERED											
64	CASH DISCOUNTS EARNED											
65	OTHER INCOME	6565	6565					1567	1567			
66	AMOUNT TO BALANCE											
67	NET ADDITIONS AND DEDUCTIONS					4902	4902					

CHEVROLET NEW VEHICLE SALES AND GROSS PROFIT ANALYSIS

LN NO	VARIABLE OPERATIONS	ACC. NO.								LN NO	
1	IMPALA	400A								1	
2		401A								2	
3	MICARLO	402A								3	
4		403A								4	
5	MALIBU	404A	1	22996	-693	-693	1	22996	-693	-693	5
6	CAMARO	405A									6
7	CAVALIER	406A									7
8	CORVETTE	407A									8
9	PRIZM	408A									9
10	AVEO	409A									10
11	COBALT	410A									11
12		411A									12
13		412A									13
14		413A									14
15		414A									15
16		415A									16
17		416A									17
18	OTHER CHEVY CAR	417A									18
19	OTHER CHEVY CAR	418A									19
20	TOTAL NEW CARS RETAIL	(BASES 1 THRU 19)	1	22996	-693	-693	1	22996	-693	-693	20
21	MEMO INTERNET CAR SALES	419A									21
22	TOTAL CAR FLEET	420A									22
23	TOTAL CAR INTERNAL	421A									23
24	TOTAL NEW CARS	(BASES 1 THRU 21)	1	22996	-693	-693	1	22996	-693	-693	24
25	VENTURE	423A									25
26	SSR	424A									26
27	G-VAN	425A									27
28	ASTRO	426A									28
29	BLAZER/TRAIL BLAZER	427A	1	31457	2122	2122	1	31457	2122	2122	29
30	S10/COLORADO	428A	3	75176	4685	1562	3	75176	4685	1562	30
31	SILVERADO/C4500-KODIAK	429A	3	69790	3218	1073	3	69790	3218	1073	31
32	AVALANCHE	430A									32
33	TAHOE	431A	1	51886	4314	4314	1	51886	4314	4314	33
34	SUBURBAN	432A									34
35	TRACKER	433A									35
36	EQUINOX	434A									36
37	HHR	435A									37
38	TRAVERSE	436A									38
39	MED C-T-W SERIES	437A									39
40	OTHER CHEVY TRUCK	438A									40
41	TOTAL NEW TRUCKS RETAIL	(BASES 25 THRU 40)	8	228309	14339	1792	8	228309	14339	1792	41
42	MEMO INTERNET TRUCK SALES	439A									42
43	TOTAL TRUCK FLEET	440A									43
44	TOTAL TRUCK INTERNAL	441A									44
45	TOTAL NEW TRUCKS	(BASES 41, 42, 44)	8	228309	14339	1792	8	228309	14339	1792	45
46											46
47	ACCESSORIES	457A									47
48	TOTAL NEW VEHICLES	(BASES 1 THRU 47)	9	251305	13646	1516	9	251305	13646	1516	48

PHYS

03/03/2009

MEMO-COMMERCIAL
VEHICLES

SALES AND GROSS PROFIT ANALYSIS

PAGE 01

LN NO	VARIABLE OPERATIONS	ACC. NO.				LN NO
1		400K				1
2		401K				2
3		402K				3
4		403K				4
5		404K				5
6		405K				6
7		406K				7
8		407K				8
9		408K				9
10		409K				10
11		410K				11
12		411K				12
13	TOTAL CARS NON-FLEET	(LINES 1 THRU 12)				13
14		412K				14
15		413K				15
16		414K				16
17	TOTAL CARS FLEET/NON-FLEET	(LINES 13 THRU 16)				17
18		415K				18
19		416K				19
20		417K				20
21		418K				21
22		419K				22
23		420K				23
24		421K				24
25		422K				25
26		423K				26
27		424K				27
28		425K				28
29		426K				29
30		427K				30
31		428K				31
32		429K				32
33		430K				33
34		431K				34
35		432K				35
36	TOTAL TRUCKS NON-FLEET	(LINES 17 THRU 35)				36
37		433K				37
38		434K				38
39		435K				39
40	TOTAL TRUCKS FLEET/NON-FLEET	(LINES 36 THRU 39)				40
41	FINANCE & INSURANCE AND PROTECTION PLANS	445K				41
42	ACCESSORIES	457K				42
43	FLEET & COMMERCIAL GROSS	(LINES 17, 41 THRU 42)				43
44						44
45	WARRANTY EXPENSE	637K				45
46	PERSONNEL EXPENSE	608K				46
47	SEMI-FIXED EXPENSE	630K				47
48	TRUCK ADVERTISING	640K				48
49	RENT & RENT EQUIVALENT	641K				49
50	FIXED EXPENSES	642K				50
51	TOTAL EXPENSES	(LINES 45 THRU 50)				51
52	FLEET & COMMERCIAL OPERATING PROFIT	(LINES 43 & 51)				52

PIRUS

PIRUS

001510

DEPARTMENTAL SALES AND GROSS PROFIT ANALYSIS

LN	NO	VARIABLE OPERATIONS CONTINUED	ACC. NO.									LN	NO
1		USED CARS RETAIL - CERTIFIED	454A	1	12047	1254	1254	1	12047	1254	1254	1	
2	U	USED CARS RETAIL - OTHER	454B	1	10248	4720	4720	1	10248	4720	4720	2	
3	S	*MEMO RECON. PER. - CAR RETAIL			568		1009		568		1009	3	
4	E	USED TRUCKS RETAIL - CERTIFIED	455A	2	62274	4654	2327	2	62274	4654	2327	4	
5	S	USED TRUCKS RETAIL - OTHER	455B	4	44328	2538	635	4	44328	2538	635	5	
6	S	*MEMO RECON. PER. - TRUCK RETAIL			836		988		836		988	6	
7	V	TOTAL USED RETAIL (LINES 1,2,4,5)		8	126897	13166	1646	8	126897	13166	1646	7	
8	H	USED CARS WHOLESALE	459	5	9300	550	110	5	9300	550	110	8	
9	I	USED TO NEW - CAR RETAIL RATIO	459	2.0:1	ADJ USED CAR INV.			2.0:1	ADJ USED CAR INV.			9	
10	C	USED TRUCKS WHOLESALE	459	5	30900	840	168	5	30900	840	168	10	
11	L	USED TO NEW - TRUCK RETAIL RATIO	459	0.8:1	ADJ USED TRK INV.			0.8:1	ADJ USED TRK INV.			11	
12	E	TOTAL USED WHOLESALE & ADJUSTMENT (LINES 8,9,10,11)		10	40200	1390	139	10	40200	1390	139	12	
13	S	USED OTHER AUTOMOTIVE	459									13	
14	V	TOTAL USED VEHICLE (PVR) (LINES 7,12,13)		18	169097	14556	809	18	169097	14556	809	14	
15	V	TOTAL NEW & USED (PVR) (LINE 14 PAGE 7 LINE 19)		27	422343	29249	1083	27	422343	29249	1083	15	
16		TOTAL FINANCE & INSURANCE AND PROTECTION PLANS			13786	-10606	-624		13786	-10606	-624	16	
17		TOTAL VARIABLE LEASE & RENTAL			615		PVR		615		PVR	17	
18		TOTAL VARIABLE (LINES 16,17,18)			436744	18573	1093		436744	18573	1093	18	
19		FIXED OPERATIONS										19	
20		CUSTOMER LABOR CARS & LIGHT DUTY TRUCKS	460A	290	44710	34626	7789	290	44710	34626	7789	20	
21		SEMI-CONTRACT LABOR CARS & LIGHT DUTY TRUCKS	460B									21	
22		OSERVICE LABOR CARS & LIGHT DUTY TRUCKS	460C									22	
23		CUSTOMER LABOR COM. FLEET & MED. DUTY TRUCKS	461A									23	
24		SEMI-CONTRACT LAB COM. FLEET & MED. DUTY TRUCKS	461B									24	
25	F	OSERVICE LABOR COM. FLEET & MED. DUTY TRUCKS	461C									25	
26		WARRANTY CLAIM LABOR	462	66	9422	6800	7217	66	9422	6800	7217	26	
27	I	INTERNAL LABOR	463	39	3866	2856	7394	39	3866	2856	7394	27	
28	K	NEW VEHICLE INSPECTION LABOR	464									28	
29		ADJUSTMENT COST OF LABOR SALES	465			1565				1565		29	
30	E	SHOP SUPPLIES	466		58000	42917	7399		58000	42917	7399	30	
31		SUBLET REPAIRS	467		6931	971	1637		6931	971	1637	31	
32	D	CUSTOMER PAINT LABOR	468	395	63931	43886	6865	395	63931	43886	6865	32	
33		CUSTOMER BODY LABOR	469									33	
34	C	WARRANTY CLAIM LABOR	470									34	
35		INTERNAL LABOR	471									35	
36		ADJUSTMENT COST OF LABOR SALES	472									36	
37	P	SUBLET REPAIRS	473									37	
38		PAINT & SHOP MATERIALS	474									38	
39		TOTAL SERVICE DEPT. (LINES 31,32)		395	63931	43886	6865	395	63931	43886	6865	39	
40		WARRANTY CLAIMS	475		8349	2293	2746		8049	2293	2746	40	
41	A	PARTS CARS & LIGHT DUTY TRUCKS P.O.	476		32732	11859	3623		32732	11859	3623	41	
42	P	PARTS COM. FLEET & MEDIUM DUTY TRUCKS P.O.	477									42	
43		PARTS QUICK SERVICE P.O.	478									43	
44		BODY CUSTOMER P.O.	479									44	
45	I	INTERNAL	480		2775	778	2804		2775	778	2804	45	
46	B	COUNTER - REPAIR	481		16093	5634	3501		16093	5634	3501	46	
47	O	WHOLESALE	482		86123	10679	1240		86123	10679	1240	47	
48	A	ACCESSORIES	483		4735	1553	3290		4735	1553	3290	48	
49	H	PURCHASE ALLOWANCES	484			2269				2269		49	
50		ADJUSTMENT - PARTS & ACCESSORIES INVENTORY	485									50	
51	S	TOTAL PARTS & ACCESSORIES (LINES 41,42,43)			150807	35065	2325		150807	35065	2325	51	
52		TIRES	486									52	
53		GAS, OIL & GREASE	487		3188	-71	-223		3188	-71	-223	53	
54		MISCELLANEOUS	488									54	
55		TOTAL OTHER (LINES 52,53,54)			3188	-71	-223		3188	-71	-223	55	
56		TOTAL PARTS & ACCESSORIES DEPT. (LINES 41,55)			153995	34994	2272		153995	34994	2272	56	
57		TOTAL FIXED (LINES 19,56)		215	217926	78882	3620	215	217926	78882	3620	57	
58		TOTAL ALL DEPARTMENTS (LINES 14,57)			654670	97455	1489		654670	97455	1489	58	

LEASE AND RENTAL ACTIVITY

PAGE 8

LN	LEASE & RENTAL DIRECT EXPENSES & INCOME	ACCT. NO.	UNITS	AMOUNT	UNITS	AMOUNT	UNITS	AMOUNT	UNITS	AMOUNT
1	INCOME REVENUE	22100								
2	RECURRING LEASE PAYMENTS	511								
3	MAINTENANCE INCOME	512								
4	PARTIAL MONTH PROGRAM INCOME	513								
5	LAIE PAYMENT CHANGE	514								
6	RENTAL INCOME	515	615	615	100			615	615	
7	ADMINISTRATIVE FEE	516								
8	OTHER LEASE REVENUE	517								
9	TOTAL LEASE REVENUE	515	615	615	100			615	615	
10	DIRECT COST	22100								
11	INTEREST	711								
12	AMORTIZATION	712								
13	INSURANCE ON SERVICE VEHICLES	713								
14	LICENSE, TITLE & TAX	714								
15	POLICY - LEASE & RENTAL VEHICLES	715								
16	MAINTENANCE & REPAIRS	716	585	585	1114			585	585	
17	RENT - SUBLET UNITS	717								
18	OTHER	718								
19	TOTAL DIRECT COSTS	716	585	585	1114			585	585	
20	GROSS PROFIT AFTER DIRECT COST	22100	-70	-70	1114			-70	-70	
21	MEMO - SELLING PRICE OF RECALLED VEHICLES	3100								
22	MEMO - DISPOSITION EXPENSE	3100								
23	GAIN/LOSS ON DISPOSITION	3100								
24	GROSS PROFIT/INCOME	3100	-70	-70	-1114			-70	-70	
25										
26										
27										
28										
29										
30										
31										
32										
33	INVENTORY ANALYSIS		UNITS	AMOUNT						
34	NEW LEASES FOR LEASE	217A								
35	DEMOS/STANDARDS	217B								
36	TERMINATED NOT DISPOSED	217C								
37	MEMO OVER 30 DAYS									
38	RECALLED VEHICLES	217D								
39	LEASED VEHICLES	217E								
40	RENTAL VEHICLES	217F								
41	LEASED EQUIPMENT	217G								
42	RECALLED EQUIPMENT	217H								
43	LEASE & RENTAL - FINANCE									
44	INSURANCE & PROTECTION PLAN ACTIVITY									
45	INSURANCE COMMISSION EARNED	511								
46	INSURANCE CHARGEBACKS	711								
47	ACCESSORIES	512								
48	GM PROTECTION PLANS	513								
49	OTHER PROTECTION PLANS	514								
50	FINANCE & INSURANCE MANAGER COMMISSIONS	715								
51										

* Customers Returned = Returned into Wholesale Leases plus, Returned into Retail Transactions plus, Extension of Lease or Financing plan, buyouts

EVERETT CHEVROLET
JAN 2009
01/31/2009

GM2004 FINANCIAL STATEMENT EXCEPTION REPORT

CURRENT EARNINGS FOR JANUARY \$-287,743.59

* PLEASE ENTER THE ABOVE AMOUNT INTO YOUR
JANUARY CURRENT EARNINGS MEMO ACCOUNT.

ADJUSTMENT TO CURRENT EARNINGS FOR JANUARY \$0.00

* PLEASE ENTER THE ABOVE AMOUNT INTO YOUR
JANUARY CURRENT EARNINGS MEMO ACCOUNT.

NOTE: IN ROUNDING THIS STATEMENT TO WHOLE DOLLARS, THE
FOLLOWING ENTRIES WERE MADE TO OFFSET THE DIFFERENCE
BETWEEN ACTUAL AND ROUNDED FIGURES. THESE ENTRIES
WERE MADE ON THE FINANCIAL STATEMENT ONLY. THEY
DID NOT, AND SHOULD NOT, AFFECT THE GENERAL LEDGER.

NET EFFECT OF ROUNDING ON THE BALANCE SHEET

\$-1.59

* THIS AMOUNT WAS ADDED INTO PAGE 1 'TO BALANCE'.

NET EFFECT OF ROUNDING ON THE STATEMENT OF INCOME AND EXPENSE

\$-4.41 MTD

\$-4.41 YTD

* THIS AMOUNT WAS ADDED INTO THE CURRENT MONTH COLUMN
ON LINE 66 AND TO THE YEAR-TO-DATE COLUMN OF THAT SAME
LINE IN THE ADDITIONS TO INCOME SECTION ON PAGE 3.
THE NET ADDITIONS OR DEDUCTIONS ARE CARRIED FROM PAGE 3
TO LINE 59 ON PAGE 2.

Everett In Transit New Vehicle Inventory
March 11, 2009

VIN	Year	Model	Note Date	Days OS	Current OSB	Mileage*
1GNFK13039J120153	2009	TAHOE K1500	12/05/08	95	\$39,091.63	IT
1GCHK59K89E123558	2009	SILVERADO	12/05/08	95	\$36,461.65	IT
1GCHK59K09E123599	2009	SILVERADO	12/05/08	95	\$36,461.65	IT
1GCHK59K19E125698	2009	SILVERADO	12/17/08	83	\$36,924.90	IT
1GNEV23D09S126336	2009	TRAVERSE	12/07/08	93	\$39,182.33	IT
1GCHK59K39E127372	2009	SILVERADO	12/22/08	78	\$36,461.65	IT
1GNEV23D89S132997	2009	TRAVERSE	12/21/08	79	\$32,068.55	IT
1GCGG25C791135461	2009	EXPRESS VAN	11/24/08	106	\$24,339.78	IT
3GCEK33M99G156675	2009	SILVERADO	12/14/08	86	\$40,712.93	IT
3GCEK23M49G156982	2009	SILVERADO	12/15/08	85	\$35,263.58	IT
3GCEK23M89G160209	2009	SILVERADO	12/21/08	79	\$35,093.58	IT
3GCEK13C59G160511	2009	SILVERADO	12/19/08	81	\$31,259.65	IT
1G1ZH57B99F203430	2009	MALIBU	12/16/08	84	\$23,275.58	IT
2CNDL23F096228150	2009	EQUINOX	10/14/08	147	\$25,129.25	IT
2CNDL23FX96232562	2009	EQUINOX	12/08/08	92	\$25,821.05	IT
2G1WD57C491240545	2009	IMPALA	12/05/08	95	\$32,401.78	IT
1G1AP58X897242093	2009	COBALT	12/11/08	89	\$24,463.13	IT
2G1WB57N191243359	2009	IMPALA	12/08/08	92	\$23,898.60	IT
1G1AP18XX97246901	2009	COBALT	12/19/08	81	\$24,418.13	IT
3GNCA53V89S600843	2009	HHR	12/22/08	78	\$23,908.30	IT
3GNCA53V19S601803	2009	HHR	12/23/08	77	\$23,908.30	IT
3GNCA53V29S603530	2009	HHR	12/25/08	75	\$24,083.80	IT

Total \$674,629.80
Total Unit 22

R. Ex. 56

North American Operations
General Motors Corporation
Dealer Accounting (3129)
PO Box 82530
Phoenix, AZ 85082-2530



CHECK No. 002462057

AMOUNT \$50,000.00

EVERETT CHEVROLET-GEAR
RANDOLPH BRANCH 085*
PO BOX 650300
DALLAS TX 75265-0300

Sam A. Albee

The Chase Manhattan Bank, N.A.
Syracuse, New York

AUDIT

⑈002462057⑈ ⑆021309379⑆ 601⑈ 2⑈ 21757⑈

REMITTANCE ADVICE

VENDOR
JUNE NO GM 80239908

1

North American Operations

General Motors Corporation
Dealer Accounting (3129)
PO Box 82530
Phoenix, AZ 85082-2530

DETAILS BEFORE DEPOSITING:

CHECK NO. 002462057

PAYMENT DATE 02/05/09

PAYOR NAME EVERETT CHEVROLET-GEAR

REGISTER NO. DESCRIPTION	INVOICE DATE	DOC. REFERENCE NUMBER	% DISC.	INVOICE AMOUNT	DISC. AMOUNT	NET AMOUNT
PARTIAL PAYMENT	02-20-09	00927447 PO BOX 61-30-09	00.0000	50,000.00	00.00	50.00
TOTAL				50,000.00	00.00	50.00

Per dram
271
FEB 08 2009

P.S

R. Ex. 66

PAUL DRENON 2 1-644-2198

AUDIT ACTION ITEMS FOR DEALERSHIP

Dealership Name: EVERETT CHEV

Contact at Dealer: BECKY (LAST) TANKS
with license

Date of the Audit: 8-22-08

Release Period: 3

Primary Dealer #: 0585

OPEN WHOLESALE:

VIN	Customer Name	Date Sold	Due Date	SC Date	# of Days Delay	Comments
1 011949						NO TITLE FOR LEASER 947A
2 067447	PELAYO	8/16	8/21		1	DLR CAN'T PAY
3 101283	A GERLACH	8/18	8/21		1	" " "
4 106727	B. JOHNSON	8/17	8/21		1	" " "
5 113280	F HUERTA	8/17	8/21		1	" " "
6 133165	M. TARRANT	8/18	8/21		1	" " "
7 143734	W. DAVIS	8/18	8/21	8/22	1	" " "
8 146898	W. LESTY	8/16	8/21		1	" " "
9 176993	A. CRAWFORD	8/21	8/26			3113.60
10 177723	P. HAYDEN	8/16	8/21		1	" " "
11 192172	S. WATSON	8/12	8/15		3	" " "
12 226421	BUADE CHEV	8/21	8/26			31102.98
13 230800	A. SEAMAN	8/16	8/21		1	" " "
14 251807	PARTS	8/15	8/20		2	" " "
15 258233	S. CRAWFORD	8/18	8/21		1	" " "

OPEN DEMO:

VIN	Comments
1	
2	
3	
4	
5	

OPEN DLR TRADE:

VIN	Comments
1	
2	
3	
4	
5	

MISCELLANEOUS (e.g. auction units, titles, insurance claims, etc...)

VIN	Comments
1 104808	MISSING SMART AWARDON TITLE BACK TO 6-8 - NEED PAYOFF
2 145643	PARTS TRK NEED TO PUT IN DEMO
3 194809	NEED TO PUT IN DEMO & WHITE
4 654435	NEED TO PUT ON SHOP RENTAL
5 654537	" " " " " "
6 654575	" " " " " "
7 654938	" " " " " "
8 655058	" " " " " "
9 A39161	MISSING TITLE NEED PAYOFF
10	

Auditor: [Signature]

Received by Dealer: [Signature]

Date: 8/22/08

AUDIT ACTION ITEMS FOR DEALERSHIP

Dealership Name: _____

Contact at Dealer: _____

Date of the Audit: _____

Release Period: _____

Primary Dealer #: _____

OPEN WHOLESALE:

	VIN	Customer Name	Date Sold	Due Date	SC Date	# of Days Delay	Comments
001	309842	D. HOOPER	8/21	8/26			15117.23
	311324	T. DSEDA	8/14	8/19		3	DLR Credit Pay
	348813	R. SMITH	8/12	8/15		3	" " "
	379560	P. HALL	8/12	8/15		3	" " "
956	104808	D95					NO TITLE IN FILE
	A89161						NO TITLE IN FILE
101	A128576						NO TITLE IN FILE
	116777	D. GLEESON	8/20	8/25			
	351328	S. MARLE	8/15	8/20		2	DLR Credit Pay
	136752	T. TRUONG	8/17	8/21		1	" " "

OPEN DEMO:

	VIN	Comments
1		
2		
3		
4		
5		

OPEN DLR TRADE:

	VIN	Comments
1		
2		
3		
4		
5		

MISCELLANEOUS (e.g. auction units, titles, insurance claims, etc...)

	VIN	Comments
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		

Auditor: [Signature]

Received by Dealer: [Signature]

Date: 8/22/08

R. Ex. 69

GMAC FINANCIAL SERVICES

Mailing Address: P.O. Box 650300 Dallas, TX 75265-0300
Telephone: 1-800-343-4541 ext. 2073

BRANCHES THROUGHOUT
THE WORLD

EXECUTIVE OFFICES
DETROIT

October 16, 2008

John Reggans
Everett Chevrolet, Inc.
7300 Evergreen Way
Everett, WA 98203

Re: Everett Chevrolet-Geo, Inc. ("Borrower") Revolving Line of Credit Agreement

Dear Mr. Reggans:

Everett Chevrolet-Geo, Inc. is the Borrower under the Revolving Line of Credit Agreement dated October 16, 2000 ("Agreement"). Due to current market conditions:

- GMAC can no longer make this credit line available to the Borrower and hereby suspends its obligation to make Credit Line Advances to the Borrower as of the date of this letter; and
- GMAC needs to raise the rate of interest on any outstanding Credit Line Advances to 600 basis points above the previous month's average of the 30-day LIBOR rate.

This rate increase requires an amendment of the Agreement that must be signed by the Borrower and GMAC. As such, GMAC proposes to amend Section 1(f) of the Agreement, which is captioned "Interest", to read as follows:

1. Strike the first paragraph in its entirety and replace it with the following:

"The Credit Line Advances will bear interest on the principal amount of and from the date of each advance to the date of repayment in full of the Credit Line Advances. Only one interest rate will apply to the Credit Line Advances at any given time. The rate of interest on the Credit Line Advances will be 600 basis points (one basis point equals one hundredth of one percent) above the previous month's average of the 30-Day LIBOR rate (as hereinafter defined). Such previous month's average of the 30-Day LIBOR rate as of October 1, 2008 is Two and Seventy Two One Hundreds percent (2.72%). Upon each subsequent increase or decrease in the previous month's average of the 30-Day LIBOR rate, the rate of interest will be increased or decreased by the same amount as the increase or decrease in the previous month's average of the 30-Day LIBOR rate, effective on the first day of the next monthly interest billing period. In no event will the applicable interest rate exceed the maximum permitted by law.

2. Strike the second paragraph in its entirety.

The foregoing amendments would be effective on December 1, 2008, and all other paragraphs of Section 1(f) and all other terms and conditions of the Agreement will remain unchanged and in full force and effect as written.

PL
X69

Please indicate the Borrower's agreement to this amendment, effective December 1, 2008, by signing below where indicated and return a signed copy of this letter to GMAC at the address indicated above by October 31, 2008.

If GMAC does not receive the Borrower's signed agreement by October 31, 2008, then:

- GMAC will deem the ERLC Agreement terminated effective November 30, 2008.
- The Borrower must pay the full amount of the Credit Line Advances plus accrued interest by November 30, 2008.

In the interim, the ERLC Agreement remains unchanged and in full force and effect as written.

If you have any questions about this matter, please contact me at telephone number 972-649-2086.

Capitalized terms used in this letter and not otherwise defined in it have the meanings ascribed to them in the Agreement.

Sincerely,

Michele Smith
Operations Manager

<u>Acknowledged and Agreed</u>
Everett Chevrolet, Inc.
Signature: 
By (print name): <u>JOHN B. REGGANS</u>
Title: <u>PRESIDENT</u>
Date: <u>10/30/08</u>

R. Ex. 76

GMAC FINANCIAL SERVICES

5208 Tennyson Parkway, Ste 120
Plano, TX 75024
(972) 649-2086 fax: (972) 649-2218

December 8, 2008

Mr. John Reggans
Everett Chevrolet, Inc.
7300 Evergreen Way
Everett, WA 98203

Re: Everett Chevrolet, Inc. ("Dealership")

Dear Mr. Reggans:

On November 25, 2008, GMAC sent the Dealership a letter regarding certain requirements as stipulated from a previous letter sent to you on July 30, 2008. The requirements that were to be met by November 30, 2008 were:

- Provide GMAC with your personal guaranty of all obligations of the Dealership to GMAC.
- An unencumbered capital injection of \$300,000.00 into the Dealership.

As of December 1, 2008, neither of these requirements had been met.

Further, GMAC sent the Dealership another letter dated November 6, 2008, which required principal balance reduction payments totaling \$172,279.00 on the following units by November 30, 2008:

- Prior model-year units financed by GMAC that have been in the Dealership's inventory for more than 180 days.
- Used vehicles financed by GMAC that have been in the Dealership's inventory for more than 120 days.

As of December 8, 2008, GMAC has not received these principal reduction payments.

Lastly, on December 5, 2008, GMAC conducted a wholesale inventory audit which revealed 75% payment delays (12 out of 16 vehicles sampled). It was determined that eight vehicles financed by GMAC, totaling \$131,637.98, were due on or before December 5, 2008. As of December 8, 2008, GMAC has not received payment for these vehicles.

Despite the Dealership's promise under its Wholesale Security Agreement to pay GMAC on demand for amounts advanced, as of the date of this letter, GMAC has not received the aforementioned payments. Therefore, the Dealership is in default under the Wholesale Security Agreement. As a result, GMAC has suspended the Dealership's wholesale credit line, effective December 9, 2008, and GM has been notified to remit to GMAC all accounts owed to the Dealership.

Nothing in this letter constitutes, or may be construed as, a waiver of GMAC's rights or remedies, all of which are expressly preserved.

If you have any questions or concerns regarding this matter, please feel free to contact me at 972-649-2086.

Sincerely,

R.M. Smith
Operations Manager

R. Ex. 77

GMAC FINANCIAL SERVICES

GMAC Dallas Regional Business Center
5208 Tennyson Parkway, Suite 120
Plano, TX 75024
1-800-343-4541 Ext. 2063

SENT VIA FEDEX AND EMAIL TO JOHN.R@EVCHEV.COM

December 15, 2008

Mr. John Reggans, President
Everett Chevrolet, Inc.
7300 Evergreen Way
Everett, WA 98203

Re: Wholesale Credit Line of Everett Chevrolet, Inc. ("Dealership")

Dear Mr. Reggans:

As you know, GMAC has communicated with you on several occasions this year about the declining creditworthiness of the Dealership. Due to its concerns, GMAC has requested in various communications that certain actions be taken within a specified period of time in order to reduce the risk to GMAC. Beginning with the meeting on June 10, 2008 between you and Jerry Vick, the requested actions included, among other things:

- Make an injection of unencumbered funds in the amount of \$800,000 into the Dealership
 - This was only partially achieved; only \$500,000 was invested
- Provide your personal guaranty of the Dealership's obligations
 - This has not been done yet
- Remit vehicle payments "promptly and faithfully" as required under the Wholesale Security Agreement ("WSA")
 - Dealership wholesale payment performance has not improved, as determined by audits taken on 8/22/2008, 9/04/2008, 9/23/2008, 10/27/2008, 11/11/2008, 11/20/2008, and 12/05/2008. Most notably, the recent sale out of trust on December 5, 2008 of approximately \$132,000 was unacceptable, and is a serious default under GMAC's WSA.
- Pay principal reductions as billed on prior model year inventory, as well as on used vehicles financed more than 120 days
 - To date, reduction payments have not been made, in full, as billed.

GMAC also advised you on numerous occasions that the Dealership has exceeded its credit line limit and has had an excessive number of financed vehicles in inventory for an extended period of time. As of the date of this letter, the Dealership's New Vehicle Credit Line is at 110 units (temporarily increased on 10/1/08 to 138 units) with 165 units currently financed by GMAC, which equates to a 196 days supply based on the October 31, 2008 GM Operating Report (54 of the 165 units currently financed by GMAC are Prior Model Year Units [2008 and older]). The Dealership's Used Vehicle Credit Line is at 110 units with 89 units currently financed by GMAC (38 units have been financed greater than 120 days).

Due to the above, this letter is to advise the Dealership that GMAC has decided to terminate the Dealership's wholesale credit line and terminate the Dealership's Revolving Line of Credit Agreement with GMAC dated October 16, 2000 (the "Revolving Line of Credit").

Accordingly, GMAC hereby demands full payment of all amounts due, including principal, unpaid accrued interest and any other charges, in connection with the Dealership's wholesale credit line and all amounts due under the Dealership's Revolving Line of Credit (all such amounts, along with any accrued interest and applicable fees, the "Dealership Obligations"). The principal amounts of such Dealership Obligations are as follows:

- Dealership's wholesale line of credit \$5,530,666.13
- Dealership's Revolving Line of Credit Agreement \$738,000.00

Payment for such Dealership Obligations is due on or before March 13, 2009 (the "Due Date") and the wholesale credit line and Revolving Line of Credit will be terminated on the Due Date. Interest on Dealership Obligations will continue to accrue and is payable with the outstanding principal balances and any other unpaid charges.

The failure of the Dealership to pay its wholesale credit obligations to GMAC by the Due Date will constitute a default of our WSA by the Dealership. In that event, GMAC will charge the Dealership a noncompliance fee of \$42,000.00, which will be immediately due and payable. The noncompliance fee would be in addition to any amounts owing to GMAC under the Dealership's wholesale credit line. This fee will neither extend the Dealership's wholesale credit line nor waive its default for failure to make the required payment. Further, GMAC will have all its rights and remedies under our Agreements and applicable law to collect the Dealership Obligations.

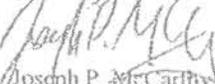
You are also advised that so long as the Dealership Obligations remain unpaid, the following conditions are in effect until further notice from GMAC:

- GMAC must retain possession of MCOs, titles, and keys to inventory.
- GMAC will continue to charge \$500 for each audit.
- The Dealership will be charged for security service required to protect GMAC's collateral.
- All demonstrator vehicles must be returned to the Dealership premises and "taken out of demonstrator service."

As always, you and the Dealership must strictly comply with all agreements with GMAC.

GMAC expressly reserves its rights under its agreements or applicable law. The Dealership's wholesale credit line is a discretionary line of credit and may be modified, suspended, or terminated at GMAC's election, in its sole discretion.

Sincerely,



Joseph P. McCarthy
Director Commercial Lending

R. Ex. 79

GENERAL MOTORS DEALER OPERATING REPORT ver. 2/16

GMAC 004622 - 2008113

LN	NO	OPERATING REPORT	CHEV-CARS	159	BUC-CARS & TRKS	-	SAAB-CARS & TRKS	-	LN
1	2	BUSINESS ASSOCIATE CODE	CHEV-TRKS	471	CAD-CARS & TRKS	-	SATU-CARS & TRKS	-	NO
3	4	158937	PONT-CARS & TRKS	-	GMC-CARS & TRKS	-	TOTAL RPG	630	1
5	6	DEALER NAME	OLDS-CARS & TRKS	-	HUMM-CARS & TRKS	-			2
7	8	EVERETT CHEVROLET-GEO	ADDRESS	7300 EVERGREEN WAY					3
9	10	FROM January 1 2008	CITY & STATE	EVERETT WA	98203-5662				4
11	12	THRU November 30 2008							5
ASSETS			AMOUNT			11-31-08			AMOUNT
7	C	CASH ON HAND	200	500				157,375	7
8	A	CASH IN BANK	202	3,155				358,622	8
9	S	CONTRACTS IN TRANSIT	215	185,148				6,412	9
10	H	SECURITIES	203	0				13,900	10
11	C	TOTAL CASH AND CONTRACTS		188,803				180,307	11
12	U	NET CUSTOMER RECEIVABLES	1102	687,353				4,524,470	12
13	R	FACTORY RECEIVABLES	261	117,509				0	13
14	E	DUE FROM FINANCE COMPANIES	357	7,023				0	14
15	C	WARRANTY CLAIMS	263	5,672				0	15
16	R	INS. COMMISSIONS RECEIVABLE	264	0				0	16
17	F	TOTAL RECEIVABLES		797,557				0	17
18	D	DEMONSTRATORS	5	181,549				22,928	18
19	N	NEW CARS	59	1,267,388				245,462,212	19
20	N	NEW TRUCKS	90	2,790,821				20,866	20
21	V	NEW MD TRUCKS	0	0				32,330	21
22	E	OTHER AUTOMOTIVE	238	0				81,800	22
23	N	USED CARS	58	841,915				13,454	23
24	T	USED TRUCKS	79	1,199,097				0	24
25	A	PARTS AND ACCESSORIES	242	510,463				0	25
26	R	TIRES	243	0				1,968	26
27	G	GAS, OIL AND GREASE	244	9,518				0	27
28	E	PAINT AND BODY SHOP MATERIALS	245	0				0	28
29	S	SUBLET REPAIRS	246	158				0	29
30	W	WORK IN PROCESS-LABOR	247	1,008				0	30
31	C	OTHER	248	0				0	31
32	M	MISC. ASSETS RECEIVED IN TRADE	249	0				0	32
33	T	LIFO RESERVE	250	(410,213)				0	33
34	F	TOTAL INVENTORIES		6,401,670				0	34
35	O	PREPAID EXPENSES: TAXES	270	5,384				0	35
36	T	INSURANCE	271	0				0	36
37	H	OTHER	274	439,837				0	37
38		TOTAL CURRENT ASSETS		7,833,231				0	38
39	A	DRIVER TRAINING VEHICLES	0	0				0	39
40	L	LEASE & RENTAL UNITS	0	0				0	40
41	G	L & R ACCUMULATED DEP.	0	0				0	41
42		TOTAL CURRENT AND WORKING ASSETS		7,833,231				0	42
43	FIXED ASSETS			AMOUNT			11-31-08		
44	A	LAND	200	0				0	43
45	U	BLDG & IMP.	201	0				0	44
46	T	LEASE HOLDS	202	15,382				0	45
47	O	IT-HARDWARE	203	893				530,000	46
48	I	IT-SOFTWARE	204	0				0	47
49	E	M/S EQUIP	205	12,148				1,818,838	48
50	Y	P/A EQUIP	206	2,908				0	49
51	U	FURN & FIXTR	207	127,168				1,223,673	50
52	S	CO. VEHICLES	208	104,560				0	51
53	5	OTHER	209	0				0	52
54		TOTALS (45-52)		262,857				0	53
55	M	MEMO CO VEHICLES - CAR	1	0				0	54
56	A	LIFE INSURANCE-CASH VALUE	231	0				0	55
57	R	NOTES & ACCT RECEIVABLE-OFFICERS	232	0				0	56
58	S	NOTES & ACCOUNTS RECEIVABLE-OTHER	233	0				0	57
59	E	OTHER INVESTMENTS & MISC. ASSETS	234	110,000				0	58
60	T	TOTAL OTHER ASSETS		110,000				0	59
61		TOTAL ASSETS		8,208,088				0	60
			LIABILITIES			11-31-08			
62	C	CASH IN BANK CREDIT BALANCE	220	157,375				0	61
63	A	ACCTS PAYABLE-TRADE CREDITORS	221	358,622				0	62
64	C	ACC. RECEIVABLE CREDIT BAL	222	6,412				0	63
65	C	CUSTOMER DEPOSITS	223	13,900				0	64
66	O	WARRANTY CLAIMS ADVANCE	224	0				0	65
67	U	NOTES PAYABLE-NEW VEH.& DEMOS	225	4,524,470				0	66
68	M	MEMO. DELAYED PAYMENT-ACCT. 310	226	0				0	67
69		TOTALS		5,050,377				0	68
70	N	NOTES PAYABLE-USED VEHICLES	227	225,772				0	69
71	N	NOTES PAYABLE-LEASE & RENTAL UNITS	228	0				0	70
72	L	NOTES PAYABLE-OTHER	229	0				0	71
73	I	INTEREST PAYABLE	230	22,928				0	72
74	D	SALARIES, WAGES & COMM. PAYABLE	231	45,212				0	73
75	C	INSURANCE PAYABLE	232	20,866				0	74
76	C	PAYROLL TAXES PAYABLE	233	32,330				0	75
77	I	SALES TAXES PAYABLE	234	81,800				0	76
78	T	OTHER TAXES PAYABLE	235	13,454				0	77
79	T	INCOME TAXES PAYABLE	236	0				0	78
80	L	EMPLOYEE'S INCENTIVES/BONUSES PAYABLE	237	0				0	79
81	O	OWNER'S BONUSES PAYABLE	238	0				0	80
82	I	RETIREMENT BENEFITS PAYABLE	239	1,968				0	81
83		OTHER PAYABLES	240	0				0	82
84		TOTAL CURRENT LIABILITIES		6,510,350				0	83
85	L	RESERVES AND DEFERRALS	332	0				0	84
86	L	LONG TERM DEBT	334	1,388,044				0	85
87	G	DEFERRED TAXES	333	0				0	86
88		TOTAL	Ln 31 to 36	7,898,394				0	87
89	L	MORTGAGES PAYABLE-REAL ESTATE	335	0				0	88
90		TOTAL LIABILITIES	Ln 37 to 41	7,898,394				0	89
91	NET	QUALIFIED L.T.D. \$		0				0	90
92	WRKGG.	DEALER		345,050				0	91
93	CAP.	STANDARD \$		2,173,000				0	92
			PROFIT OR LOSS SUMMARY			CORPORATION TYPE:			
94				S-Corp.					
95				NET WORTH					
96				CAPL STOCKS					
97				ADDL PD IN CAP					
98				RET. EARNINGS					
99				DIVIDENDS					
100				INVESTMENTS					
101				TO BAL +/- 3109					
102				DRAWINGS					
103				DUR TO BAL					
104				COMP TO BAL					
105				PROFIT OR LOSS					
106				TOTAL NET WORTH					
107				TOTAL LIABILITIES & NET WORTH					

TOTAL OPERATION EXPENSE ANALYSIS

LN	NO	TOTAL INCOME AND EXPENSE	TOTAL DEALERSHIP						FIXED OPERATIONS						LN	
			MONTH	PER MIL YTD	% OF SALES	YTD	PER MIL	% OF SALES	MONTH	% OF SALES	YTD	PER MIL	% OF SALES			
1		TOTAL INCOME AND EXPENSE	1,514,348	29.57%	18.28%				1,180,808	10%	2,000,000	10%	333,042	3%	1,866,966	3%
2		GROSS PROFIT/INCOME	248,233	4.30%	16.28%				115,808	10%	2,000,000	10%	130,577	3%	1,866,966	3%
3		EXPENSES														
4		VEH. SALES COMPENSATION & OTHER	87,841	19.4%	0.3%				47,841	4%	2,000,000	4%	0	0%	47,841	0%
5		DEALERSHIP EXPENSE	3,330	3.9%	0.2%				3,330	3%	2,000,000	3%	0	0%	3,330	0%
6		POLICY WORK/VEHICLES	499	0.2%	0.0%				499	0%	2,000,000	0%	0	0%	499	0%
7		TOTAL VARIABLE	52,700	21.2%	0.5%				52,700	4%	2,000,000	4%	0	0%	52,700	0%
8		SALARIES-OWNERS / EXECUTIVE MANAGER	19,200	7.8%	1.2%				9,800	1%	2,000,000	1%	0	0%	9,800	0%
9		SALARIES-SUPERVISORS	42,148	17.1%	2.7%				26,149	2%	2,000,000	2%	0	0%	42,148	0%
10		SALARIES-CLERICAL	11,315	4.9%	0.7%				5,096	0%	2,000,000	0%	0	0%	11,315	0%
11		OTHER SALARIES AND WAGES	22,907	13.4%	2.1%				12,235	1%	2,000,000	1%	0	0%	22,907	0%
12		ADVERTISING COMPENSATION	7,900	3.2%	0.2%				7,900	0%	2,000,000	0%	0	0%	7,900	0%
13		INCENTIVES-SUPERVISOR	0	0.0%	0.0%				0	0%	2,000,000	0%	0	0%	0	0%
14		TAXES-PAYROLL	25,174	10.2%	1.8%				13,443	1%	2,000,000	1%	0	0%	25,174	0%
15		EMPLOYEE BENEFITS	9,802	3.7%	0.5%				5,648	0%	2,000,000	0%	0	0%	9,802	0%
16		RETIREMENT BENEFITS	0	0.0%	0.0%				0	0%	2,000,000	0%	0	0%	0	0%
17		TOTAL PERSONNEL	147,708	80.0%	8.2%				82,108	4%	2,000,000	4%	0	0%	147,708	0%
18		COMPANY VEHICLE EXPENSE	4,917	2.0%	0.2%				2,017	0%	2,000,000	0%	0	0%	4,917	0%
19		OFFICE SUPPLIES AND EXPENSES	3,444	1.4%	0.2%				3,444	0%	2,000,000	0%	0	0%	3,444	0%
20		OTHER SUPPLIES	13,502	1.4%	0.2%				2,038	0%	2,000,000	0%	0	0%	13,502	0%
21		CO-OP ADVERTISING	9,846	4.0%	0.0%				9,846	0%	2,000,000	0%	0	0%	9,846	0%
22		ADVERTISING	23,197	9.4%	1.3%				17,531	1%	2,000,000	1%	0	0%	23,197	0%
23		ADVERTISING REIMBURSEMENTS	15,744	2.3%	0.3%				15,744	0%	2,000,000	0%	0	0%	15,744	0%
24		CONTRIBUTIONS	100	0.0%	0.0%				100	0%	2,000,000	0%	0	0%	100	0%
25		POLICY WORK-PARTS AND SERVICE	1,205	0.5%	0.0%				1,205	0%	2,000,000	0%	0	0%	1,205	0%
26		INFORMATION TECHNOLOGY SERVICES	17,218	7.9%	1.1%				10,682	0%	2,000,000	0%	0	0%	17,218	0%
27		OUTSIDE SERVICES (OTHER)	24,267	9.9%	1.8%				15,535	1%	2,000,000	1%	0	0%	24,267	0%
28		TRAVEL AND ENTERTAINMENT	0	0.0%	0.0%				0	0%	2,000,000	0%	0	0%	0	0%
29		MEMBERSHIP FEES AND PUBLICATIONS	1,378	0.6%	0.0%				714	0%	2,000,000	0%	0	0%	1,378	0%
30		LEGAL AND AUDITING EXPENSE	3,908	1.5%	0.2%				3,908	0%	2,000,000	0%	0	0%	3,908	0%
31		TELEPHONE	4,582	1.9%	0.3%				2,202	0%	2,000,000	0%	0	0%	4,582	0%
32		TRAINING EXPENSE	9,275	3.1%	0.5%				9,275	0%	2,000,000	0%	0	0%	9,275	0%
33		INTEREST-FLOORPLAN	20,858	8.5%	3.9%				20,858	1%	2,000,000	1%	0	0%	20,858	0%
34		INTEREST-FLOORPLAN CREDIT	(10,121)	-0.3%	-1.0%				(10,121)	0%	2,000,000	0%	0	0%	(10,121)	0%
35		INTEREST-NOTES PAYABLE (OTHER)	3,939	1.5%	0.2%				1,818	0%	2,000,000	0%	0	0%	3,939	0%
36		INSURANCE - INVENTORY	0	0.0%	0.0%				0	0%	2,000,000	0%	0	0%	0	0%
37		AD DEBT EXPENSE	0	0.0%	0.0%				0	0%	2,000,000	0%	0	0%	0	0%
38		FREIGHT	2,990	1.2%	0.2%				485	0%	2,000,000	0%	0	0%	2,990	0%
39		MISCELLANEOUS EXPENSES	1	0.0%	0.0%				0	0%	2,000,000	0%	0	0%	1	0%
40		TOTAL REPAIRS	104,430	42.4%	6.0%				79,000	4%	2,000,000	4%	0	0%	104,430	0%
41		RENT	24,120	9.8%	1.5%				17,080	0%	2,000,000	0%	0	0%	24,120	0%
42		AMORTIZATION-LEASEHOLDS	0	0.0%	0.0%				0	0%	2,000,000	0%	0	0%	0	0%
43		REPAIRS-REAL ESTATE	0	0.0%	0.0%				0	0%	2,000,000	0%	0	0%	0	0%
44		DEPRECIATION BLDGS. & IMPROVEMENTS	0	0.0%	0.0%				0	0%	2,000,000	0%	0	0%	0	0%
45		TAXES-REAL ESTATE	5,364	2.3%	0.3%				3,064	0%	2,000,000	0%	0	0%	5,364	0%
46		INSURANCE BLDGS. & IMPROVEMENTS	3,132	1.3%	0.2%				1,566	0%	2,000,000	0%	0	0%	3,132	0%
47		INTEREST - MORTGAGES	0	0.0%	0.0%				0	0%	2,000,000	0%	0	0%	0	0%
48		UTILITIES	648	0.4%	0.0%				474	0%	2,000,000	0%	0	0%	648	0%
49		EXP-TOTAL REPAIRS & RENT BOUNDARY	33,564	13.9%	2.2%				17,104	0%	2,000,000	0%	0	0%	33,564	0%
50		INSURANCE OTHER	3,702	1.5%	0.2%				2,136	0%	2,000,000	0%	0	0%	3,702	0%
51		TAXES-OTHER	5,086	2.3%	0.4%				5,290	0%	2,000,000	0%	0	0%	5,086	0%
52		REPAIRS-EQUIPMENT	87	0.0%	0.0%				0	0%	2,000,000	0%	0	0%	87	0%
53		DEPRECIATION-EQUIPMENT	3,825	1.1%	0.1%				7,074	0%	2,000,000	0%	0	0%	3,825	0%
54		EQUIPMENT RENTAL	474	0.2%	0.0%				282	0%	2,000,000	0%	0	0%	474	0%
55		TOTAL REPAIRS	46,748	19.0%	3.0%				25,886	1%	2,000,000	1%	0	0%	46,748	0%
56		NET PAYOUT OVERHEAD	258,886	121.4%	10.7%				154,085	13%	2,000,000	13%	0	0%	258,886	0%
57		TOTAL EXPENSES - EXCL. PRO OF GBA	351,054	142.8%	23.1%				208,255	18%	2,000,000	18%	0	0%	351,054	0%
58		OTHER EXPENSES/LOSSES	(104,819)	-42.8%	-3.2%				(99,597)	0%	2,000,000	0%	0	0%	(104,819)	0%
59		NET PROFIT BEFORE TAXES	19,737	1.4%	0.7%				19,737	0%	2,000,000	0%	0	0%	19,737	0%
60		NET PROFIT AFTER TAXES	(94,009)	-38.2%	-2.1%				(94,009)	0%	2,000,000	0%	0	0%	(94,009)	0%
61		NET PROFIT AFTER TAXES & PRO OF GBA	(94,009)	-38.2%	-2.1%				(94,009)	0%	2,000,000	0%	0	0%	(94,009)	0%
62		NET PROFIT AFTER TAXES & PRO OF GBA	(94,009)	-38.2%	-2.1%				(94,009)	0%	2,000,000	0%	0	0%	(94,009)	0%
63		NET PROFIT AFTER TAXES & PRO OF GBA	(94,009)	-38.2%	-2.1%				(94,009)	0%	2,000,000	0%	0	0%	(94,009)	0%
64		NET PROFIT AFTER TAXES & PRO OF GBA	(94,009)	-38.2%	-2.1%				(94,009)	0%	2,000,000	0%	0	0%	(94,009)	0%

FIXED OPERATIONS - DEPARTMENT PROFITABILITY

LN	NO	MECHANICAL (05)		BODY SHOP (09)		PARTS & ACCESSORIES (07)		GENERAL & ADMINISTRATIVE (06)		LN	NO
		MONTH	% YEAR-TO-DATE	MONTH	% YEAR-TO-DATE	MONTH	% YEAR-TO-DATE	MONTH	% YEAR-TO-DATE		
1		85,849	8%	1,330,811	5%	247,993	1%	2,314,843	6%	1	
2		83,302	8%	1,286,863	5%	17,275	1%	1,983,344	5%	2	
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NEW VEHICLE SALES AND GROSS PROFIT ANALYSIS

BAC 160937 - 200811

CHEVROLET-DEO

LN NO.	CHEVROLET	ACU	MONTH				YEAR-TO-DATE				LN NO.
			UNITS SOLD	SALES	GROSS PROF.	PER UNIT BLD.	UNITS SOLD	SALES	GROSS PROF.	PER UNIT BLD.	
1	IMPALA	411A	1	31,021	2,722	2,722	0	146,062	0,168	0,168	1
2	DO NOT USE	407A	0	0	0	0	0	0	0	0	2
3	M.CARLO	417A	0	0	0	0	0	0	0	0	3
4	DO NOT USE	407A	0	0	0	0	0	0	0	0	4
5	MALIBU	401A	0	0	0	0	583,008	25,529	628	628	5
6	CAMARO	405A	0	0	0	0	0	0	0	0	6
7	DO NOT USE	407A	0	0	0	0	0	0	0	0	7
8	CORVETTE	407A	0	0	0	0	285,279	28,083	3376	3376	8
9	DO NOT USE	407A	0	0	0	0	0	0	0	0	9
10	AVEO	405A	3	31,330	3,661	1,220	866,433	3,955	247	247	10
11	COBALT	411A	1	16,317	1,283	1,283	531,934	1,549	389	389	11
12	DO NOT USE	411A	0	0	0	0	0	0	0	0	12
13	DO NOT USE	412A	0	0	0	0	0	0	0	0	13
14	DO NOT USE	413A	0	0	0	0	0	0	0	0	14
15	DO NOT USE	414A	0	0	0	0	0	0	0	0	15
16	DO NOT USE	415A	0	0	0	0	0	0	0	0	16
17	DO NOT USE	415A	0	0	0	0	0	0	0	0	17
18	OTHER CHEVY CAR	411A	0	0	0	0	0	0	0	0	18
19	OTHER CHEVY CAR	416A	0	0	0	0	0	0	0	0	19
20	TOTAL NEW CARS RTL		5	78,668	7,646	1,529	124	2,207,306	89,714	724	20
21	MEMO* e-CAR SLS this	415A	0	0	0	0	0	0	0	0	21
22	TOTAL CAR FLEET this	411A	0	0	0	0	232,869	1,649	187	187	22
23	TOTA CAR INTERNAL	421A	0	0	0	0	0	0	0	0	23
24	TOTAL NEW CARS		5	78,668	7,646	1,529	143	2,450,075	88,085	616	24
25	UPLANDER	423A	0	0	0	0	20,444	176	176	25	
26	SSR	424A	0	0	0	0	0	0	0	0	26
27	EXPRESS	42CA	0	0	0	0	48,369	897	949	27	
28	DO NOT USE	423A	0	0	0	0	0	0	0	0	28
29	TRAIL BLAZER	427A	0	0	0	0	177,547	8,353	392	392	29
30	S10 / COLORADO	428A	0	0	0	0	507,881	19,169	197	197	30
31	SILVERADO/C4500-KO	429A	8	178,407	15,980	1,906	819,802	68,063	1,488	1,488	31
32	AVALANCH	430A	3	143,067	3,919	1,306	819,426	3,498	1,75	1,75	32
33	TAHOE	431A	0	0	0	0	673,971	20,462	1,636	1,636	33
34	SUBURBAN	432A	0	0	0	0	82,247	8,906	2,200	2,200	34
35	DO NOT USE	433A	0	0	0	0	0	0	0	0	35
36	EQUINOX	434A	0	0	0	0	14,187	9,072	1,516	1,516	36
37	HHR	435A	1	24,250	1,209	1,209	354,484	42,630	743	743	37
38	TRAVERSE	436A	0	0	0	0	0	0	0	0	38
39	MED C-T-W SERIES	437A	0	0	0	0	0	0	0	0	39
40	OTHER CHEVY TRUCK	438A	0	0	0	0	0	0	0	0	40
41	TOTAL NEW TRKS RTL		12	345,724	21,108	1,759	146	4,578,714	167,804	1,149	41
42	MEMO* e-TRK SLS this	439A	0	0	0	0	0	0	0	0	42
43	TOTAL TRK FLEET this	440A	0	0	0	0	101,242	1,030	1,172	1,172	43
44	TOTA TRK INTERNAL	441A	0	0	0	0	0	0	0	0	44
45	TOTAL NEW TRUCKS		12	345,724	21,108	1,759	152	4,877,956	168,774	1,097	45
46											46
47	ACCESSORIES this pag	442A	0	0	0	0	0	0	0	0	47
48	TOTAL NEW VEHICLES		17	424,392	28,754	1,691	295	7,128,031	254,839	864	48
49											49

NEW VEHICLE SALES AND GROSS PROFIT ANALYSIS

EV
CHEVROLET-GEO

LN NO.	PONTIAC	INTL	MONTH				YEAR-TO-DATE				LN NO.
			UNITS SOLD	SALES	GROSS PROFIT	PER UNIT SLD	UNITS SOLD	SALES	GROSS PROFIT	PER UNIT SLD	
1	VIBE	4205	0	0	0	0	0	0	0	0	1
2	DO NOT USE	4215	0	0	0	0	0	0	0	0	2
3	DO NOT USE	4220	0	0	0	0	0	0	0	0	3
4	DO NOT USE	4230	0	0	0	0	0	0	0	0	4
5	GRAND PRIX	4240	0	0	0	0	0	0	0	0	5
6	DO NOT USE	4250	0	0	0	0	0	0	0	0	6
7	N G6	4258	0	0	0	0	0	0	0	0	7
8	L SOLSTICE	4270	0	0	0	0	0	0	0	0	8
9	W GTO	4275	0	0	0	0	0	0	0	0	9
10	G5	4280	0	0	0	0	0	0	0	0	10
11	C G8	4108	0	0	0	0	0	0	0	0	11
12	A DO NOT USE	4110	0	0	0	0	0	0	0	0	12
13	R DO NOT USE	4120	0	0	0	0	0	0	0	0	13
14	S DO NOT USE	4130	0	0	0	0	0	0	0	0	14
15	DO NOT USE	4140	0	0	0	0	0	0	0	0	15
16	DO NOT USE	4150	0	0	0	0	0	0	0	0	16
17	DO NOT USE	4160	0	0	0	0	0	0	0	0	17
18	DO NOT USE	4170	0	0	0	0	0	0	0	0	18
19	OTHER PONTIAC CAR	4180	0	0	0	0	0	0	0	0	19
20	TOTAL NEW CARS RTL		0	0	0	0	0	0	0	0	20
21	MEMO* e-CAR SLS this	4100	0	0	0	0	0	0	0	0	21
22	TOTAL CAR FLEET this	4208	0	0	0	0	0	0	0	0	22
23	TOTA CAR INTERNAL	4210	0	0	0	0	0	0	0	0	23
24	TOTAL NEW CARS		0	0	0	0	0	0	0	0	24
25	MONTANA/SVB	4214	0	0	0	0	0	0	0	0	25
26	DO NOT USE	4240	0	0	0	0	0	0	0	0	26
27	TORRENT	4250	0	0	0	0	0	0	0	0	27
28	DO NOT USE	4254	0	0	0	0	0	0	0	0	28
29	N DO NOT USE	4274	0	0	0	0	0	0	0	0	29
30	I DO NOT USE	4298	0	0	0	0	0	0	0	0	30
31	W DO NOT USE	4298	0	0	0	0	0	0	0	0	31
32	DO NOT USE	4303	0	0	0	0	0	0	0	0	32
33	T DO NOT USE	4318	0	0	0	0	0	0	0	0	33
34	R DO NOT USE	4320	0	0	0	0	0	0	0	0	34
35	U DO NOT USE	4330	0	0	0	0	0	0	0	0	35
36	I DO NOT USE	4340	0	0	0	0	0	0	0	0	36
37	K DO NOT USE	4350	0	0	0	0	0	0	0	0	37
38	S DO NOT USE	4308	0	0	0	0	0	0	0	0	38
38	DO NOT USE	4448	0	0	0	0	0	0	0	0	39
40	OTHER PONTIAC TRU	4388	0	0	0	0	0	0	0	0	40
41	TOTAL NEW TRKS RTL		0	0	0	0	0	0	0	0	41
42	MEMO* e-TRK SLS this	4308	0	0	0	0	0	0	0	0	42
43	TOTAL TRK FLEET this	4414	0	0	0	0	0	0	0	0	43
44	TOTA TRK INTERNAL	4417	0	0	0	0	0	0	0	0	44
45	TOTAL NEW TRUCKS		0	0	0	0	0	0	0	0	45
46											46
47	ACCESSORIES this per	4571	0	0	0	0	0	0	0	0	47
48	TOTAL NEW VEHICLES		0	0	0	0	0	0	0	0	48
49											49

PNUS

EAC 15837 - 200311

NEW VEHICLE SALES AND GROSS PROFIT ANALYSIS

EV1 - NEWVEHICLE.DOC

BAC 15A027 - 200811

LN NO.	OLDSMOBILE	ACC	MONTH				YEAR-TO-DATE				LN NO.
			UNITS SOLD	SALES	GROSS PROFIT	PER UNIT SOLD	UNITS SOLD	SALES	GROSS PROFIT	PER UNIT SOLD	
1	ALERO	400C	0	0	0	0	0	0	0	0	1
2	INTRIGUE	401C	0	0	0	0	0	0	0	0	2
3	AURORA	402C	0	0	0	0	0	0	0	0	3
4	DO NOT USE	403C	0	0	0	0	0	0	0	0	4
5	DO NOT USE	404C	0	0	0	0	0	0	0	0	5
6	DO NOT USE	410C	0	0	0	0	0	0	0	0	6
7	N DO NOT USE	400C	0	0	0	0	0	0	0	0	7
8	L DO NOT USE	407C	0	0	0	0	0	0	0	0	8
9	W DO NOT USE	409C	0	0	0	0	0	0	0	0	9
10	DO NOT USE	409C	0	0	0	0	0	0	0	0	10
11	C DO NOT USE	410C	0	0	0	0	0	0	0	0	11
12	A DO NOT USE	411C	0	0	0	0	0	0	0	0	12
13	R DO NOT USE	412C	0	0	0	0	0	0	0	0	13
14	S DO NOT USE	413C	0	0	0	0	0	0	0	0	14
15	DO NOT USE	414C	0	0	0	0	0	0	0	0	15
16	DO NOT USE	415C	0	0	0	0	0	0	0	0	16
17	DO NOT USE	416C	0	0	0	0	0	0	0	0	17
18	DO NOT USE	417C	0	0	0	0	0	0	0	0	18
19	OTHER OLDS CAR	418C	0	0	0	0	0	0	0	0	19
20	TOTAL NEW CARS RTL		0	0	0	0	0	0	0	0	20
21	MEMO* e-CAR SLS this	419C	0	0	0	0	0	0	0	0	21
22	TOTAL CAR FLEET this	420C	0	0	0	0	0	0	0	0	22
23	TOTA CAR INTERNAL	421C	0	0	0	0	0	0	0	0	23
24	TOTAL NEW CARS		0	0	0	0	0	0	0	0	24
25	SILHOUET	423C	0	0	0	0	0	0	0	0	25
26	DO NOT USE	424C	0	0	0	0	0	0	0	0	26
27	DO NOT USE	425C	0	0	0	0	0	0	0	0	27
28	DO NOT USE	426C	0	0	0	0	0	0	0	0	28
29	M BRAVADA	427C	0	0	0	0	0	0	0	0	29
30	F DO NOT USE	428C	0	0	0	0	0	0	0	0	30
31	W DO NOT USE	429C	0	0	0	0	0	0	0	0	31
32	DO NOT USE	430C	0	0	0	0	0	0	0	0	32
33	DO NOT USE	431C	0	0	0	0	0	0	0	0	33
34	R DO NOT USE	432C	0	0	0	0	0	0	0	0	34
35	U DO NOT USE	433C	0	0	0	0	0	0	0	0	35
36	C DO NOT USE	434C	0	0	0	0	0	0	0	0	36
37	K DO NOT USE	435C	0	0	0	0	0	0	0	0	37
38	S DO NOT USE	436C	0	0	0	0	0	0	0	0	38
39	DO NOT USE	437C	0	0	0	0	0	0	0	0	39
40	OTHER OLDS TRUCK	438C	0	0	0	0	0	0	0	0	40
41	TOTAL NEW TRKS RTL		0	0	0	0	0	0	0	0	41
42	MEMO* e-TRK SLS this	439C	0	0	0	0	0	0	0	0	42
43	TOTAL TRK FLEET this	440C	0	0	0	0	0	0	0	0	43
44	TOTA TRK INTERNAL	441C	0	0	0	0	0	0	0	0	44
45	TOTAL NEW TRUCKS		0	0	0	0	0	0	0	0	45
46											46
47	ACCESSORIES this part	457C	0	0	0	0	0	0	0	0	47
48	TOTAL NEW VEHICLES		0	0	0	0	0	0	0	0	48
49											49

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NEW VEHICLE SALES AND GROSS PROFIT ANALYSIS

BUICK CHEVROLET-GEO

LN NO.	BUICK	ACCT	MONTH				YEAR-TO-DATE				LN NO.
			UNITS SOLD	SALES	GROSS PROF	PER UNIT SLD	UNITS SOLD	SALES	GROSS PROF	PER UNIT SLD	
1	DO NOT USE	4020	0	0	0	0	0	0	0	0	1
2	DO NOT USE	4030	0	0	0	0	0	0	0	0	2
3	DO NOT USE	4020	0	0	0	0	0	0	0	0	3
4	DO NOT USE	4030	0	0	0	0	0	0	0	0	4
5	LUCERNE	4040	0	0	0	0	0	0	0	0	5
6	DO NOT USE	4050	0	0	0	0	0	0	0	0	6
7	LACROSSE	4060	0	0	0	0	0	0	0	0	7
8	DO NOT USE	4070	0	0	0	0	0	0	0	0	8
9	DO NOT USE	4080	0	0	0	0	0	0	0	0	9
10	DO NOT USE	4090	0	0	0	0	0	0	0	0	10
11	DO NOT USE	4100	0	0	0	0	0	0	0	0	11
12	DO NOT USE	4110	0	0	0	0	0	0	0	0	12
13	DO NOT USE	4120	0	0	0	0	0	0	0	0	13
14	DO NOT USE	4130	0	0	0	0	0	0	0	0	14
15	DO NOT USE	4140	0	0	0	0	0	0	0	0	15
16	DO NOT USE	4150	0	0	0	0	0	0	0	0	16
17	DO NOT USE	4160	0	0	0	0	0	0	0	0	17
18	DO NOT USE	4170	0	0	0	0	0	0	0	0	18
19	OTHER BUICK CAR	4180	0	0	0	0	0	0	0	0	19
20	TOTAL NEW CARS RTL		0	0	0	0	0	0	0	0	20
21	MEMO* n-CAR SLS this	4190	0	0	0	0	0	0	0	0	21
22	TOTAL CAR FLEET this	4200	0	0	0	0	0	0	0	0	22
23	TOTA CAR INTERNAL	4210	0	0	0	0	0	0	0	0	23
24	TOTAL NEW CARS		0	0	0	0	0	0	0	0	24
25	TERRAZA	4220	0	0	0	0	0	0	0	0	25
26	RENDEZVOUS	4230	0	0	0	0	0	0	0	0	26
27	ENCLAVE	4240	0	0	0	0	0	0	0	0	27
28	DO NOT USE	4250	0	0	0	0	0	0	0	0	28
29	RAINIER	4260	0	0	0	0	0	0	0	0	29
30	DO NOT USE	4270	0	0	0	0	0	0	0	0	30
31	DO NOT USE	4280	0	0	0	0	0	0	0	0	31
32	DO NOT USE	4290	0	0	0	0	0	0	0	0	32
33	DO NOT USE	4300	0	0	0	0	0	0	0	0	33
34	DO NOT USE	4310	0	0	0	0	0	0	0	0	34
35	DO NOT USE	4320	0	0	0	0	0	0	0	0	35
36	DO NOT USE	4330	0	0	0	0	0	0	0	0	36
37	DO NOT USE	4340	0	0	0	0	0	0	0	0	37
38	DO NOT USE	4350	0	0	0	0	0	0	0	0	38
39	DO NOT USE	4360	0	0	0	0	0	0	0	0	39
40	OTHER BUICK TRUCK	4370	0	0	0	0	0	0	0	0	40
41	TOTAL NEW TRKS RTL		0	0	0	0	0	0	0	0	41
42	MEMO* n-TRK SLS this	4380	0	0	0	0	0	0	0	0	42
43	TOTAL TRK FLEET this	4390	0	0	0	0	0	0	0	0	43
44	TOTA TRK INTERNAL	4400	0	0	0	0	0	0	0	0	44
45	TOTAL NEW TRUCKS		0	0	0	0	0	0	0	0	45
46											46
47	ACCESSORIES this par	4570	0	0	0	0	0	0	0	0	47
48	TOTAL NEW VEHICLES		0	0	0	0	0	0	0	0	48
49											49

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NEW VEHICLE SALES AND GROSS PROFIT ANALYSIS

CHEVROLET-GEO

BAC 158937 - 200811

LN NO.	CADILLAC	M/C	MONTH				YEAR-TO-DATE				LN NO.
			UNITS SOLD	SALES	GROSS PROF.	PER UNIT GLD.	UNITS SOLD	SALES	GROSS PROF.	PER UNIT GLD.	
1	DO NOT USE	400E	0	0	0	0	0	0	0	0	1
2	DTS	401F	0	0	0	0	0	0	0	0	2
3	DO NOT USE	402E	0	0	0	0	0	0	0	0	3
4	CONVERSN	403M	0	0	0	0	0	0	0	0	4
5	STS-V	404E	0	0	0	0	0	0	0	0	5
6	STS	405L	0	0	0	0	0	0	0	0	6
7	SRX	406E	0	0	0	0	0	0	0	0	7
8	DO NOT USE	407E	0	0	0	0	0	0	0	0	8
9	CTS	408E	0	0	0	0	0	0	0	0	9
10	XLR-V, XLR ROADSTER	409F	0	0	0	0	0	0	0	0	10
11	DO NOT USE	410E	0	0	0	0	0	0	0	0	11
12	DO NOT USE	411E	0	0	0	0	0	0	0	0	12
13	DO NOT USE	412E	0	0	0	0	0	0	0	0	13
14	DO NOT USE	413E	0	0	0	0	0	0	0	0	14
15	DO NOT USE	414E	0	0	0	0	0	0	0	0	15
16	DO NOT USE	415E	0	0	0	0	0	0	0	0	16
17	DO NOT USE	416E	0	0	0	0	0	0	0	0	17
18	DO NOT USE	417E	0	0	0	0	0	0	0	0	18
19	OTHER CADILLAC CAR	418F	0	0	0	0	0	0	0	0	19
20	TOTAL NEW CARS RTL		0	0	0	0	0	0	0	0	20
21	MEMO* e-CAR SLS this	419E	0	0	0	0	0	0	0	0	21
22	TOTAL CAR FLEET this	420E	0	0	0	0	0	0	0	0	22
23	TOTAL CAR INTERNAL	421E	0	0	0	0	0	0	0	0	23
24	TOTAL NEW CARS	422E	0	0	0	0	0	0	0	0	24
25	DO NOT USE	423E	0	0	0	0	0	0	0	0	25
26	DO NOT USE	424E	0	0	0	0	0	0	0	0	26
27	DO NOT USE	425E	0	0	0	0	0	0	0	0	27
28	DO NOT USE	426E	0	0	0	0	0	0	0	0	28
29	DO NOT USE	427E	0	0	0	0	0	0	0	0	29
30	DO NOT USE	428E	0	0	0	0	0	0	0	0	30
31	DO NOT USE	429E	0	0	0	0	0	0	0	0	31
32	ESCALADE EXT	430E	0	0	0	0	0	0	0	0	32
33	ESCALADE	431F	0	0	0	0	0	0	0	0	33
34	ESCALADE / ESV	432E	0	0	0	0	0	0	0	0	34
35	DO NOT USE	433E	0	0	0	0	0	0	0	0	35
36	DO NOT USE	434E	0	0	0	0	0	0	0	0	36
37	DO NOT USE	435L	0	0	0	0	0	0	0	0	37
38	DO NOT USE	436E	0	0	0	0	0	0	0	0	38
39	DO NOT USE	437E	0	0	0	0	0	0	0	0	39
40	OTHER CADILLAC TRK	438E	0	0	0	0	0	0	0	0	40
41	TOTAL NEW TRKS RTL		0	0	0	0	0	0	0	0	41
42	MEMO* e-TRK SLS this	439E	0	0	0	0	0	0	0	0	42
43	TOTAL TRK FLEET this	440E	0	0	0	0	0	0	0	0	43
44	TOTAL TRK INTERNAL	441E	0	0	0	0	0	0	0	0	44
45	TOTAL NEW TRUCKS		0	0	0	0	0	0	0	0	45
46											46
47	ACCESSORIES this per	442E	0	0	0	0	0	0	0	0	47
48	TOTAL NEW VEHICLES		0	0	0	0	0	0	0	0	48
49											49

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NEW VEHICLE SALES AND GROSS PROFIT ANALYSIS

EVT THEMOLETDQEO

LN NO.	GMCTRK	ACCT	MONTH				YEAR-TO-DATE				LN NO.
			UNITS SOLD	SALES	GROSS PROF.	PER UNIT BLD.	UNITS SOLD	SALES	GROSS PROF.	PER UNIT BLD.	
1	DO NOT USE	4011	0	0	0	0	0	0	0	0	1
2	DO NOT USE	4011	0	0	0	0	0	0	0	0	2
3	DO NOT USE	4012	0	0	0	0	0	0	0	0	3
4	DO NOT USE	4013	0	0	0	0	0	0	0	0	4
5	DO NOT USE	4014	0	0	0	0	0	0	0	0	5
6	DO NOT USE	4015	0	0	0	0	0	0	0	0	6
7	DO NOT USE	4016	0	0	0	0	0	0	0	0	7
8	DO NOT USE	4017	0	0	0	0	0	0	0	0	8
9	DO NOT USE	4018	0	0	0	0	0	0	0	0	9
10	DO NOT USE	4019	0	0	0	0	0	0	0	0	10
11	DO NOT USE	4020	0	0	0	0	0	0	0	0	11
12	DO NOT USE	4111	0	0	0	0	0	0	0	0	12
13	DO NOT USE	4112	0	0	0	0	0	0	0	0	13
14	DO NOT USE	4113	0	0	0	0	0	0	0	0	14
15	DO NOT USE	4141	0	0	0	0	0	0	0	0	15
16	DO NOT USE	4151	0	0	0	0	0	0	0	0	16
17	DO NOT USE	4161	0	0	0	0	0	0	0	0	17
18	DO NOT USE	4171	0	0	0	0	0	0	0	0	18
19	DO NOT USE	4181	0	0	0	0	0	0	0	0	19
20	TOTAL NEW CARS RTL		0	0	0	0	0	0	0	0	20
21	MEMO* e-CAR SLS this	4191	0	0	0	0	0	0	0	0	21
22	TOTAL CAR FLEET this	4201	0	0	0	0	0	0	0	0	22
23	TOTA CAR INTERNAL	4211	0	0	0	0	0	0	0	0	23
24	TOTAL NEW CARS 5T TRUCK		0	0	0	0	0	0	0	0	24
25	ACADIA	4221	0	0	0	0	0	0	0	0	25
26	DO NOT USE	4241	0	0	0	0	0	0	0	0	26
27	G-VAN (SAVANA)	4251	0	0	0	0	0	0	0	0	27
28	DO NOT USE	4261	0	0	0	0	0	0	0	0	28
29	ENVY	4271	0	0	0	0	0	0	0	0	29
30	CANYON	4281	0	0	0	0	0	0	0	0	30
31	SIERRA/C4500-TOPKID	4291	0	0	0	0	0	0	0	0	31
32	DO NOT USE	4301	0	0	0	0	0	0	0	0	32
33	YUKON-DENALI	4311	0	0	0	0	0	0	0	0	33
34	YUKON XL-DENALI	4321	0	0	0	0	0	0	0	0	34
35	DO NOT USE	4331	0	0	0	0	0	0	0	0	35
36	DO NOT USE	4341	0	0	0	0	0	0	0	0	36
37	DO NOT USE	4351	0	0	0	0	0	0	0	0	37
38	DO NOT USE	4361	0	0	0	0	0	0	0	0	38
39	MED C-T-W SERIES	4371	0	0	0	0	0	0	0	0	39
40	OTH GMC TRKS	4381	0	0	0	0	0	0	0	0	40
41	TOTAL NEW TRKS RTL		0	0	0	0	0	0	0	0	41
42	MEMO* e-TRK SLS this	4391	0	0	0	0	0	0	0	0	42
43	TOTAL TRK FLEET this	4401	0	0	0	0	0	0	0	0	43
44	TOTA TRK INTERNAL	4411	0	0	0	0	0	0	0	0	44
45	TOTAL NEW TRUCKS		0	0	0	0	0	0	0	0	45
46											46
47	ACCESSORIES this pag	4571	0	0	0	0	0	0	0	0	47
48	TOTAL NEW VEHICLES		0	0	0	0	0	0	0	0	48
49											49

BAC 158937 - 200411

NEW VEHICLE SALES AND GROSS PROFIT ANALYSIS

BY: THEBROLET-GEO

BAC 1 68937 - 200811

LN NO.	HUMMER	ACC	MONTH				YEAR-TO-DATE				LN NO.
			UNITS SOLD	SALES	GROSS PROFIT	PER UNIT SLD	UNITS SOLD	SALES	GROSS PROFIT	PER UNIT SLD	
1	DO NOT USE	402G	0	0	0	0	0	0	0	0	1
2	DO NOT USE	401G	0	0	0	0	0	0	0	0	2
3	DO NOT USE	402G	0	0	0	0	0	0	0	0	3
4	DO NOT USE	402G	0	0	0	0	0	0	0	0	4
5	DO NOT USE	404G	0	0	0	0	0	0	0	0	5
6	DO NOT USE	405G	0	0	0	0	0	0	0	0	6
7	H DO NOT USE	406G	0	0	0	0	0	0	0	0	7
8	F DO NOT USE	407G	0	0	0	0	0	0	0	0	8
9	W DO NOT USE	409G	0	0	0	0	0	0	0	0	9
10	DO NOT USE	406G	0	0	0	0	0	0	0	0	10
11	C DO NOT USE	412G	0	0	0	0	0	0	0	0	11
12	A DO NOT USE	411G	0	0	0	0	0	0	0	0	12
13	R DO NOT USE	412G	0	0	0	0	0	0	0	0	13
14	H DO NOT USE	413G	0	0	0	0	0	0	0	0	14
15	DO NOT USE	414G	0	0	0	0	0	0	0	0	15
16	DO NOT USE	415G	0	0	0	0	0	0	0	0	16
17	DO NOT USE	416G	0	0	0	0	0	0	0	0	17
18	DO NOT USE	417G	0	0	0	0	0	0	0	0	18
19	DO NOT USE	419G	0	0	0	0	0	0	0	0	19
20	TOTAL NEW CARS RTL		0	0	0	0	0	0	0	0	20
21	MEMO* e-CAR SLS this	419G	0	0	0	0	0	0	0	0	21
22	TOTAL CAR FLEET this	420G	0	0	0	0	0	0	0	0	22
23	TOTA CAR INTERNAL	421G	0	0	0	0	0	0	0	0	23
24	TOTAL NEW CARS		0	0	0	0	0	0	0	0	24
25	H1	423G	0	0	0	0	0	0	0	0	25
26	H2	424G	0	0	0	0	0	0	0	0	26
27	H2 SUT	425G	0	0	0	0	0	0	0	0	27
28	H2 SUV	426G	0	0	0	0	0	0	0	0	28
29	H3	427G	0	0	0	0	0	0	0	0	29
30	L H1 ALPHA	428G	0	0	0	0	0	0	0	0	30
31	W H3 T	429G	0	0	0	0	0	0	0	0	31
32	DO NOT USE	430G	0	0	0	0	0	0	0	0	32
33	I DO NOT USE	431G	0	0	0	0	0	0	0	0	33
34	R DO NOT USE	432G	0	0	0	0	0	0	0	0	34
35	U DO NOT USE	433G	0	0	0	0	0	0	0	0	35
36	C DO NOT USE	434G	0	0	0	0	0	0	0	0	36
37	K DO NOT USE	435G	0	0	0	0	0	0	0	0	37
38	S DO NOT USE	436G	0	0	0	0	0	0	0	0	38
39	DO NOT USE	437G	0	0	0	0	0	0	0	0	39
40	OTHER HUMMER TRU	438G	0	0	0	0	0	0	0	0	40
41	TOTAL NEW TRKS RTL		0	0	0	0	0	0	0	0	41
42	MEMO* e-TRK SLS this	440G	0	0	0	0	0	0	0	0	42
43	TOTAL TRK FLEET this	440G	0	0	0	0	0	0	0	0	43
44	TOTA TRK INTERNAL	441G	0	0	0	0	0	0	0	0	44
45	TOTAL NEW TRUCKS		0	0	0	0	0	0	0	0	45
46											46
47	ACCESSORIES this pac	457G	0	0	0	0	0	0	0	0	47
48	TOTAL NEW VEHICLES		0	0	0	0	0	0	0	0	48
49											49

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NEW VEHICLE SALES AND GROSS PROFIT ANALYSIS

E1 JHR/ROLET/GEO

BAC 158327 - 200411

LN NO.	SATURN	ACC	MONTH				YEAR-TO-DATE				LN NO.
			UNITS SOLD	SALES	GROSS PROF	PER UNIT SLD	UNITS SOLD	SALES	GROSS PROF	PER UNIT SLD	
1	ION 1 SEDAN	4024	0	0	0	0	0	0	0	0	1
2	ION 2 SEDAN	4014	0	0	0	0	0	0	0	0	2
3	ION3 SEDAN	4024	0	0	0	0	0	0	0	0	3
4	ION 2 COUPE	4024	0	0	0	0	0	0	0	0	4
5	ION 3 COUPE	4041	0	0	0	0	0	0	0	0	5
6	L300 1 SEDAN	435H	0	0	0	0	0	0	0	0	6
7	L300 2 SEDAN	4051	0	0	0	0	0	0	0	0	7
8	L300 3 SEDAN	4071	0	0	0	0	0	0	0	0	8
9	L300 1 WAGON	4031	0	0	0	0	0	0	0	0	9
10	L300 2 WAGON	4091	0	0	0	0	0	0	0	0	10
11	L300 3 WAGON	4101	0	0	0	0	0	0	0	0	11
12	SKY	4111	0	0	0	0	0	0	0	0	12
13	AURA	4121	0	0	0	0	0	0	0	0	13
14	ASTRA	4124	0	0	0	0	0	0	0	0	14
15	DO NOT USE	4124	0	0	0	0	0	0	0	0	15
16	DO NOT USE	4124	0	0	0	0	0	0	0	0	16
17	DO NOT USE	4124	0	0	0	0	0	0	0	0	17
18	DO NOT USE	4124	0	0	0	0	0	0	0	0	18
19	OTHER SATURN CAR	4124	0	0	0	0	0	0	0	0	19
20	TOTAL NEW CARS RTL		0	0	0	0	0	0	0	0	20
21	MEMO* e-CAR SLS this	4124	0	0	0	0	0	0	0	0	21
22	TOTAL CAR FLEET/MV	4201	0	0	0	0	0	0	0	0	22
23	TOTA CAR INTERNAL	4211	0	0	0	0	0	0	0	0	23
24	TOTAL NEW CARS		0	0	0	0	0	0	0	0	24
25	RELAY	4231	0	0	0	0	0	0	0	0	25
26	VUE 4	424H	0	0	0	0	0	0	0	0	26
27	VUE 6	425H	0	0	0	0	0	0	0	0	27
28	OUTLOOK	426H	0	0	0	0	0	0	0	0	28
29	DO NOT USE	427H	0	0	0	0	0	0	0	0	29
30	DO NOT USE	428H	0	0	0	0	0	0	0	0	30
31	DO NOT USE	429H	0	0	0	0	0	0	0	0	31
32	DO NOT USE	430H	0	0	0	0	0	0	0	0	32
33	DO NOT USE	431H	0	0	0	0	0	0	0	0	33
34	DO NOT USE	432H	0	0	0	0	0	0	0	0	34
35	DO NOT USE	433H	0	0	0	0	0	0	0	0	35
36	DO NOT USE	434H	0	0	0	0	0	0	0	0	36
37	DO NOT USE	435H	0	0	0	0	0	0	0	0	37
38	DO NOT USE	436H	0	0	0	0	0	0	0	0	38
39	DO NOT USE	437H	0	0	0	0	0	0	0	0	39
40	OTH SATURN TRUCK	437H	0	0	0	0	0	0	0	0	40
41	TOTAL NEW TRKS RTL		0	0	0	0	0	0	0	0	41
42	MEMO* e-TRK SLS this	437H	0	0	0	0	0	0	0	0	42
43	TOTAL TRK FLEET/MV	440H	0	0	0	0	0	0	0	0	43
44	TOTA TRK INTERNAL	4411	0	0	0	0	0	0	0	0	44
45	TOTAL NEW TRUCKS		0	0	0	0	0	0	0	0	45
46		445H									46
47	ACCESSORIES this per	457H	0	0	0	0	0	0	0	0	47
48	TOTAL NEW VEHICLES		0	0	0	0	0	0	0	0	48
49											49

NEW VEHICLE SALES AND GROSS PROFIT ANALYSIS

EYE FOR CHEVROLET GEO

BAC 158327 - 200811

LN NO.	SAAB	ACC.	MONTH				YEAR-TO-DATE				LN NO.
			UNITS SOLD	SALES	GROSS PROF	PER UNIT SLD	UNITS SOLD	SALES	GROSS PROF	PER UNIT SLD	
1	9-2X 2.5i	409j	0	0	0	0	0	0	0	0	1
2	9-2X AERO	409l	0	0	0	0	0	0	0	0	2
3	DO NOT USE	409n	0	0	0	0	0	0	0	0	3
4	9-3 2.0T SEDAN	409p	0	0	0	0	0	0	0	0	4
5	9-3 2.0T SPORTCOMBI	409r	0	0	0	0	0	0	0	0	5
6	9-3 AERO SEDAN	409t	0	0	0	0	0	0	0	0	6
7	9-3 AERO SPORTCOM	409v	0	0	0	0	0	0	0	0	7
8	9-3 2.0T CONVERTIBLE	409x	0	0	0	0	0	0	0	0	8
9	9-3 AERO CONVERTIB	409z	0	0	0	0	0	0	0	0	9
10	DO NOT USE	409b	0	0	0	0	0	0	0	0	10
11	9-5 2.3T SEDAN	410d	0	0	0	0	0	0	0	0	11
12	9-5 2.3T WAGON	410f	0	0	0	0	0	0	0	0	12
13	9-5 2.3T SPORT COMB	410h	0	0	0	0	0	0	0	0	13
14	9-5 AERO SEDAN	410j	0	0	0	0	0	0	0	0	14
15	9-5 AERO SPORT COM	410l	0	0	0	0	0	0	0	0	15
16	9-3 TURBO X SPORT S	410n	0	0	0	0	0	0	0	0	16
17	9-3 TURBO X SPORT C	410p	0	0	0	0	0	0	0	0	17
18	DO NOT USE	410r	0	0	0	0	0	0	0	0	18
19	SAAB - OTHER CAR	410t	0	0	0	0	0	0	0	0	19
20	TOTAL NEW CARS RTL		0	0	0	0	0	0	0	0	20
21	MEMO* e-CAR SLS ths	410v	0	0	0	0	0	0	0	0	21
22	TOTAL CAR FLEET ths	420f	0	0	0	0	0	0	0	0	22
23	TOTA CAR INTERNAL	420h	0	0	0	0	0	0	0	0	23
24	TOTAL NEW CARS		0	0	0	0	0	0	0	0	24
25	9-7X 4.2i	423f	0	0	0	0	0	0	0	0	25
26	9-7X 5.3i	424h	0	0	0	0	0	0	0	0	26
27	9-7X AERO	425j	0	0	0	0	0	0	0	0	27
28	DO NOT USE	426l	0	0	0	0	0	0	0	0	28
29	DO NOT USE	427n	0	0	0	0	0	0	0	0	29
30	DO NOT USE	428p	0	0	0	0	0	0	0	0	30
31	DO NOT USE	429r	0	0	0	0	0	0	0	0	31
32	DO NOT USE	430t	0	0	0	0	0	0	0	0	32
33	DO NOT USE	431v	0	0	0	0	0	0	0	0	33
34	DO NOT USE	432x	0	0	0	0	0	0	0	0	34
35	DO NOT USE	433z	0	0	0	0	0	0	0	0	35
36	DO NOT USE	434b	0	0	0	0	0	0	0	0	36
37	DO NOT USE	435d	0	0	0	0	0	0	0	0	37
38	DO NOT USE	436f	0	0	0	0	0	0	0	0	38
39	DO NOT USE	437h	0	0	0	0	0	0	0	0	39
40	SAAB - OTHER TRUCK	438j	0	0	0	0	0	0	0	0	40
41	TOTAL NEW TRKS RTL		0	0	0	0	0	0	0	0	41
42	MEMO* e-TRK SLS ths	439l	0	0	0	0	0	0	0	0	42
43	TOTAL TRK FLEET ths	440n	0	0	0	0	0	0	0	0	43
44	TOTA TRK INTERNAL	441p	0	0	0	0	0	0	0	0	44
45	TOTAL NEW TRUCKS		0	0	0	0	0	0	0	0	45
46		445r									46
47	ACCESSORIES ths per	446t	0	0	0	0	0	0	0	0	47
48	TOTAL NEW VEHICLES		0	0	0	0	0	0	0	0	48
49											49

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NEW VEHICLE SALES AND GROSS PROFIT ANALYSIS

EVI
1EPROLET-DEO

EAC 124837 - 200911

LN NO.	OTH NON-GM	ACC	MONTH				YEAR-TO-DATE				LN NO.
			UNITS SOLD	SALES	GROSS PROF.	PER UNIT SLD	UNITS SOLD	SALES	GROSS PROF.	PER UNIT SLD	
1	OTH CAR -1	423J	0	0	0	0	0	0	0	0	1
2	OTH CAR -2	401J	0	0	0	0	0	0	0	0	2
3	OTH CAR -3	402J	0	0	0	0	0	0	0	0	3
4	OTH CAR -4	303J	0	0	0	0	0	0	0	0	4
5	OTH CAR -5	304J	0	0	0	0	0	0	0	0	5
6	OTH CAR -6	424J	0	0	0	0	0	0	0	0	6
7	N OTH CAR -7	204J	0	0	0	0	0	0	0	0	7
8	L OTH CAR -8	405J	0	0	0	0	0	0	0	0	8
9	W OTH CAR -9	406J	0	0	0	0	0	0	0	0	9
10	OTH CAR -10	407J	0	0	0	0	0	0	0	0	10
11	I OTH CAR -11	410J	0	0	0	0	0	0	0	0	11
12	A OTH CAR -12	411J	0	0	0	0	0	0	0	0	12
13	R OTH CAR -13	412J	0	0	0	0	0	0	0	0	13
14	S OTH CAR -14	413J	0	0	0	0	0	0	0	0	14
15	OTH CAR -15	414J	0	0	0	0	0	0	0	0	15
16	OTH CAR -16	415J	0	0	0	0	0	0	0	0	16
17	OTH CAR -17	416J	0	0	0	0	0	0	0	0	17
18	OTH CAR -18	417J	0	0	0	0	0	0	0	0	18
19	OTH CAR -19	418J	0	0	0	0	0	0	0	0	19
20	TOTAL NEW CARS RTL		0	0	0	0	0	0	0	0	20
21	MEMO IDS-Military - Car	419J	0	0	0	0	0	0	0	0	21
22	TOTAL CAR FLEET this	420J	0	0	0	0	0	0	0	0	22
23	TOTA CAR INTERNAL	421J	0	0	0	0	0	0	0	0	23
24	TOTAL NEW CARS		0	0	0	0	0	0	0	0	24
25	OTH TRK -1	422J	0	0	0	0	0	0	0	0	25
26	OTH TRK -2	424J	0	0	0	0	0	0	0	0	26
27	OTH TRK -3	425J	0	0	0	0	0	0	0	0	27
28	OTH TRK -4	426J	0	0	0	0	0	0	0	0	28
29	N OTH TRK -5	427J	0	0	0	0	0	0	0	0	29
30	T OTH TRK -6	428J	0	0	0	0	0	0	0	0	30
31	W OTH TRK -7	429J	0	0	0	0	0	0	0	0	31
32	OTH TRK -8	430J	0	0	0	0	0	0	0	0	32
33	I OTH TRK -9	431J	0	0	0	0	0	0	0	0	33
34	R OTH TRK -10	432J	0	0	0	0	0	0	0	0	34
35	U OTH TRK -11	433J	0	0	0	0	0	0	0	0	35
36	C OTH TRK -12	434J	0	0	0	0	0	0	0	0	36
37	K OTH TRK -13	435J	0	0	0	0	0	0	0	0	37
38	S OTH TRK -14	436J	0	0	0	0	0	0	0	0	38
39	OTH TRK -15	437J	0	0	0	0	0	0	0	0	39
40	OTH TRK -16	438J	0	0	0	0	0	0	0	0	40
41	TOTAL NEW TRKS RTL		0	0	0	0	0	0	0	0	41
42	MEMO IDS-Military - Trk	439J	0	0	0	0	0	0	0	0	42
43	TOTAL TRK FLEET this	440J	0	0	0	0	0	0	0	0	43
44	TOTA TRK INTERNAL	441J	0	0	0	0	0	0	0	0	44
45	TOTAL NEW TRUCKS		0	0	0	0	0	0	0	0	45
46	NEW OTHER AUTOMO	445J		1,959	828			84,467	33,223		46
47	ACCESSORIES this per	457J	0	0	0	0	0	0	0	0	47
48	TOTAL NEW VEHICLES		0	1,959	828		0	84,467	33,223	0	48
49							PNUS			PNUS	49

SALES AND GROSS PROFIT ANALYSIS

BA C 158837 - 200411

LN NO.	(MEMO) FLEET & COMMERCIAL	UNITS SOLD	MONTH				YEAR-TO-DATE				LN NO.
			SALES	GROSS PROFIT	PER UNIT, GLD						
1	VIBE/SOLSTICE	424K	0	0	0	0					1
2	COBALT/GS	421K	0	0	0	0					2
3	MALIBU/ALERO/GS	420K	0	0	0	0					3
4	MONTE CARLO/GRAND PRIX/GS	420K	0	0	0	0					4
5	IMPALA/LUCERNE	401K	0	0	0	0					5
6	CORVETTE/SAAB	400K	0	0	0	0					6
7	AVEO	400K	0	0	0	0					7
8	LACROSSE	417K	0	0	0	0					8
9	AURORA	416K	0	0	0	0					9
10	CADILLAC	413K	0	0	0	0					10
11	SATURN	410K	0	0	0	0					11
12	OTHER CAR MODELS	411K	0	0	0	0					12
13	TOTAL CARS NON-FLEET		0	0	0	0	0	0	0	0	13
14	FLEET - FANVX	412K	0	0	0	0	242,789	(1,649)	(87)	14	
15	FLEET - PSA/PURA	412K	0	0	0	0				15	
16	FLEET - FAN/CAP	410K	0	0	0	0				16	
17	TOTAL CARS FLEET/NON-FLEET		0	0	0	0	19	242,789	(1,649)	(87)	17
18	UPLANDER/MONTANA/SILOH/T	410K	0	0	0	0					18
19	ENCLAVE/CADADA	410K	0	0	0	0					19
20	EXPRESS/SAVANA	417K	0	0	0	0					20
21	EQUINOX/HR/VUE/TORR/TRAV	418K	0	0	0	0					21
22	RENDEZ	419K	0	0	0	0					22
23	TBZ/BRAVIA/ENV/RAINERS/SA	420K	0	0	0	0					23
24	TAHOE/YUKON/VALENCIA/S	421K	0	0	0	0					24
25	HUMMER	422K	0	0	0	0					25
26	COLO/CAN	423K	0	0	0	0					26
27	SILVERADO/SIERRA 1500	424K	0	0	0	0					27
28	SILVERADO/SIERRA 2500	425K	0	0	0	0					28
29	SILVERADO/SIERRA 3500	426K	0	0	0	0					29
30	SILVERADO/SIERRA CREW-C	427K	0	0	0	0					30
31	C-4500/5500 SERIES	428K	0	0	0	0					31
32	C-6500/8500 SERIES	429K	0	0	0	0					32
33	W - SERIES	430K	0	0	0	0					33
34	T-SERIES	431K	0	0	0	0					34
35	OTHER TRUCK MODELS	432K	0	0	0	0					35
36	TOTAL TRUCKS NON-FLEET		0	0	0	0	0	0	0	0	36
37	FLEET - FANVX	433K	0	0	0	0	101,242	(1,030)	(172)	37	
38	FLEET - PSA/PURA	434K	0	0	0	0					38
39	FLEET - FAN/CAP	435K	0	0	0	0					39
40	TOTAL TRUCKS FLEET/NON-FLEET		0	0	0	0	8	101,242	(1,030)	(172)	40
41	FAI AND PROT. PLNS	436K	0	0	0	0					41
42	ACCESSORIES	437K	0	0	0	0					42
43	FLEET & COMMERCIAL GROSS		0	0	0	0	25	344,011	(2,679)	(107)	43
44											44
45	VARIABLE EXP	637K						0.0%		0.0%	45
46	PERSONNEL EXP	638K						0.0%		0.0%	46
47	SEMI-FIXED EXP	639K						0.0%		0.0%	47
48	MEMO*ADVERTISING	640K						0.0%		0.0%	48
49	RENT & RENT EQUIP	641K						0.0%		0.0%	49
50	FIXED EXPENSES	642K						0.0%		0.0%	50
51	TOTAL EXPENSES										51
52	NET FLEET & COMMERCIAL		0	0	0	0	25	344,011	(2,679)	(107)	52

View GM Standard Accounting Manual as it pertains to Fleet & Commercial

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DEPARTMENTAL SALES AND GROSS PROFIT ANALYSIS

LN NO.	VARIABLE OPERATIONS CONTINUED	ACC	MONTH				YEAR-TO-DATE				LN NO.
			UNITS SOLD	SALES	GROSS PROF.	P.U.S.	UNITS SOLD	SALES	GROSS PROF.	P.U.S.	
1	J USED CARS RTL - GM CERTIFIED	438	1	11,704	1,397	1,397	22	354,878	80,308	2,600	1
2	S USED CARS RTL - OTHER	438	14	204,261	30,412	2,172	24	338,054	348,678	7,629	2
3	E "MEMO" RECON PER - CAR RTL			754	OTHER	803		1,749		125	3
4	D USED TRUCKS RTL - CERTIFIED	438	2	37,362	3,850	1,825	32	782,917	88,788	3,028	4
5	USED TRUCKS RTL - OTHER	438	23	375,850	25,524	1,110	262	3,656,170	304,874	1,927	5
6	V "MEMO" RECON PER - TRX RTL			922	OTHER	770		974		177	6
7	E TOTAL USED RETAIL		40	628,177	80,983	1,525	530	7,438,514	1,008,650	1,805	7
8	H USED CARS WHOLESALE	438	8	23,700	1,143	143	82	180,227	697	9	8
9	I USED TO NEW - CAR RTL RATIO	639	3 : 1	ADJ USED CAR IN	0			ADJ USED CAR IN	0		9
10	C USED TRUCKS WHOLESALE	438	8	13,950	1,071	170	82	288,633	2,080	10	10
11	I USED TO NEW - TRX RTL RATIO	653	2.1 : 1	ADJ USED TRX IN	0			ADJ USED TRX IN	0		11
12	E TOTAL USED WHSL & ADJ		14	37,650	2,214	158	133	488,780	1,543	12	12
13	S USED OTHER AUTO	438		0	0	0		0	0	0	13
14	TOTAL USED RETAIL (P.V.)		54	666,827	83,197	1,170	663	7,908,274	1,011,193	1,525	14
15	TOTAL NEW & ADJ (P.V.)		71	1,093,178	82,779	1,307	958	15,100,772	1,299,255	1,356	15
16	TOTAL F&I AND PROT. PLANS			88,840	22,930	402		1,809,982	273,819	332	16
17	TOTAL VARIABLE L&R			788	(63)	PVR		1,328	588	PVR	17
18	TOTAL VARIABLE			1,180,608	115,858	2,029		16,275,482	1,780,473	2,228	18
19											19
20											20
21											21
22											22
23											23
24											24
25											25
26											26
27											27
28											28
29											29
30											30
31											31
32											32
33											33
34											34
35											35
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BAC 13807 - 200411

ADDITIONAL DATA

LN NO	FINANCE INCOME & PROFIT PLAN ACTIVITY	MONTHLY				YEAR-TO-DATE				LN	
		UNITS	SALES	REV/GROSS	PER UNIT	UNITS	SALES	REV/GROSS	PER UNIT		
1	FINANCE INCOME-NEW	9	1,782	1,782	198	83	1,600	1,600	190	1	
2	INS. COMM. EARNED-NEW	2	1,214	1,214	607	10	1,100	1,100	550	2	
3	FIN & INS CHARGEBACKS									3	
4	ACCESSORIES	0	0	0	0	0	0	0	0	4	
5	GM PROT. PLANS	0	0	0	0	0	0	0	0	5	
6	OTHER PROT. PLANS	7	13,693	7,076	1,011	53	129,638	79,638	1,062	6	
7	REPO. LOSSES-NEW			0						7	
8	FBI COMP			(8,095)	PVR			(6,842)	PVR	8	
9	NEW FBI & PROT. PLAN INCOME		18,689	1,977	118		389,832	216,273	801	9	
10	FINANCE INCOME-USED	28	11,858	11,858	423	1020	1,172	1,172	428	10	
11	INS. COMM. EARNED-USED	19	9,483	9,483	498	1072	1,172	1,172	502	11	
12	FIN & INS CHARGEBACKS			0				0		12	
13	ACCESSORIES	0	0	0	0	0	0	0	0	13	
14	GM PROT. PLANS	0	0	0	0	0	0	0	0	14	
15	OTHER PROT. PLANS	23	48,632	8,728	293	242	137,250	31,616	104	15	
16	REPO. LOSSES-USED			0						16	
17	FBI COMP			(7,095)	PVR			(6,850)	PVR	17	
18	USED FBI & PROT. PLAN INCOME		69,951	20,953	524		771,150	257,358	486	18	
19	TOTAL FBI INCOME (IN 21 F1)		88,640	22,930	402		1,160,982	473,831	592	19	
20	SUPPLEMENTAL INVENTORY ANALYSIS										
21	INVENTORIES										21
22	NEW VEHICLES										22
23	DEMONSTRATORS										23
24	CARS										24
25	TRUCKS										25
26	MEDIUM DUTY TRUCKS										26
27	OTHER AUTO										27
28	USED VEHICLES										28
29	CARS										29
30	TRUCKS										30
31	PARTS AND ACCESSORIES										31
32	PARTS CORES										32
33	OTHER INVENTORIES										33
34	TOTAL LIFO RESERVE										34
35	WORK-IN-PROCESS LABOR-SRV										35
36	WORK-IN-PROCESS LABOR-BODY										36
37	ADMITTED CREDIT DEFLECTION										37
38	EXHIBIT	NEW(4)	USED(7)	LSR(5)	FA(4)	M(CHRICAL)(5)	BODY(8)	PARTS(7)	CSA(9)	TOTAL	
39	OWNERS / EXEC MGRS	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
40	SUPERVISORS	1.0	1.0	0.0	0.0	0.0	0.0	0.0	0.0	2.0	
41	VEH. BRV/PRTS SLSPLE	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	
42	TECHNICIANS	11.0	11.0	0.0	0.0	0.0	0.0	0.0	0.0	22.0	
43	CLERICAL	1.5	1.5	0.0	0.0	0.0	0.0	0.0	0.0	3.0	
44	OTHERS	2.0	2.0	0.0	0.0	0.0	0.0	0.0	0.0	4.0	
45	TOTAL	12.6	11.6	0.0	0.0	0.0	0.0	0.0	0.0	53.4	
46	TOTAL HIRED Y-T-D	18.0	16.0	0.0	0.0	0.0	0.0	0.0	0.0	64.0	
47	TOT TERMINATED Y-T-D	5.4	4.4	0.0	0.0	0.0	0.0	0.0	0.0	10.6	
48	DEALERSHIP CUSTOMER RECEIVABLES										
49	RI * IRN(4)										49
50	RESULTS										50
51	-7.58%										51
52	DE * IRN(4)										52
53	RESULTS										53
54	-54.53%										54
55	CUSTOMER RECEIVABLES										55
56	TOTAL										56
57	300 ASP DEBIT BAL										57
58	340 LESS ALLOW. DBTFLACGTS.										58
59	NET CUST * OWNER REC										59
60	CASH SALES-PARTS/BRV/BODY										60
61	MONTH										61
62	YEAR-TO-DATE										62
63	TOTAL NEW CARB RETAIL	6	78,998	7,648	1,509	14	2,207,306	89,714	1,724	63	
64	TOTAL NEW CARB FLEET & INTERNAL	0	0	0	0	0	0	0	0	64	
65	TOTAL NEW CARS	5	78,998	7,648	1,529	143	2,450,075	88,065	1,816	65	
66	TOTAL NEW TRUCKS RETAIL	12	345,724	21,108	1,759	146	1,770,771	69,804	1,481	66	
67	TOTAL NEW TRUCKS FLEET & INTERNAL	0	0	0	0	0	0	0	0	67	
68	TOTAL NEW TRUCKS	12	345,724	21,108	1,759	152	4,677,956	166,774	1,897	68	
69	MISC CAR & TRUCK RETAIL UNITS ¹⁴	0	0	0	0	0	0	0	0	69	
70	MISC CAR & TRUCK FLEET AND INTERNAL UNITS ¹⁵	0	0	0	0	0	0	0	0	70	
71	NEW OTHER AUTOMOTIVE		1,859	826	49		1,446,151	133,223	112	71	
72	ACCESSORIES		0	0	0		0	0	0	72	
73	TOTAL NEW VEHICLES	17	428,351	29,582	1,740	295	7,192,498	288,062	979	73	
74	MEMO TOTAL NEW RETAIL VEHICLES	17	428,392	28,764	1,891	270	6,784,020	257,518	954	74	

Retail Cars & Trucks units/sales/gross recorded in accounts that were not assigned by GM to a Vehicle Model prior to Jan. 1, 2004
 Fleet and/or Internal Cars & Trucks units/sales/gross recorded in accounts that were not assigned by GM to a Vehicle Model prior to Jan. 1, 2004

LEASE AND RENTAL ACTIVITY

DATE PRINTED: 08/01/11

LN NO	LEASE & RENTAL DIRECT EXPENSES & INCOME	TOTAL OPERATION				END CLOSED		OPEN		RENTAL OPERATIONS		LN NO
		CURRENT MONTH	YTD	PERCENT	PERCENT	CURRENT MONTH	YTD	CURRENT MONTH	YTD	CURRENT MONTH	YTD	
1	INCOME REVENUE											1
2	RECURRING LEASE PAYMENTS	0	0			0	0	0	0	0	0	2
3	MAINTENANCE INCOME	0	0			0	0	0	0	0	0	3
4	PARTIAL MONTH (PRORATA) INCOME	0	0			0	0	0	0	0	0	4
5	LATE PAYMENT CHARGE	0	0			0	0	0	0	0	0	5
6	RENTAL INCOME	788	13,728	100.00%		0	0	0	0	788	13,728	6
7	ADMINISTRATIVE FEE	0	0			0	0	0	0	0	0	7
8	OTHER LEASE REVENUE	0	0			0	0	0	0	0	0	8
9	TOTAL LEASE AND RENTAL INCOME	788	13,728	100.00%		0	0	0	0	788	13,728	9
10	LES - HISTORICAL DATA ADJUSTMENT	0	0			(710) CLOSED - END		(720) OPEN - END		(730) RENTAL		10
11	INTEREST	0	0			0	0	0	0	0	0	11
12	AMORTIZATION	0	0			0	0	0	0	0	0	12
13	INSURANCE (ON SERVICE VEHICLES)	0	0			0	0	0	0	0	0	13
14	LICENSE, TITLE & TAX	0	0			0	0	0	0	0	0	14
15	POLICY - LEASE & RENTAL VEHICLES	0	0			0	0	0	0	0	0	15
16	MAINTENANCE & REPAIRS	839	6,141	44.7%		0	0	0	0	839	6,141	16
17	RENT-SUBLET UNITS	0	0			0	0	0	0	0	0	17
18	OTHER	0	0			0	0	0	0	0	0	18
19	TOTAL DIRECT COSTS	839	6,141	44.7%		0	0	0	0	839	6,141	19
20	MEMO - SELLING PRICE OF DISPOSED VEHICLES	-51	7,587	55.3%		0	0	0	-12	-51	7,599	20
21	MEMO - DISPOSITION EXPENSE	0	0			0	0	0	0	0	0	21
22	MEMO - GAIN/LOSS ON DISPOSITION	0	0			0	0	0	0	0	0	22
23	MEMO - PERIOD ADJUSTMENT	-51	7,587	55.3%		0	0	0	-12	-51	7,599	23
24	Per Vehicle Disposed during the period (line 20)											24
25	BEGINNING UNITS IN SERVICE	0	0			0	0	0	0	0	0	25
26	UNITS ADDED INTO SERVICE IN PERIOD	0	0			0	0	0	0	0	0	26
27	UNITS REMOVED FROM SERVICE IN PERIOD	0	0			0	0	0	0	0	0	27
28	ENDING UNITS IN SERVICE / EFFECTIVE UNITS	0	0			0	0	0	0	0	0	28
29	UNITS DISPOSED	0	0			0	0	0	0	0	0	29
30	MEMO - CUSTOMERS RETAINED	0	0			0	0	0	0	0	0	30
31	INVENTORY ANALYSIS											31
32	NEW UNITS FOR LEASE											32
33	DEMOSTRATORS											33
34	TERMINATED NOT DISPOSED											34
35	MEMO - 30 DAYS 33/ U											35
36	VEHICLES IN BERV											36
37	LEASED VEHICLES											37
38	RENTAL VEHICLES											38
39	LEASED EQUIPMENT											39
40	MEMO - FINANCE, INSURANCE & PROT. PLAN ACTIVITY											40
41	INS. COMA. EARNED											41
42	INS. CHARGEBACKS											42
43	ACCESSORIES											43
44	GM PROT. PLANS											44
45	OTHER PROT. PLANS											45
46	FBI MANAGER COMMISSIONS											46
47	LAN - FBI & PROT. PLAN INCOME											47

ACCOUNTS RECEIVABLE

LEASE BILLINGS

OTHER RECEIVABLES

SUB-TOTAL

LESS ALLOW. DUBIT ACCT

TOTAL

Effective Units = Cumulative YTD total of bog. units in service less the cumulative YTD total of units removed from serv.

Customers Retained = Renewals into Wholesale Leases plus, Renewals into Retail Transactions plus, Extension of Leases or Financing plus, buyouts.

Mechanical Department - Operating Summary

LN	NO	DESCRIPTION	QTY	UNIT	AMOUNT	PERCENT	AMOUNT	PERCENT	AMOUNT	PERCENT
1		MEMBERSHIP PERFORMED COURSE OF ACTION								
2		OWNERS / EXEC MGRS								
3		SUPERVISORS								
4		VEHICULARS								
5		TECHNICIANS								
6		CLERICAL								
7		OTHERS								
8		TOTAL								
9		TOTAL HRED Y-T-D								
10		TOT TERMINATED Y-T-D								
11		WORK-IN-PROCESS LABOR-SRV								
12		FIXED LABOR RATES								
13		QUICK-SERV LAB-CAR & LD TRKS								
14		QUICK-SERV LAB-CAR & LD TRKS								
15		QUICK-SERV LAB-CAR & LD TRKS								
16		QUICK-SERV LAB-CAR & LD TRKS								
17		QUICK-SERV LAB-CAR & LD TRKS								
18		QUICK-SERV LAB-CAR & LD TRKS								
19		QUICK-SERV LAB-CAR & LD TRKS								
20		QUICK-SERV LAB-CAR & LD TRKS								
21		QUICK-SERV LAB-CAR & LD TRKS								
22		QUICK-SERV LAB-CAR & LD TRKS								
23		QUICK-SERV LAB-CAR & LD TRKS								
24		QUICK-SERV LAB-CAR & LD TRKS								
25		QUICK-SERV LAB-CAR & LD TRKS								
26		QUICK-SERV LAB-CAR & LD TRKS								
27		DEPARTMENT PROFITABILITY								
28		MECHANICAL (05)								
29		MONTH								
30		GROSS PROFIT/MON								
31		% GROSS								
32		SALARIES-OWNERS / EXECUTIVE MANAGERS								
33		SALARIES-SUPERVISION								
34		SALARIES-CLERICAL								
35		OTHER SALARIES AND WAGES								
36		ABSENTEE COMPENSATION								
37		INCENTIVES-SUPERVISION								
38		TAXES-PAYROLL								
39		EMPLOYEE BENEFITS								
40		RETIREMENT BENEFITS								
41		TOTAL PERSONNEL								
42		COMPANY VEHICLE EXPENSE								
43		OFFICE SUPPLIES AND EXPENSES								
44		OTHER SUPPLIES								
45		E-COMMERCE ADVERTISING								
46		ADVERTISING								
47		ADVERTISING REIMBURSEMENTS								
48		CONTRIBUTIONS								
49		POLICY WORK PARTS AND SERVICE								
50		INFORMATION TECHNOLOGY SERVICES								
51		OUTSIDE SERVICES (OTHER)								
52		TRAVEL AND ENTERTAINMENT								
53		MEMBERSHIP DUES AND PUBLICATIONS								
54		LEGAL AND AUDITING EXPENSE								
55		TELEPHONE								
56		TRAINING EXPENSE								
57		INTEREST-FLOORPLAN								
58		INTEREST-FLOORPLAN CREDIT								
59		INTEREST-NOTES PAYABLE (OTHER)								
60		INSURANCE - INVENTORY								
61		BAD DEBT EXPENSE								
62		FREIGHT								
63		MISCELLANEOUS EXPENSE								
64		TOTAL SEMI-FIXED								
65		RENT								
66		AMORTIZATION LEASEHOLDS								
67		REPAIRS-REAL ESTATE								
68		DEPRECIATION BLDG. & IMPROVEMENTS								
69		TAXES-REAL ESTATE								
70		INSURANCE BLDG. & IMPROVEMENTS								
71		INTEREST - MORTGAGES								
72		UTILITIES								
73		SUB-TOTAL RENT & EQUIPMENT								
74		INSURANCE OTHER								
75		TAXES-OTHER								
76		REPAIRS-EQUIPMENT								
77		DEPRECIATION-EQUIPMENT								
78		EQUIPMENT RENTAL								
79		TOTAL FIXED								
80		TOTAL FIXED OVERHEAD								
81		TOTAL EXPENSES								
82		DEPARTMENT PROFIT OR LOSS								
83		CUSTOMER PARTS GROSS TRANSFER								
84		PROFIT/LOSS								
85		CONTRIBUTION TO SALES								

Parts & Accessories Department - Operating Summary

LN NO	DESCRIPTION	LN NO	DESCRIPTION	LN NO	DESCRIPTION	LN NO	DESCRIPTION
1	DEPARTMENT	1	GM PARTS	1	SALES	1	3,267,218
2	OWNERS / EXEC MGRS	2	PARTS AND ACCESSORIES	2	OTHER INVENTORIES	2	1,051,089
3	SUPERVISORS	3	PARTS CORES	3	SALES	3	32,175
4	VEHICLE PARTS	4	OTHER INVENTORIES	4	SALES	4	26,000
5	TECHNICIANS	5	NON-GM PARTS	5	SALES	5	3,314,641
6	CLERICAL	6	PARTS AND ACCESSORIES	6	SALES	6	1,053,344
7	OTHERS	7	PARTS CORES	7	SALES	7	32,175
8	TOTAL	8	OTHER INVENTORIES	8	SALES	8	26,000
9	TOTAL Hired Y-T-D	9	SALES	9	SALES	9	3,314,641
10	TOT TERMINATED Y-T-D	10	OTHER INVENTORIES	10	SALES	10	32,175
11	DEPARTMENT PROFITABILITY	11	SALES	11	SALES	11	3,314,641
12	WARRANTY CLAIMS	12	SALES	12	SALES	12	3,314,641
13	MECH CARBOLD TRK R.O.	13	SALES	13	SALES	13	3,314,641
14	MECH COMPLY & MD TRKS R.O.	14	SALES	14	SALES	14	3,314,641
15	MECH GUCL MECH R.O.	15	SALES	15	SALES	15	3,314,641
16	BODY CUST. R.O.	16	SALES	16	SALES	16	3,314,641
17	INTERNAL	17	SALES	17	SALES	17	3,314,641
18	COUNTER RETAIL	18	SALES	18	SALES	18	3,314,641
19	WHOLESALE	19	SALES	19	SALES	19	3,314,641
20	ACCESSORIES	20	SALES	20	SALES	20	3,314,641
21	PURCHASE ALLOWANCES	21	SALES	21	SALES	21	3,314,641
22	ADL PSA INVENTORY	22	SALES	22	SALES	22	3,314,641
23	TOTAL	23	SALES	23	SALES	23	3,314,641
24	TOTAL	24	SALES	24	SALES	24	3,314,641
25	TOTAL	25	SALES	25	SALES	25	3,314,641
26	TOTAL	26	SALES	26	SALES	26	3,314,641
27	TOTAL	27	SALES	27	SALES	27	3,314,641
28	TOTAL	28	SALES	28	SALES	28	3,314,641
29	TOTAL	29	SALES	29	SALES	29	3,314,641
30	DEPARTMENT PROFITABILITY	30	SALES	30	SALES	30	3,314,641
31	MONTH	31	SALES	31	SALES	31	3,314,641
32	SALES	32	SALES	32	SALES	32	3,314,641
33	GROSS PROFIT/INCOME	33	SALES	33	SALES	33	3,314,641
34	SALARIES-OWNERS / EXECUTIVE MANAGERS	34	SALES	34	SALES	34	3,314,641
35	SALARIES-SUPERVISION	35	SALES	35	SALES	35	3,314,641
36	SALARIES-CLERICAL	36	SALES	36	SALES	36	3,314,641
37	OTHER SALARIES AND WAGES	37	SALES	37	SALES	37	3,314,641
38	ABSENTEE COMPENSATION	38	SALES	38	SALES	38	3,314,641
39	INCENTIVES-SUPERVISION	39	SALES	39	SALES	39	3,314,641
40	TAXES-PAYROLL	40	SALES	40	SALES	40	3,314,641
41	EMPLOYEE BENEFITS	41	SALES	41	SALES	41	3,314,641
42	RETIREMENT BENEFITS	42	SALES	42	SALES	42	3,314,641
43	TOTAL PERSONNEL	43	SALES	43	SALES	43	3,314,641
44	COMPANY VEHICLE EXPENSE	44	SALES	44	SALES	44	3,314,641
45	OFFICE SUPPLIES AND EXPENSES	45	SALES	45	SALES	45	3,314,641
46	OTHER SUPPLIES	46	SALES	46	SALES	46	3,314,641
47	E-COMMERCE ADVERTISING/FEEES	47	SALES	47	SALES	47	3,314,641
48	ADVERTISING	48	SALES	48	SALES	48	3,314,641
49	ADVERTISING REIMBURSEMENTS	49	SALES	49	SALES	49	3,314,641
50	CONTRIBUTIONS	50	SALES	50	SALES	50	3,314,641
51	POLICY WORK-PARTS AND SERVICE	51	SALES	51	SALES	51	3,314,641
52	INFORMATION TECHNOLOGY SERVICES	52	SALES	52	SALES	52	3,314,641
53	OUTSIDE SERVICES (OTHER)	53	SALES	53	SALES	53	3,314,641
54	TRAVEL AND ENTERTAINMENT	54	SALES	54	SALES	54	3,314,641
55	MEMBERSHIP DUES AND PUBLICATIONS	55	SALES	55	SALES	55	3,314,641
56	LEGAL AND AUDITING EXPENSE	56	SALES	56	SALES	56	3,314,641
57	TELEPHONE	57	SALES	57	SALES	57	3,314,641
58	TRAINING EXPENSE	58	SALES	58	SALES	58	3,314,641
59	INTEREST-FLOORPLAN	59	SALES	59	SALES	59	3,314,641
60	INTEREST-NOTES PAYABLE (OTHER)	60	SALES	60	SALES	60	3,314,641
61	INSURANCE - INVENTORY	61	SALES	61	SALES	61	3,314,641
62	BAD DEBT EXPENSE	62	SALES	62	SALES	62	3,314,641
63	FREIGHT	63	SALES	63	SALES	63	3,314,641
64	MISCELLANEOUS EXPENSE	64	SALES	64	SALES	64	3,314,641
65	TOTAL SEPARATED	65	SALES	65	SALES	65	3,314,641
66	RENT	66	SALES	66	SALES	66	3,314,641
67	AMORTIZATION-LEASEHOLDS	67	SALES	67	SALES	67	3,314,641
68	REPAIRS-REAL ESTATE	68	SALES	68	SALES	68	3,314,641
69	DEPRECIATION BLDGS. & IMPROVEMENTS	69	SALES	69	SALES	69	3,314,641
70	TAXES-REAL ESTATE	70	SALES	70	SALES	70	3,314,641
71	INSURANCE BLDGS. & IMPROVEMENTS	71	SALES	71	SALES	71	3,314,641
72	INTEREST - MORTGAGES	72	SALES	72	SALES	72	3,314,641
73	UTILITIES	73	SALES	73	SALES	73	3,314,641
74	SUB TOTAL RENT & RENT EQUIVALENT	74	SALES	74	SALES	74	3,314,641
75	INSURANCE OTHER	75	SALES	75	SALES	75	3,314,641
76	TAXES-OTHER	76	SALES	76	SALES	76	3,314,641
77	REPAIRS-EQUIPMENT	77	SALES	77	SALES	77	3,314,641
78	DEPRECIATION-EQUIPMENT	78	SALES	78	SALES	78	3,314,641
79	EQUIPMENT RENTAL	79	SALES	79	SALES	79	3,314,641
80	TOTAL FIXED	80	SALES	80	SALES	80	3,314,641
81	TOTAL FIXED OVERHEAD	81	SALES	81	SALES	81	3,314,641
82	TOTAL EXPENSES	82	SALES	82	SALES	82	3,314,641
83	DEPARTMENT PROFIT/LOSS	83	SALES	83	SALES	83	3,314,641
84	CUSTOMER PARTS UNDER TRANSFER	84	SALES	84	SALES	84	3,314,641
85	PROVISION OF GSA	85	SALES	85	SALES	85	3,314,641
86	DEPT PROFIT OR LOSS AFTER TRANSFER	86	SALES	86	SALES	86	3,314,641
87		87	SALES	87	SALES	87	3,314,641
88		88	SALES	88	SALES	88	3,314,641

R. Ex. 88

Wholesale Audit Checklist

Dealership: EVERETT CHEVROLET

Dealer #'s: 0585 /

Release Period: 3

Date Issued: 08/21/08

Issued To: CSI-WAYNE FINK

Classification: L

Type of Audit: FLOOR

Date and Time Information Retrieved: 8/21/2008 11:23:48 AM

Issued By: A MANN

	Yes	N/A
Add vehicles being floor planned for which documentation has not been processed (e.g., non-GM cash drafts, auction billings, etc.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Delete and initial vehicles paid prior to issuance (checks received but not processed, suspense list, etc.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Delete and initial vehicles (individually or collectively) which do not require inspection: - DPP vehicles under primary and secondary account numbers, provided vehicles have been identified as - DPP transaction and appropriate documentation has been received	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Add/delete vehicles involved in dealership exchanges for which paperwork has not been processed	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Record vehicle code when status of vehicle has changed and paperwork has not been processed (e.g., demonstrators placed into or removed from service, etc.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Designate used vehicle for which the vehicle ownership documentation must be inspected	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Attach to (or note on) the audit a list of vehicles not inspected during the previous audit (when required)	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Instructions for Employee Completing Audit (See also reverse of 576 Supp)

Type of Audit	Yes	No
Standard Physical Audit:		
- Wholesale Floor Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Shop Rental	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Mfr. Finance Plan	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Major Body Mfr	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Alternative Audit:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- MCO/Title Audit	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Inspection Paid Records	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Partial Inventory Audit	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Other (Describe Below)	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Special Instructions	Yes	No
Collect funds/documentation if within release period	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Note name/address of purchaser (all sold units)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Note name/address of purchaser (irregularities only)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Check all MCOs/titles	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Examine all used vehicle titles	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Examine only used vehicle titles designated	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Inspect dealership records for new vehicles added	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Inspect Mileage	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Inspect recourse repossessions	<input type="checkbox"/>	<input checked="" type="checkbox"/>
If MFP audit, record status of upfit	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Other Instructions

No SVA or Registered Vehicles. SmartCash, VTIMS and BARS attached.

(This form outlines the procedures for updating a wholesale audit and includes instructions for field completion; the form may be issued by the employee updating the audit and attached to the audit prior to issuance.)

8/21/2008 11:23:51 AM

**GMAC 003477
CONFIDENTIAL**

WHOLESALE AUDIT

576

Branch Number: 0225
 Dealer Number: 0885
 Destination: EVERETT CHEVROLET
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

* A. ✓ If Inspected & Condition OK
 * A. ○ If Vehicle Inspected But Damaged
 * A. X If Vehicle Missing

* B. ✓ If IMCO Inspected
 * B. T If Title Inspected
 * B. X If Title/IMCO Missing

Issued To: CSI-WAYNE PINK
 Date Issued: 08/1/08

Row	Note Date	Interest Del	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Mileage If Reg.	A	B	Deliv Date	Remit Date	Block Date	Irreg.	Comments	
1	08-May-06		20625	20,625.00	2006	SOLSTICE	1G2MB33B38Y	000129									
2	05-Aug		8756.25	8,756.25	2005	SANTA FE	KM6SC73D55U	011949									WALVE per CLPP
3	06-May-08		14200	14,200.00	2008	EQUINOX	2CNDL13FX86	015652									WALVE per CLPP
4	02-Jun		9375	9,375.00	2007	LANCER	JA3AJ26E87U	017614									
5	08-Jul		6956.25	6,956.25	2006	SEBRING	4C3AG52H25E	020957									
6	25-Oct-07		28410.51	28,410.51	2008	EQUINOX	2CNDL537185	037037									
7	12-Jun		6825	6,825.00	2006	ACCENT	KMHCH46C10U	038907									
8	21-Jul		8250	8,250.00	2006	ACCENT	KMHCM38C28U	062097									
9	09-Jun		14775.88	14,775.88	2008	AVEO	KL1TG66808B	067447									
10	11-Apr		12243.75	12,243.75	2007	ENDEAVOR	4A4MN21S07E	077276									
11	02-Jun		9206.25	9,206.25	2007	GALANT	4A3AB36F37E	083221									
12	08-Jul		19406.25	19,406.25	2005	EQUINOX	2CNDL73F465	091173									
13	05-Aug		42281.33	42,281.33	2008	SILVERADO	1GCHK233X8F	100785									
14	30-Jul		44811.65	44,811.65	2008	CORVETTE	1G1Y25M2X65	101283									
15	22-Aug		46557.18	46,557.18	2009	TAHOE	1GNFK23085J	101734									
16	25-Mar		10400	10,400.00	2008	PT CRUISER	3A5FY48B88T	104114									
17	25-Jun		17595	17,595.00	2007	SOLSTICE	1G2MB35B97Y	104806									
18	18-Jul		16040	16,040.00	2006	SILVERADO	2GCEK19B761	105727									
19	30-Jul		15000	15,000.00	2004	SSR	1GCE514P04B	106939									
20	11-Apr		11163.75	11,163.75	2007	SEDONA	KNDME233576	107467									

*MCO IN FILE
 PAYOFF TO WIFE ON 8/11/08
 TITLE FOR THE PROPERTY REGISTERED*

*8/10/08
 SHERRON PAUL JOHNSON PMS
 FRANKIE ANAST - HE HAS NOT PAY
 PAYOFF
 8/10/08
 RELAY - ONE DAY PAY*

*8/10/08
 XOL General
 IT*

*9/10/08
 MESSIAH DIRECT ACCOUNT
 TITLE - NEED HAYFF*

*8/10/08
 JOHNSON
 U. R. 06 IN WIFE'S NAME
 OR IN STORAGE*

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WHOLESALE AUDIT

576

Branch Number: 085
 Dealer Number: 0553
 Dealership: EVERETT CHEVROLET
 Address: 7300 EVERGREEN WAY EVERETT, WA 99203
 Release Period: 3

* A - ✓ If Inspected & Conclusion OK
 * A - D If Vehicle Inspected But Damaged
 * A - X If Vehicle Missing
 * B - ✓ If INCO Inspected
 * B - Y If Title Inspected
 * B - X If Title/INCO Missing

Issued To: CSI/WAYNE PINK
 Date Issued: 08/21/08

Row	Neto Date	Interest Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Mileage If Reg.	A	B	Date Of Delivery	Rebill. Date	Blockng Date	Irreg. ✓	Comments
21	03-Aug	04-Aug-08	24480.68	24480.68	2009	MALIBU	1G1ZF575X9F	107760		✓						
22	05-Mar	05-Mar-00	8156.25	8156.25	2007	TAURUS	1FAFP59J47A	107788		✓						
23	06-May	06-May-08	12500	12500.00	2008	GRAND PRIX	2G2WPS52981	108814	FAU	✓						X-37 FA 32A1156E FOL A/C REPAIRS
24	29-Feb	29-Feb-08	17126.26	17126.26	2006	K1500	1GNFK16Z58J	109083	DLT	✓						
25	14-Mar	14-Mar-05	35394.08	45508.08	2003	CORVETTE	1G1YY325438	108620	DE	✓						
26	10-Aug	10-Aug-07	35443.93	35443.93	2008	SILVERADO	1GCEK19Y48Z	110314	LT	✓						
27	19-Jun	19-Jun-08	12500	12500.00	2008	MALIBU	1G1ZT58N58F	111081	FAU	✓						
28	28-Apr	28-Apr-08	8531.25	8531.25	2004	DURANGO	1D4HB38N34F	111694	U	✓						
29	30-Jun	30-Jun-08	12800	12800.00	2008	SEBRING	1C3LC46K18N	113589	FAU	✓						
30	07-Aug	07-Aug-06	15621.65	15621.65	2009	COBALT	1G1XX18T8787	115734		✓						6/21
31	19-Jun	19-Jun-08	14200	14200.00	2008	AURA	1G8ZS57N88F	116632	FAU	✓						
32	18-Nov	18-Nov-04	42172.55	46868.55	2005	SSR	1GCES14HX59	116906	LT	✓						
33	08-Aug	08-Aug-08	15621.65	15621.65	2009	COBALT	1G1AK18H797	117439		✓						
34	11-Apr	11-Apr-08	13125	13125.00	2007	XL7	2S3DA417976	118200	DLT	✓						8/15/08 HANDBA-VEAL
35	07-Sep	07-Sep-07	43832.15	43832.15	2008	SILVERADO	1GCHK23668F	119219	LT	✓						
36	04-Jun	04-Jun-08	18500	18500.00	2008	IND CHEROK	1J8GR48K98C	119542	FAU	✓						
37	02-Jul	02-Jul-08	23885	23885.00	2006	SSR	1GCES14HX59	120468	FAU	✓						Waive per CLPP
38	11-Jan	11-Jan-07	64995.25	64995.25	2008	CORVETTE	1G1YY28E366	120874	DE	✓						J. ROBBIN BA @ HOME RE FAU 9/15/08 DR
39	13-Apr	13-Apr-05	50025.28	55563.28	2005	CORVETTE	1G1YY34U455	122440		✓						
40	11-Jun	11-Jun-08	16040	16040.00	2006	STS	1G6DW677950	122677	FAU	✓						

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WHOLESALE AUDIT

Branch Number: 085
 Dealer Number: 0885
 Dealership: EVERETT CHEVROLET
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

576

* A - ✓ If Inspected & Condition OK
 * A - D If Vehicle Inspected But Damaged
 * A - X If Vehicle Missing

* B - ✓ If MCO Inspected
 * B - Y If Title Inspected
 * B - X If Title/MCO Missing

Issued To: CSI-WAYNE PINK
 Date Issued: 08/21/08

Row	Note Date	Interest Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Mileage If Req.	A	B	Date Of Delivery	Remit. Date	Blocking Date	Irreg. ✓	Comments	
61	19-Jun	19-Jun-08	5695	5,695.00	2005	CLASSIC	1G1ND52F15M	135537		FAU							
62	29-Aug	29-Aug-08	15621.65	15,621.65	2009	COBALT	1G1AK18H597	135700		#	X		Waive per	CLPP			IT
63	25-Jun	25-Jun-08	11737.5	11,737.50	2004	XC70	YV1SZ59H841	136096		(U)							
64	21-Jul	21-Jul-08	15000	15,000.00	2004	LS430	JTHBN36F540	136152		(U)		XX 8/17		8/15			TRUCKING BLK CAN'T PAY
65	19-Aug	19-Aug-08	28418.68	28,418.68	2008	SILVERADO	1GCEK19C08Z	136462		LT							
66	08-Aug	08-Aug-08	12275	12,275.00	2006	ENVOY	1GKET18S086	136571		FAU	LT						
67	14-Nov	14-Nov-07	17840	17,840.00	2007	UPLANDER	1GNDV33107D	136681		DEU	LT						
68	20-Aug	20-Aug-08	15621.65	15,621.65	2009	COBALT	1G1AK18H597	137107		#	X		Waive per	CLPP			IT
69	28-Dec	28-Dec-07	43805.03	43,805.03	2008	AVALANCHE	3GNFK12378G	137257		EI	LT						
70	04-Aug	04-Aug-08	4875	4,875.00	2005	CAVALIER	1G1JC12F157	140455		(U)							
71	11-Oct	11-Oct-07	22800.8	22,800.80	2008	COLORADO	1GCDT189X88	140568		LT							
72	25-Apr	25-Apr-08	13740	13,740.00	2008	TRAILBLAZER	1GNDS13S982	140635		FAU	LT						
73	14-Oct	15-Oct-07	15883.28	15,883.28	2008	COLORADO	1GCCS149488	142385		LT							
74	19-Aug	19-Aug-08	43805.03	43,805.03	2008	AVALANCHE	3GNFK12318G	143734		LT		XX 8/18	8/22	8/22			W. BLAKE'S BLK CAN'T PAY
75	30-Jul	30-Jul-08	7875	7,875.00	2002	PRESS CUTA	1GBJG31R821	145843		(U)	LT						PART TRACK
76	01-Jul	01-Jul-08	5493.75	5,493.75	2003	BLAZER	1GNBT13X33K	146898		(U)	LT	XX 8/16					8/15 PART TRACK LEFTY BLK CAN'T PAY
77	22-Jul	22-Jul-08	11250	11,250.00	2006	SILVERADO	1GCHK23U56F	147329		(U)	LT						
78	11-Jun	11-Jun-08	7895	7,895.00	2005	ONTE CARLO	2G1WW12E769	147364		FAU							
79	23-Oct	23-Oct-07	50485.6	50,485.60	2008	K1500	3GNFK16Y98G	149500		LT							
80	07-May	07-May-08	15979.78	15,979.78	2008	COLORADO	1GCCS149388	149683		DE	LT						

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WHOLESALE AUDIT

Branch Number: 086
 Dealer Number: 0588
 Dealership: EVERETT CHEVROLET
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

576

* A - ✓ If Inspected & Condition OK
 * A - D If Vehicle Inspected But Damaged
 * A - X If Vehicle Missing
 * B - ✓ If MCO Inspected
 * B - T If Title Inspected
 * B - X If Title/MCO Missing

Issued To: CSI-WAYNE FINK
 Date Issued: 08/21/08

	Note Date	Interest Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	0000	M/Repa If Req.	A	B	Date Of Delivery	Remitt. Date	Blocking Date	Irreg. ✓	Comments
81	30-Sep	01-Oct-07	35443.93	35,443.93	2008	SILVERADO	1GCEK19Y48Z	150005	LT							
82	14-Dec	14-Dec-07	12208.25	12,206.25	2003	K1500	3GNFK16Z83G	155340	U LT							
83	01-Oct	01-Oct-07	33761.35	33,761.35	2008	SILVERADO	2GCEK13M181	157735	LT							
84	17-Jan	17-Jan-08	10612.5	10,612.50	2007	SILVERADO	1GCEC14X87Z	161552	U LT							
85	19-May	19-May-08	10484.43	10,484.43	2008	AVEO	KL1TD86648B	161989								
86	04-Aug	04-Aug-08	8625	8,625.00	2003	RAILBLAZER	1GNET16S43Z	165626	U LT		X		Waive per CLPP 9/5			THE SB DR HAS CREDIT TITLE
87	08-Jul	08-Jul-08	15206.25	15,206.25	2006	SILVERADO	2GCEC19N081	167912	U LT							
88	25-Jun	25-Jun-08	13800	13,800.00	2003	E320	WDBUF65J83A	168471	U							
89	20-Dec	20-Dec-07	42379.5	42,379.50	2008	SILVERADO	1GCHK23608F	169341	LT							
90	01-Apr	01-Apr-08	24853.33	24,853.33	2008	COLORADO	1GGDT13E688	171189	LT							
91	05-May	05-May-08	24891.53	24,891.53	2008	COLORADO	1GCDT13E288	174381	LT							
92	28-Dec	28-Dec-07	46110.15	46,110.15	2008	SILVERADO	1GCHK23608F	174345	LT		XX			8/21		
93	22-Nov	23-Nov-07	34157.03	34,157.03	2008	SILVERADO	3GCEK13M88G	175509	LT							
94	28-Feb	28-Feb-08	44267	44,267.00	2008	TAHOE K1500	1GNFK13048J	175631	LT							
95	26-Nov	26-Nov-07	33859.53	33,859.53	2008	SILVERADO	3GCEK13MX8G	176873	LT							
96	11-Nov	13-Nov-07	31113.8	31,113.80	2008	SILVERADO	1GCEK19J28Z	176993	LT		XX	8/21		8/21		DA CRAWFORD
97	11-Nov	13-Nov-07	30437.85	30,437.85	2008	SILVERADO	1GCEK19J08Z	177723	LT		X	8/16		8/25		DA HEYDEN D-R CAN'T PAY
98	03-Jan	03-Jan-08	41228.25	41,228.25	2008	TAHOE K1500	1GNFK13098J	181005	LT							
99	30-Dec	31-Dec-07	26752.93	26,752.93	2008	MALIBU	1G1ZK57718F	181287								
100	25-Jan	25-Jan-08	37508.43	37,508.43	2008	RAILBLAZER	1GNET13HX8Z	181295	EI LT							

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WHOLESALE AUDIT

576

Branch Number: 088
 Dealer Number: 0885
 Dealership: EVERETT CHEVROLET
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

* A - ✓ If Inspected & Condition OK
 * A - D If Vehicle Inspected But Damaged
 * A - X: If Vehicle Missing

* B - ✓ If MCO Inspected
 * B - T If Title Inspected
 * B - X If Title/MCO Missing

Issued To: CSI-WAYNE FINK
 Date Issued: 08/21/08

	Note Date	Interest Date	Current OSB	Original OSD	Year	Model	Vehicle Identification No.	Code	Mileage If Req.	A	B	Date Of Delivery	Remitt. Date	Blocking Date	Irreg.	Comments
101	11-Jun	11-Jun-08	11240	11,240.00	2007	GRAND PRIX	2G2WP552671	183808	FAU	✓						
102	07-May	07-May-08	51751.25	51,751.25	2008	TAHOE K1500	1GNFK13098R	183855	DE LT	X						waive per CLPP J. REGGIN'S DEMO
103	21-Feb	21-Feb-08	42606.15	42,606.15	2008	SILVERADO	1GCHK23K38F	186051	LT	✓						
104	10-Dec	10-Dec-07	35598.28	35,598.28	2008	AVALANCHE	3GNFK12388G	186810	LT	✓						
105	19-Aug	19-Aug-08	48267.18	48,267.18	2008	SILVERADO	1GCJK33678F	186998	LT	✓						
106	04-Feb	04-Feb-08	23278.3	23,278.30	2008	COLORADO	1GCDT399588	188071	LT	✓						
107	05-Feb	05-Feb-08	47895.55	47,895.55	2008	SILVERADO	1GBHK23648F	188270	LT	✓						
108	06-Feb	06-Feb-08	47895.55	47,895.55	2008	SILVERADO	1GBHK23698F	188989	LT	✓						
109	07-Nov	07-Nov-07	37955.25	37,955.25	2008	SILVERADO	2GCEK13M081	189530	LT	✓						
110	08-Nov	08-Nov-07	37955.25	37,955.25	2008	SILVERADO	2GCEK13M381	190896	LT	✓						
111	13-Feb	13-Feb-08	44227.4	44,227.40	2008	SILVERADO	1GCHK23698F	191791	LT	✓						
112	07-May	19-Jun-08	35542.1	35,542.10	2008	SILVERADO	1GCEK19Y08Z	192526	PD LT	✓						
113	19-Feb	19-Feb-08	27187.18	27,187.18	2008	MALIBU	1G1ZK577284	194383	EI	X						waive per CLPP SALES MAN L. WILST DEMO IN VALATISA NEEDON DEMO
114	03-Feb	04-Feb-08	48799.2	48,799.20	2008	K1500	1GNFK16378J	194809	LT	✓						
115	02-Mar	03-Mar-08	22008.95	22,008.95	2008	COLORADO	1GCCS339388	197097	LT	✓						
116	26-Dec	26-Dec-07	37955.25	37,955.25	2008	SILVERADO	3GCEK13M18G	197336	LT	✓						
117	29-Feb	29-Feb-08	37091.65	37,091.65	2008	SILVERADO	1GCHK23K88F	198146	LT	✓						
118	05-Jun	05-Jun-08	5660	5,660.00	2007	COBALT	1G1AK55F177	199112	FAU	X	3/12					WATSON ALL CONIT PAY
119	30-Dec	31-Dec-07	38164.33	38,164.33	2008	SILVERADO	3GCEK13M28G	199290	LT	✓						
120	08-Feb	08-Feb-08	19414.65	19,414.65	2008	MALIBU	1G1ZG57B78F	200768		✓						

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WHOLESALE AUDIT

576

Branch Number: 088
 Dealer Number: 0595
 Dealership: EVERETT CHEVROLET
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

* A - ✓ If Inspected & Condition OK
 * A - D If Vehicle Inspected But Damaged
 * A - X If Vehicle Missing

* B - ✓ If MCO Inspected
 * B - T If Title Inspected
 * B - X If Title/MCO Missing

Issued To: CSI-WAYNE FINK
 Date Issued: 08/21/08

	Note Date	Interest Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Mileage If Req.	F A	B	Date Of Delivery	Remitt. Date	Blocking Date	Irreg. ✓	Comments	
121	28-Apr	28-Apr-08	16481.25	16,481.25	2004	SILVERADO	1GCHK291X4E 200915	ULT									
122	29-Feb	29-Feb-08	23887.5	23,887.50	2005	YUKON	1GKEK63U35J 200958	ULT									
123	31-Dec	31-Dec-07	38184.33	38,184.33	2008	SILVERADO	3GCEK13M88G 201131	LT									
124	08-Aug	08-Aug-08	14175	14,175.00	2006	HUMMER	5GTDN136288 202835	FAU LT			X			9/4			MUST BEAD TO SHOW 8/16 - IT IS NOT ALLOWED TO BE BAKIS 3/2
125	18-Jun	18-Jun-08	24796.95	24,796.95	2008	COLORADO	1GCCS339888 203541	DE LT									
126	31-Mar	31-Mar-08	22778.2	22,778.20	2008	COLORADO	1GCCS83E088 204200	LT									
127	01-Feb	01-Feb-08	31123.85	31,123.85	2008	TRAILBLAZER	1GN0T13S382 204228	LT									
128	31-Mar	31-Mar-08	25812.5	25,812.50	2008	COLORADO	1GCDT33E188 204417	LT									
129	18-Jun	18-Jun-08	27399.68	27,399.68	2008	MALIBU	1G1ZK577184 204675	DE									
130	03-Apr	03-Apr-08	25812.5	25,812.50	2008	COLORADO	1GCDT33E388 204676	LT									
131	31-Jul	31-Jul-08	7781.25	7,781.25	2007	COLORADO	1GCCS149678 204965	ULT									
132	11-Apr	11-Apr-08	16423.53	16,423.53	2008	COLORADO	1GCCS149088 207412	LT									
133	29-May	29-May-08	10528.93	10,528.93	2008	AVEO	KL1TD66638B 208221										
134	18-Apr	18-Apr-08	16423.53	16,423.53	2008	COLORADO	1GCCS149X88 208406	LT									
135	05-Mar	06-Mar-08	34439.3	34,439.30	2008	TAHOE C1500	1GNFC13C68J 209981	LT									
136	18-Jun	19-Jun-08	6695	6,695.00	2004	IMPALA	2G1WFS2E449 210880	FAU									
137	07-Mar	07-Mar-08	39473.85	39,473.85	2008	TAHOE K1500	1GNFK13048J 211379	LT									
138	28-Aug	28-Aug-08	24863.38	24,863.38	2009	EQUINOX	2CNDL33F796 211593	#LT			X		Waive per CLPP				IT
139	04-Dec	04-Dec-07	34157.03	34,157.03	2008	SILVERADO	2GCEK13M881 212665	LT									
140	16-Jun	16-Jun-08	15725	15,725.00	2006	SIERRA	1GTEK19ZX6Z 213260	FAU LT									

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WHOLESALE AUDIT

Branch Number: 055
 Dealer Number: 0685
 Dealership: EVERETT CHEVROLET
 Address: 7300 EVERGREEN WAY EVERETT, WA 99203
 Release Period: 3

576

* A - ✓ If Inspected & Condition OK
 * A - D If Vehicle Inspected But Damaged
 * A - X If Vehicle Missing
 * B - ✓ If MCO Inspected
 * B - Y If Title Inspected
 * B - X If Title/MCO Missing

Issued To: CSI-WAYNE FINK
 Date Issued: 08/21/08

	Note Date	Interest Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Mileage If Req.	A	B	Date Of Delivery	Remit. Date	Blocking Date	Irreg.	Comments
141	05-Sep	05-Sep-08	28295.85	28,295.85	2008	SILVERADO	1GCHK24K48E 213472	#LT		X	✓			Waive per CLPP		IT
142	31-Aug	31-Aug-07	10840	10,840.00	2008	SEBRING	1C3EL56R28N 213547	FAULT			T					
143	20-Mar	20-Mar-08	40384.2	40,384.20	2008	K1500	1GNFK16328J 218126	LT			✓					
144	05-Jun	05-Jun-08	25209	25,209.00	2008	COLORADO	1GCDT33E388 221283	LT			✓					
145	23-Mar	24-Mar-08	40867.85	40,867.85	2008	TAHOE K1500	1GNFK13D08J 221803	LT			✓					
146	18-Jun	18-Jun-08	25751.55	25,751.55	2008	COLORADO	1GCDT49E68B 222523	LT			✓					
147	18-Jun	18-Jun-08	37038.43	37,038.43	2008	RAILBLAZER	1GNET13H382 223208	LT			✓					
148	09-Jun	09-Jun-08	31747.95	31,747.95	2008	RAILBLAZER	1GNET13M182 224791	LT			✓					
149	02-Sep	02-Sep-08	46548.2	46,548.20	2008	SILVERADO	1GCHK23648F 225040	#LT		X	✓			Waive per CLPP		IT
150	10-Jun	10-Jun-08	26916.78	26,916.78	2008	RAILBLAZER	1GNDS13S882 225143	LT			✓					
151	06-Aug	06-Aug-08	12095	12,095.00	2007	RAILBLAZER	1GNDT13S172 225383	FAULT			T					
152	04-Apr	04-Apr-08	53142.7	53,142.70	2008	K1500	1GNFK16328J 225657	LT			✓					
153	18-Feb	19-Feb-08	31102.98	31,102.98	2008	SILVERADO	1GCEK19J08Z 226421	LT		X	X	8/21		8/20		SALE TO BLANKET IN CHINA IS NOW FLOORING DLK
154	05-Aug	05-Aug-08	16395	16,395.00	2008	RAILBLAZER	1GNET13H562 226673	FAULT			T					
155	18-Feb	18-Feb-08	35130.28	35,130.28	2008	SILVERADO	1GCEK19J58Z 227113	LT			✓					
156	19-Feb	19-Feb-08	31641.45	31,641.45	2008	SILVERADO	1GCEK18J58Z 227340	LT			✓					
157	20-Feb	20-Feb-08	31641.45	31,641.45	2008	SILVERADO	1GCEK19J48Z 228172	LT			✓					
158	20-Feb	20-Feb-08	35130.28	35,130.28	2008	SILVERADO	1GCEK19J08Z 228198	LT			✓					
159	24-Feb	25-Feb-08	22282.53	22,282.53	2008	SILVERADO	1GCEK19K38Z 228904	LT	WCP		✓					
160	24-Feb	25-Feb-08	27145.38	27,145.38	2008	SILVERADO	1GCEK19CX8Z 230946	LT			✓					

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WHOLESALE AUDIT

576

Branch Number: 085
 Dealer Number: 0686
 Dealership: EVERETT CHEVROLET
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

* A - ✓ If Inspected & Condition OK
 * A - D If Vehicle Inspected But Damaged
 * A - X If Vehicle Missing

* B - ✓ If MCO Inspected
 * B - T If Title Inspected
 * B - X If Title/MCO Missing

Issued To: CSI-WAYNE FINK
 Date Issued: 08/21/08

	Note Date	Interest Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Mileage If Req.	A	B	Date Of Delivery	Remitt. Date	Blocking Date	Inrog. ✓	Comments
161	27-Mar	27-Mar-08	19482.85	19,482.85	2008	MALIBU	1G1ZG57B78F	232054		/						
162	25-Feb	25-Feb-08	27145.38	27,145.38	2008	SILVERADO	1GCEK18C08Z	232625	LT	/						
163	01-Jul	01-Jul-08	31095.15	31,095.15	2008	RAILBLAZER	1GNDD13S882	233157	LT	/						
164	29-Feb	29-Feb-08	24224.85	24,224.85	2008	SILVERADO	1GCEK14C08Z	235421	LT	/						
165	02-Mar	03-Mar-08	24224.85	24,224.85	2008	SILVERADO	1GCEK14C28Z	236148	LT	/						
166	02-Mar	03-Mar-08	24224.85	24,224.85	2008	SILVERADO	1GCEK14CX8Z	236575	LT	/						
167	02-Mar	03-Mar-08	24224.85	24,224.85	2008	SILVERADO	1GCEK14C56Z	236810	LT	/						
168	02-Mar	03-Mar-08	24224.85	24,224.85	2008	SILVERADO	1GCEK14C16Z	236822	LT	/						
169	03-Mar	03-Mar-08	24224.85	24,224.85	2008	SILVERADO	1GCEK14C68Z	237013	LT	/						
170	03-Mar	03-Mar-08	24224.85	24,224.85	2008	SILVERADO	1GCEK14C38Z	237132	LT	/						
171	11-Apr	11-Apr-08	11062.5	11,062.50	2004	RAM TRUCK	1D7HU18D44J	237309		U						
172	25-Jun	25-Jun-08	15995	15,995.00	2005	YUKON	1GKEK83U35J	237699	FAULT							
173	04-Mar	04-Mar-08	24224.85	24,224.85	2008	SILVERADO	1GCEK14C28Z	237896	LT	/						
174	04-Mar	04-Mar-08	24224.85	24,224.85	2008	SILVERADO	1GCEK14C68Z	238033	LT	/						
175	04-Mar	04-Mar-08	24224.85	24,224.85	2008	SILVERADO	1GCEK14C28Z	238420	LT	/						
176	04-Mar	04-Mar-08	24224.85	24,224.85	2008	SILVERADO	1GCEK14C48Z	238659	LT	/						
177	05-Mar	05-Mar-08	24224.85	24,224.85	2008	SILVERADO	1GCEK14C78Z	238255	LT	/						
178	05-Mar	05-Mar-08	24224.85	24,224.85	2008	SILVERADO	1GCEK14C88Z	239426	LT	/						
179	05-Mar	05-Mar-08	24224.85	24,224.85	2008	SILVERADO	1GCEK14C38Z	239513	LT	/						
180	07-Mar	07-Mar-08	24224.85	24,224.85	2008	SILVERADO	1GCEK14C98Z	239757	LT	/						

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WHOLESALE AUDIT

576

Branch Number: 066
 Dealer Number: 0608
 Dealership: EVERETT CHEVROLET
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

* A - ✓ If Inspected & Condition OK
 * A - D If Vehicle Inspected But Damaged
 * A - X If Vehicle Missing

* B - ✓ If MCO Inspected
 * B - T If Title Inspected
 * B - X If Title/MCO Missing

Issued To: CSI-WAYNE FINK
 Date Issued: 08/21/08

	Note Date	Interest Date	Current OSB	Original OSB	Year	Model	Vehicles Identification No.	Code	Mileage If Req.	A	B	Date Of Delivery	Remit. Date	Blocking Date	Irreg. ✓	Comments
181	23-Nov	23-Nov-07	18187.5	18,187.50	2005	TAHOE K1500	1GNEK13T05R 240090	DLT			X		Wolvs per	GLPP		CK'D ELECTRONIC TITLE
182	01-May	01-May-08	19563.4	19,563.40	2008	MALIBU	1G1ZG57B48F 240810				/					
183	08-May	08-May-08	10484.43	10,484.43	2008	AVEO	KL1TD66658B 241236				/					
184	06-Apr	06-Apr-06	18924.98	18,924.98	2006	SILVERADO	3GCEC14Z26G 241445	LT			/					
185	10-Mar	10-Mar-08	27175.98	27,175.98	2008	SILVERADO	1GCEK19C98Z 241677	LT			/					
186	10-Mar	10-Mar-08	27175.98	27,175.98	2008	SILVERADO	1GCEK19C08Z 241776	LT			/					
187	11-Mar	11-Mar-08	27175.98	27,175.98	2008	SILVERADO	1GCEK19C18Z 243374	LT			/					
188	07-May	19-Jun-08	35264.23	35,264.23	2008	AVALANCHE	3GNFK12318G 244269	PD LT			/					
189	07-Mar	07-Mar-08	15177.63	15,177.63	2008	COBALT	1G1AK58F187 244725				/					
190	04-Aug	04-Aug-08	40567.63	40,567.63	2008	RAILBLAZER	1GNET13H38Z 245029	LT			/					
191	14-Mar	14-Mar-08	26819.23	26,819.23	2008	SILVERADO	1GCEC19C28Z 245065	LT			/					
192	18-Mar	18-Mar-08	32412.48	32,412.48	2008	AVALANCHE	3GNEC12J08G 245596	LT			/					
193	11-Apr	11-Apr-08	7481.25	7,481.25	2007	MALIBU	1G1ZS58F57F 247358	U			-T					
194	18-Mar	18-Mar-08	22558.78	22,558.78	2008	SILVERADO	1GCEC19X08Z 247402	LT			XX 8/16					UNFR OKED A. GEMMAN - ONE DON'T PAY
195	07-May	07-May-08	10484.43	10,484.43	2008	AVEO	KL1TD665X8B 250871				XX 8/16					8/25 S. SHAWAN ONE DON'T PAY
196	05-Jun	05-Jun-08	10484.43	10,484.43	2008	AVEO	KL1TD66658B 251474				/					
197	05-Jun	05-Jun-08	10484.43	10,484.43	2008	AVEO	KL1TD66668B 251807				XX 8/15					8/25 B. PAPI - ONE DON'T PAY
198	09-May	09-May-08	10484.43	10,484.43	2008	AVEO	KL1TD66618B 255490				/					
199	08-May	08-May-08	26741.63	26,741.63	2008	SILVERADO	1GCEK19CX8Z 255629	LT			/					
200	08-May	08-May-08	26779.88	26,779.88	2008	SILVERADO	1GCEK19C26Z 256554	LT			/					

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WHOLESALE AUDIT

576

Branch Number: 086
 Dealer Number: 0586
 Dealership: EVERETT CHEVROLET
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

* A - ✓ If Inspected & Condition OK
 * A - O If Vehicle Inspected But Damaged
 * A - X If Vehicle Missing

* B - ✓ If MCO Inspected
 * B - T If Title Inspected
 * B - X If Title/MCO Missing

Issued To: CSI-WAYNE FINK
 Date Issued: 08/21/08

	Note Date	Interest Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Mileage If Req.	A	B	Date Of Delivery	Remit. Date	Blocking Date	Irreg.	Comments
201	08-Aug	08-Aug-08	11275	11,275.00	2006	ENVOY	1GKDT13S662	258021	FA	U	T					
202	10-Aug	10-Aug-08	35748.46	35,749.48	2008	SILVERADO	2GCEK19J781	258033	LT			9/18				S. CRAWFORD Also at the time
203	15-Aug	18-Aug-08	40781.9	40,781.90	2008	TAHOE K1500	1GNFK13036R	260087	LT							
204	30-Jul	30-Jul-08	14930.13	14,930.13	2008	COBALT	1G1AK58FX87	261085	DEEI							
205	25-Mar	25-Mar-08	21708.65	21,708.65	2008	COBALT	1G1AM18B187	261623								
206	30-Jul	30-Jul-08	6506.25	6,506.25	2003	SILVERADO	1GCEC14V23Z	265639	U	LT						-Waive per CLPP C
207	12-Jun	12-Jun-08	26033.28	26,033.28	2008	MALIBU	1G1ZJ577X8F	266938								
208	30-Apr	30-Apr-08	35826.93	35,826.93	2008	AVALANCHE	3GNFK12378G	268558	LT							
209	30-Jul	30-Jul-08	16895	16,895.00	2007	IMPALA	2G1WD58CX79	269528	DE							-Waive per CLPP C
210	03-Jul	03-Jul-08	14087.63	14,097.63	2008	COBALT	1G1AK18F887	269866	EI							
211	30-Jul	30-Jul-08	19807.43	19,807.43	2008	MALIBU	1G1ZG57B884	270825	DE							9/12 BECKY THE OFFICE MGR. ASKED, SHE IS OFF TODAY
212	20-Jun	20-Jun-08	22368.53	22,368.53	2008	MALIBU	1G1ZH57B28F	278081								
213	19-Mar	19-Mar-08	26338.73	26,338.73	2008	SILVERADO	2GCEC19C381	278603	LT							
214	15-Aug	18-Aug-08	23618.43	23,618.43	2008	MALIBU	1G1ZJ57748F	279328								
215	14-May	14-May-08	31187.98	31,187.98	2008	SILVERADO	2GCEK19J381	282507	LT							
216	20-Aug	20-Aug-08	8681.25	8,681.25	2003	S TRUCK	1GQCT19X738	285800	U	LT						
217	27-May	27-May-08	38529.85	38,529.85	2008	SILVERADO	2GCEK13J581	286003	LT							
218	17-Jul	17-Jul-08	24566.6	24,566.60	2008	MALIBU	1G1ZJ57B58F	286342	EI							
219	10-Jul	10-Jul-08	24184.1	24,184.10	2008	MALIBU	1G1ZJ57BX8F	294212								
220	15-Jul	15-Jul-08	26402.6	26,402.60	2008	MALIBU	1G1ZJ57748F	296064								

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WHOLESALE AUDIT

Branch Number: 085
 Dealer Number: 0566
 Dealership: EVERETT CHEVROLET
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

576

* A - ✓ If Inspected & Condition OK
 * A - □ If Vehicle Inspected But Damaged
 * A - X If Vehicle Missing

* B - ✓ If MCO Inspected
 * B - T If Title Inspected
 * B - X If Title/MCO Missing

Issued To: CSI-WAYNE FINK
 Date Issued: 08/21/08

Row	Note Date	Interest Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Mileage If Req.	A	B	Date Of Delivery	Remitt. Date	Blocking Date	Irreg.	Comments	
221	08-Aug	08-Aug-08	15075	15,075.00	2008	NVOYDENALI	1GKET63M762	296649	FA	LT							
222	11-Jan	11-Jan-07	37715.38	37,715.38	2006	RAILBLAZER	1GNET13H862	299228	DE	LT							
223	08-Jul	07-Jul-08	24396.7	24,396.70	2006	SILVERADO	1GCEK14C78Z	299259		LT							
224	20-Aug	20-Aug-08	8606.25	8,606.25	2003	DAKOTA	1D7HL46N13S	301201	(U)					Waive per CLPP			TFR
225	11-Jul	11-Jul-08	15117.23	15,117.23	2008	AVEO	KL1TD86EX9B	304081									
226	29-Jul	29-Jul-08	15117.23	15,117.23	2009	AVEO	KL1TD66E19B	304082									
227	01-Aug	01-Aug-08	15117.23	15,117.23	2009	AVEO	KL1TD66E89B	304113									
228	18-Jul	18-Jul-08	15117.23	15,117.23	2009	AVEO	KL1TD86E29B	306035									
229	18-Jul	18-Jul-08	15117.23	15,117.23	2008	AVEO	KL1TD66E69B	306037									
230	20-Jul	21-Jul-08	15117.23	15,117.23	2009	AVEO	KL1TD66E79B	306113									
231	01-Jul	01-Jul-08	31272.13	31,272.13	2008	SILVERADO	2GCEK19J081	307783		LT							
232	18-Jul	18-Jul-08	16570.05	16,570.05	2008	AVEO	KL1TG66E99B	308209									
233	21-Jul	21-Jul-08	16570.05	16,570.05	2009	AVEO	KL1TG66E59B	308322									
234	20-Jul	21-Jul-08	16570.05	16,570.05	2009	AVEO	KL1TG66E79B	308323									
235	20-Jul	21-Jul-08	16570.05	16,570.05	2009	AVEO	KL1TG66E99B	308324									
236	20-Jul	21-Jul-08	15201.78	15,201.78	2009	AVEO	KL1TD66E59B	308829									
237	30-Mar	31-Mar-08	29240.73	29,240.73	2008	EQUINOX	2CNDL037186	309069		LT							
238	21-Jul	21-Jul-08	15117.23	15,117.23	2009	AVEO	KL1TD86E29B	309842									
239	20-Jul	21-Jul-08	15117.23	15,117.23	2009	AVEO	KL1TD66E89B	309862									
240	14-Aug	14-Aug-08	16575	16,575.00	2006	350Z	JN1AZ34D66M	310022	(U)								

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 GMAC 003488

WHOLESALE AUDIT

576

Branch Number: 086
 Dealer Number: 0885
 Dealership: EVERETT CHEVROLET
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

* A - ✓ If Inspected & Condition OK
 * A - D If Vehicle Inspected But Damaged
 * A - X If Vehicle Missing

* B - ✓ If MCO Inspected
 * B - T If Title Inspected
 * B - X If Title/MCO Missing

Issued To: CSI-WAYNE FINK
 Date Issued: 08/21/08

Row	Note Date	Interest Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Mileage If Req.	A	B	Date Of Delivery	Remitt. Date	Blotting Date	Irreg.	Comments	
241	21-Jul	21-Jul-08	16236.3	16,236.30	2009	AVEO	KL1TG66E48B 310584	ABSOPF									
242	20-Jul	21-Jul-08	16236.3	16,236.30	2009	AVEO	KL1TG66E48B 310455	2404E									
243	21-Jul	21-Jul-08	16236.3	16,236.30	2009	AVEO	KL1TG66E39B 310456										
244	21-Jul	21-Jul-08	16320.85	16,320.85	2009	AVEO	KL1TG66E18B 311203	311203									
245	20-Jul	21-Jul-08	16320.85	16,320.85	2009	AVEO	KL1TG66E39B 311204	311204									
246	21-Jul	21-Jul-08	16320.85	16,320.85	2009	AVEO	KL1TG66E48B 311258	311258									
247	25-Jun	25-Jun-08	13406.25	13,406.25	2008	ENVOY	1GNDT125962 311324	311324									
248	15-Aug	15-Aug-08	24396.7	24,396.70	2008	SILVERADO	1GCEK14C88Z 317722	317722									
249	27-Jul	28-Jul-08	13893.23	13,893.23	2009	AVEO	KL1TD86E88B 320533	320533									
250	28-Jul	28-Jul-08	13893.23	13,893.23	2009	AVEO	KL1TD86E39B 320591	320591									
251	28-Jul	28-Jul-08	13893.23	13,893.23	2009	AVEO	KL1TD86E78B 320593	320593									
252	07-May	07-May-08	48571.78	48,571.78	2007	AVANTACHE	3GNFK12Y973 320797	320797									
253	16-Jul	16-Jul-08	10125	10,125.00	2006	IMPALA	2G1WT58K269 321033	(U)									
254	18-Jul	18-Jul-08	15240	16,240.00	2006	SILVERADO	2GCEK198981 345616	FAULT									
255	11-Jul	11-Jul-08	23599.28	23,599.28	2008	COBALT	1G1AP18X487 347480										
256	08-Jul	08-Jul-08	23153.78	23,153.78	2008	COBALT	1G1AP18XX87 348813				X	8/12					8/25 (X) SMITH DR CAN'T PAY
257	25-Jun	25-Jun-08	8793.75	8,793.75	2004	S60	YV1RS61T342 349560	(U)			X	8/12					8/25 (X) HALL DR CAN'T PAY
258	16-Jul	16-Jul-08	5437.5	5,437.50	2002	TRAILBLAZER	1GNDS13S122 351318	(ULT)			X	8/15					8/25 (X) MATHIE DR CAN'T PAY
259	15-Aug	15-Aug-08	14595	14,595.00	2005	ENVOYDENALI	1GKET69M652 365622	FAULT			X	T					Waive per CLPP SMITH AND HALL DR CAN'T PAY DR IN ARIZONA DR. MA
260	01-Jul	01-Jul-08	10593.75	10,593.75	2005	ALTIMA	1N48L11D95N 481059	(U)									

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WHOLESALE AUDIT

Branch Number: 055
 Dealer Number: 0565
 Dealership: EVERETT CHEVROLET
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

576

* A - ✓ If Inspected & Condition OK
 * A - O If Vehicle Inspected But Damaged
 * A - X If Vehicle Not Inspected

* B - ✓ If MCO Inspected
 * B - T If Title Inspected
 * B - Y If Title/MCO Missing

Issued To: OSI-WAYNE PINK
 Date Issued: 08/21/08

Note Date	Internal Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Mileage	Date Of	Remitt.	Blocking	Irreg.	Comments
261	01-Jul	01-Jul-08	9168.75	9,168.75	2007	PT CRUISER	3C3JNS6E34T	5607731	08/21/08	08/21/08	08/21/08	08/21/08	08/21/08
262	11-Apr	11-Apr-08	0962.5	8,962.50	2004	ENDEZVOUS	3G6DB03E14S	589348	08/21/08	08/21/08	08/21/08	08/21/08	08/21/08
263	11-Jun	11-Jun-08	7796	7,795.00	2005	COBALT	1G1AL56F567	602200	08/21/08	08/21/08	08/21/08	08/21/08	08/21/08
264	09-Apr	09-Apr-08	11700	11,700.00	2007	RAM TRUCK	1D7HA16K77J	604427	FA				
265	30-Jul	30-Jul-08	6618.75	6,618.75	2006	COBALT	1G1AL56F367	622008	U				OK'D ELECTRONIC TITLE
268	06-Jun	06-Jun-08	5737.5	5,737.50	2003	DURANGO	1D4HS38N63F	625747	U				
267	20-May	20-May-08	3206.25	3,206.25	2002	SABLE	HMFM50U920	692101	U				
268	16-Jul	16-Jul-08	5643.75	5,643.75	2005	COBALT	1G1AK52F757	634782	U				OK'D ELECTRONIC TITLE
269	06-Jun	06-Jun-08	14250	14,250.00	2007	CHARGER	2B3KA43G7H	638317	U				OK'D ELECTRONIC TITLE
270	18-Jun	18-Jun-08	22297.45	22,297.45	2008	HHR	3GND453P18S	643067	DE LT				
271	02-May	02-May-08	3581.25	3,581.25	2003	MALIBU	1G1ND52J03M	654435	U				ONLY WITH SER. OF 5774A, TO RETURN TO SHOP REPAIR NEEDED
272	02-May	02-May-08	3581.25	3,581.25	2003	MALIBU	1G1ND52J83M	654537	U				SHOP REPAIR NEEDED
273	02-May	02-May-08	3581.25	3,581.25	2003	MALIBU	1G1ND52J53M	654575	U				" " "
274	02-May	02-May-08	3581.25	3,581.25	2003	MALIBU	1G1ND52J43M	654938	U				" " "
275	02-May	02-May-08	3581.25	3,581.25	2003	MALIBU	1G1ND52J13M	655058	U				" " "
276	02-May	02-May-08	3581.25	3,581.25	2003	MALIBU	1G1ND52J03M	655191	U				
277	11-Apr	11-Apr-08	8418.75	8,418.75	2004	DAKOTA	1D7HG12K14S	700406	U				
278	27-Jun	27-Jun-08	22004.23	22,004.23	2008	HHR	3GNC45P2S	707127	U				
279	01-Jul	01-Jul-08	12000	12,000.00	2008	FORESTER	JF1SG69868M	712006	U				
280	07-Jul	07-Jul-08	22954.25	22,954.25	2008	HHR	3GCCA05P78S	713367	U				

GMAC 003490
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WHOLESALE AUDIT

576

Branch Number: 088
 Dealer Number: 0568
 Dealership: EVERETT CHEVROLET
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

* A - ✓ If Inspected & Condition OK
 * A - D If Vehicle Inspected But Damaged
 * A - X If Vehicle Missing
 * B - ✓ If MCO Inspected
 * B - T If Title Inspected
 * B - X If Title/MCO Missing

Issued To: CSI-WAYNE FINK
 Date Issued: 08/21/08

Row	Note Date	Interest Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Mileage If Req.	A	B	Date Of Delivery	Remit Date	Blocking Date	Irreg.	Comments	
281	22-Jul	22-Jul-08	19817.23	19,817.23	2006	HHR	3GNCA23D78S	716460									
282	30-Jul	30-Jul-08	9000	9,000.00	2006	COROLLA	1NXBR30E76Z	746440									
283	19-Mar	19-Mar-08	10031.25	10,031.25	2005	VUE	5GZCZ63435S	801231									Waive per CLPP ADULT MAINTENANCE TO WHOLESALE JR Motor Sport I TAKED
284	08-Aug	08-Aug-08	17975	17,975.00	2006	97X	5S3ET13M862	802742									
285	08-Aug	08-Aug-08	15595	15,595.00	2006	97X	5S3ET13M462	803936									
286	07-Aug	07-Aug-08	7895	7,895.00	2005	VUE	5GZCZ23D95S	846411									
287	15-Apr	15-Apr-08	9581.25	9,581.25	2005	RANGER	1FTZR16E45P	A02145									
288	07-May	07-May-08	22850	22,850.00	2002	XK8	SAJDA42C72N	A28840									Waive per CLPP JOHN REGGON'S 1745 @ HOME ONE IN STORAGE
289	16-Jul	16-Jul-08	5381.25	5,381.25	2003	EXPLORER	1FMYU60E23U	A37680									
290	14-Aug	14-Aug-08	8625	8,625.00	2002	EXCURSION	1FMSU43F02E	A39161									NO TITLE - PPA TO US MA ON 8/13
291	30-Jul	30-Jul-08	7500	7,500.00	2003	RANGER	1FTZR45E87P	A48840									Waive per CLPP 8/21
292	30-Jul	30-Jul-08	14006.25	14,006.25	2007	RANGER	1FTZR45E87P	A52660									Waive per CLPP TITLE
293	30-Aug	30-Aug-07	9393.75	9,393.75	2004	GT CONVTLN	2FTRX17W44C	A68576									Waive per CLPP NO TITLE ON FILE ONLY TITLE AFFIDAVIT 12/30/06-TITLE ONOFF REQUEST
294	06-Jun	06-Jun-08	11231.25	11,231.25	2007	ESCAPE	1FMYU93127K	B33689									
295	10-Jan	10-Jan-08	11625	11,625.00	2005	EXPLORER	1FMZU73KX5U	B33927									
296	11-Apr	11-Apr-08	12881.25	12,881.25	2002	W SUPER DU	1FTNX21F72E	C88790									

GMAC 003491
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WHOLESALE AUDIT

- * A. ✓ If Inspected & Condition OK
- * A. D If Vehicle Inspected But Damaged
- * A. X If Vehicle Missing
- * B. ✓ If MCO Inspected
- * B. T If Title Inspected
- * B. X If Title/MCO Missing

Row	Notw Date	Interest Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Mileage If Reg.	A	B	Deliv Date	Remitt Date	Blocking Date	Irreg. ✓	Comments	
1							135940										
2							307370										
3							240536										
4							243142										
5							317734										
6							181817										
7							116777			X		8/20					D. GUNESSON Floor 9/21
8																	
9																	
10																	
11																	
12																	
13																	
14																	
15																	
16																	
17																	
18																	
19																	
20																	

GMAC FINANCIAL SERVICES

GMAC Dallas Regional Business Center
5208 Fennyson Parkway, Suite 120
Plano, TX 75024
1-800-343-4541 Ext. 2073

September 22, 2008

EVERETT CHEVROLET-GEO
Attn: John Reggans
7300 EVERGREEN WAY
EVERETT, WA 98203

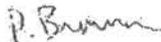
Dear Mr. Reggans:

The audit(s) completed on 8/22/2008 yielded 17 payment delays out of 21 deliveries captured during the audit period (81% total delays). A payment is considered late when it is received beyond the release period of 3 business days. The number of delays for this sampling period is considered excessive and in need of your attention. The results of the inventory audit are provided for your information.

Audit Type	Total Deliveries	Payment Delays *	%
Wholesale Floor Plan	21	17	81%

Notwithstanding the foregoing, your wholesale credit line is expressly subject to the written terms of the Wholesale Financing Agreement under which it was extended. It is a discretionary line of credit and may be modified, suspended or terminated at our election, in our sole discretion.

Sincerely,



Paul Brennan
Portfolio Manager

cc: M.J. Vick

GMAC 003494
CONFIDENTIAL

R. Ex. 89



Albert Rodriguez
Audit

Profile Logout Help

Mar 04, 2009

Process Search Reports About

Search

Audit Summary: Audit #56199-1

How Do I?

Advanced Search...

Print Report

Recent Items

- Audit_56199-1
- Audit Search
- Clear Audits Bin
- Audit_56458-1
- Audit_56458-1
- Audit_56119-1
- In Process Audits Bin
- Close Audits Bin
- Issue Audits Bin
- Audit_5623-1
- Audit_57381-1

Scheduled: 09-23-2008
 Issued: 09-22-2008 @ 10:37 PM by wzmvzlg
 Initiated: 09-22-2008 @ 2:14 PM by wzcvllb
 Completed: 09-23-2008 @ 20:19 PM by wzcvllb
 Cleared: 10-14-2008 @ 12:01 PM by arzhltla
 Closed: 10-14-2008 @ 22:13 PM by bzzz889a
 Mgmt: Review
 Canceled
 Audit Duration: 6:00

Branch: Sacramento Business Center (851)
 Dealer (4-digit): EVERETT CHEVROLET INC. (688)
 Classification: P
 Audit Type: Wholesale
 Audit Issue: No
 Std Audit: Yes
 W/S Release Period: 3
 Avg Mail Time: 0

Audit Stats:

Total VINs: 247
 # Present: 212
 # Sold: 15
 # Pmt Remitted: 0
 # Paid: 15
 # Missing: 20
 # Waived: 20
 # Manually Added: 8
 # No Action: 3

Main: Total Conv VINs: 0
 # Present: 0
 # Sold: 0
 # Missing: 0
 # Manually Added: 0
 # No Action: 0

Payment Irregularities: 9
 # Other Irregularities: 4
 % Sales Delayed: 60.00%
 % Paid: 6.00%
 % Paid Delayed: 60.00%
 # Days Delayed (Low): 1
 # Days Delayed (High): 6
 Avg. Delay (Days): 2.44

Comments / Issues

Type - Status Entered By Note

General (Closed)
 09-23-2008 18:27 PM mann, andy
 09-23-2008 18:21 PM Hoopes, David
General (Closed)
 09-23-2008 18:05 PM Hoopes, David
General (Closed)
 10-14-2008 11:45 AM Rodriguez, Albed
 10-14-2008 22:13 PM Stokes, Robby

Please get a copy of front & back of title for unit (A68576)
 PER OUR RECORDS A68576 PIF 9/19.

DISCUSSED DELAYS W BECKY OM A SHE STATES SHE CAN NOT PAY/OFF UNITS
 WHEN FILES NOT BROUGHT TO IM RELEASE PERIOD.

15 Release (3 NAV), 12 Used), 9 Payment Delays, 1 to 6 days (1 to 5 days), 4 Other (regs, no reg), 1 DE (Gemo-line full- PFI requested PIF, Dir refused), 1 TD (Extended), 2 Misuse, 1 Employee driving, 1 With Service Customer (PFI requested PIF, Dir refused), Request to Waive 20 Missing Units, 3 IT, 7 DE, 1 With Service CS, 8 Smart Auction in Transit, 2 TD, 1 Employee Driving, Also Request to Waive 8 Missing Titles, 2 Mailed to GMAC in error 8/22/08, 6 IT from Smart Auction, Approved

Supplemental Audits

#	Status	Audit #	No of VINS	Audit Rep
---	--------	---------	------------	-----------

Assigned Audit Reps

Name	User ID	Primary Audit Rep
Hoopes, David	wz0116	Yes

Instructions/Tasks

- Instructions/Tasks**
- Record the physical inspection of each vehicle listed on the Wholesale Inventory Audit
 - For all vehicles not available, review dealership records, determine the reason and record the details.
 - Inspect vehicle ownership documentation (e.g. MCO/VIS, title/ownership) on all vehicles not available for inspection.
 - Complete all special instructions including the following:
 - Record purchaser information (all sold vehicles)
 - Record purchaser information, (if regularities only)
 - Check vehicle ownership documentation (e.g. MCO, title) on only used vehicles
 - Contact the branch to summarize the results of the audit prior to updating and leaving the dealership

Audit Trail

Date/Time	User	Detail
Wed, 09-04-2008 11:13 AM	azn115	Audit Report sent to: (alpartin@riguez@gmac.com)
Tue, 10-14-2008 22:13 PM	bzzz3us	Audit Closed on Tue, 10-14-2008
Tue, 10-14-2008 22:06 PM	bzzz3us	Audit Closing Phase started by 'bzzz3us'
Tue, 10-14-2008 12:01 PM	azn115	Audit Closed on Tue, 10-14-2008

Fri, 09-10-2008 17:17 PM	gmac11s	Audit Clearance Phase started by 'gmac11s'
Tue, 09-23-2008 20:19 PM	system	Audit Completion Phase finished by 'wzcl1b'
Tue, 09-23-2008 20:19 PM	system	Audit Completed on Tue, 09-23-2008
Mon, 09-22-2008 21:34 PM	system	Audit Completion Phase started by 'wzcl1b'
Mon, 09-22-2008 21:14 PM	system	Audit Initiated on Mon, 09-22-2008
Mon, 09-22-2008 18:37 PM	wzmw11s	Audit Report sent to: (David.Hoopas@gmac11s.com)
Mon, 09-22-2008 18:37 PM	wzmw11s	Audit Issued on Mon, 09-22-2008
Mon, 09-22-2008 18:28 PM	wzmw11s	Set Audit Release Period to 3 days
Mon, 09-22-2008 18:26 PM	wzmw11s	Audit Issuance Phase started by 'wzmw11s'
Mon, 09-22-2008 18:27 PM	wzmw11s	Audit Rep 'wzcl1b' added to audit and assigned as primary rep.
Mon, 09-22-2008 18:27 PM	wzmw11s	Audit Creation Mon, 09-22-2008

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Albert Rodriguez

Profile Logout Help

Mar 04, 2008

Audit

Process Search Reports About

Search

Audit Wholesale VIN Summary: Audit #56199-1

How Do I?

Find Audit

Advanced Search...

Filter
 Show Public

Recent Items

- Audit_56199-1
Audit Search
Clear Audits Bin
Audit_68460-1
Audit_68459-1
Audit_68110-1
In Process Audits Bin
Close Audits Bin
Issue Audits Bin
Audit_56923-1
Audit_57361-1

Table with columns: #, Date, Note, VIN, Status, Code, Other, Sale, Rammed, Blocked, Issues. Contains 14 rows of audit data.

GMAC 003412
CONFIDENTIAL

15	09-23-2008	104415 1GNDD339792	104553 1GCEM4R04R	106939 KNDMB23876	107497 1GCEK18B5GZ	107692 1FAFP63U7A	107788 ZG2MP652984	108314 1GNFK16Z561	109053 1G1N43P3435	109620 1GCEK18Y48E	110374 1GZT18N58E	111691 1GCEG1AX29Z	112233 1D4H86N34E	113684 1GSLG6K18N	115599 1GNEK13037R	116805 1GZS1TNR8E	116932 1GCEM4R04R	116906 1GCHK2368E	119819 1RGR46K96E	119932 1GDE1ZHX3E	120966 1GCEK20YX8Q	120986 1G1Y25E365	120974 1G1Y25E365	122440 1G1Y25E365
		#LT	DE	ULT	#U	U	FAU	ULT	DE	ET	FAU	#LT	U	FAU	FAU	FAU	LT	LT	FAU	FAU	#LT	DE		
		M-InTrans	M-Demp	Good	Good	Good	Sold	Good	Good	Good	Good	M-InTrans	Good	Good	Good	Good	Good	Good	M-Drive	Good	M-InTrans	M-Demp		
		M	T	T	X	T	X	T	T	T	T	X	T	T	T	M	T	T	T	T	M	M		
							09-23-2008	09-23-2008	09-16-2008	09-23-2008	09-23-2008													

37	06-11-2008	IGSDW6Z250 122677	FAU	Good	T	
38	06-29-2008	IGNH131851 123112	ULT	Good	T	
39	06-17-2008	IGIAK181592 123982				Q 0
40	08-18-2008	IGIAK181857 124651		Good		
41	10-23-2007	IGNER27256 124728	FAU	Good	T	
42	08-17-2007	IGZ2H17864 125107	FAU	Good	T	
43	08-17-2007	IGDAX261975 125527		Good		
44	08-20-2008	IGIAP18X197 125857		Good		
45	05-07-2008	IGIAY265573 126183	DE	McDerm	M	
46	11-05-2003	IGHX2251W5 127818	U	Good	M	
47	08-18-2008	IGOLK23205F 128852	ULT	Good	T	
48	05-22-2008	IGIAK18185Z 128873		Good		
49	08-22-2008	IGIAK18180Z 130243		Good		
50	08-15-2008	IGIYAS1805 131658		M-W/Erp	M Q 0	
51	05-30-2008	IGIY265585 132179		Good		
52	06-28-2008	IGIY2351585 133991	U	Good	T	
53	09-17-2008	IGCHK23698E 135320	LT	Good		
54	08-19-2008	IGNDSW16M 135537	FAU	Good	T	
55	08-29-2008	IGIAK18185Z 135708		Good		
56	08-05-2008	IGKET18506E 136471	FAU	Good	T	
57	09-22-2008	2SAYV58CX89 136839		Good	X Q 0	
58	11-14-2007	IGNDV33107D 136881	DE	Good	T	
59		IGI2J5728E 136974	U	Good		

60	08-29-2008	133AK18H59T 13710Z			Good			
61	12-28-2007	3GNFK12178G 137257	EL LT		Good			
62	08-04-2008	1G1AC12F15Z 340455	U	T	Good			
62	10-11-2007	1CGDT192X8R 140568	LT		Good			
64	04-25-2006	1GNDS13S98Z 140636	FAU	T	Good			
65	10-14-2007	1CGCS14848R 142885	LT		Good			
66	08-16-2008	1SCHK23608E 145427	EL LT		Good			
67	07-30-2008	1GBUG31R21 145673	ULT	T	Good			
68	06-11-2008	2GNVW12E759 147364	PAU	T	Good			
69	10-23-2007	3GNFK16Y88G 148403	LT		Good			
70	05-07-2008	1GCGS14938R 149683	DE	X	Sold	09-19-2008	09-24-2008	09-24-2008
71	08-30-2007	1GCEK19X48Z 150005	LT		Good			
72	09-05-2008	1GNDY20108D 154774	FAU	T	Good			
73	09-11-2008	1GNFQ13D28U 154829	LT		Good			
74	12-14-2007	3GNFK16Z88G 155340	ULT	X	Sold	09-30-2008	08-25-2008	09-25-2008
75	08-12-2008	1SND113X41K 158748	ULT	X	Sold	09-20-2008	09-25-2008	09-25-2008
76	09-10-2008	3GVEA92N98G 158878	FAU	T	Good			
77	01-17-2008	1GCEG14X87Z 167352	ULT	T	Good			
78	09-12-2008	5GDPH16456 162282	PAU	T	Smart			
79	09-03-2008	2ZVH08H68E 165781	U	T	Good			
80	07-08-2008	2SCFC18N051 167812	ULT	T	Good			
81	12-20-2007	1GCHK2388RE 169341	LT		Good			
82	04-01-2008	1GCDT13E68A 171189	LT		Good			

83	06-05-2008	1GCDT13E286	LT	Good			
84	02-28-2008	1GNFK1348J	LT	Good			
85	08-05-2008	1GKEK3925L	FAU	Sold	X	0	09-23-2008
86	09-05-2008	1GCDT13E286	ULT	Good	T		
87	09-28-2008	1GCEK1980Z	ULT	Good	T		
88	01-09-2008	1GNFK1308J	LT	Good			
89	09-04-2008	1G1ZK3746E	DE	Good			
90	01-25-2008	1GNEY18X82	EL	Good			
91	09-04-2008	2G3MP552671	DE	Good			
92	05-07-2008	1GNFK1308J	U	Good	T		
93	02-21-2008	1GCHK23K39E	DE	Good			
94	12-10-2007	1GNFK12388G	LT	Good			
95	02-04-2008	1GCDT139558	LT	Good			
96	02-06-2008	1SRHK23E48E	LT	Good			
97	02-06-2008	1GCHK23598E	LT	Good			
98	11-08-2007	2GCEK13V381	LT	Good			
99	02-13-2008	1GCHK23698E	LT	Good			
100	09-04-2008	1GCEK19Y08Z	DE	M-Drive	M	0	
101	02-19-2008	1G1ZK37284	EL	Good			
102	09-12-2008	1GNFK13S882	FAU	Sold	X	0	09-23-2008
103	03-02-2008	1GCEK1980Z	LT	Good			
104	02-28-2008	1GCHK23K39E	LT	Good			
105	02-29-2008	1GKEK3925L	ULT	Good	T		

Audit VIN Summary

106	12-31-2007	350EKK13M59Q	LT	Good	
107	03-31-2008	1G00T33E168 201131 204417	LT	Good	
108	06-15-2008	1GJZR57184 204616	DE	M-Demo	M
109	04-05-2008	1G0DT38E388 204678	LT	Good	
110	07-31-2008	15G0S148678 204985	ULT	Good	T
111	09-05-2008	1GNEM185558 205574	FAU	Good	T
112	04-11-2008	1G0G5149086 207412	LT	Good	
113	04-18-2008	1G0G5149X88 208306	LT	Good	
114	06-19-2008	2S1VF52E449 210880	FAU	Good	T
115	09-18-2008	1GNEK13Z031 211257	ULT	Good	T
116	03-07-2008	1GNFK13M481 211378	LT	Good	
117	08-28-2008	2GNDL33E796 211588	LT	Good	
118	12-04-2007	2GCEK13M551 212655	LT	Good	
119	06-16-2008	1GTEK19Z462 213250	FAU	Good	T
120	09-04-2008	1G3E145E26N 213542	DE U	Good	T
121	03-20-2008	1GNFK13M281 213126	LT	Good	
122	06-05-2008	1G00I33E38R 212383	LT	Good	
123	06-19-2008	1G0D145E658 222523	LT	Good	
124	06-18-2008	1GNF13H382 223208	LT	Good	
125	05-09-2008	1GNF13M182 224791	LT	Good	
126	09-02-2008	1G5HK23645E 225040	LT	Good	
127	06-06-2008	1GND143S172 225383	FAU	Sold	X 0 0 03-20-2008 09-26-2008 09-26-2008
128	04-04-2008	1GNFK13M281 225657	LT	Good	

129	09-12-2008	IGNDI13S1Z2 246972	FAU	Good	T				
130	08-05-2008	IGNET13H88Z 246573	FAU	Sold	X	0	09-20-2008	09-26-2008	09-26-2008
131	02-19-2008	IGCEK19J58Z 227340	LT	Good					
132	09-02-2008	ICAHG39U661 228736	FAU	Good	T				
133	01-24-2008	IGCEK19C88Z 230945	LT	Good					
134		IGCEK19C08Z 232545		Good					
135	07-01-2008	IGNDI13S88Z 233457	LT	Good					
136	08-29-2008	IGCEK22N56G 244387	FAU	Sold	X	0	08-16-2008	09-25-2008	09-23-2008
137	03-03-2008	IGCEK14C38Z 237132	LT	Good					
138	04-11-2008	ID7HU18D4H1 237308	U	Good	T				
139	03-04-2008	IGCEK14C28Z 237895	LT	Good					
140	03-04-2008	IGCEK14C88Z 238633	LT	Good					
141	03-04-2008	IGCEK14C68Z 238420	LT	Good					
142	03-04-2008	IGCEK14C48Z 238658	LT	Good					
143	03-05-2008	IGCEK14C78Z 239258	LT	Good					
144	03-06-2008	IGCEK14C88Z 239428	LT	Good					
145	03-05-2008	IGCEK14C98Z 239518	LT	Good					
146	03-07-2008	IGCEK14C68Z 239757	LT	Good					
147	11-23-2007	IGNBK13T06E 240090	ULF	Good	T				
148	05-08-2008	KLNTC66568E 241433		Good					
149	04-06-2008	IGCEK14Z20G 241443	LT	Good					
150	03-10-2008	IGCEK19C98Z 241677	LT	Good					
151	08-17-2008	IGNET13H88Z 243132	LT	Good					

152	03-11-2008	IGCEK19C18Z 243374	LT	Good			
153	03-07-2008	ISIAK68F18Z 244725		Sold	X O B	09-19-2008	09-29-2008
154	03-14-2008	IGSEC19C28Z 245065	LT	Good			
155	03-18-2008	IGNEQ12J00G 245856	LT	Good			
156	03-10-2008	IGSEC19X08Z 247402	LT	Good			
157	09-03-2008	KL1FD668X8R 250871		Good			
158	06-05-2008	KL1FD66858E 251474			O B		
159	08-28-2008	KL1FD66868E 251807		Good			
160	05-08-2008	KL1FD66810H 255420		Good			
161	05-08-2008	IGCEK19CX8Z 255828	LT	Good			
162	05-08-2008	IGCEK19C28Z 255834	LT	Good			
163	08-18-2008	IGNBK13038R 260087	LT	Good			
164	03-25-2008	IG1AM18B18Z 261823		Good			
165	07-30-2008	IGSEC14V22Z 265819	ULT	Good	T		
166	06-12-2008	IG1Z577X6E 265936		Good			
167	09-22-2008	IGYFK68N19G 267972	P U	Not Smart	X O B		
168	08-10-2008	IGNET13H20Z 269217	FAU	Good	X O D		
169	07-30-2008	IGYWD58CX7E 269528	DE U	Sold	X O O	09-19-2008	09-24-2008
170	07-03-2008	ISYAK18E88Z 269358	EI	Good			
171	08-15-2008	IG1Z577X6E 279328		Not Done	M O O		
172	05-27-2008	IGCEK13J581 286003	LT	Good			
173	07-10-2008	IG1Z577X6E 286212		Good			
174	08-28-2008	IGNZH57EX8E 286710		Good			

175	06-03-2008	1G1ZL6T8X8E285405	Good	Good	EXXKXHFH1F01 2005-20-00 2Y1
176	07-16-2008	1G1ZL6T8X8E285084	Good	Good	EXXKXHFH1F01 2005-21-10 2Y1
177	08-08-2008	1GKE163M762285649	Good	Good	EXXKXHFH1F01 2005-20-00 2Y1
178	01-11-2007	1GNET18H862292226	Good	Good	EXXKXHFH1F01 2005-21-10 2Y1
179	07-08-2008	1GTEK140762288259	Good	Good	EXXKXHFH1F01 2005-21-10 2Y1
180	08-20-2008	1DZEL48M13S304001	Good	Good	EXXKXHFH1F01 2005-21-10 2Y1
181	07-29-2008	KMTD66E19E304082	Good	Good	EXXKXHFH1F01 2005-21-10 2Y1
182	08-01-2008	KMTD66E19E304111	Good	Good	EXXKXHFH1F01 2005-21-10 2Y1
183	07-18-2008	KMTD66E19E306035	Good	Good	EXXKXHFH1F01 2005-21-10 2Y1
184	07-19-2008	KMTD66E19E306037	Good	Good	EXXKXHFH1F01 2005-21-10 2Y1
185	07-01-2008	ZGCEK19J081307783	Good	Good	EXXKXHFH1F01 2005-21-10 2Y1
186	07-18-2008	KMTD66E19E308209	Good	Good	EXXKXHFH1F01 2005-21-10 2Y1
187	07-21-2008	KMTD66E19E308327	Good	Good	EXXKXHFH1F01 2005-21-10 2Y1
188	07-20-2008	KMTD66E19E308328	Good	Good	EXXKXHFH1F01 2005-21-10 2Y1
189	07-20-2008	KMTD66E19E308329	Good	Good	EXXKXHFH1F01 2005-21-10 2Y1
190	07-20-2008	KMTD66E19E308329	Good	Good	EXXKXHFH1F01 2005-21-10 2Y1
191	03-30-2008	ZOND03Z186309052	Good	Good	EXXKXHFH1F01 2005-21-10 2Y1
192	07-20-2008	KMTD66E19E309852	Good	Good	EXXKXHFH1F01 2005-21-10 2Y1
193	06-14-2008	MTL233AD58M319022	Good	Good	EXXKXHFH1F01 2005-21-10 2Y1
194	07-21-2008	KMTD66E19E310384	Good	Good	EXXKXHFH1F01 2005-21-10 2Y1
195	07-20-2008	KMTD66E19E310455	Good	Good	EXXKXHFH1F01 2005-21-10 2Y1
196	07-21-2008	KMTD66E19E310456	Good	Good	EXXKXHFH1F01 2005-21-10 2Y1
197	07-21-2008	KMTD66E19E311203	Good	Good	EXXKXHFH1F01 2005-21-10 2Y1

Line	Date	Vehicle ID	Condition	Disposition	Status	Remarks
221	09-04-2008	1B3E136X15N246032	U	Good	T	
222	09-04-2008	1C3LC46K37N891105	U	Sold	X	09-21-2008 09-28-2008
223	08-10-2008	2HGES26812H594149	U	Good	T	
224	05-17-2008	1GJAL5E56Z602293	FAU	Good	T	
225	04-09-2008	1D7HA16K71J804447	FAU	Good	T	
226	07-16-2008	1G1AK2E157633782	U	Good	T	
227	09-17-2008	3XVAP81K86M640688	U	Good	T	
228	06-18-2008	3CNDAS2P1BS643087	DE	Good	T	
229	05-02-2008	1G3ND52403M654435	U	M-Rental	T	0
230	05-02-2008	1G1ND52403M654435	U	Good	T	
231	05-02-2008	1G1ND52403M654435	U	Good	T	
232	05-02-2008	1G1ND52403M654435	U	Good	T	
233	05-02-2008	1G1ND52403M654435	U	Good	T	
234	05-02-2008	1G1ND52403M654435	U	Good	T	
235	09-08-2008	1D2HG1K14S700455	U			0
236	07-07-2008	1F1SG36366H712005	U	Good	T	
237	07-30-2008	1NXBR30E76Z746340	U	Good	T	
238	05-19-2008	5GZCZ63435S804231	ULT	Good	T	
239	08-08-2008	5S3ET13M852802742	FAU	Good	T	
240	05-08-2008	5S3ET13M852804935	FAU	Good	T	
241	06-22-2008	5GZCZ63435S840681	U	M-Smart	X	0
242	04-16-2008	1E3ZL5E45P402145	ULT	Good	T	
243	05-07-2008	5AND42C72N628840	DE	M-Demp	T	0

244	07-16-2008	1FMXU6ME29L	U/LT	Good	T
		A37880			
245	06-18-2008	ZEMDAR553R	U/LT	Good	T
		A47185			
246	07-30-2008	1FTR45E3P	U/LT	Good	T
		A52650			
247	09-03-2008	1F3AR1FX4E	U/LT	Good	T
		A55133			
248	08-04-2008	1FTR4U76P	U/LT	Good	T
		A62037			
249	06-05-2008	1FMXU5317K	U/LT	Good	T
		E33682			
250	04-11-2008	1F3X21F725	U/LT	Good	T
		C38190			

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GMAC FINANCIAL SERVICES

GMAC Dallas Regional Business Center
5208 Tennyson Parkway, Suite 120
Plano, TX 75024
1-800-343-4541 Ext. 2073

October 16, 2008

EVERETT CHEVROLET-GEO

Attn: John Reggans
7300 EVERGREEN WAY
EVERETT, WA 98203

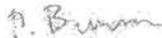
Dear Mr. Reggans:

The audit(s) completed on 9/23/2008 yielded 9 payment delays out of 15 deliveries captured during the audit period (60% total delays). A payment is considered late when it is received beyond the release period of 3 business days. The number of delays for this sampling period is considered excessive and in need of your attention. The results of the inventory audit are provided for your information.

Audit Type	Total Deliveries	Payment Delays*	%
Wholesale Floor Plan	15	9	60%

Notwithstanding the foregoing, your wholesale credit line is expressly subject to the written terms of the Wholesale Financing Agreement under which it was extended. It is a discretionary line of credit and may be modified, suspended or terminated at our election, in our sole discretion.

Sincerely,



Paul Brennan
Portfolio Manager

COPY

cc: Jerry Vick

GMAC 003424
CONFIDENTIAL

R. Ex. 90

WHOLESALE AUDIT

578

Branch Number: 058
 Dealer Number: 0585
 Dealership: EVERETT CHEVROLET, INC
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

* A - ✓ If Inspected & Condition OK
 * A - C If Vehicle Inspected But Damaged
 * A - X If Vehicle Missing
 * B - ✓ If NCO Inspected
 * B - T If Title Inspected
 * B - X If Title/MCO Missing
 Issued To: CSI-JOHN LAFARGUE
 Date Issued: 09/03/08

Row	Note Date	Interest Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Mileage If Reg.	A	B	Date Of Delivery	Remitt. Date	Stocking Date	Irreg.	Comments
1	05-May	05-May-08	20625	20,625.00	2006	SOLSTICE	1G2MB33B38Y	000129	U	✓	✓					
2	05-Aug	05-Aug-08	8756.25	8,756.25	2005	SANTA FE	KM6SC73D65U	011940	U	✓	✓					
3	05-May	05-May-06	14200	14,200.00	2008	EQUINOX	2CNDL13FX86	015652	FAU LT	✓	✓					
4	02-Jun	02-Jun-08	9375	9,375.00	2007	LANCER	JA3AJ2BE67U	017614	U	✓	✓					
5	08-Jul	08-Jul-08	6956.25	6,956.25	2005	SEBRING	4C3AG53H25E	020957	U	✓	✓					
6	25-Oct	25-Oct-07	28410.51	28,410.51	2008	EQUINOX	2CNDL537196	037037	LT	✓	✓					
7	12-Jun	12-Jun-08	6825	6,825.00	2006	ACCENT	KMHCM46C18U	039907	U	X	8-30	9-4	9/4			J. Blavin
8	21-Jul	21-Jul-08	8250	8,250.00	2008	ACCENT	KMHCM36C28U	062097	U	✓	✓					
9	11-Apr	11-Apr-08	12243.75	12,243.75	2007	ENDEAVOR	4A4MN21S07E	077276	U	✓	✓					
10	02-Jun	02-Jun-08	9206.25	9,206.25	2007	GALANT	4A3AB36F37E	083221	U	✓	✓					
11	08-Jul	08-Jul-06	10406.25	10,406.25	2006	EQUINOX	2CNDL73F466	091473	U LT	✓	✓					
12	05-Aug	05-Aug-07	42281.33	42,281.33	2008	SILVERADO	1GCHK33B38F	100785	LT	✓	✓					
13	22-Aug	22-Aug-08	46567.18	46,567.18	2008	TAHOE	K1500	1G1FK23068J	101734	LT	X	✓				Waive per CLPP
14	25-Mar	25-Mar-08	10400	10,400.00	2008	PT CRUISER	3ABFY48B88T	104114	FAU	✓	✓					
15	25-Jun	25-Jun-06	17895	17,895.00	2007	SOLSTICE	1G2MB35B87Y	104808	FAU	✓	✓					
16	30-Jul	30-Jul-06	15000	15,000.00	2004	SSR	1GCE514P04B	106939	DE U LT	X	✓					Waive per CLPP
17	11-Apr	11-Apr-08	11183.75	11,183.75	2007	SEDONA	KNDMB233576	107467	U LT	✓	✓					
18	02-Aug	02-Aug-08	24480.58	24,480.58	2008	MALIBU	1G1ZF5T5X9F	107760	U	✓	✓					
19	05-Mar	05-Mar-08	8156.25	8,156.25	2007	TAURUS	1FAPP53J47A	107768	U	✓	✓					
20	08-May	08-May-05	12500	12,500.00	2008	GRAND PRIX	2G3WP552981	108814	FAU	✓	✓					

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WHOLESALE AUDIT

576

Branch Number: 035
 Dealer Number: 0583
 Dealership: EVERETT CHEVROLET, INC
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

* A. ✓ If Inspected & Condition OK
 * A. D If Vehicle Inspected But Damaged
 * A. X If Vehicle Missing
 * B. ✓ If NCO Inspected
 * B. T If Title Inspected
 * B. X If Title/MCO Missing
 Issued To: CSI-JOHN LAFARGUE
 Date Issued: 09/03/08

Invoice Date	Invoice Date	Current OSE	Original OSE	Year	Model	Vehicle Ident#	Code	Mileage If Req.	A	B	Date Of Delivery	Rebuilt Date	Blocking Date	Irreg.	Comments
21	29-Feb-08	17,125.25	17,126.25	2006	K1500	1GNFK16Z56J	109083	U LT	✓						
22	14-Mar-05	35,994.08	45,508.08	2003	CORVETTE	1G1YY32G435	109620	DE	✓						
23	19-Aug-07	35,443.93	35,443.93	2008	SILVERADO	1CCEK18Y482	110314	LT	✓						
24	19-Jun-08	12,500	12,500.00	2008	MALIBU	1G1ZT58N58F	111091	FAU	✓						
25	28-Apr-08	8,531.25	8,531.25	2004	DURANGO	1D4HB38NS4F	111694	U	✓						
26	30-Jun-08	12,600	12,600.00	2006	SEBRING	1C3LC46K18N	113589	FAU	✓						
27	19-Jun-08	14,200	14,200.00	2008	AURA	1G6ZS57N68F	116632	FAU	✓						
28	18-Nov-04	42,172.55	46,850.55	2005	SSR	1GCE514HX5B	116906	LT	✓						
29	08-Aug-08	15,621.65	15,321.65	2009	COBALT	1G1AK1B1H787	117439		✓						
30	07-Sep-07	43,832.15	43,832.15	2008	SILVERADO	1GCHK23668F	119219	LT	✓						
31	04-Jun-08	16,500	16,500.00	2008	IND CHEROK	1J8GR4BK98C	119542	FAU	✓						
32	02-Jul-08	23,895	23,895.00	2005	SSR	1GCE514HX5B	120468	FAU LT	✓						
33	11-Jan-07	64,895.25	64,895.25	2006	CORVETTE	1G1YY28E365	120874	DE	✓						Waive per CLIP
34	13-Apr-05	50,025.28	55,583.28	2005	CORVETTE	1G1YY34J465	122440		✓						
35	11-Jun-08	16,040	16,040.00	2005	STS	1G6DW677960	122677	FAU	✓						
36	29-Jan-08	17,793.75	17,793.75	2005	TAHOE	1GNEX13T85J	123114	U LT	✓						
37	17-Aug-08	15,621.65	15,621.65	2009	COBALT	1G1AK1B1H397	123982		✓						
38	18-Aug-08	15,621.65	15,621.65	2009	COBALT	1G1AK1B1H897	124464		✓						
39	23-Oct-07	22,075	22,075.00	2005	AVALANCHE	3GNEK12Z25G	124749	FAU LT	✓						
40	23-May-08	8,437.5	8,437.50	2004	VENTURE	1GNDX03E44D	124864	U LT	✓						

John Lafargue

GMAC 003443
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WHOLESALE AUDIT

575

Branch Number: 098
 Dealer Number: 0588
 Dealership: EVERETT CHEVROLET, INC
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

* A - ✓ If Inspected & Condition OK
 * A - D. If Vehicle Inspected But Damaged
 * A - X If Vehicle Missing

* B - ✓ If MCO Inspected
 * B - T If Title Inspected
 * B - X If Title/MCO Missing

Issued To: CSI-JOHN LAFARGUE
 Date Issued: 09/03/08

	Note Date	Interest Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Alleged If Reg.	A	B	Date Of Delivery	Remit. Date	Blocking Date	Inq. ✓	Comments
41	17-Aug	17-Aug-07	15640	15,640.00	2006	G6	1G2ZH178684	125107	FA U		✓					
42	17-Aug	20-Aug-07	54328.6	54,328.60	2007	CORVETTE	1G1YY36U975	125527			✓					
43	20-Aug	20-Aug-08	23470.36	23,470.36	2009	COBALT	1G1AP18X197	125867			✓					
44	21-Aug	21-Aug-08	15454.15	15,454.15	2009	COBALT	1G1AS18HX97	125910			✓					
45	07-May	07-May-08	79435.38	79,435.38	2007	CORVETTE	1G1YY26E575	126189	DE		X			Waive per CLP		<i>Deems - John Pignone</i>
46	06-Nov	06-Nov-03	11319	16,170.00	1998	CORVETTE	1G1YY32G1W5	127318	U		✓					
47	22-Aug	22-Aug-08	15621.65	15,621.65	2009	COBALT	1G1AK18HX97	129875			✓					
48	22-Aug	22-Aug-08	15621.65	15,621.65	2009	COBALT	1G1AK18H097	130243			✓					
49	15-Aug	18-Aug-08	54433.98	54,433.88	2008	CORVETTE	1G1YY36W885	131658			✓					
50	30-May	30-May-08	73927.48	73,927.48	2008	CORVETTE	1G1YY26E885	132179			✓					
51	27-Aug	27-Aug-08	15621.65	15,621.65	2009	COBALT	1G1AK18H297	132947			✓					
52	28-Aug	28-Aug-08	27056.25	27,056.25	2006	CORVETTE	1G1YY25U565	133991	U		X					<i>Sh. working with Paul @ GMAC Copy of BEC to him folder copy-off in file</i>
53	11-Oct	11-Oct-07	45799.9	45,799.90	2008	SILVERADO	1GCHK23698F	135320	LT		✓					
54	19-Jun	19-Jun-08	5695	5,695.00	2005	CLASSIC	1G1ND52F15M	135537	FA U		✓					
55	29-Aug	29-Aug-08	15621.65	15,621.65	2009	COBALT	1G1AK18H597	135700			✓					
56	19-Aug	19-Aug-08	28418.68	28,418.68	2008	SILVERADO	1GCEK19C08Z	136462	LT		X					<i>GMAC vol 4-3</i>
57	08-Aug	08-Aug-08	12275	12,275.00	2006	ENVOY	1GKET16S066	136571	FA U LT		✓					
58	14-Nov	14-Nov-07	17840	17,840.00	2007	UPLANDER	1GNDV33107D	136681	DE U LT		✓					
59	29-Aug	29-Aug-08	15621.65	15,621.65	2009	COBALT	1G1AK18H597	137107			✓					
60	28-Dec	28-Dec-07	43805.03	43,805.03	2008	AVALANCHE	3GNFK12378G	137257	EI LT		✓					

GMAC 003444
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WHOLESALE AUDIT

576

Branch Number: 855
 Dealer Number: 9485
 Dealership: EVERETT CHEVROLET, INC
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

* A . ✓ If Inspected & Condition OK
 * A . 0 If Vehicle Inspected But Damaged
 * A . X If Vehicle Missing
 * B . ✓ If MCO Inspected
 * B . T If Title Inspected
 * B . X If Title/MCO Missing
 Issued To: CSI-JOHN LAFARGUE
 Date Issued: 06/03/09

Row	Note Date	Interest Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	mileage If Rep.	A	B	Date Of Delivery	Renit Date	Blockng Date	Insp. Date	Comments	
61	04-Aug	04-Aug-08	4875	4,875.00	2005	CAVALIER	1G1JC12F157	140455	U	✓							
62	11-Oct	11-Oct-07	22800.8	22,800.80	2008	COLORADO	1GCDT199X88	140568	LT	✓							
63	25-Apr	25-Apr-08	13740	13,740.00	2008	RAILBLAZER	1GNDS13S892	140635	FA U LT	✓							
64	14-Oct	15-Oct-07	15883.28	15,883.28	2008	COLORADO	1GCCS149488	142385	LT	✓							
65	30-Jul	30-Jul-08	7875	7,575.00	2002	PRESS CUTA	1GBJG31R021	145843	U LT	X						Waive per CLPP	
66	11-Jun	11-Jun-08	7895	7,895.00	2005	DNTE CARLO	2G1WW12E759	147364	FAU	✓							
67	23-Oct	23-Oct-07	50485.6	50,485.60	2008	K1500	3GNFK16Y985	149500	LT	✓							
68	07-May	07-May-08	15979.78	15,979.78	2008	COLORADO	1GCCS149388	149663	DE LT	✓							
69	30-Sep	01-Oct-07	35443.93	35,443.93	2008	SILVERADO	1GCEK19Y48Z	150005	LT	✓							
70	27-Aug	27-Aug-08	7500	7,500.00	2004	RAILBLAZER	1GNET16S746	155134	U LT	X		9-1		9/8		F. Clincker	
71	14-Dec	14-Dec-07	12206.25	12,206.25	2003	K1500	3GNFK16Z63G	155340	U LT	✓							
72	01-Oct	01-Oct-07	33761.35	33,761.35	2008	SILVERADO	2GCEK13M181	157735	LT	✓							
73	17-Jan	17-Jan-08	10812.5	10,812.50	2007	SILVERADO	1GCEC14X87Z	161552	U LT	✓							
74	22-Aug	22-Aug-08	10695	10,695.00	2008	RAILBLAZER	1GNND13S162	164342	FAU LT	X		8-30		9/5		R. Sugerman	
75	04-Aug	04-Aug-08	8625	8,625.00	2003	RAILBLAZER	1GNET16S432	165626	U LT	X		8-31		9/5		R. Penworthy	
76	08-Jul	08-Jul-08	15206.25	15,206.25	2008	SILVERADO	2GCEC19N081	167912	U LT	✓							
77	25-Jun	25-Jun-08	13800	13,800.00	2003	E320	WDBUF65J65A	168471	U	✓							
78	20-Dec	20-Dec-07	42379.5	42,379.50	2008	SILVERADO	1GCHK2608F	169341	LT	✓							
79	01-Apr	01-Apr-08	24853.33	24,853.33	2008	COLORADO	1GCDT13E886	171189	LT	✓							
80	05-May	05-May-06	24891.53	24,891.53	2008	COLORADO	1GCDT13E289	174381	LT	✓							

WHOLESALE AUDIT

576

Branch Number: 085
 Dealer Number: 0565
 Dealership: EVERETT CHEVROLET, INC
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

* A - ✓ If Inspected & Condition OK
 * A - D If Vehicle Inspected But Damaged
 * A - X If Vehicle Missing

* B - ✓ If MCO Inspected
 * B - 7 If Title Inspected
 * B - X If Title/MCO Missing

Issued To: CS-JOHN LAFARGUE
 Date Issued: 08/03/08

Note Date	Interact Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Mileage If Req.	A	B	Date Of Delivery	Remitt. Date	Blocking Date	Insp. Date	Comments	
81 22-Nov	23-Nov-07	34157.03	34157.03	2008	SILVERADO	3GCEK13M68G	175509	LT	✓							
82 28-Feb	28-Feb-08	44267	44267	2008	TAHOE	K1500 1GNFK13048J	175631	LT	✓							
83 26-Nov	26-Nov-07	33869.53	33869.53	2008	SILVERADO	3GCEK13MX6G	176873	LT	X		9-4	9-4			C. Reese	
84 26-AUG	26-AUG-08	16762.5	16762.5	2007	SILVERADO	1GCEK19607Z	178961	U-LT	✓							Good Difficult to file
85 03-Jan	03-Jan-08	41228.25	41228.25	2008	TAHOE	K1500 1GNFK13098J	181005	LT	✓							
86 30-Dec	31-Dec-07	26762.93	26762.93	2008	MALIBU	1G1ZK57719F	181287	EL	X							Malibu Demo - John Targiere
87 25-Jan	25-Jan-08	37508.43	37508.43	2008	RAILBLAZER	1GNET13HX82	181295	EI	✓							
88 11-Jun	11-Jun-08	11240	11240	2007	GRAND PRIX	2G2WPS52671	183808	FAU	X							Malibu Demo - Zanel
89 07-May	07-May-08	51751.25	51751.25	2008	TAHOE	K1500 1GNFK13098F	183855	DE	✓							
90 21-Feb	21-Feb-08	42506.15	42506.15	2008	SILVERADO	1GCHK23K38F	186051	LT	✓							
91 10-Dec	10-Dec-07	36588.28	36588.28	2008	AVALANCHE	3GNFK12388G	186810	LT	✓							
92 04-Feb	04-Feb-08	23278.3	23278.3	2008	COLORADO	1GCDT399588	188071	LT	✓							
93 05-Feb	05-Feb-08	47895.55	47895.55	2008	SILVERADO	1G8HK23648F	188270	LT	✓							
94 06-Feb	06-Feb-08	47895.55	47895.55	2008	SILVERADO	1G8HK23698F	188989	LT	✓							
95 07-Nov	07-Nov-07	37955.25	37955.25	2008	SILVERADO	2GCEK13M081	189530	LT	✓							
96 08-Nov	08-Nov-07	37955.25	37955.25	2008	SILVERADO	2GCEK13M381	190896	LT	✓							
97 13-Feb	13-Feb-08	44227.4	44227.4	2008	SILVERADO	1GCHK23698F	191791	LT	✓							
98 07-May	19-Jun-08	35542.1	35542.1	2008	SILVERADO	1GCEK19Y08Z	192526	PD	X							Malibu Demo - Junior
99 19-Feb	19-Feb-08	27187.18	27187.18	2008	MALIBU	1G1ZK577294	194383	EI	✓							
100 02-Mar	03-Mar-08	22008.95	22008.95	2008	COLORADO	1GCDT399588	197097	LT	✓							

WHOLESALE AUDIT

676

Branch Number: 005
 Dealer Number: 6585
 Dealership: EVERETT CHEVROLET, INC
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

* A - ✓ If Inspected & Condition OK
 * A - D If Vehicle Inspected But Damaged
 * A - X If Vehicle Missing

* B - ✓ If MCO Inspected
 * B - 7 If Title Inspected
 * B - X If Title/MCO Missing

Issued To: CSI-JOHN LAFARGUE
 Date Issued: 09/03/08

Note	Interst	Current	Original	Year	Model	Vehicle Identification No.	Code	Mileage	A	B	Date Of Delivery	Blocking Date	Irrep.	Comments
101	28-Dec-07	37855.25	37855.25	2008	SILVERADO	3GCEK13M16G	187338	LT	✓					
102	29-Feb-08	37091.65	37081.65	2008	SILVERADO	1GCHK23K88F	198146	LT	✓					
103	31-Dec-07	38184.33	38184.33	2008	SILVERADO	3GCEK13M28G	199290	LT	✓					
104	08-Feb-08	19414.55	19414.55	2008	MALIBU	1G1ZG57B78F	200768		X	8-31	9/5			72. Conell
106	28-Feb-08	23887.5	23887.50	2006	YUKON	1GKEK63U55J	200958	U LT	✓					
106	31-Dec-07	38184.33	38184.33	2008	SILVERADO	3GCEK13M58G	201131	LT	✓					
107	08-Aug-08	14175	14175.00	2006	HUMMER	5GTDH136268	202835	FA U LT	✓					
108	01-Feb-08	31123.85	31123.85	2008	RAILBLAZER	1GNDT13S382	204228	LT	✓					
109	31-Mar-08	25812.5	25812.50	2008	COLORADO	1GDDT33E188	204417	LT	✓					
110	18-Jun-08	27399.68	27399.68	2008	MALIBU	1G1ZK577184	204675	DE	✓					
111	03-Apr-08	25812.5	25812.50	2008	COLORADO	1GDDT33E358	204675	LT	✓					
112	31-Jul-08	7781.25	7781.25	2007	COLORADO	1GCCS146678	204966	U LT	✓					
113	11-Apr-08	16423.33	16423.53	2008	COLORADO	1GCCS148088	207412	LT	✓					
114	29-May-08	10526.93	10526.93	2008	AVEO	KL1TD66638B	208221		✓					
115	16-Apr-08	16423.53	16423.53	2008	COLORADO	1SCCS148X88	208406	LT	✓					
116	06-Mar-08	34439.3	34439.30	2008	AHOE C1500	1GNFC13C58J	209881	LT	X	9-2	9/8			Pauley/Korte
117	19-Jun-08	6696	6696.00	2004	IMPALA	2G1WF52E449	210880	FAU	✓					
118	07-Mar-08	39473.85	39473.85	2008	AHOE K1500	1GNFK13048J	211379	LT	✓					
119	28-Aug-08	24863.38	24863.36	2009	EQUINOX	2CNDL33F796	211503	LT	✓					
120	04-Dec-07	34157.03	34157.03	2008	SILVERADO	3GCEK13M881	212665	LT	✓					

GMAC 003447
 CONFIDENTIAL

WHOLESALE AUDIT

576

Branch Number: 065
 Dealer Number: 0653
 Company: EVERETT CHEVROLET, INC
 Address: 7500 EVERGREEN WAY EVERETT, WA 98203
 Purchase Period: 3

Issued To: CSI-JOHN LAFARGUE
 Date Issued: 09/03/08

* A - ✓ If Inspected & Condition OK
 * A - D If Vehicle Inspected But Damaged
 * A - X If Vehicle Missing

* B - ✓ If MCO Inspected
 * B - T If Title Inspected
 * B - K If Title/MCO Missing

Row	Note Date	Interest Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Mileage If Rec.	A	B	Date Of Delivery	Remitt. Date	Blocking Date	Irrep.	Comments	
121	15-Jun	16-Jun-08	15725	15,725.00	2006	SIERRA	1GTEK192X6Z	213260	FA U LT	✓							
122	06-Sep	05-Sep-08	20295.65	28,295.65	2008	SILVERADO	1GCHK24K48E	213472	#LT	✓	✓		Waive per CLPP			Waive per CLPP	
123	31-Aug	31-Aug-07	10840	10,840.00	2006	SEBRING	1C3EL56R26N	213547	FA U	✓	✓		Waive per CLPP			Waive - Alonzo	
124	20-Mar	20-Mar-08	40384.2	40,384.20	2008	K1500	1GNFK15326J	218126	LT	✓							
125	05-Jun	05-Jun-08	25208	25,209.00	2008	COLORADO	1GCDT35E368	221283	LT	✓							
126	23-Mar	24-Mar-08	40867.85	40,867.85	2008	TAHOE	1GNFK13008J	221603	LT	✓	✓	9-1				9/1 A. Rich	
127	18-Jun	18-Jun-08	25751.55	25,751.55	2008	COLORADO	1GCDT49E088	222523	LT	✓							
128	18-Jun	18-Jun-08	37038.43	37,038.43	2008	TRAILBLAZER	1GNET13H382	225208	LT	✓							
129	09-Jun	09-Jun-08	31747.95	31,747.95	2008	TRAILBLAZER	1GNET13M182	224791	LT	✓							
130	02-Sep	02-Sep-08	45548.2	45,548.20	2008	SILVERADO	1GCHK23648F	225040	LT	✓							
131	06-Aug	06-Aug-08	12065	12,095.00	2007	TRAILBLAZER	1GNDT13S172	225863	FA U LT	✓	✓						
132	04-Apr	04-Apr-08	53142.7	53,142.70	2008	K1500	1GNFK16328J	225667	LT	✓							
133	05-Aug	05-Aug-08	16395	16,395.00	2006	TRAILBLAZER	1GNET13H562	226673	FA U LT	✓	✓						
134	19-Feb	19-Feb-08	31541.45	31,541.45	2008	SILVERADO	1GCEK19J68Z	227340	LT	✓							
135	20-Feb	20-Feb-08	31641.45	31,641.45	2006	SILVERADO	1GCEK19J48Z	228172	LT	✓							
136	20-Feb	20-Feb-08	35130.28	35,130.28	2008	SILVERADO	1GCEK19J08Z	228198	LT	✓							
137	02-Sep	02-Sep-08	14185	14,195.00	2006	XPRESS VAN	1GAHG39J561	228736	FA U LT	✓	✓		Waive per CLPP			Waive per CLPP	
138	24-Feb	25-Feb-08	27145.38	27,145.38	2008	SILVERADO	1GCEK19CX8Z	230946	LT	✓							
139	27-Mar	27-Mar-08	19482.65	19,482.65	2008	MALIBU	1G1ZG57B70F	232054		✓							
140	25-Feb	25-Feb-08	27145.38	27,145.38	2008	SILVERADO	1GCEK19C08Z	232625	LT	✓							

reviewed by 406-721-4800
 SA [Signature] at Remission Dept - GMC
 [Signature]
 [Signature]

WHOLESALE AUDIT

576

Branch Number: 0885
 Dealer Number: 0596
 Dealership: EVERETT CHEVROLET, INC
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

Issued To: CSI-JOHN LAFARGUE
 Date Issued: 08/03/08

* A . ✓ If Inspected & Condition OK
 * A . 0 If Vehicle Inspected But Damaged
 * A . X If Vehicle Missing

* B . ✓ If MCO Inspected
 * B . T If Title Inspected
 * B . X If Title/MCO Missing

Note	Date	Interact Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Mileage If Rep.	A	B	Deliv Date	Result Date	Blocking Date	Insp. Date	Comments
141	01-Jul	01-Jul-08	3,1095.15	31,095.15	2008	TRAILBLAZER	IGNDT1SS882	233157		✓						
142	29-Aug	29-Aug-08	23940	23,940.00	2005	ESCALADE	3GYEKR2M6G	234957	FA U LT	✓	✓					Vehicle on 2-4 R.M. Westinghouse Fort Lewis Dr. Douglas 9-3
143	29-Feb	29-Feb-08	24,224.85	24,224.85	2008	SILVERADO	1GCEK14C08Z	235421	LT	✓						
144	02-Mar	03-Mar-08	24,224.85	24,224.85	2008	SILVERADO	1GCEK14C28Z	238148	LT	✓						
145	02-Mar	03-Mar-08	24,224.85	24,224.85	2008	SILVERADO	1GCEK14C38Z	236575	LT	✓						
146	02-Mar	03-Mar-08	24,224.85	24,224.85	2008	SILVERADO	1GCEK14C58Z	236810	LT	✓						
147	02-Mar	03-Mar-08	24,224.85	24,224.85	2008	SILVERADO	1GCEK14C18Z	236822	LT	✓						
148	03-Mar	03-Mar-08	24,224.85	24,224.85	2008	SILVERADO	1GCEK14C68Z	237013	LT	✓						
149	03-Mar	03-Mar-08	24,224.85	24,224.85	2008	SILVERADO	1GCEK14C38Z	237132	LT	✓						
150	11-Apr	11-Apr-08	11,062.5	11,062.50	2004	RAM TRUCK	1D7HU18D44J	237309	U	✓						
151	04-Mar	04-Mar-08	24,224.85	24,224.85	2008	SILVERADO	1GCEK14C28Z	237896	LT	✓						
152	04-Mar	04-Mar-08	24,224.85	24,224.85	2008	SILVERADO	1GCEK14C68Z	238033	LT	✓						
153	04-Mar	04-Mar-08	24,224.85	24,224.85	2008	SILVERADO	1GCEK14C28Z	238420	LT	✓						
154	04-Mar	04-Mar-08	24,224.85	24,224.85	2008	SILVERADO	1GCEK14C48Z	238659	LT	✓						
155	05-Mar	05-Mar-08	24,224.85	24,224.85	2008	SILVERADO	1GCEK14C78Z	239255	LT	✓						
156	05-Mar	05-Mar-08	24,224.85	24,224.85	2008	SILVERADO	1GCEK14C88Z	239426	LT	✓						
157	05-Mar	05-Mar-08	24,224.85	24,224.85	2008	SILVERADO	1GCEK14C38Z	239513	LT	✓						
158	07-Mar	07-Mar-08	24,224.85	24,224.85	2008	SILVERADO	1GCEK14C98Z	239757	LT	✓						
159	23-Nov	23-Nov-07	18,187.5	18,187.50	2005	FALCON	K1500	1GNEK13T05R	240090	U	LT					
160	01-May	01-May-08	19,653.4	19,653.40	2008	MALIBU	1G12G57B48F	240810								

GMAC 003449
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WHOLESALE AUDIT

576

Branch Number: 039
 Dealer Number: 5685
 Dealership: EVERETT CHEVROLET, INC
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Point: 3

* A. ✓ If Inspected & Condition OK
 * A. D If Vehicle Inspected But Damaged
 * A. X If Vehicle Missing
 * B. ✓ If MCO Inspected
 * B. T If Title Inspected
 * B. X If Title/MCO Missing
 Issued To: CSI-JOHN LAFARGUE
 Date Issued: 09/03/08

Row	Mo/Date	Interest Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Mileage If Rep.	A	B	Date Of Delivery	Remitt Date	Blocking Date	Insp	Comments
161	05-May	05-May-05	10,484.43	10,484.43	2006	AVEO	KL1TD686586	241236		✓						
162	06-Apr	06-Apr-05	18,924.98	18,924.98	2006	SILVERADO	3GCEC14Z26G	241445		X	T	Welve per CLPP			✓	Done - Parts Truck
163	10-Mar	10-Mar-08	27,175.98	27,175.98	2008	SILVERADO	1GCEK19C98Z	241677		✓						
164	10-Mar	10-Mar-08	27,175.98	27,175.98	2008	SILVERADO	1GCEK19C08Z	241776		✓						
165	11-Mar	11-Mar-08	27,175.98	27,175.98	2008	SILVERADO	1GCEK19C18Z	243374		✓						
166	07-Mar	07-Mar-08	15,177.63	15,177.63	2008	COBALT	1G1AK58F107	244725		✓						
167	14-Mar	14-Mar-08	26,619.23	26,619.23	2008	SILVERADO	1GCEC19C26Z	245065		✓						
168	18-Mar	18-Mar-08	32,412.48	32,412.48	2008	AVALANCHE	3GNEC12J06G	245598		✓						
169	11-Apr	11-Apr-08	7,481.25	7,481.25	2007	MALIBU	1G1ZS58F57F	247359		✓						
170	18-Mar	18-Mar-08	22,558.78	22,558.78	2008	SILVERADO	1GCEC19X06Z	247402		✓						
171	05-Jun	05-Jun-08	10,484.43	10,484.43	2008	AVEO	KL1TD686588	251474		✓						
172	28-Aug	28-Aug-08	10,484.43	10,484.43	2008	AVEO	KL1TD686586	251807		✓						
173	09-May	09-May-08	10,484.43	10,484.43	2008	AVEO	KL1TD68616B	255490		✓						
174	08-May	08-May-08	26,741.63	26,741.63	2008	SILVERADO	1GCEK19C8Z	255929		✓						
175	08-May	08-May-08	26,779.88	26,779.88	2008	SILVERADO	1GCEK19C26Z	256554		✓						
176	15-Aug	15-Aug-08	40,781.9	40,781.90	2008	TAHOE	1GNFK13038R	260087		✓						
177	30-Jul	30-Jul-08	14,930.13	14,930.13	2008	COBALT	1G1AK58FX87	261055		X	T	Welve per CLPP			✓	Done - Along
178	25-Mar	25-Mar-08	21,708.65	21,708.65	2008	COBALT	1G1AM186187	261623		✓						
179	30-Jul	30-Jul-08	6,506.25	6,506.25	2003	SILVERADO	1GCEC14V23Z	265639		X	T	Welve per CLPP			✓	Done - Parts Truck
180	12-Jun	12-Jun-08	26,033.28	26,033.28	2008	MALIBU	1G1ZJ577X8F	266938		✓						Inspected at Costco

GMAC 003450
CONFIDENTIAL

WHOLESALE AUDIT

575

Branch Number: 086
 Dealer Number: 0585
 Dealership: EVERETT CHEVROLET, INC
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

* A - ✓ If Inspected & Condition OK
 * A - D If Vehicle Inspected But Damaged
 * A - X If Vehicle Missing

* B - ✓ If MCO Inspected
 * B - T If Title Inspected
 * B - X If Title/MCO Missing

Issued To: CSI-JOHN LAFARGUE
 Date Issued: 09/03/08

	Note Date	Interest Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Mileage If Recd.	A	B	Date Of Delivery	Remitt. Date	Blocking Date	Irreg.	Comments
181	30-Jul	30-Jul-05	16695	16,695.00	2007	IMPALA	2G1WD58CX79	269528	DE U		X			Waive per CLPP		Demo - Chris B. W.C. Sng
182	03-Jul	03-Jul-08	14097.63	14,097.63	2008	COBALT	1G1AK18F887	269856	EI		✓					
183	15-Aug	18-Aug-08	23618.43	23,618.43	2008	MALIBU	1G1ZJ57748F	279328			✓					
184	14-May	14-May-08	31187.98	31,187.98	2008	SILVERADO	2GCEK19J381	282507	LT		✓					
185	20-Aug	20-Aug-08	8681.25	8,681.25	2003	S TRUCK	1GCCT19X738	285800	U LT		X					SMAC pr. 9-3
186	27-May	27-May-08	38529.85	38,529.85	2006	SILVERADO	2GCEK13J581	286003	LT		✓					
187	17-Jul	17-Jul-08	24586.6	24,586.60	2008	MALIBU	1G1ZJ67B58F	286342	EI		X	9-2		9/5		DT see Johnson - V exchange
188	10-Jul	10-Jul-08	24184.1	24,184.10	2008	MALIBU	1G1ZJ57B88F	294212			✓					
189	28-Aug	28-Aug-08	21816.03	21,816.03	2008	MALIBU	1G1ZH57B88F	294710			✓					
190	15-Jul	15-Jul-06	26402.6	26,402.60	2008	MALIBU	1G1ZJ57748F	296064			✓					
191	08-Aug	08-Aug-08	15075	15,075.00	2006	NVOYDENALI	1GKET63M782	296649	FA U LT		✓					
192	11-Jan	11-Jan-07	37715.38	37,715.38	2006	RAILBLAZER	1GNET13H882	299228	DE LT		X			Waive per CLPP		Demo - Low. Sng
193	06-Jul	07-Jul-08	24396.7	24,396.70	2008	SILVERADO	1GCEK14C78Z	299259	LT		✓					
194	20-Aug	20-Aug-08	8606.25	8,606.25	2003	DAKOTA	1D7HL48N13S	301201	U		X					Loss Application in file
195	29-Jul	29-Jul-08	15117.23	15,117.23	2009	AVEO	KL1TD66E19B	304082			✓					
196	01-Aug	01-Aug-08	15117.23	15,117.23	2009	AVEO	KL1TD66E89B	304113			✓					
197	18-Jul	18-Jul-08	15117.23	15,117.23	2009	AVEO	KL1TD66E29B	306035			✓					
198	18-Jul	18-Jul-08	15117.23	15,117.23	2009	AVEO	KL1TD66E69B	306037			✓					
199	20-Jul	21-Jul-08	15117.23	15,117.23	2009	AVEO	KL1TD66E79B	306113			✓					
200	01-Jul	01-Jul-08	31272.13	31,272.13	2006	SILVERADO	2GCEK19J081	307783	LT		✓					

GMAC 003451
CONFIDENTIAL

WHOLESALE AUDIT

578

Branch Number: 093
 Dealer Number: 0585
 Dealership: EVERETT CHEVROLET, INC
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

* A - ✓ If Inspected & Condition OK
 * A - D If Vehicle Inspected But Damaged
 * A - X If Vehicle Missing
 * B - ✓ If MCO Inspected
 * B - T If Title Inspected
 * B - X If Title/MCO Missing

Issued To: C61JOHN LAFARGUE
 Date Issued: 09/03/08

	Note Date	Interest Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Mileage If Req.	A	B	Date Of Delivery	Remitt. Date	Backing Date	Irreg. ✓	Comments
201	18-Jul	18-Jul-08	16570.05	16,570.05	2009	AVEO	KL1TG66E99B	308209		✓						
202	21-Jul	21-Jul-08	16570.05	16,570.05	2009	AVEO	KL1TG66E59B	308322		✓						
203	20-Jul	21-Jul-08	16570.05	16,570.05	2009	AVEO	KL1TG66E79B	308323		✓						
204	20-Jul	21-Jul-08	16570.05	16,570.05	2009	AVEO	KL1TG66E89B	308324		✓						
205	20-Jul	21-Jul-08	15201.78	15,201.78	2009	AVEO	KL1TD66E59B	308829		✓						
206	30-Mar	31-Mar-08	29240.73	29,240.73	2008	EQUINOX	2CNDL037186	309069	LT	✓						
207	20-Jul	21-Jul-08	15117.23	15,117.23	2009	AVEO	KL1TD66E99B	309862		✓						
208	14-Aug	14-Aug-08	16575	16,575.00	2008	350Z	JN1AZ34D66M	310022	U	✓	✓					
209	21-Jul	21-Jul-08	16236.3	16,236.30	2009	AVEO	KL1TG66E49B	310384		✓						
210	20-Jul	21-Jul-08	16236.3	16,236.30	2009	AVEO	KL1TG66E19B	310455		✓						
211	21-Jul	21-Jul-08	16236.3	16,236.30	2009	AVEO	KL1TG66E39B	310456		✓						
212	21-Jul	21-Jul-08	16320.85	16,320.85	2009	AVEO	KL1TG66E19B	311203		✓						
213	20-Jul	21-Jul-08	15320.85	15,320.85	2009	AVEO	KL1TG66E39B	311204		✓						
214	21-Jul	21-Jul-08	16320.85	16,320.85	2009	AVEO	KL1TG66E49B	311258		✓						
215	15-Aug	15-Aug-08	24398.7	24,398.70	2008	SILVERADO	1GCEK14C88Z	317722	LT	✓						
216	27-Aug	27-Aug-08	23883.58	23,883.58	2008	EQUINOX	2CNDL23F286	317734	LT	✓						
217	27-Jul	28-Jul-08	13693.23	13,693.23	2009	AVEO	KL1TD66E09B	320533		✓						
218	28-Jul	28-Jul-08	13693.23	13,693.23	2009	AVEO	KL1TD66E39B	320591		✓						
219	28-Jul	28-Jul-08	13693.23	13,693.23	2009	AVEO	KL1TD66E79B	320593		✓						
220	07-May	07-May-08	46571.78	46,571.78	2007	AVALANCHE	3GNFK12Y97G	320797	DE LT	X	✓			Waive plus CLP		Demo - John Pappas

GMAC 003452
CONFIDENTIAL

WHOLESALE AUDIT

576

Branch Number: 055
 Dealer Number: 6586
 Challenge: EVERETT CHEVROLET, INC
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Reporting Period: 3

* A . ✓ If Inspected & Condition OK
 * A . O If Vehicle Inspected But Damaged
 * A . X If Vehicle Missing
 * B . ✓ If MCO Inspected
 * B . T If Title Inspected
 * B . X If Title/MCO Missing

Issued To: CSI-JOHN LAFARGUE
 Date Issued: 09/03/08

Note Date	Invoice Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Mileage If Rep.	A . D	Date Of Delivery	Remit. Date	Blocking Date	Imag.	Comments
	221 16-Jul		10125	2006	IMPALA	2G1WT58K289	321033	U	✓					
	222 27-Aug		11850	2003	SILVERADO	2GCEK19T531	333090	U	✓					850AC pd 9-3
	223 18-Jul		15240	2006	SILVERADO	2GCEK19B961	345616	FAU LT	✓					
	224 11-Jul		23599.28	2006	COBALT	1G1AP18X487	347480	U	✓					
	226 02-Sep		10895	2005	RAILBLAZER	1GNDT13S152	354334	FAU LT	XX		Waive per CLPP			revised at location 503-612-9104 SA purchase - Enterprise, Pdx. (M)
	226 15-Aug		14595	2005	NVOYDENALI	1GKET83M652	365622	FAU LT	✓					revised at location 801-288-7900 SA purchase - 10th A.A. (M)
	227 02-Sep		6195	2006	RAILBLAZER	1GNDT13S952	383158	FAU LT	XX		Waive per CLPP			
	228 01-Jul		10593.75	2005	ALTIMA	1N4BL11D95N	491059	U	✓					
	229 28-Aug		22797.45	2009	HHR	3GNCA53V79S	504108	EI LT	✓					
	230 29-Aug		18962.45	2009	HHR	3GNCA13B88S	508859	LT	XX	9-25 INVENTORY 9-15 9-19				revised at location 801-288-7900 SA purchase - 10th A.A. (M)
	231 01-Jul		9166.75	2007	PT CRUISER	3C3JY58E3T	560773	U	✓	9-20	9-4			TT Southernwood
	232 11-Apr		6982.5	2004	ENDEZVOUS	3G5DB08E14S	589343	U LT	✓					
	233 11-Jun		7795	2006	COBALT	1G1AL55F587	602293	FAU	✓					
	234 09-Apr		11700	2007	RAM TRUCK	1D7HA16K77J	604427	FAU	✓					
	235 30-Jul		8618.75	2006	COBALT	1G1AL55F367	622008	U	✓	9-20	9-8			777, 777, 777
	236 06-Jun		5737.5	2003	DURANGO	1D4H639N63F	626747	U	✓	9-2	9-4			F. Wilson 73042 9-4 or 9-3 Indiv. of. Clin. doc. out 9-3
	237 16-Jul		5643.75	2006	COBALT	1G1AK52F757	634792	U	✓		Waive per CLPP			
	238 06-Jun		14250	2007	CHARGER	2S3KA43GX7H	638317	U	✓					
	239 16-Jun		22297.45	2008	HHR	3GNDAS3P18S	643067	DE LT	✓					
	240 02-May		3581.25	2003	MALIBU	1G1ND52J03M	654435	U	✓					

WHOLESALE AUDIT

576

Branch Number: 005
 Dealer Number: 0565
 Dealership: EVERETT CHEVROLET, INC
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

* A. ✓ If Inspected & Condition OK
 * A. D If Vehicle Inspected But Damaged
 * A. X If Vehicle Missing

* B. ✓ If MCO Inspected
 * B. T If Title Inspected
 * B. Y If Title/MCO Missing

Issued To: CSI-JOHN LAFARGUE
 Date Issued: 06/23/08

Node Date	Interest Date	Current DSD	Original DSE	Year	Model	Vehicle Identification No.	Color	Mileage If Reg.	A	B	Date Of Delivery	Remarks Date	Blocking Date	Insg.	Comments
261 09-Jun	09-Jun-08	11231.25	11,231.25	2007	ESCAPE	1FMYU83127K	B33689	U LT	✓						
262 10-Jan	10-Jan-08	11825	11,825.00	2005	EXPLORER	1FMZU730X5U	B33827	U LT	X		9-3	9/3			S/Karter
263 11-Apr	11-Apr-08	12881.25	12,881.25	2002	W SUPER DU	1FTNX21F72E	C38790	U LT	✓						

WHOLESALE AUDIT

* A. ✓ If Inspected & Condition OK
 * A. D If Vehicle Inspected But Damaged
 * A. X If Vehicle Missing
 * B. ✓ If MCO Inspected
 * B. Y If Title Inspected
 * B. X If Title/MCO Missing

Row No	Sub No	Interest Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Message If Rec.	A	B	Date Of Delivery	Permit Date	Blocking Date	Irreg. Date	Comments	
1							1574229			✓							
2							795445			✓							
3							250871			✓							
4							557156			✓							✓ To Chevrolet Enviro. P. 25
5							544252			✓							✓ To Chevy Enviro P. 25
6							462237			✓							✓ To Ford Super Cab P. 25
7							165781			✓							✓ Repair at Quality Body Mfg
8							259223			✓							✓ To Nissan Enviro P. 25
9							255133			✓							✓ To Chevrolet Enviro P. 25
10																	
11																	
12																	
13																	
14																	
15																	
16																	
17																	
18																	
19																	
20																	

010/014

02/11/2006 10:10 FAX

GMAC 003456
 CONFIDENTIAL

COMMENTS:

Reviewed all documents with T. Beckey - Off. Secy.
Missing letter on UCFP dealer is waiting for from London & Paul
at GMAC has agreed to accept copying of letter pay-off checks.

I certify the information contained in this audit is accurate and
that the audit has been conducted in accordance with CLPP Section 3700
and the instructions provided by the branch.

[Signature] CSI 9-4-08
SIGNATURE OF EMPLOYEE COMPLETING AUDIT TITLE DATE

QUESTIONS FOR PERSON CLEARING AUDIT

- 1. Any irregularities or other reasons for further investigation and special clearance..... Yes No
- 2. Potential Loss Report prepared (see CLPP 3810-2)..... Yes No
- 3. Summary of the irregularities with educational measures taken recorded on DTR..... Yes No
- 4. Wholesale Inventory Control updated..... Yes No
- 5. Explain under "Comments" what action, if any, was taken with the dealer.

I certify this audit has been cleared in accordance with CLPP
Section 3700 & 3810-1b.

[Signature] 9/17/08
SIGNATURE OF EMPLOYEE CLEARING AUDIT Title Date

This audit is closed in accordance with CLPP Section 3700
and requires no further action or decisions.

[Signature] 9/18/08
SIGNATURE OF EMPLOYEE CLOSING AUDIT Title Date

MANAGEMENT REVIEW (where required) Title Date

2008 SEP -8 AM 11:12

GMAC 003457
CONFIDENTIAL

GMAC FINANCIAL SERVICES

GMAC Dallas Regional Business Center
5208 Tennyson Parkway, Suite 120
Plano, TX 75024
1-800-343-4541 Ext. 2073

September 22, 2008

EVERETT CHEVROLET-GEO
Attn: John Reggans
7300 EVERGREEN WAY
EVERETT, WA 98203

Dear Mr. Reggans:

The audit(s) completed on 9/4/2008 yielded 7 payment delays out of 16 deliveries captured during the audit period (44% total delays). A payment is considered late when it is received beyond the release period of 3 business days. The number of delays for this sampling period is considered excessive and in need of your attention. The results of the inventory audit are provided for your information.

Audit Type	Total Deliveries	Payment Delays *	%
<i>Wholesale Floor Plan</i>	16	7	44%

Notwithstanding the foregoing, your wholesale credit line is expressly subject to the written terms of the Wholesale Financing Agreement under which it was extended. It is a discretionary line of credit and may be modified, suspended or terminated at our election, in our sole discretion.

Sincerely,



Paul Brennan
Portfolio Manager

Cc: M. J. Vick

GMAC 003458
CONFIDENTIAL

R. Ex. 91

Wholesale Audit Checklist

Dealership: EVERETT CHEVROLET, INC.

Dealer #'s: 0585/7

Release Period: 3

Date Issued: 10/24/08

Issued To: CSI-WAYNE FINK

Classification: L

Type of Audit: FLOOR

Date and Time Information Retrieved: 10/24/2008 9:50:19 AM

Issued By: A MANN

	Yes	N/A
Add vehicles being floor planned for which documentation has not been processed (e.g., non-GM cash drafts, auction billings, etc.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Delete and initial vehicles paid prior to issuance (checks received but not processed, suspense list, etc.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Delete and initial vehicles (individually or collectively) which do not require inspection: - DPP vehicles under primary and secondary account numbers, provided vehicles have been identified as - DPP transaction and appropriate documentation has been received	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Add/delete vehicles involved in dealership exchanges for which paperwork has not been processed	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Record vehicle code when status of vehicle has changed and paperwork has not been processed (e.g., demonstrators placed into or removed from service, etc.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Designate used vehicle for which the vehicle ownership documentation must be inspected	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Attach to (or note on) the audit a list of vehicles not inspected during the previous audit (when required)	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Instructions for Employee Completing Audit (See also reverse of 576 Supp)

Type of Audit	Yes	No	Special Instructions	Yes	No
Standard Physical Audit:			Collect funds/documentation if within release period	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Wholesale Floor Plan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Note name/address of purchaser (all sold units)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Shop Rental	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Note name/address of purchaser (irregularities only)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Mfr. Finance Plan	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Check all MCOs/titles	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Major Body Mfr	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Examine all used vehicle titles	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Alternative Audit:	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Examine only used vehicle titles designated	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- MCO/Title Audit	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Inspect dealership records for new vehicles added	<input checked="" type="checkbox"/>	<input type="checkbox"/>
- Inspection Paid Records	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Inspect Mileage	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Partial Inventory Audit	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Inspect recourse repossessions	<input type="checkbox"/>	<input checked="" type="checkbox"/>
- Other (Describe Below)	<input type="checkbox"/>	<input checked="" type="checkbox"/>	If MFP audit, record status of upfit	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Other Instructions

No SmartCash, SVA, BARS or Registered Vehicles. VTIMS attached.

(This form outlines the procedures for updating a wholesale audit and includes instructions for field completion; the form may be issued by the employee updating the audit and attached to the audit prior to issuance.)

10/24/2008 9:50:22 AM

GMAC 003281
CONFIDENTIAL

AUDIT ACTION ITEMS FOR DEALERSHIP

Dealership Name: EVERETT CHEV

Contact at Dealer: TERRE / LINDA

Date of the Audit: 10/27/08

Release Period: 3

Primary Dealer #: 0585

OPEN WHOLESALE:

	VIN	Customer Name	Date Sold	Due Date	SC Date	# of Days Delay	Comments
1	135537	A. TYLER	10/15	10/30			
2	150387	J. GAYSON	10/18	10/23	10/22	2	
3	154772	J. ANDAL	10/19	10/23	10/22	2	
4	154989	D. CONWELL	10/26	10/30			
5	112257	M. BEARKE	10/26	10/30			
6	165781	S. MERTAGE	10/18	10/23	10/22	2	
7	198146	WASH FOOD	10/24	10/29			
8	261369	WASH FOOD	10/24	10/29			
9	209856	M. KEAT	10/21	10/29			
10	286679	N. FOREY	10/21	10/24	10/22	1	
11	298535	WAL ROANES	10/17	10/22	10/22	2	
12	320639	M. R. FAUST	10/23	10/28			
13	A5AL50	R. YENNY	10/24	10/29			
14							
15							

OPEN DEMO:

	VIN	Comments
1	136639	CHRYSLER DEMO
2	245443	DEMO PARTS
3	241445	DEMO PARTS
4	136639	PARTS DEMO
5	306237	NEW DEMO

OPEN DLR TRADE:

	VIN	Comments
1	119772	To Jerry Chamber cited for 238274 - COPY RECEIVED
2		
3		
4		
5		

MISCELLANEOUS (e.g. auction units, titles, insurance claims, etc.)

	VIN	Comments
1	172616	AWAKE THE TRUCK SALES AUCTION #12
2	182636	AWAKE THE TRUCK SALES AUCTION #12
3	166175	AWAKE THE TRUCK SALES AUCTION #12
4		
5		
6	310384	WALKER DEMO
7	222350	J. REBEAN DEMO
8		
9		
10		

Auditor: W.D. FEOK

Received by Dealer: [Signature]

Date: 10-27-08

WHOLESALE AUDIT

576

Branch Number: 088
 Dealer Number: 6664
 Dealership: EVERETT CHEVROLET, INC.
 Address: 7900 EVERGREENWAY, EVERETT, WA 98203
 Release Period: 3

M.V. If Inspected & Condition OK
 A.O. If Vehicle Reported But Damaged
 A.X. If Vehicle Missing

M.W.C. If MCO Inspected
 B.Y. If Title Inspected
 B.X. If Title MCO Missing

Insured To: CREDITWAYNE FINK
 Date Insured: 10/24/08

Notes	Date	Interest Date	Current OSB	Original OSB	Year	Model	Vehicle Identification	Pass	Mileage	A	B	Permit	Block	Irreg	Comments
21	24-Oct	24-Oct-08	39182.33	39182.33	2008	TRAVERSE	1GNEV33D796	108692	#LT						
22	28-Feb	28-Feb-08	17126.25	17126.25	2006	K1600	1GNFK162851	108063	U LT						IT #2
23	31-Oct	31-Oct-08	28697.28	28697.28	2008	TRAVERSE	1GNEV13D296	108418	#LT						IT #2
24	14-Mar	14-Mar-08	36384.08	36384.08	2002	CORVETTE	1G1YY32G435	108620	DE						
25	10-Aug	10-Aug-07	35443.93	35443.93	2008	SILVERADO	1G6EK19Y48Z	110314	LT						IT #2
26	28-Oct	28-Oct-08	44240.36	44240.36	2009	TRAVERSE	1GNEV33D496	110453	#LT						
27	19-Jun	19-Jun-08	12500	12500.00	2008	MALIBU	1G1ZT58N69F	111091	FAU						
28	02-Oct	02-Oct-08	18704.78	18704.78	2009	SILVERADO	1G6ED14X29Z	111233	LT						
29	28-Apr	28-Apr-08	8531.25	8531.25	2004	DURANGO	1D4H88N94F	111694	U						
30	16-Oct	16-Oct-08	50089.35	50089.35	2008	RAILBLAZER	1GNDT33S49Z	111878	LT						
31	30-Jun	30-Jun-08	12609	12609.00	2008	SEBRING	1G3L246K178N	113689	FAU						
32	03-Nov	03-Nov-08	48950.6	48950.60	2008	SILVERADO	1GCHK6809F	114097	#LT						IT #2
33	03-Nov	03-Nov-08	36481.65	36481.65	2009	SILVERADO	1GCHK68K29E	114256	#LT						IT #2
34	30-Oct	30-Oct-08	30728.9	30728.90	2008	RAILBLAZER	1GNDT33S99Z	114711	#LT						IT #2
35	12-Sep	12-Sep-08	27685	27685.00	2007	SAHOE K1600	1GNFK16037R	114805	FAU LT						IT #2
36	04-Nov	04-Nov-08	35853.1	35853.10	2009	RAILBLAZER	1GNDT33S99Z	115458	#LT						IT #2
37	03-Nov	03-Nov-08	40382.4	40382.40	2009	RAILBLAZER	1GNET43H79Z	115599	#LT						IT #2
38	19-Jun	19-Jun-08	14200	14200.00	2008	AURA	1G8ZS57N88E	116632	FAU						
39	18-Nov	18-Nov-04	42172.55	48258.55	2005	SSR	1GCEST4K45B	116908	LT						
40	20-Oct	20-Oct-08	13885	13885.00	2008	ENVOL	1GKDT33S28Z	117580	FAU LT						

WHOLESALE AUDIT

578

Branch Number: 085
 Dealer Number: 0834
 Dealer Name: EVERETT CHEVROLET, INC.
 Address: 7300 EVERGREEN WAY EVERETT, WA 98103
 Release Period: 3

* A - If Inspected & Condition OK
 * A - B - If Vehicle Inspected & Damaged
 * A - X - If Vehicle Missing
 * B - If MCO Inspected
 * B - T - If Title Inspected
 * B - X - If Title MCO Missing

Issued To: CSIWAYNE RINK
 Date Issued: 10/2/08

Row	Notes Date	Interest Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Mileage If Rec.	Date of Delivery	Remit. Date	Booking Date	Usage	Comments
81	11-Sep	11-Sep-08	32,778.83	32,778.83	2008	TAHOE	1GNFC130280	454929	LT	SAU XX 10/16/08		10/30		D. COOPER
82	08-Oct	08-Oct-08	8325	8325.00	2004	TRAILBLAZER	1GNETH6S746	155134	U LT					
83	10-Sep	10-Sep-08	19895	20,895.00	2008	ESCALADE	1GUYEK2N88G	158878	FAU LT					
84	17-Jan	17-Jan-08	10612.5	10,612.50	2007	SILVERADO	1GCEC14X87Z	161562	U LT					
85	23-Oct	23-Oct-08	13785	13,785.00	2008	MALIBU	1G1ZHS7B66F	162057	FAU					
86	12-Sep	12-Sep-08	16195	16,195.00	2008	HUMMER	5GTDN135460	162287	FAU LT	SAU XX 10/16/08		10/30		BRATKE
87	15-Oct	15-Oct-08	21714.33	21,714.33	2008	MALIBU	1G1ZG57B30F	165404						
88	03-Sep	03-Sep-08	15581.26	15,581.25	2008	MUSTANG	1ZVHT82H88S	165781	U	SAU XX 10/16/08	10/17/08	10/17		33 HARRACE MUSTANG TITLE FROM BANK HERE - BRAT PUSK
89	23-Oct	23-Oct-08	11495	11,495.00	2008	MUSTANG	1ZVET84N66S	166175	FAU					
90	08-Jul	08-Jul-08	15206.25	15,206.25	2008	SILVERADO	2GCEC19N08F	167942	U LT					
91	20-Dec	20-Dec-07	42379.5	42,379.50	2008	SILVERADO	1GCHK23808F	168341	LT					
92	18-Oct	18-Oct-08	21714.33	21,714.33	2009	MALIBU	1G1ZG57B30F	169772		DT XX 10/16/08		10/24		FARRER TRAFFIC TO
93	01-Apr	01-Apr-08	24855.33	24,855.33	2008	COLORADO	1G6DTM3E88S	171189	LT					
94	22-Oct	22-Oct-08	6595	6,595.00	2008	UPLANDER	1GNNDV2S180	172616	FAU LT					
95	23-Oct	23-Oct-08	21714.33	21,714.33	2009	MALIBU	1G1ZG57B66F	172897						
96	05-May	05-May-08	24851.53	24,851.53	2008	COLORADO	1G6DTM3E88S	174281	LT					
97	06-Oct	06-Oct-08	23175.68	23,175.68	2009	IMPALA	1G1W567A961	174501						
98	29-Oct	29-Oct-08	26517.83	26,517.83	2009	MALIBU	1G1ZS57B66F	175423	#					
99	26-Feb	26-Feb-08	44287	44,287.00	2008	TAHOE	1GNFK13048J	175637	LT					
100	30-Oct	30-Oct-08	25555.83	25,555.83	2008	MALIBU	1G1ZU57B99F	177044	#					

WHOLESALE AUDIT

576

Branch Number: 086
 Dealer Number: 086

Company: EVERETT CHEVROLET, INC.
 Address: 360 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

*A- if Respected & Condition OK
 *A-D if Vehicle Inspected But Damaged
 *A-X if Vehicle Missing

*B- if IADCO Inspected
 *B-T if Title Inspected
 *B-X if IADCO Missing

Issued To: COL-WAYNE FINK
 Date Issued: 10/2/08

Note Date	Interest Date	Current OSB	Original OSB	Year	Model	Vehicle Identification	Body	Mileage if Reg.	A	B	Date of Delivery	Remitt. Date	Blockig. Date	Impg.	Comments
101 05-Sep	05-Sep-08	14118.75	14118.75	2007	COLORADO	1GCGT13E278	U LT	477330	✓	✓					
102 31-Oct	31-Oct-08	25317.63	25317.63	2009	MALIBU	1G1ZJ57B28F	#	478438	X						IT #2
103 03-Jan	03-Jan-08	41228.25	41228.25	2006	TAHOE	K1500 1GNFK13088J	LT	181005	✓	✓					
104 04-Sep	04-Sep-08	29752.83	26752.83	2008	MALIBU	1G1ZK57718F	DE	181287	✓	✓					
105 25-Jan	25-Jan-08	37506.43	37506.43	2006	RAILBUZER	1GNET13HX82	EI LT	181285	✓	✓					
106 25-Sep	25-Sep-08	10237.5	10237.50	2003	SILVERADO	2GCEK19T431	U LT	182006	✓	X					copy with photo CK-D AFFORDABLE LOSS FIVE
107 04-Sep	04-Sep-08	11240	11240.00	2007	GRAND PRIX	2G2WP52871	DEU	183808	✓	✓					
108 07-May	07-May-00	51751.25	51751.25	2008	TAHOE	K1500 1GNFK13098R	DE LT	183855	✓	✓					
109 10-Dec	10-Dec-07	36598.28	36599.28	2008	AVALANCHE	3GNFK12380G	LT	186810	✓	✓					
110 04-Feb	04-Feb-08	23276.3	23276.30	2008	COLORADO	1GCGT399588	LT	188071	✓	✓					
111 17-Oct	17-Oct-08	28053.15	28053.15	2009	IMPALA	2G1WS07N591	LT	188452	✓	✓					
112 06-Feb	06-Feb-08	47885.55	47885.55	2008	SILVERADO	1G8HK23680F	LT	188688	✓	✓					
113 31-Oct	31-Oct-08	27468.39	27468.33	2009	MALIBU	1G1ZJ577894	#	189083	X						IT #2
114 13-Feb	13-Feb-08	44227.4	44227.40	2008	SILVERADO	1GCHK33898F	LT	191791	✓	✓					
115 04-Sep	04-Sep-08	33542.1	33542.10	2008	SILVERADO	1GCEK19T08Z	DE LT	192526	X	✓					IR Demo - OFF TOOK IT NOT IN VEHIC
116 06-Nov	06-Nov-08	23275.58	23275.58	2009	MALIBU	1G1ZK67B194	#	193276	X	X					
117 10-Feb	10-Feb-08	27187.18	27187.18	2008	MALIBU	1G1ZK67264	EI	194383	✓	✓					
118 03-Mar	03-Mar-08	22008.95	22008.95	2008	COLORADO	1GCGS338385	LT	197087	✓	✓					
119 29-Feb	29-Feb-08	37081.65	37081.65	2008	SILVERADO	1GCHK23888F	LT	198146	X	X		10/28			MAX X FIVE COX P
120 28-Feb	28-Feb-08	23887.5	23887.50	2005	YUKON	1GKEK63U353	U LT	200958	✓	✓					

WHOLESALE AUDIT

578

Branch Number: 055
 Dealer Number: 055
 Dealership: EVERETT CHEVROLET, INC.
 Address: 7300 EVERGREENWAY EVERETT, WA 98203
 Release Period: 3

* A - ✓ If Inspector's Condition OK
 * A - 0 If Vehicle Inspected But Damaged
 * A - X If Vehicle Missing
 * B - ✓ If MCO Inspected
 * B - T If Title Inspected
 * B - X If Title MCO Missing
 Issued To: CSI-WAYNE/FINK
 Date Issued: 10/24/08

Node	Interest Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Mileage If Rec.	Y	V	A	B	Date Of Salvary	Remit. Date	Blocking Date	Issp.	Comments	
121	31-Dec-07	36184.33	36184.33	2006	SILVERADO	3G0GK13M566G	204131	LT										
122	18-Jun-06	27399.68	27399.68	2006	MALIBU	1G1ZK677184	204675	DE										
123	03-Apr-06	25612.5	25612.50	2008	COLORADO	1GCDT33E388	204676	LT										
124	31-Jul-06	7781.26	7781.25	2007	COLORADO	1G00S49678	204665	U LT										
125	11-Apr-06	16423.53	16423.53	2008	COLORADO	1G0CS49088	207412	LT										
126	16-Apr-06	16423.53	16423.53	2008	COLORADO	1G0CS49088	208406	LT										
127	19-Jun-08	6696	6695.00	2004	IMPALA	2G1WY52E49	210880	FAU										
128	28-Aug-08	24863.38	24863.38	2008	EQUINOX	2CNDL33F796	211593	LT										
129	04-Dec-07	34157.03	34157.03	2008	SILVERADO	2CCEK13M681	212665	LT										
130	16-Jun-06	15725	15725.00	2006	SIERRA	1GTEK19Z6Z	213260	FAU LT										
131	04-Sep-08	10840	10840.00	2008	SEBRING	1CSEL56R26N	213647	DE U										
132	20-Mar-06	40384.2	40384.20	2006	K1500	16NFK16328J	218126	LT										
133	29-Sep-06	9466.75	9466.75	2004	IMPALA	2G1WY551949	220150	0										
134	05-Jun-08	25209	25209.00	2006	COLORADO	1G0DT33E388	221283	LT										
135	26-Sep-05	49384.43	49384.43	2008	AVALANCHE	3GNFK12Y18G	222350	EI LT										
136	18-Jun-08	25751.56	25751.56	2008	COLORADO	1G0DT49E388	222523	LT										
137	18-Jun-08	37038.43	37038.43	2008	TRAILBLAZER	1GNET13H388	223208	LT										
138	04-Apr-08	53142.7	53142.70	2008	K1500	16NFK16328J	225557	LT										
139	12-Sep-06	12095	12095.00	2007	TRAILBLAZER	1GNDR13H17E	226372	FAU LT										
140	19-Feb-06	31641.45	31641.45	2006	SILVERADO	1GCEK19J66Z	227340	LT										

W. J. Beckwith
(216)

WHOLESALE AUDIT

576

Branch Number: 068
 Dealer Number: 0563
 Dealer Name: EVERETT-CHEVROLET, INC.
 Address: 7300 EVERGREEN WAY, EVERETT, WA, 98203
 Release Period: 3

Inspected & Condition: OK
 Vehicle Inspected: BUT Damaged
 Vehicle Make/Model

Issue To: CSI-WAYNE FRJK
 Date Issued: 10/24/08

Row	Nov Date	Interset Date	Current OIB	Original CSB	Year	Model	Vehicle Identification	Code	Whichever	Date of Delivery	Repsit Date	Blocking Data	Comments
141	14-Oct	14-Oct-08	25129.25	25129.25	2009	EQUINOX	2CNDL29F090	LT	X				IT 413
142	03-Nov	03-Nov-08	29813.2	29813.20	2009	EQUINOX	2CNDL63F990	LT	X				IT 418
143	24-Feb	25-Feb-08	27145.98	27145.98	2008	SILVERADO	1GCEK19C8Z	LT					
144	01-Jul	01-Jul-08	31095.15	31095.15	2008	TRAILBLAZER	1GNDT1988Z	LT					
145	05-Mar	03-Mar-08	24224.85	24224.85	2008	SILVERADO	1GCEK14C8Z	LT					
146	11-Apr	11-Apr-08	111062.5	111082.50	2004	RAM TRUCK	1D7HU18D44J	U					
147	04-Mar	04-Mar-08	24224.85	24224.85	2008	SILVERADO	1GCEK14C8Z	LT					
148	04-Mar	04-Mar-08	24224.85	24224.85	2008	SILVERADO	1GCEK14C8Z	LT					
149	04-Mar	04-Mar-08	24224.85	24224.85	2008	SILVERADO	1GCEK14C29Z	LT					
150	04-Mar	04-Mar-08	24224.85	24224.85	2008	SILVERADO	1GCEK14C48Z	LT					
151	05-Mar	05-Mar-08	24224.85	24224.85	2008	SILVERADO	1GCEK14C78Z	LT					
152	05-Mar	05-Mar-08	24224.85	24224.85	2008	SILVERADO	1GCEK14C88Z	LT					
153	05-Mar	05-Mar-08	24224.85	24224.85	2008	SILVERADO	1GCEK14C38Z	LT					
154	07-Mar	07-Mar-08	24224.85	24224.85	2008	SILVERADO	1GCEK14C98Z	LT					
155	25-Nov	23-Nov-07	18187.5	18187.50	2006	TAHOE	1GNEK13T96R	U LT					Exchange Title
156	06-Apr	05-Apr-08	18924.98	18924.98	2006	SILVERADO	1GCEC14Z26G	LT					Process Title
157	10-Mar	10-Mar-08	27175.88	27175.88	2006	SILVERADO	1GCEK19C98Z	LT					
158	17-Sep	19-Sep-06	36021.78	36021.78	2008	TRAILBLAZER	1GNET19H86Z	LT					
159	11-Mar	11-Mar-08	27175.88	27175.88	2008	SILVERADO	1GCEK19C18Z	LT					
160	14-Mar	14-Mar-08	26519.23	26519.23	2006	SILVERADO	1GCEC19C28Z	LT					

WHOLESALE AUDIT

576

Branch Number: 087
 Dealer Number: 0828
 Dealership: EVERETT CHEVROLET, INC.
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

* A - X If inspected & condition OK
 * A - D If vehicle inspected but damaged
 * A - X If vehicle missing
 * B - Y If MCO inspected
 * B - T If title inspected
 * B - X If title/MCO missing

Issued To: CSHWAYNE FINK
 Date Issued: 10/24/08

Row	Note Date	Interest Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Mileage Tracked	A	B	Date Of Delivery	Remind. Date	Blocking Data	Inreg.	Comments
161	18-Mar	18-Mar-08	32412.48	32412.48	2008	AVANANCHE	3GNE012108G	245598	LT							
162	18-Mar	18-Mar-08	22558.78	22558.78	2008	SILVERADO	1G0EC19X08Z	247402	LT							
163	03-Sep	03-Sep-08	10484.43	10484.43	2008	AVEO	KL1TD866X08	250871								
164	28-Aug	28-Aug-08	10484.43	10484.43	2008	AVEO	KL1D0668808	251807								
165	08-May	08-May-08	26778.88	26778.88	2008	SILVERADO	1GCEK18C28Z	256354	LT							
166	15-Aug	15-Aug-08	40781.6	40781.6	2008	TAHOE	1GNFK13038R	260987	LT							
167	22-Oct	22-Oct-08	28280.4	28280.4	2008	TRAILBLAZER	1GNDD13988Z	261369	EU LT	540	XX	10/24/08	10/24/08			WAT & FROD DEPT
168	25-Mar	25-Mar-08	21708.65	21708.65	2008	COBALT	1G1AM18B18Z	261823								
169	30-Jul	30-Jul-08	8508.25	8508.25	2008	SILVERADO	1G0EC14Z28Z	265639	U LT	DE						PARIS
170	12-Jun	12-Jun-08	26033.28	26033.28	2008	MALIBU	1G1ZJ577X8F	266938								
171	22-Sep	22-Sep-08	17195	17195	2004	ESCALADE	3GYFK66N14G	267072	FAU LT							
172	10-Sep	10-Sep-08	18595	18595	2006	TRAILBLAZER	1GNED13H28Z	268217	FAU LT							
173	03-Jul	03-Jul-08	14087.63	14087.63	2008	COBALT	1G1AK18F58Z	269856	EU	540	XX	10/24/08	10/24/08			C Kent
174	14-Oct	14-Oct-08	23818.43	23818.43	2008	MALIBU	1G1ZJ57748F	279328	DE							
175	27-May	27-May-08	38529.85	38529.85	2008	SILVERADO	2G0EK13J581	286003	LT							
176	10-Jul	10-Jul-08	24184.1	24184.1	2008	MALIBU	1G1ZJ577X8F	294212								
177	28-Aug	28-Aug-08	21816.03	21816.03	2008	MALIBU	1G1ZJ577X8F	294710								
178	15-Jul	15-Jul-08	26402.6	26402.6	2008	MALIBU	1G1ZJ57748F	295064								
179	20-Oct	20-Oct-08	10895	10895	2005	TRAILBLAZER	1GNDD13S58Z	296513	FAU LT	XX						NOT PROCESSED ON DIMIT AUCTION - COMEON
180	08-Aug	08-Aug-08	15075	15075	2006	NOVADENALU	1GKET63M76Z	296649	FAU LT	540	XX	10/24/08	10/24/08			3W Foley

WHOLESALE AUDIT

578

Branch Number: 085
 Dealer Number: 0885
 Dealership: EVERETT CHEVROLET, INC.
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

A. X If Inspected & Condition OK
 A. D. If Vehicle Inspected But Damaged
 A. X If Vehicle Missing
 B. V If ACC Inspected
 B. T If Title Inspected
 B. X If Title ACC Missing
 Issued for: CSI-WAYNE PINK
 Date Issued: 10/24/08

Node	Interest Date	Outright OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Subtype	W	A	B	Delivery Date	Remile Date	Shipping Date	Comments
181	25-Sep-08	8806.25	8,806.25	2006	CRYSLER 300	203K543R285	288536	U	X	T		10/26/08			10/26/08 A. ROSS - S.A.R.
182	11-Jan-07	3775.38	37,715.38	2006	RAILBLAZER	1GNET13H862	298228	BE, LT							
183	08-Jul-07	24396.7	24,396.70	2008	SILVERADO	1GCER14C78Z	298259	LT							SMAR MOTOR INC MOTOR FROM BROKER
184	20-Oct-08	27295	27,285.00	2007	TAHOE	1GNFK13007R	300915	FA, U, LT							COPIES RETURNED K.C. FERRERUS F.A.U. FERR
185	20-Aug-08	3608.25	8,506.25	2003	DAKOTA	1D7H149N13S	301201	U							
186	28-Jul-08	15117.23	15,117.23	2009	AVEO	KL1TD88E19B	304082								
187	18-Jul-08	15117.23	15,117.23	2009	AVEO	KL1TD88E29B	308035								
188	18-Jul-08	15117.23	15,117.23	2009	AVEO	KL1TD88E69B	308037	AE							10/26/08 New Sales - OK ACC SENT
189	18-Jul-08	16570.05	16,570.05	2009	AVEO	KL1TG68E99B	308208								
190	21-Jul-08	16570.05	16,570.05	2009	AVEO	KL1TG8E59B	308922								AKA @ COSTCO
191	20-Jul-08	16570.05	16,570.05	2009	AVEO	KL1TG8E79B	308323								
192	20-Jul-08	16570.05	16,570.05	2009	AVEO	KL1TG68E99B	308324								
193	20-Jul-08	15207.78	15,207.78	2009	AVEO	KL1TD88E99B	308829								
194	30-Mar-08	28240.73	28,240.73	2008	EQUINOX	2CNDL08718R	309089	LT							
195	20-Jul-08	15117.23	15,117.23	2009	AVEO	KL1TD88E99B	309862								
196	14-Aug-08	16576	16,575.00	2009	350Z	JNAZ94D66M	310022	U							
197	21-Jul-08	16236.3	16,236.30	2009	AVEO	KM1TG8E49B	310884	OE							10/26/08 New Sales - OK ACC SENT
198	20-Jul-08	16236.3	16,236.30	2009	AVEO	KL1TG8E49B	310855								
199	21-Jul-08	16236.3	16,236.30	2009	AVEO	KL1TG8E39B	310456								
200	21-Jul-08	16320.85	16,320.85	2009	AVEO	KL1TG8E19B	311203								

WHOLESALE AUDIT

376

Branch Number: 088
 Dealer Number: 0888
 Relationship: EVERETT CHEVROLET, INC.
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: >
 Issued To: C/WAYNE PINK
 Date Issued: 10/24/08
 A ✓ Mileage inspected & condition ok
 B ✓ IMCO inspected
 C ✓ VIN checked inspected but damaged
 D ✓ Title inspected
 E ✓ Vehicle missing
 F ✓ Vehicle missing

Invoice No.	Note Date	Invoice Date	Current O/S	Original O/S	Year	Model	Vehicle Identification No.	Code	Mileage	Date of Delivery	Blocking Date	Comments
221	20-Sep-08	20-Sep-08	5981.25	5,981.25	2002	ODYSSEY	2HKRL18602H	548101	U LT			
222	11-Jun-08	11-Jun-08	7785	7,785.00	2006	COBALT	1G1AL65F837	B02293	FAU			
223	09-Apr-08	09-Apr-08	11700	11,700.00	2007	RAM TRUCK	1D7HA16K77J	604427	FAU			
224	16-Jul-08	16-Jul-08	5843.75	5,843.75	2006	COBALT	1G1AK52F757	634782	U			
225	17-Sep-08	17-Sep-08	12318.75	12,318.75	2006	JETTA	QVWRF61869M	640688	U			
226	02-May-08	02-May-08	3581.25	3,581.25	2003	MALIBU	1G1ND52J03M	654435	U			
227	02-May-08	02-May-08	3581.25	3,581.25	2003	MALIBU	1G1ND52J83M	654537	U			
228	02-May-08	02-May-08	3581.25	3,581.25	2003	MALIBU	1G1ND52J33M	654575	U			
229	02-May-08	02-May-08	3581.25	3,581.25	2003	MALIBU	1G1ND52J43M	654938	U			
230	02-May-08	02-May-08	3581.25	3,581.25	2003	MALIBU	1G1ND52J10M	655068	U			
231	02-May-08	02-May-08	3581.25	3,581.25	2003	MALIBU	1G1ND52J39M	655191	U			
232	23-Oct-08	23-Oct-08	5795	5,795.00	2007	AVEO	KL1TD66637B	709043	FAU			
233	01-Jul-08	01-Jul-08	12000	12,000.00	2006	FORESTER	JF1SG66668H	712006	U			
234	18-Mar-08	18-Mar-08	10031.25	10,031.25	2005	VUE	5GZCZ53435S	801291	U LT			
235	08-Aug-08	08-Aug-08	17875	17,875.00	2006	97X	5SBET13M862	802742	FAU			
236	08-Aug-08	08-Aug-08	15595	15,595.00	2006	97X	5SBET13M462	803936	FAU			
237	22-Sep-08	22-Sep-08	10696	10,695.00	2005	VUE	5GZCZ53495S	840901	FAU LT			
238	15-Apr-08	15-Apr-08	9661.25	9,661.25	2005	RANGER	1FTZT15E46P	A02145	U LT			
239	07-May-08	07-May-08	22650	22,650.00	2002	XKB	SAJDA42C72N	A38840	DEU			
240	15-Jul-08	15-Jul-08	5361.25	5,361.25	2003	EXPLORER	1FMYU60E23U	A37680	U LT			

*Everett Invoice
 10 S. Stanley Street
 SR 18/88 AL 18771*

*SR to return all other
 SR to return 188 188774*

Steve J. Roberts

WHOLESALE AUDIT

576

Branch Number: 069
 Dealer Number: 0688
 Dealer: EVBETT CHEVROLET, INC.
 Address: 7300 EVERGREEN WAY EVERETT, WA 98203
 Release Period: 3

*A. ✓ If inspected & condition OK
 *A. D. If vehicle inspected but damaged
 *A. X. If vehicle missing

*B. ✓ If NCO inspected
 *B. T. If TPO inspected
 *B. X. If TPO missing

Issues To: CHERYLNE FINK
 Date Issued: 10/2/08

Note Date	Interest Date	Current OSB	Original OSB	Year	Model	Vehicle Identification No.	Code	Mileage If Rep.	A. D. If Rep.	Date Of Delivery	Reimb. Date	Blocking Date	Irreg. Date	Comments
241 18-Sep-08	18-Sep-08	5756.25	5766.25	2003	WINDSTAR	2FMDA6B60B	A47185	U.L.T.						
242 30-Jul	30-Jul-08	14006.28	14006.25	2007	RANGER	1FTR45B7P	A52650	U.L.T.		10/18/08				R. YEART
243 03-Sep-08	03-Sep-08	14887.5	14887.30	2004	W SUPER DU	1FTSW31PX4E	A55133	U.L.T.						
244 04-Sep-08	04-Sep-08	10066.75	10066.75	2005	RANGER	1FTYR14U79P	A62037	U.L.T.						
245 11-Apr	11-Apr-08	12881.25	12881.25	2002	W SUPER DU	1FTRX21R2E	C38790	U.L.T.						

GMAC FINANCIAL SERVICES

GMAC Dallas Regional Business Center
5208 Tennyson Parkway, Suite 120
Plano, TX 75024
1-800-343-4541 Ext. 2063

November 19, 2008

EVERETT CHEVROLET, INC.
Attn: John Reggans
7300 EVERGREEN WAY
EVERETT, WA 98203

RE: Wholesale audit completed on 10/27/2008

Dear Mr. Reggans:

Thank you and your staff for the courtesies extended and assistance given during the wholesale inventory audit conducted at your dealership. The results of the inventory audit are provided for your information:

Audit Type	Total Deliveries	Payment Delays *	%
Wholesale Floor Plan	13	5	38%

The audit summary information above is provided to help you maintain efficiency, and to ensure unnecessary dealership expenses are minimized or eliminated.

Any delay in payment beyond your established release period is not in keeping with your floor plan agreement with GMAC and must be corrected. Payment delays also result in additional floor plan interest expense to your dealership.

We hope you will find this information beneficial and assume you will take all measures necessary to improve future audit results.

Sincerely,



Pedram Davoudpour
Portfolio Manager

cc: M.J. Vick

GMAC 003296
CONFIDENTIAL

R. Ex. 105

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SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

GMAC, a Delaware Corporation,

No. 08-2-10683-5

Plaintiff,

DECLARATION OF CYNDY CHRISTIE,
BRANCH MANAGER, U.S. BANK

vs.

EVERETT CHEVROLET, INC., a
Delaware Corporation; and JOHN
REGGANS and JANE DOE REGGANS
and their marital community,

Defendants.

I, Cyndy Christie, declare as follows:

1. I make this Declaration of my personal knowledge. I am the Branch Manager of U.S. Bank in Everett, Washington, located at 1702 Hewitt Ave, Evcrett.
2. Everett Chevrolet is a customer of our bank.
3. On December 18th, 2008, our branch closed at 3:00 p.m. because of inclement weather. To confirm this fact, I recently reviewed payroll records and saw that our employees were sent home at 3:20 p.m.

DECLARATION OF CYNDY CHRISTIE - 1

MARSH MUNDORF PRATT SULLIVAN

+ McKENZIE, P.S.C.
16504 9TH AVENUE S.E., SUITE 203
MILL CREEK, WA 98012
(425) 742-4545 FAX: (425) 745-6060

COPY

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 13th day of March, 2008 at Everett, Washington

Cyndy Christie

Cyndy Christie
Branch Manager
U.S. Bank, Everett

E:\Clients\Everett Christie, Inc\Decl of Cyndy Christie.doc

RP VOL. I

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

GMAC, A DELAWARE CORPORATION,)	
)	
Plaintiff,	)	Cause No. 08-2-10683-5
	)	COA. 63331-7-I
vs.)	
)	
EVERETT CHEVROLET, INC., A DELAWARE CORPORATION,)	
Et al.)	
)	
Defendants.)	

VERBATIM REPORT OF PROCEEDINGS
VOLUME I

BE IT REMEMBERED that on 17th day of March, 2009,
the above-entitled and numbered cause came on for
Replevin Hearing before JUDGE ERIC Z. LUCAS, Snohomish
County Superior Court, Everett, Washington.

A P P E A R A N C E S

For the Plaintiff	JOHN E. GLOWNEY
For the Defendant	WILLIAM WHEELER and KARL HAUSMANN

REPORTED BY:
DIANA NISHIMOTO, OFFICIAL COURT REPORTER
SNOHOMISH COUNTY COURTHOUSE
3000 EVERETT, WA 98201
PHONE (425) 388-3281
CSR. 3222

1 defendant here?

2 A. Yes, I am.

3 Q. And how did you become familiar with Everett
4 Chevrolet?

5 A. Upon my rotation into branch manager in the Pacific
6 Northwest, I went on visits with the prior branch
7 manager and Everett Chevrolet was one of the
8 dealerships that we called on with my initial visit
9 with them.

10 Q. When was that approximately?

11 A. That was late August, early September of '07.

12 Q. Of '07?

13 A. Yes.

14 Q. And who did you meet there as the principal in that
15 business?

16 A. Mr. Reggans.

17 Q. Now, did you have any contact with Mr. Reggans later
18 in the year of 2007 regarding his credit situation?

19 A. Yes. There was a request by Mr. Reggans to increase
20 the revolving line of credit.

21 Q. When was that?

22 A. That was in, I believe, in October of '07 was the
23 information about the revolving line of credit.

24 Q. Did he have, at that time, a revolving line of credit?

25 A. He had an existing \$500,000 line of credit.

1 Q. Is that the same as wholesale lending floor plan line
2 of credit?

3 A. No, they are two separate lines of credit.

4 Q. And he had -- and this was a request to the revolving
5 line of credit?

6 A. To the revolving line of credit, right.

7 Q. And he had an existing one of a limit of five hundred
8 thousand?

9 A. There was a limit of five hundred thousand on the
10 existing and there was a request to increase that.

11 Q. Was that request made to you or how did you learn
12 about it?

13 A. That request was made to me. It was in a conversation
14 that I had with Mr. Reggans. He indicated that he was
15 being proactive and was -- felt there was a need for
16 the possible need to increase that line of credit for
17 dealership operations and asked if we could increase

18 that.

19 Q. And do you know whether that -- whether GMAC agreed to
20 do so?

21 A. We agreed to do so and increased it to eight hundred
22 thousand.

23 Q. So by three hundred thousand?

24 A. By three hundred thousand, correct.

25 Q. And has, to your knowledge, has Mr. -- has Everett

1 Chevrolet utilized that, the extended amount of line
2 of credit?

3 A. Yes, yes they have. I know by May of 2008 that the
4 revolving line of credit had been increased, the usage
5 of it to I believe about \$786,000.

6 Q. Leaving 14 thousand, maybe?

7 A. Correct.

8 Q. And that was by about May of 2008?

9 A. May of 2008.

10 Q. Okay. Did you have then, and do you recall what he
11 told you as his reasons he was asking for increasing
12 the line of credit?

13 A. Not specifically, but he indicated that he was trying
14 to be proactive. He knew he was close to his existing
15 limit and was thinking that as he went through the
16 winter that there may be a need for the dealership.

17 Q. It appears that there was then, given how much he drew
18 on it, correct?

19 A. Correct.

20 Q. Did you have any subsequent meetings then with Mr.
21 Reggans in the year 2008?

22 A. Well, if I could, it also towards the end of 2007
23 there was a request made to finance the real estate,
24 that he had an option to purchase the real estate.

25 Q. And the real estate is what real estate?

1 A. The real estate that Everett Chevrolet currently sits
2 on.

3 Q. And he made this request again to you?

4 A. Yes.

5 THE COURT: Are we talking about the store on
6 Highway 99?

7 THE WITNESS: On Evergreen Park Way.

8 THE COURT: Evergreen Way?

9 THE WITNESS: Evergreen Way, yes.

10 THE COURT: Sorry to interrupt you, counsel.
11 Those little details help me.

12 MR. GLOWNEY: Certainly.

13 BY MR. GLOWNEY:

14 Q. So he had an option to purchase essentially the land
15 in which his business was operating?

16 A. Correct.

17 Q. And he came to you with -- what was his request now?

18 A. His request was that he had an option to purchase it
19 at a price that needed to get done by the end of the
20 year. And I believe he started talking about that in
21 late November. And the initial request was that he
22 had a time frame that he was receiving some pressure
23 to get it done by the end of the year. We said we
24 would look at what we could do with that time frame
25 but it was going to be very difficult to accomplish.

1 Q. He first approached you late in November, I take it?

2 A. Correct.

3 Q. So your point was it was hard to finish that up in the
4 time left in the year?

5 A. Correct.

6 Q. What happened with that in 2007?

7 A. 2007 we were not able to meet the time frame. We
8 continued looking at it in 2008 and completed a
9 review. And it was not a loan that provided positive
10 cash flow so we were not able to provide the funding
11 for that purchase.

12 Q. And when you say it wouldn't provide positive cash
13 flow, what do you mean by that?

14 A. When you look at the dealership operation and the debt
15 that's on the statement, plus the existing -- or the
16 current -- the debt that would be responsible for the
17 new loan, there was not sufficient cash coming into

18 the operation to make the repayment of the current
19 debt plus the potential future debt.

20 Q. So it wouldn't be able to make the debt service with
21 all that lending, with that amount of debt, couldn't
22 make the debt service, and these were taken from his
23 financial information provided to you?

24 A. Correct.

25 Q. Okay. And was that communicated to Mr. Reggans and

1 Everett Chevrolet, to your knowledge?

2 A. It was communicated, yes, orally by myself.

3 Q. Do you recall when that was communicated to him?

4 A. I don't have the specific dates. I know it was
5 communicated on more than one occasion, because he did
6 continue to ask about the opportunity for that loan,
7 and it would have been in the -- towards the end of
8 the first quarter of 2008, the March, April time
9 frame.

10 Q. March, April, okay. So then did you have any other
11 meetings or dealings with Everett Chevrolet or Mr.
12 Reggans in early 2008?

13 A. Yes, we did, in addition we had had some success at
14 some other dealerships having some intense interaction
15 with the sales staff to increase the volume of retail
16 offerings, retail contracts that were sent to GMAC.

17 The individual who was responsible for Everett

18 Chevrolet in the sales role, Ted Modrzejwski came and
19 asked if Everett Chevrolet would be a good target for
20 having similar visits. We discussed it and said it
21 would be a good target, so we had visits with Mr.
22 Reggans to kind of identify and say we were going to
23 come in and look to come in on weekly basis, look at
24 his management team, look at the applications that we
25 received, and try and build a communication and get

1 more business coming into GMAC.

2 Q. And in brief, what came of that?

3 A. We were not as successful as we would have liked.

4 Part of the issue was during that time there were
5 several management changes so we would start and then
6 there would be some changes and we were not able to
7 get the ball rolling like we were in some other
8 dealerships that did not have the management the
9 turnover.

10 Q. When you say management turnover, at Everett
11 Chevrolet?

12 A. At Everett Chevrolet, yes.

13 Q. Do you recall having occasion to meet with Mr. Reggans
14 to discuss GMAC's credit concerns regarding Everett
15 Chevrolet's performance?

16 A. Yes, I did.

17 Q. And did you meet -- do you recall meeting with him
18 more than once, or once?

19 A. There was one major visit that happened on June 10th
20 that was preceded by some phone calls to set up that
21 -- set up that meeting. And in the phone call that
22 was established for the time frame to meet, the
23 discussion topics came up in that phone conversation.

24 Q. And about when was that phone conversation?

25 A. The phone conversation was the -- around the first

1 week of June, that June 2nd, 3rd, 4th time frame.

2 Q. And who was the conversation with?

3 A. The phone conversation was with Mr. Reggans.

4 Q. And you?

5 A. And myself, correct.

6 Q. And can you give me the substance of that
7 conversation?

8 A. Mr. Reggans and I had been returning some phone calls
9 back and forth. We were finally able to connect. I
10 told Mr. Reggans that our analysis of the April
11 financial statement was completed.

12 Q. Whose April's financial?

13 A. Everett Chevrolet's. The business center in
14 Sacramento had completed an analysis of Everett
15 Chevrolet's April financial condition.

16 Q. Okay. Let me back up for a second. How does it
17 come to be that GMAC has his April financial

18 statement? Is this something he sends to GMAC?

19 A. Yes.

20 Q. That Everett Chevrolet sends to --

21 A. Everett Chevrolet sends the financial information to
22 GMAC. We were continuing to look at the opportunity
23 of the real estate loan, and we had asked a number of
24 -- a number of questions about the dealership
25 operation.

1 Q. Was providing an operating statement of Everett
2 Chevrolet a regular requirement of GMAC's?

3 A. It was a regular requirement, yes.

4 Q. And how often would they provide that statement, if
5 you know?

6 A. We have access to the statement on a monthly basis.

7 Q. Do they provide updated figures on a updated basis?

8 A. They provide updated figures into G M system that we
9 have access to on a monthly basis.

10 Q. And Sacramento was what to GMAC at that time?

11 A. Sacramento was the business center that handled the
12 Pacific Northwest, or the northwest area.

13 Q. And you indicated they had done a review of his
14 financial statements as of April?

15 A. Right.

16 Q. And so that was a topic that you discussed with Mr.
17 Reggans in this early June telephone conversation?

18 A. There were specific concerns that were identified in
19 the analysis and there were specific actions that they
20 wanted discussed and covered with Mr. Reggans.

21 Q. Did you discuss any of those in this phone
22 conversation?

23 A. In the phone conversation I discussed all of them,
24 because Mr. Reggans asked if the subject was going to
25 be good news. And I indicated it was not. There were

1 A. The dealership has a -- had a three day release
2 privilege that's --

3 Q. What's a three day release privilege?

4 A. A three day release privilege is a privilege granted
5 to dealers, understanding that a vehicle that is sold
6 on a Friday night is practically not possible to
7 expect payment from the dealership at that time, for a
8 variety of reasons.

9 One, office staff work different hours than sales
10 staff do, availability of communication. Sometimes
11 there are --

12 Q. Is it just -- what does it mean in shorter terms, I'm
13 sorry?

14 A. The dealership has three days -- three business days
15 from the day they sell a vehicle to remit payment to
16 GMAC in release --

17 Q. Three business days or three calendar days?

18 A. Three business days.

19 Q. So you indicated that they were not paying GMAC for
20 cars as they -- within their three day release
21 privilege?

22 A. That was one of the key factors in increasing
23 frequency of audits.

24 Q. So by December you indicated that GMAC was starting to
25 do daily audits, is that correct? And then what had

1 occurred on December 5th?

2 A. December 5th, we had done an audit, and I believe that
3 was our first audit in December at the dealership.
4 There were vehicles that were sold and GMAC had been
5 unpaid outside the release privilege for vehicles that
6 were due December 5th, or earlier to GMAC.

7 The dealership was unable to make payment to GMAC
8 on December 5th, through some -- I was a -- made aware
9 of some phone conversations that occurred that we
10 allow the dealership until Monday to make payment to
11 GMAC on vehicles that were due.

12 Q. So you went to the dealership on that Monday?

13 A. I went to the dealership that Monday afternoon after
14 it was determined that the arrangements to pay on
15 Monday were not going to be able to be fulfilled.

16 Q. Okay. And what did you do when you were there on
17 Monday, in summary fashion?

18 A. In summary, I tried to get an assessment of the
19 situation of how many vehicles we were looking at,
20 what the game plan for the dealership was to make the
21 payment to GMAC.

22 Q. Now, how does GMAC and Everett Chevrolet know what the
23 payment -- know what payment is due to GMAC when
24 Everett Chevrolet sells a car? How do they know what
25 amount to pay?

1 A. There is a number of factors. One, the amount that
2 is due on a new vehicle is listed on the floor plan.
3 We also have an electronic system that gives the
4 dealership access to their inventory that says this
5 vehicle is on GMAC, and its floor plan for this amount
6 of money.

7 Q. Okay. So, I guess I will keep it short here, so --

8 THE COURT: Can I jump in here for a second?

9 MR. GLOWNEY: Sure.

10 THE COURT: Is that like an electronic spread
11 sheet, is that what you call it?

12 THE WITNESS: You have the ability to take the
13 information from the system and put it on to a spread
14 sheet, yes.

15 THE COURT: All right. Thanks.

16 Go ahead, counsel.

17 BY MR. GLOWNEY:

18 Q. Thank you, your Honor. So in other words, there is
19 an amount assigned to each car?

20 A. Correct.

21 Q. And GMAC can find that and Everett Chevrolet can find
22 it?

23 A. Correct.

24 Q. They both know what it is?

25 A. Correct.

1 Q. So when they sell a car, they know how much they have
2 to pay GMAC?

3 A. Correct.

4 Q. They have a three day release period?

5 A. Correct.

6 Q. So they know when they have to pay GMAC?

7 A. Correct.

8 Q. So they had some payments, or a payment for more than
9 one car, I take it, due December 5th, which is a
10 Friday, I believe?

11 A. Yes.

12 Q. And that was not paid again by the following Monday?

13 A. Correct.

14 Q. So then anything further happen at the dealership on
15 that Monday after your visit?

16 A. There were -- there was a conversation, that I was
17 part of, between Mr. Reggans and individuals in

18 Dallas. And I believe Don Rice was on that phone
19 call.

20 Q. And you were on the phone call?

21 A. Yes, I was in Mr. Reggans' office for that phone call.

22 Q. And what was discussed?

23 A. The -- we were trying --

24 MR. WHEELER: Objection as to Don Rice, hearsay.

25 MR. GLOWNEY: He would be a party. One, he can

1 relate what he said.

2 And two, I don't think it's offered for any truth
3 of the statement Don Rice submitted.

4 THE COURT: I will admit it, but not for the
5 truth.

6 MR. GLOWNEY: All right.

7 BY MR. GLOWNEY:

8 Q. Let me ask first, can you tell me what Mr. Reggans
9 said in this conversation?

10 A. Not verbatim.

11 Q. Can you give me the substance of what he said?

12 A. The substance was that he was not able to make the
13 payments that were due on December 8th, that he was
14 working to get an injection of cash into the
15 dealership, but that was going to take sometime and
16 that he was working as fast -- as soon as possible.
17 But there was not a specific action plan that this is

18 where the money would come from or this is how it
19 would get done.

20 Q. Did he acknowledge specifically, or implicitly that --

21 MR. WHEELER: Objection, leading.

22 THE COURT: Not yet. Go ahead.

23 BY MR. GLOWNEY:

24 Q. Did he acknowledge implicitly or explicitly, or did he
25 acknowledge in anyway there was a debt due and not

1 paid to GMAC on that day?

2 A. Yes.

3 Q. Now did Everett Chevrolet -- were they able to pay
4 that particular -- have you heard the phrase out of
5 trust?

6 A. Yes.

7 Q. Can you tell the Court generally what the phrase out
8 of trust means?

9 A. Generally that refers to when vehicles are sold and
10 they have not paid them by the end of the release
11 privilege.

12 Q. So in this industry, people will refer to that as
13 being out of trust?

14 A. Out of trust, correct.

15 Q. So when he didn't pay by December 5th, he was out of
16 trust on those vehicles?

17 A. Correct.

18 Q. And he wasn't able to cure that on the following
19 Monday?

20 A. Right.

21 Q. Did he eventually cure that or not?

22 A. He did eventually cure that.

23 Q. Do you remember when -- I will ask you, do you
24 remember when?

25 A. Yes, I believe that was cured on December 9th.

1 Q. Which would be the following day?

2 A. The following day.

3 Q. Do you know how it was cured?

4 A. It was cured by floor planning some vehicles for the
5 dealership to pay off the vehicles that were still out
6 of trust.

7 There were some vehicles that were not currently
8 floor planned that we could floor plan, that generated
9 some funds that we then applied to the vehicles that
0 were sold out of trust.

11 Q. And was there any cash payment at the time, as well?

12 A. I do not believe so with the -- I do not believe so.

13 Q. Okay. So that would have been Tuesday, December 9th
14 then?

15 A. Correct.

16 Q. Were you present at the dealership on that day?

17 A. Yes, I was.

18 Q. And did GMAC conduct an audit?

19 A. Yes, we did.

20 Q. And do you know the results of that audit?

21 A. The audit was done first thing in the morning, so the
22 vehicles that were still sold out of trust from the
23 prior days were reflected on that audit.

24 Q. Okay. So then were you present on the next day, the
25 10th?

- 1 A. Yes.
- 2 Q. Was an audit conducted on that day?
- 3 A. Yes, it was.
- 4 Q. Were you conducting the audit yourself?
- 5 A. I was conducting the audits in conjunction with Ted
- 6 Modrzejwski.
- 7 Q. Modrzejwski?
- 8 A. Yes.
- 9 Q. And do you happen to know the result of the audits on
- 10 the 11th?
- 11 A. The 11th, there were funds that were due to GMAC on
- 12 the 10th that were unpaid. And when we completed the
- 13 audit on the 11th those funds were still unpaid.
- 14 Q. So Everett Chevrolet was out of trust again?
- 15 A. Everett Chevrolet again was out of trust starting
- 16 December 10th.
- 17 Q. Did you discuss that with Mr. Reggans on the 11th?
- 18 A. At that time Mr. Reggans, in conversations that were
- 19 going on with Dallas, asked that I be excluded from
- 20 those conversations.
- 21 Q. So he wouldn't discuss it with you, is that what you
- 22 are saying?
- 23 A. In the conversations that were going on with Dallas,
- 24 correct.
- 25 Q. So do you know whether or not the out of trust

1 situation from December 10th was cured by Everett
2 Chevrolet?

3 A. It was cured in the evening of December 11th.

4 Q. Do you know how it was cured?

5 A. That was cured by a combination of a cashier's check
6 and the flooring of some additional vehicles to pay
7 off the sold out of trust.

8 Q. Okay. So is it correct to say that when you floor
9 additional vehicles, you are essentially lending him
10 some more money?

11 A. Yes.

12 Q. And then he takes the proceeds of that money, pays off
13 the old out of trust, but now has a new debt on the
14 cars that are still there?

15 A. Correct. In that -- in that the vehicles that were
16 -- we have the inventory securing not only the floor
17 plan but the revolving line of credit. So we are
18 securing our security on the line of credit.

19 Q. When you shift a vehicle from non floored over to
20 floor?

21 A. Correct.

22 Q. So what you are saying, is that when GMAC --

23 MR. WHEELER: Objection, leading.

24 THE COURT: Yes, so --

25 MR. GLOWNEY: Thank you. I will move on to

1 were sold. And we can get information, she can
2 provide us with files.

3 We would go -- when we do the audit, we would know
4 from our indication that a vehicle was missing, we
5 would know by the vehicle identification number that
6 it was missing. We would use the dealer record to
7 find a stock number that identified that vehicle.

8 From that stock number, we could obtain information
9 from the dealer's records that that stock number was
10 sold to a specific customer. And depending upon where
11 in the cycle it was the deal may be in my office, it
12 may be in the sales office, it may be in the business
13 office. And when it got to the business office, Ms.
14 Cady was a person we could go to and say, I need the
15 file on this specific deal and she would get that
16 information for us.

17 She was -- she was also the individual that I
18 worked with to get the records that allowed me to get
19 information to Dallas to allow us to floor vehicles to
20 cure the -- the sold out of trust condition. She was
21 also the person who we would get information about how
22 we were progressing in getting cashier's checks.

23 Q. Okay. Let me just come back to a topic. This out of
24 trust thing occurred in December, was that the first
25 time that Everett Chevrolet been sold out of trust?

1 A. No.

2 Q. Had it been sold out of trust in November?

3 Well, let me ask you this. Do you recall when,
4 prior to that, when it had been sold out of trust?

5 A. Sold out of trust in May, sold out of trust in July.
6 I believe also in October and August.

7 Q. So this had occurred on a number of occasions, it
8 sounds like, before?

9 A. Yes.

10 Q. And that had caused the increase in audits?

11 A. Correct.

12 Q. And is there a term -- I don't know -- is there a term
13 that --

14 THE REPORTER: Excuse me, could you please repeat
15 the question?

16 BY MR. GLOWNEY:

17 Q. Was there, Mr. Vick, a term used in your industry to
18 refer to the packet of documents that relate to a sale
19 to a retail customer?

20 A. Generally that's referred to as a deal jacket.

21 Q. A deal jacket. Did you have any interaction during
22 this December 8th, with anyone else in particular at
23 the dealership?

24 A. Yes. In addition, there would be times to get files
25 from the finance office, and Mr. White was one of the

- 1 A. Correct.
- 2 Q. All right. So you were at the dealership on the
3 10th, and you participated in that audit also, right?
- 4 A. Correct.
- 5 Q. And what was the findings of that audit?
- 6 A. On December 10th, there were vehicles due and unpaid
7 to GMAC, and that was in the amount of about \$149,000.
- 8 Q. All right. And were these vehicles past due?
- 9 A. Yes.
- 10 Q. \$149,000, that was past due?
- 11 A. It was due on that day.
- 12 Q. Due on that day. And you participated in the audit?
- 13 A. Yes, I did.
- 14 Q. And your level of participation was what?
- 15 A. Same as the previous.
- 16 Q. All right. And do you know how many vehicles this
17 hundred, and you said, 47 thousand dollars
18 represented?
- 19 A. 49, and I don't have a specific number on that.
- 20 Q. But the audit would show that, right?
- 21 A. Correct.
- 22 Q. And who did that audit? Who had the primary
23 responsibility for that audit?
- 24 A. That was Ted Modrzejwski.
- 25 Q. All right. And was that audit cured?

1 A. Not that day.

2 Q. It was cured the next day, right?

3 A. Yes, it was indeed.

4 Q. And how was that audit cured?

5 A. That audit was cured by again floor planning
6 unencumbered vehicles and a cashier's check that was
7 secured by the dealership.

8 Q. Okay. So the dealership had other new vehicles that
9 were unencumbered that were used to pay this
10 \$149,000?

11 A. The vehicles on the 11th were for the most part used
12 vehicles.

13 Q. They were used vehicles?

14 A. For the most part.

15 Q. Do you know when those used vehicles arrived at the
16 dealership? Did they arrive at the dealership on the
17 11th?

18 A. I don't know the specific date those vehicles arrived
19 at the dealership.

20 Q. All right. But there was a good chance that those
21 vehicles were already at the dealership prior to this
22 dealer being declared "out of trust"?

23 A. That is possible.

24 Q. And do you know where -- strike that.

25 Do you know when the vehicles that cured the

- 1 Q. Okay. Now counsel asked you some questions about the
2 difficulty for a dealer to get a cashier's check and
3 make payment, and that was an extreme difficulty on
4 the dealership. Do you recall that line of
5 questioning?
- 6 A. I do.
- 7 Q. Do you have the understanding of what the purpose of
8 working capital is for a dealership?
- 9 A. I do.
- 10 Q. What is the purpose of working capital?
- 11 A. The purpose of working capital is funds that allows
12 the dealership to pay their obligations whether it be
13 floor plan, whether it be payroll, whether it be rent
14 and meet those obligations on a timely basis.
- 15 Q. Okay. So what does it signify, if anything, if a
16 dealer can not make payments such as these 11 or 14
17 cars on a timely basis?
- 18 A. One of the things that it generally indicates is that
19 the dealership does not have sufficient working
20 capital to operate the business.
- 21 Q. And what had GMAC asked this dealership to do in terms
22 of injecting additional working capital?
- 23 A. We had requested that the dealership inject \$800,000
24 of unencumbered working capital back in June of 2008.
- 25 Q. And that was based on what financials?

1 A. That was based on the April financial statement.

2 Q. And are you familiar with the sort of year to date
3 operating profits or losses of this dealership in
4 2008?

5 A. To a general degree, yes.

6 Q. And by December 9th, do you have an idea, or do you
7 have a recollection of what their operating profit and
8 loss was for 2008?

9 A. Every month, with the exception of January and
10 February, they had operated each month at a loss.

11 Q. So the year to date would be totaling up those losses
12 plus the two plus months of January and February?

13 A. Right.

14 Q. Do you have a knowledge of what that number was in
15 January or February?

16 A. I don't have that number, but we do have a financial
17 statement.

18 Q. So it would be on their financial statement?

19 A. Right.

20 Q. Okay.

21 THE COURT: Can I jump in here, counsel?

22 MR. GLOWNEY: You certainly can, your Honor.

23 THE COURT: Do they produce as part of their
24 financial statements, do they produce a cash flow
25 statement?

RP VOL. II

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

GMAC, A DELAWARE CORPORATION,)	
)	
Plaintiff,	)	Cause No. 08-2-10683-5
	)	COA. 63331-7-I
vs.)	
)	
EVERETT CHEVROLET, INC., A DELAWARE CORPORATION,)	
Et al.)	
)	
Defendants.)	

VERBATIM REPORT OF PROCEEDINGS
VOLUME II

BE IT REMEMBERED that on 18th day of March, 2009,
the above-entitled and numbered cause came on for
Replevin Hearing before JUDGE ERIC Z. LUCAS, Snohomish
County Superior Court, Everett, Washington.

A P P E A R A N C E S

For the Plaintiff	JOHN E. GLOWNEY
For the Defendant	WILLIAM WHEELER and KARL HAUSMANN

REPORTED BY:
DIANA NISHIMOTO, OFFICIAL COURT REPORTER
SNOHOMISH COUNTY COURTHOUSE
3000 EVERETT, WA 98201
PHONE (425) 388-3281
CSR. 3222

1 A. That's correct.

2 Q. So this would have been from an audit conducted on
3 December 16, 2008, correct?

4 A. Correct.

5 Q. That would have been a Tuesday, would it not?

6 A. I'm sorry, I don't know.

7 Q. You don't know.

8 May I approach the calendar, your Honor?

9 THE COURT: I don't know if that will work, but go
10 ahead.

11 MR. GLOWNEY: Okay.

12 THE COURT: Mr. Glowney, I think the one taped to
13 the counter is the one.

14 THE COURT: We have it Friday the 12th -- okay.
15 It's a Tuesday.

16 MR. GLOWNEY: It is a Tuesday. Thank you. Okay.
17 So may I show this to the witness, your Honor?
18 This calendar.

19 THE COURT: A calendar, sure, go ahead.

20 THE WITNESS: Okay, I agree, it was a Tuesday.

21 BY MR. GLOWNEY:

22 Q. So you agree it was a Tuesday?

23 A. Yes.

24 Q. So on Tuesday, December 16th, 2008, you received this
25 copy of this sort of summary sheet, I guess, if you

- 1 might call it that, of the audit, correct?
- 2 A. That's correct.
- 3 Q. And at the top, it's called audit action items for
- 4 dealerships, is it not?
- 5 A. It is.
- 6 Q. And then it's got below that a box with lines in it
- 7 and it's called open wholesale, correct?
- 8 A. Yes.
- 9 Q. Okay. And in there there are listed, what was it, 12
- 10 VIN numbers, correct?
- 11 A. Correct.
- 12 Q. 12 customer names, correct?
- 13 A. Correct.
- 14 Q. 12 dates sold, correct?
- 15 A. Correct.
- 16 Q. And then it has 12 due dates, does it not?
- 17 A. It does.
- 18 Q. Okay. And this would be a statement from the auditor
- 19 of dates in which Everett Chevrolet had sold cars,
- 20 that they are telling --
- 21 A. Correct.
- 22 Q. And you understand that the auditor would go to
- 23 Everett Chevrolet to get the date of a sold car, did
- 24 you not?
- 25 A. That's correct.

- 1 Q. So the auditor, using the dates of sale that he got
2 from Everett Chevrolet, would list them on this
3 document here, correct?
- 4 A. Correct.
- 5 Q. And then you can do a three day calculation and figure
6 out what due date it is, correct?
- 7 A. Correct.
- 8 Q. Now, this document on -- delivered to Everett
9 Chevrolet on the 16th shows dates for sales that would
10 be coming due on the 18th of one, two, three, four,
11 five, six, seven, eight, nine, perhaps ten cars, as I
12 read the writing here. Do you disagree?
- 13 A. I do not disagree.
- 14 Q. So Everett Chevrolet knew on December 16th, just from
15 this sheet, that on the 18th it would have ten cars
16 that were due to be paid to GMAC, is that correct?
- 17 A. Based on this information, correct.
- 18 Q. Based on this information, correct?
- 19 And the sales dates you just testified, come from
20 Everett Chevrolet, correct?
- 21 A. That's correct.
- 22 Q. And Everett Chevrolet knows when they've sold a car?
- 23 A. Correct.
- 24 Q. And then they put it in their accounting records, is
25 that correct?

1 A. Correct.

2 Q. So on the 16th Everett Chevrolet knew that in two days
3 they are going to have to make a payment for the
4 wholesale amounts of each of these two cars to GMAC,
5 correct?

6 A. That would be correct.

7 Q. And you can determine how much is due for each car
8 simply by popping up a screen that will tell you the
9 wholesale amount?

10 A. That's correct.

11 MR. WHEELER: Objection. You said he can lead, all
12 right, he can lead..

13 THE COURT: Correct.

14 BY MR. GLOWNEY:

15 Q. Is that correct?

16 A. Yes.

17 Q. So in five minutes or less, even someone like me who
18 is not very good at the computer, you can probably pop
19 up that screen?

20 MR. WHEELER: Objection, even someone like you who
21 is not good at a computer. Let's just hear the
22 question.

23 THE COURT: Why don't you rephrase it?

24 MR. GLOWNEY: Thank you, your Honor.

25 THE COURT: We don't really know the depth of your

1 technical skills.

2 MR. GLOWNEY: I don't want to put that out here,
3 thank you .

4 THE COURT: I am not sure you don't want to put
5 that at issue.

6 MR. GLOWNEY: I don't. I will withdraw that
7 question and rephrase it, your Honor.

8 BY MR. GLOWNEY:

9 Q. Everett Chevrolet, or someone like you, ma'am, could
10 in five minutes, I believe, determine how much is
11 going to be owing for those sales, correct?

12 A. That is not correct.

13 Q. You couldn't sit down and pull up the wholesale
14 amounts and say here is what's due?

15 A. What I can testify to is the fact that if all of these
16 cars had been put into accounting then I could
17 determine that the sale date was accurate for the date
18 that they have sold and that the due date would be
19 accurate, if it were in accounting. I can't confirm
20 that all of these cars were in accounting at that
21 point in time.

22 Q. And my question is a little different. Let's just,
23 for the moment say if someone gave you these VIN
24 numbers and said, I want you to take these ten VIN
25 numbers and I want you to tell me what I have to pay

1 if I need to pay it off right now?

2 A. Yes, that's accurate, I could do that right now.

3 Q. You could do that in five minutes, couldn't you?

4 A. Yes.

5 Q. Just come back and say, here is the number, here is
6 the total, and you would take wholesale amounts and
7 add them together and say here is what it is,
8 correct?

9 A. Yes, sir.

10 Q. That's not hard to do?

11 A. Yes.

12 Q. So if you have sales dates, you are going to know in
13 three days when they are due, and in five minutes you
14 can figure out how much is due, correct?

15 A. Yes.

16 Q. Let me do one more college try. Plaintiff's exhibit
17 10, if you remember, we looked at that document
18 yesterday?

19 A. I do, or on Monday, actually.

20 MR. WHEELER: What is exhibit 10 again?

21 MR. GLOWNEY: Exhibit 10, counsel, is -- I will
22 show it to you.

23 MR. WHEELER: I know what it is.

24 BY MR. GLOWNEY:

25 Q. This was the sort of list of additional cars that

RP VOL. III

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 IN AND FOR THE COUNTY OF SNOHOMISH
3

4 GMAC,)
5 Plaintiff,)
6 -vs-) Snohomish County
7 EVERETT CHEVROLET, INC., et al.,) Cause No. 08-2-10683-5
8 Defendants.) Court of Appeals
Cause No. 63331-7-I

9
10 VERBATIM REPORT OF PROCEEDINGS
11

12 SHOW CAUSE REPLEVIN HEARING
13

14 VOLUME III
15 March 19, 2009
16

17
18 HONORABLE ERIC Z. LUCAS
19 Judge
20

21 Department 4
22 Snohomish County Superior Court
23 Everett, Washington
24

25 Reported by:
WILLIAM MEEK, CSR
Official Court Reporter
CSR No. 2696

COPY

1 REBECCA IVERSON, having been duly sworn,
2 testified as follows:

3 MR. GLOWNEY: Are you ready for me to proceed,
4 Your Honor?

5 THE COURT: Oh, you may proceed.

6 MR. GLOWNEY: Thank you, Your Honor.
7

8 DIRECT EXAMINATION

9 BY MR. GLOWNEY:

10 Q Good afternoon, Ms. Iverson.

11 A Hi.

12 Q Could you state your name, spell it, and give your
13 address for the court reporter, please?

14 A Rebecca Iverson, R-E-B-E-C-C-A, I-V-E-R-S-O-N. And I go
15 by Becky. My address is 10005 151st Place S.E.,
16 Snohomish, 98296.

17 Q And how are you currently employed, Ms. Iverson?

18 A I work for Doug's Lynnwood Mazda, as the office
19 manager/controller.

20 Q And were you -- I'm sorry. Were you, at a previous
21 time, employed at Everett Chevrolet?

22 A Yes, I was.

23 Q How long did you work at Everett Chevrolet?

24 A I worked for John from December of '96, to September
25 25 of '08.

1 overruled.

2 You may proceed, Mr. Glowney.

3 MR. GLOWNEY: Thank you, Your Honor.

4 Q (By Mr. Glowney) And what was your position at Everett
5 Chevrolet, while you worked there?

6 A Controller/office manager.

7 Q Office manager and controller?

8 A Um-hm.

9 Q Okay. And do you know who you were replaced by? Do you
10 know Ms. Cady?

11 A Not personally.

12 Q Okay. And do you have any understanding of what her
13 position was?

14 A I would assume office manager/controller.

15 MR. WHEELER: Objection as to -- that's
16 speculation.

17 THE COURT: Sustained.

18 MR. GLOWNEY: Thank you, Your Honor.

19 Q (By Mr. Glowney) Are you familiar with Everett
20 Chevrolet beginning to experience difficulty in making
21 payments, and having financial difficulties, while you
22 worked there?

23 A Yes.

24 Q And when did that start occurring?

25 A Early 2008.

1 Q Did they have any trouble in late 2007?

2 A Some.

3 Q Okay. And why were they having trouble, as far as you
4 could see?

5 A Well, declining economy --

6 MR. WHEELER: Objection. She's not an expert.
7 She hasn't been qualified as an expert. How could she
8 testify as to why the dealership was encountering
9 financial difficulty?

10 THE COURT: Okay. Mr. Glowney?

11 MR. GLOWNEY: I think she can testify to what she
12 knows, which is if they weren't bringing in money and
13 weren't able to pay their debts, she would know maybe
14 if they had some unexpected increase in costs. I
15 don't think that's the reason, but she would know from
16 her familiarity --

17 MR. WHEELER: That's a speaking objection --

18 THE COURT: Whoa, whoa. Don't interrupt each
19 other. I don't allow that.

20 Were you finished?

21 MR. GLOWNEY: Well, my only point was I think
22 she's familiar with the financial condition, so she
23 would have some understanding of whether there's
24 increase in costs, lower profits, unexpected charge of
25 something, she would know that. So I think she can

1 leading. So go ahead.

2 Q (By Mr. Glowney) So you're familiar with those
3 records?

4 A Yes.

5 Q Okay. Are you familiar with the amount of profits per
6 month?

7 A I don't remember them right now, but --

8 Q Are you familiar enough and remember enough to know
9 whether they declined month to month?

10 A Yes.

11 Q And when did that decline start?

12 A In 2007.

13 Q And did it accelerate, stay the same, go up, in 2008,
14 while you were still there?

15 A Some months it went up, some months it was fairly
16 steady.

17 Q And do you happen to recall, when you left in
18 September of 2008, what the year-to-date net operating
19 loss for Everett Chevrolet was?

20 A No, I don't.

21 MR. WHEELER: Objection, Your Honor. This
22 witness is incompetent to testify, and what I mean by
23 incompetent, a witness has to be able to recall the
24 pertinent facts for which she's being or he's being
25 addressed and that are at issue.

- 1 A I wasn't asked, but I did that every day.
- 2 Q You did check every day, okay. And do you know why you
3 checked every day?
- 4 A I had to know where I was, a cash position, and what
5 my float was with the bank. I mean, I had to know
6 what I could pay, what I couldn't pay, and how much
7 money I had.
- 8 Q And were there times that you had bills that you
9 couldn't pay?
- 10 A Yes.
- 11 Q Were there times you had bills you couldn't pay
12 timely?
- 13 A Yes.
- 14 Q Was that often?
- 15 A It was getting to be quite often.
- 16 Q And this is up until the time you stopped working
17 there?
- 18 A Yes.
- 19 Q And were the bills substantial bills that couldn't be
20 paid?
- 21 A Yes.
- 22 Q Or a whole variety of bills that couldn't be paid?
- 23 A It was a whole variety of bills.
- 24 Q All right. And so was Everett Chevrolet paying bills
25 late?

1 A Yes.

2 Q Very late sometimes?

3 A Yes.

4 Q Now, are you familiar or do you know whether or not
5 Everett Chevrolet had a revolving line of credit with
6 GMAC?

7 A We had a line of credit with GMAC.

8 Q Not the wholesale floor plan, but a line of credit;
9 right? And how did, to your knowledge, Everett
10 Chevrolet use a line of credit?

11 A To pay bills.

12 Q And do you know how much that line of credit was, in
13 the fall of 2007?

14 A \$700,000.

15 Q And do you recall whether or not it was increased by
16 some amount, by GMAC, in the fall of 2007?

17 A No.

18 Q You don't recall that the lending limit was increased
19 in the fall of 2007?

20 A I -- I was not aware that it was increased.

21 Q Okay. Do you recall what the lending limit was, in
22 2008, on the line of credit?

23 A \$800,000.

24 Q And how much of that was available for use, by Everett
25 Chevrolet?

1 credit?

2 A I would go to John when I needed money, and he would
3 tell me to draw on the line of credit.

4 Q Okay. So you testified just previously here that
5 there were times that Everett Chevrolet did not pay
6 its bills timely.

7 A Correct.

8 Q Do you know why that was?

9 A Because the line of credit had been cancelled.

10 Q Had been cancelled when?

11 A I don't know when, but I had tried to bring it up to
12 the \$800,000, and was informed that it had been
13 cancelled.

14 Q Okay. How about before that time? Before that time,
15 did you try to use the line of credit, and you
16 couldn't use it because it was maxed out?

17 A No.

18 Q Okay. Now, you resigned your position on or about
19 September 25; is that correct?

20 A Correct.

21 Q And would you tell the Court why you resigned?

22 A I resigned because I was -- it was coming up to sales
23 tax time for -- to pay August sales tax, I hadn't paid
24 July's sales tax yet. And so I had e-mailed Jay
25 Carpenter, the company attorney, to just say is there

1 anything I need to do to protect myself from not
2 paying the sales tax. And he --

3 MR. WHEELER: Objection as to what he said. It's
4 hearsay.

5 THE COURT: Sustained.

6 Q (By Mr. Glowney) Without telling us what this
7 gentleman said to you, can you tell us why you
8 resigned?

9 A I contacted the Department of Revenue compliance
10 auditor, and was told --

11 MR. WHEELER: Objection as to what she was told.

12 THE COURT: Sustained.

13 Q (By Mr. Glowney) Can you just tell us, from your
14 understanding of why you resigned --

15 A I could be held liable -- I could be held liable for
16 the Washington state sales tax that was being unpaid.

17 Q You mean, held personally liable?

18 A Personally liable.

19 Q Did you discuss this with Mr. Reggans?

20 A Yes, I did.

21 Q What did he tell you, if anything?

22 A He -- he said he would call me back, when I told him.
23 He called me back and said he would get with me, and
24 that was on the 23rd. I hadn't heard -- I heard from
25 him on the evening of the 23rd.

1 On the 24th, I did not hear anything from him.
2 And on the 25th, the sales tax was due at midnight.
3 So I resigned before midnight so that I wouldn't be
4 held liable for August sales tax also.

5 Q Okay. And to your knowledge, did, at that time,
6 Everett Chevrolet have the funds sufficient to pay the
7 sales tax?

8 A If we didn't pay GMAC.

9 Q So you couldn't pay both creditors?

10 A Correct.

11 Q Now, were you present at the Everett Chevrolet
12 dealership, when GMAC conducted audits?

13 A Yes.

14 Q Do you recall when they first conducted audits?

15 A They've always conducted audits.

16 Q Okay. Did there come a time when the audits became
17 more frequent?

18 A Yes.

19 Q And do you recall when that was?

20 A Early summer.

21 Q How many were they doing in the early summer, on a
22 monthly basis?

23 A About every other week.

24 Q Okay. Did it become more frequent?

25 A When I left, they were there every day.

1 Q Okay. And during that time, from early summer to
2 there, was Everett Chevrolet able to pay GMAC timely,
3 on all occasions?

4 A No.

5 Q And do you recall how often they were unable to pay
6 timely?

7 A No.

8 Q Okay. Now, did you observe any acts by any auditors
9 that interfered with Everett Chevrolet's ability to
10 sell cars?

11 A Not when I was there.

12 Q And you were there through September, I guess, 25th,
13 officially; correct?

14 A I resigned on the 25th.

15 Q Correct.

16 MR. GLOWNEY: No further questions. Thank you,
17 Ms. Iverson.

18 THE COURT: Cross-examination, Mr. Wheeler.

19 MR. WHEELER: Thank you, Your Honor.
20

21 CROSS-EXAMINATION

22 BY MR. WHEELER:

23 Q Mrs. Iverson, you said that the dealership paid its
24 bills, in part, through the line of credit; correct?

25 A In part, correct.

RP VOL. VI

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

GMAC, A DELAWARE CORPORATION,)	
)	
Plaintiff,	)	Cause No. 08-2-10683-5
	)	COA. 63331-7-I
vs.)	
)	
EVERETT CHEVROLET, INC., A DELAWARE CORPORATION,)	
Et al.)	
)	
Defendants.)	

VERBATIM REPORT OF PROCEEDINGS
VOLUME VI

BE IT REMEMBERED that on 24th day of March, 2009,
the above-entitled and numbered cause came on for
Replevin Hearing before JUDGE ERIC Z. LUCAS, Snohomish
County Superior Court, Everett, Washington.

A P P E A R A N C E S

For the Plaintiff	JOHN E. GLOWNEY
For the Defendant	WILLIAM WHEELER and KARL HAUSMANN

REPORTED BY:
DIANA NISHIMOTO, OFFICIAL COURT REPORTER
SNOHOMISH COUNTY COURTHOUSE
3000 EVERETT, WA 98201
PHONE (425) 388-3281
CSR. 3222

1 due 12-19 or 12-22, you keep adding those together,
2 the balance?

3 A. The sum due 12-18-08 all the way down to 1-02-09, the
4 sum of those figures on the left side should reconcile
5 with the total of \$623,986.92.

6 Q. And then this would also reflect if there were
7 payments made in that time frame?

8 A. They do. If a unit on here, no particular unit, just
9 any unit, if for whatever reason we receive a payment,
10 that is applied towards that unit, or if it's a
11 partial payment, then I will reduce the floor plan
12 amount, which is the floor plan amount, column 2 to
13 reflect what is owed after payments are received.

14 Q. Okay. Now, did you engage in a similar exercise but
15 date it a little later in January?

16 A. I did.

17 Q. Mr. Davoudpour, let me hand you what has been marked
18 as plaintiff's exhibit 52. Will you take a look at
19 that document and tell me what that is?

20 A. This is the sold out of trust worksheet that I
21 conducted as of 1-7-09.

22 Q. Again, you produced all the data contained on this
23 document?

24 A. I did.

25 MR. GLOWNEY: I offer plaintiff's exhibit 52.

1 MR. WHEELER: No objection.

2 THE COURT: 52 is admitted.

3

4

(Exhibit 52 was offered
and received into
evidence.)

5

6

MR. GLOWNEY: Thank you, Your Honor.

7

BY MR. GLOWNEY:

8

Q. So how is this a little different, or is it a little
9 different than the previous ones you have shown us
10 this morning?

11

A. It is. It's a later date, which means I would have
12 had more sales basically from the previous exhibit
13 which ended 12-31-08, if sales did occur, and I had
14 those sale documents and information in my possession
15 at the time, then I would update this sheet. And this
16 information takes that into consideration as well as
17 if we received any other payments, whether from the
18 dealership or retail lenders.

19

Q. So if I look over on the second page then, and looking
20 at the column that indicates sale date?

21

A. Correct.

22

Q. It appears that there are some sale dates of 12-30,
23 12-29, 12-30, January 1st, January 6th, is that
24 correct?

25

A. Yes. Those are just that -- vehicles that were sold

- 1 for whatever reason. I didn't have the sales
2 information to me at that point on 12-30 or 12-31. I
3 was also out of town for New Year's, so by the time I
4 got back and updated the sheet, that's the information
5 that I had.
- 6 Q. Now, the front page continues to show sales from as
7 old as 12-13 not paid, is that correct?
- 8 A. Correct. I keep a -- essentially a running total day
9 by day. And as a unit would be sold, if it sold
10 completely, I mean, paid off completely, then it would
11 go completely off this list. If it's a partial
12 payment then whatever payment we received, I would
13 apply it to the floor plan amount, the FP amount,
14 thereby reduce the total amount.
- 15 Q. So we are still showing three cars that were sold on
16 December 13th, not paid by January 7th, is that
17 correct?
- 18 A. Correct.
- 19 Q. And four cars sold on the 14th, not paid by January
20 7th, is that correct?
- 21 A. Correct.
- 22 Q. And then so forth and so on down the list?
- 23 A. Correct.
- 24 Q. And it appears that the last entry would have been due
25 on January 9th, correct?

- 1 A. Due on January 9th, correct.
- 2 Q. So you did this on the 7th, so that one wasn't due as
3 of the date this was done, correct?
- 4 A. Correct.
- 5 Q. It was going to come due on the 9th?
- 6 A. Yes.
- 7 Q. Okay. And then you -- I take it on the second page,
8 you have a running tab again, as to what the various
9 amounts that were coming due?
- 10 A. Yes.
- 11 Q. And you show how many cars due and not paid?
- 12 A. As of this date, as of the day I did this, it was 33
13 units for total amount of \$778,774.80.
- 14 Q. And those numbers are reflected on the second page of
15 your summary?
- 16 A. They are, yes.
- 17 Q. Now, that 33 includes the one that's due on the 9th,
18 correct?
- 19 A. Correct.
- 20 Q. Okay. And the \$778,774.80 total includes that one as
21 well?
- 22 A. Correct.
- 23 Q. And did you do a similar exercise in the March time
24 frame?
- 25 A. I did.

RP VOL. VII

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

GMAC, A DELAWARE CORPORATION,)	
)	
Plaintiff,	)	Cause No. 08-2-10683-5
	)	COA. 63331-7-I
vs.)	
)	
EVERETT CHEVROLET, INC., A DELAWARE CORPORATION,)	
Et al.)	
)	
Defendants.)	

VERBATIM REPORT OF PROCEEDINGS
VOLUME VII

BE IT REMEMBERED that on 25th day of March, 2009,
the above-entitled and numbered cause came on for
Replevin Hearing before JUDGE ERIC Z. LUCAS, Snohomish
County Superior Court, Everett, Washington.

A P P E A R A N C E S

For the Plaintiff	JOHN E. GLOWNEY
For the Defendant	WILLIAM WHEELER and KARL HAUSMANN

REPORTED BY:
DIANA NISHIMOTO, OFFICIAL COURT REPORTER
SNOHOMISH COUNTY COURTHOUSE
3000 EVERETT, WA 98201
PHONE (425) 388-3281
CSR. 3222

1 A. The \$800,000 of unencumbered cash, correct.

2 Q. And you discussed this with him?

3 A. Yes.

4 Q. And was this in person conversation or telephone
5 conversation?

6 A. It was in telephone conversations.

7 Q. And what was the substance of that conversation?

8 A. He indicated he was working with Motors Holding, and
9 working out an arrangement to have some additional
10 cash put into the store.

11 They had, during the month of October, provided him
12 with \$500,000 earlier in the month.

13 Q. In October?

14 A. In October.

15 Q. And how did you know about that?

16 A. He provided us with a copy of the wire transfer. It
17 actually was right around the timeline that we were
18 doing an audit, and those funds helped bring us whole,
19 because he was sold out of trust earlier in October,
20 yes.

21 Q. And so to your knowledge, if you look at the operating
22 report for October -- you have it with you?

23 A. I have it.

24 Q. Would that report refresh the receipt of the over 500
25 -- what the total was?

1 A. What we received was a copy of the bank statement, as
2 I recall, showing that the money had been deposited in
3 the month end. So it was our understanding that the
4 \$500,000 was showing in cash and contracts.

5 So it was concerning that the CARS report was
6 already reflecting negative cash, after such a large
7 cash injection.

8 THE COURT: Counsel, I think I need to jump in
9 here again.

10 MR. GLOWNEY: Certainly, sir.

11 THE COURT: Does that cash injection show on the
12 operating report for October, in any of the detail?
13 I haven't really tried to analyze this, because it's
14 so tiny, but does it show on any of these pages?

15 THE WITNESS: My understanding, and if you look at
16 some of the other financial statements, long term debt
17 increased in October, and I believe, that that
18 reflects that \$500,000 that he received from Motors
19 Holding.

20 THE COURT: All right. So where is long term
21 debt?

22 THE WITNESS: It's line 34.

23 THE COURT: On the front?

24 THE WITNESS: Yes, first page, line 44, it's a
25 million, 411.

1 Q. And do you recall what those discussions were about?

2 A. There was a conversation with myself and Don Rice, a
3 conference call.

4 Q. With Mr. Reggans?

5 A. With Mr. Reggans.

6 Q. Do you recall when in the month that was?

7 A. It was, I believe, mid month before Thanksgiving.

8 Q. Okay.

9 A. And the substance was where he was, how things were
10 coming along with his workings with Motors Holding, as
11 well as the credit lines.

12 Q. With respect to Motors Holding, do you know or recall
13 what was said by Mr. Reggans?

14 A. That he was working on it and something would be
15 resolved in the near future.

16 Q. Did he give you anything more than that?

17 A. I do not believe so, I don't recall.

18 Q. And then you discussed the credit lines?

19 A. Yes, we did.

20 Q. What did you discuss about the credit lines?

21 A. We talked about the fact that the credit lines were
22 continuing to increase instead of trending downward
23 like we had desired. And Mr. Rice and I believe Mr.
24 Reggans discussed the possibility at that point of
25 suspending the credit lines, because they were moving

1 in the wrong direction. We did not suspend the GM
2 drafting ability, to continue him having the ability
3 to get the new models that were coming in and he had
4 some sold units.

5 THE COURT: Did you say we did not suspend or did
6 suspend?

7 THE WITNESS: We did not suspend the GM factory
8 tape to tape piece, meaning that GM could still allow
9 him to have some inventory, but we weren't going to do
10 over the counter type transactions. It was his
11 ordered units, because he was concerned about the new
12 models coming from.

13 THE COURT: All right. Thank you.

14 MR. GLOWNEY: Thank you, your Honor.

15 BY MR. GLOWNEY:

16 Q. Do you recall anything else from that discussion, in
17 particular?

18 A. I believe we told him that we were going to give him
19 -- because at that point, the October 30th letter had
20 expired, and we were going to give him until the end
21 of the month to come up with the difference of the
22 \$300,000 towards the 800,000, as well as his personal
23 guarantee.

24 Q. Okay. I take it subsequently you sent him a letter
25 to that effect?

1 A. Correct, a letter was sent out in July.

2 Q. Before I get to that, because I got to find that, I'm
3 going to take something else here.

4 Ms. Smith, let me hand you what has been marked as
5 exhibit 75. And ask you to take a look at that
6 document. Do you recognize that document?

7 A. Yes, I do.

8 Q. Can you tell me what that is?

9 A. This is an audit action item report for Everett
10 Chevrolet, and the date of the audit was November
11 11th, 2008.

12 MR. GLOWNEY: I would offer exhibit 75, your Honor.

13 THE COURT: Any objection to 75?

14 MR. WHEELER: No objection.

15 THE COURT: 75 is admitted.

16 MR. GLOWNEY: Thank you, your Honor.

17
18 (Exhibit 75 was offered
19 and received into
evidence.)

20 BY MR. GLOWNEY:

21 Q. And what did this audit show with respect to Everett
22 Chevrolet, as of 11-11-2008?

23 A. There were a number of vehicles that were sold, of
24 which three -- excuse me, five units were sold and
25 should have been paid prior to us conducting the

1 audit.

2 There were delays, they were considered sold out of
3 trust.

4 Q. Now, is the amount of the delay shown on the document,
5 can you tell?

6 A. Yes, it shows -- as in the first specific item, it
7 shows a five day delay.

8 Q. Do you recall whether this was cured?

9 A. This particular audit was made whole at the time of
10 the audit.

11 Q. Okay.

12 A. So it was cured.

13 Q. As of the day?

14 A. As of that day.

15 Q. How was it cured, do you know?

16 A. It was paid via, I believe, via Smart Cash.

17 Q. Now you have the document I wanted to ask you about?

18 Let me hand you what has been marked as defendant's
19 exhibit 9. And I will take these for a moment. Thank
20 you.

21 And ask you to -- if you recognize exhibit 9?

22 A. Yes, I do.

23 Q. And what is exhibit 9?

24 A. It's a letter to Mr. Reggans confirming the
25 conversation that I mentioned earlier regarding the

1 requirements that were stipulated in the July 30th
2 letter and what those requirements were of the
3 \$800,000 that needed to be injected into the
4 dealership, requests for his personal guarantee and
5 the need for him to pay faithfully and promptly on his
6 sold units.

7 And what had been accomplished was there was
8 \$500,000.

9 Q. And was that the money from Motors Holding?

10 A. That was the money from Motors Holding, that we had
11 not received the personal guarantee. And then we
12 indicated that there was concern with audits that were
13 taken in August, September, and October.

14 Q. And the concern with the audits is?

15 A. Well, the August 22nd audit was a sold out of trust
16 where we spent sometime there until it was made whole.
17 sold units at that specific audit, of the 22
18 vehicles that were sampled, were -- had delays.

19 The September 4th audit reflected seven delays out
20 of the 16 sold units. September 23rd audit reflected
21 nine delays out of the 15 sold units. And then -- and
22 then the October 27th audit reflected five out of 13
23 vehicles.

24 Q. Okay. So what -- did you give a new demand or new
25 deadlines to Mr. Reggans --

1 A. Yes.

2 Q. -- to Everett Chevrolet, in this letter?

3 A. Correct. We asked -- we were willing to until
4 November 30th for the additional \$300,000, as well as
5 his personal guarantee of all obligations.

6 Q. And did you tell him what GMAC was prepared to do if
7 he couldn't meet these requests?

8 A. Yes. If he was unable to make those requests, we
9 would suspend or terminate the dealership's wholesale
10 credit lines.

11 Q. Now, after you sent the letter, that's exhibit 9, do
12 you recall having any discussions immediately
13 thereupon or not regarding this?

14 A. No, I don't believe so.

15 Q. Okay. So you had this discussion on the 21st, before
16 --

17 A. Correct.

18 Q. Now, the deadline of November 30th, was that -- did
19 Everett Chevrolet provide additional \$300,000 in
20 capital?

21 A. No, they did not.

22 Q. And you had sent a letter requesting principal
23 reductions for November, is that correct?

24 A. That's correct.

25

1 Q. And would those have been due?

2 A. They were -- I believe the letter says due upon
3 receipt, but we give them until the end of the month
4 to make that payment.

5 Q. And did Everett Chevrolet make a principal reduction
6 as requested at the end of November, 2008?

7 A. No, they did not.

8 Q. So what is the next thing that occurred then, with
9 respect to Everett Chevrolet and its credit position
10 with GMAC?

11 A. In December, early December there was some
12 conversations with respect to the fact that the
13 curtailments, the principal partial demand for
14 curtailments were not paid.

15 Q. This was a conversation with who?

16 A. Joe McCarthy.

17 Q. And between you and Mr. McCarthy?

18 A. Yes, between myself and Mr. McCarthy.

19 Q. And what --

20 A. And Pedram.

21 Q. What was the outcome of those discussions?

22 A. A decision was made to invoke the open account as well
23 as suspend their credit lines.

24 Q. What open account?

25 A. We have a security interest in the GM open account.

1 principal reductions for November was not paid,
2 \$172,000 on the prior model year inventory, as well as
3 the used vehicles.

4 And then it also indicates that the audit that was
5 conducted the prior Friday.

6 Q. What date was that?

7 A. December 5th.

8 Q. Okay.

9 A. Resulted in a sold out of trust situation where 75
10 percent of the vehicles inspected were delays, 12 out
11 of 16. And at that point there was still \$131,637.98
12 that was due on or before December 5th, that was not
13 paid.

14 And then based on this information, we suspended
15 the credit lines, as well as invoked the open account.

16 Q. Okay. And suspending the credit lines means what?

17 A. That GM will not have the ability to draft on his
18 credit line and ship inventory to him.

19 Q. Now, had you had any conversations with Mr. Reggans
20 regarding the December 5th out of trust situation at
21 -- or at the time of this letter?

22 A. Yes, Joe McCarthy and myself, and I believe Pedram
23 also were on a conference call with Mr. Reggans
24 Friday.

25 Q. I'm sorry, on Friday?

- 1 A. Friday afternoon.
- 2 Q. And what was the discussion that occurred there?
- 3 A. How he was going to be able to cure this amount of
- 4 money that was due to GMAC.
- 5 Q. Okay. Now in that conversation, did Mr. Reggans
- 6 dispute the out of trust situation?
- 7 A. He felt like there might be some inaccuracies, but he
- 8 was unable to provide us with the detail of what was
- 9 the inaccuracies were.
- 10 Q. Did you ask him to do so?
- 11 A. Yes, we did ask him to do so.
- 12 Q. What did he say when you asked him to do so?
- 13 A. He hadn't had an opportunity to look into it, and he
- 14 would get back to us.
- 15 Q. This is what he told you?
- 16 A. Yes.
- 17 Q. Do you recall anything else that was discussed in the
- 18 December 5th telephone call?
- 19 A. No, I believe that would be it, the fact that there
- 20 was some balance of money that was due and needed to
- 21 be paid.
- 22 Q. Okay. And the -- do you recall whether or not there
- 23 was some money paid on December 5th?
- 24 A. I do not recall.
- 25 Q. Let me see if this refreshes your memory. Let me hand

- 1 you exhibit 35. Do you recognize exhibit 35?
- 2 A. Yes, it's a Smart Cash transaction sheet.
- 3 Q. Does it refresh your memory as to whether or not any
- 4 cash was paid on the 5th or not?
- 5 A. It appears \$74,325.08 was paid. It's not dated,
- 6 though, so. It's possible this was processed that
- 7 day, it's just not dated, so I can't --
- 8 Q. Okay. Now did -- was there any discussion with Mr.
- 9 Reggans as to how the remaining sold out of trust was
- 10 going to be resolved?
- 11 A. He was working on collecting contracts in transit and
- 12 trying to -- he I indicated he was going to have his F
- 13 and I team work diligently on Monday to try to bring
- 14 some cash back into the store so he could go ahead and
- 15 pay GMAC.
- 16 Q. Okay. Any conversations with Mr. Reggans over that
- 17 weekend?
- 18 A. No, there were -- I don't recall a conversation with
- 19 Mr. Reggans over the weekend.
- 20 Q. So on Monday then, December the 8th, did Everett
- 21 Chevrolet cure the out of trust situation?
- 22 A. No, they did not.
- 23 Q. Did you have any conversations with Mr. Reggans on
- 24 that date?
- 25 A. I believe I recall a conversation where he was still

1 working on trying to work through the contracts and
2 transits and bring some additional cash into the
3 store.

4 Q. Okay. And again, this would be a telephone call?

5 A. A telephone call with myself and Joe McCarthy.

6 Q. Okay. And did, in this conversation, did the issue of
7 whether he disputed the out of trust situation come up
8 again?

9 A. Yes.

10 Q. How did it come up?

11 A. He said that he still felt that our records might be
12 inaccurate, but he was unable to provide us with any
13 information to prove otherwise.

14 Q. Did you ask him to do so?

15 A. Yes, we did ask him to tell us what you think the sale
16 dates are.

17 Q. Did he tell you?

18 A. No, he did not.

19 Q. At any time subsequent to December 8th, did he tell
20 you what he thought the real sale dates are?

21 A. No.

22 Q. Okay and you had asked him on two occasions, I take
23 it?

24 A. Yes.

25 Q. Do you recall if you asked him on any other sale dates

1 with regards to those specific sale dates?

2 A. With regard to those specific sale dates, no.

3 Q. Okay. Do you recall anything else of substance of
4 that conversation on December 8th?

5 A. No, that he was still trying to figure out a way to
6 get the cash to pay for GMAC.

7 We had, at that point, advised him that he needed
8 to pay certified funds for the inventory.

9 Q. Okay. Why did you ask for certified funds at that
10 point?

11 A. We were concerned that with the cash position and the
12 fact that he wasn't able to pay us, that Smart Cash
13 transaction, if processed, might not clear.

14 Q. What was the difference between Smart Cash and
15 certified funds, to your knowledge?

16 A. Certified funds is a cashier's check where you go to
17 the bank and get it done. They verify that the funds
18 are actually in the account before they issue a
19 cashier's check or certified check.

20 Smart Cash is an electronic transaction that
21 happens overnight and there is no verification where
22 it's not like a wire, a wire not released without
23 verification that the funds are actually in the
24 account. It's like an electronic check, where if the
25 funds are not there, there is an opportunity that it

1 A. In that conversation, yes.

2 Q. And what did he say to that?

3 A. He disagreed again.

4 Q. And did you -- what else did you discuss then?

5 A. He, again, asked -- we had quite a bit of discussion
6 with respect to the auditors, and I told him as long
7 as he was current, all we would be doing is coming in
8 the morning, doing an audit, providing our results and
9 then leaving.

10 But our concern was that we wanted to know on a
11 day-to-day basis how much was owed to GMAC so we could
12 follow it more closely.

13 Q. And did he have cars that the payments were due on the
14 11th?

15 A. Yes, I believe so. I have to double check that.
16 There was money due on the 10th that was paid on the
17 11th.

18 Q. Let me hand you exhibit 32, and see if that refreshes
19 your memory.

20 A. Okay. This doesn't have any sales dates on it, so I
21 don't have that -- it shows that money was paid on the
22 11th.

23 Q. And was it for a number of cars?

24 A. It was for a number of cars.

25 Q. So would he be paid in advance for cars?

1 A. No.

2 Q. So do you know whether those were sold out of trust or
3 just simply coming due?

4 A. They were sold out of trust because the money due on
5 the 10th was not paid.

6 Q. Do you know which car was which?

7 A. Not unless I was to look at the audit.

8 Q. Okay. So, was he able to, on the 11th then cure the
9 sold out of trust simply with cash from Everett
10 Chevrolet?

11 A. No, he was not.

12 Q. Since December 5th, how often had this occurred?

13 A. It was on two separate occasions where the sold out of
14 trust units were paid with significant portion of the
15 floor plan proceeds and some cash.

16 Q. So what was your upshot of your conversation on the
17 11th with Mr. Reggans?

18 A. He was not pleased with the upshot that GMAC would not
19 be leaving and he refused to provide us with the
20 titles and the MCO's.

21 Q. Okay. In this conversation did he disagree with any
22 of the sales dates or the request for funds that GMAC
23 made?

24 A. No, I do not recall that being part of our
25 conversation. It was predominantly about having the

1 Chevrolet, or on his behalf?

2 A. Yes, we did.

3 Q. I hand you what is marked as exhibit 78 and ask if you
4 can identify that, please?

5 A. Yes, this is a letter that was sent to -- from Mr.
6 Reggans' attorney, Mr. Wheeler asked to myself and Joe
7 McCarthy and Keith Constantine.

8 Q. Did you receive any -- or what did you do with the
9 letter when you received it?

10 A. We forwarded it on to our attorneys.

11 MR. GLOWNEY: I offer exhibit 78, your Honor.

12 MR. WHEELER: No objection.

13 THE COURT: 78 is admitted.

14
15 (Exhibit 78 was offered
16 and received into
evidence.)

17 BY MR. GLOWNEY:

18 Q. Now, did you have any further.

19 Let's move to the date of December 18th. Do you
20 recall that date?

21 A. Yes, I do.

22 Q. Did you have any dealings related to the Everett
23 Chevrolet account on the 18th?

24 A. Yes, I did.

25 Q. And what were they in regards to?

- 1 A. There was a balance of \$206,000 that was due on that
2 timeline, approximately from the sale of vehicles over
3 the weekend, Saturday, Sunday and Monday sales.
- 4 Q. There is a little calendar there. What day was the
5 18th?
- 6 A. The 18th was a Thursday, so the vehicle sold on the
7 13th, 14th, and 15th were due on the 18th.
- 8 Q. And the 13th, 14th and 15th are again what days of the
9 week?
- 10 A. They are Saturday, Sunday, and Monday.
- 11 Q. Okay. So there was going to be \$206,000 due on the
12 18th?
- 13 A. Correct.
- 14 Q. So what did you do with respect to that?
- 15 A. Mr. Hoopes was at the dealership that day and I asked
16 him.
- 17 Q. What was he doing there?
- 18 A. He was on site to possibly conduct an audit that day.
- 19 Q. What occurred with Mr. Hoopes?
- 20 A. I asked him to speak to Ms. Cady, and, you know, a
21 reminder of the funds that were outstanding that were
22 due today.
- 23 Q. How did you contact Mr. Hoopes?
- 24 A. Via phone.
- 25 Q. And do you know whether or not that occurred?

1 A. Yes, it did. He did speak to Ms. Cady.

2 Q. What happened after that, with respect to that
3 request?

4 A. I believe I -- that there was a phone conversation
5 with myself and Ms. Cady. I think I recall --

6 Q. On what day?

7 A. On the 18th.

8 Q. And what occurred in that conversation?

9 A. A reminder there was \$206,000 due that day from the
10 sale of the inventory from Saturday, Sunday and
11 Monday.

12 Q. Okay. And what did Ms. Cady say to you, if you can
13 recall?

14 A. She would have to look into it, and that she would be
15 getting back to me.

16 Q. Did she get back to you then?

17 A. I did not hear back from her that day.

18 Q. Did you hear back from Mr. Hoopes that day?

19 A. Yes, I did.

20 Q. What did Mr. Hoopes tell you?

21 A. He indicated he had a conversation with Mr. Reggans
22 about the amount due.

23 Q. What did Mr. Reggans say?

24 A. Mr. Reggans wanted to know where his list was, and
25 that Dave had not done an audit that day, because of

1 the snow. And my understanding is Dave indicated that
2 the list was provided previously and that information
3 was Ms. Cady had it. And I don't know the full
4 ramifications of the conversation, but I understand
5 that Mr. Reggans was upset about it.

6 Q. Was there any further contact by Everett Chevrolet to
7 you on the 18th?

8 A. On the 18th, no.

9 Q. So I take it there was no request as to making
10 provisions for payment?

11 A. Correct.

12 Q. Of any kind?

13 A. Of any kind, no.

14 Q. Did you receive any e-mails on the 18th?

15 A. I did not receive an e-mail on the 18th.

16 Q. Now, on the 19th, did you have any communications with
17 Everett Chevrolet?

18 A. I had a conversation with Terry Cady in the morning
19 asking what happened, why we didn't receive the funds
20 from the 18th.

21 Q. What time was this in the --

22 A. In the morning.

23 Q. Plano time?

24 A. I would say 10:00, 10:30 Plano time, which would be
25 8:30, Pacific time.

1 Q. And you asked her again, I'm sorry?

2 A. I asked her what happened with regards to the
3 \$206,000, and she was going to get back to me with
4 regards to it. And she asked me if I had received an
5 e-mail. And I said no. And she verified my e-mail
6 address and she had it incorrect, so I did not receive
7 the note she had sent me.

8 Q. Did she then tell you what the e-mail had said?

9 A. She indicated that the bank had closed and that's why
10 she was unable to handle the \$206,000.

11 Q. On the 18th?

12 A. On the 18th, correct.

13 Q. So what else did she say then on the 19th?

14 A. Well, I asked her, well, what about today. She said,
15 well, I am not sure. I will need to get with Mr.
16 Reggans, and I said, well, we need to get this
17 resolved. And as soon as you can provide me with some
18 information as to how it's going to be handled, please
19 give me a call back. And I did not hear back from
20 her.

21 Q. Okay. And in that conversation, was -- did she raise
22 any dispute over the amount that was due?

23 A. No, she did not.

24 Q. Okay. Did she indicate if Mr. Reggans was going to
25 call you?

1 MR. WHEELER: Objection, leading.

2 THE COURT: Overruled.

3 THE WITNESS: She said that she would speak to Mr.
4 Reggans, and I don't recall if she specifically said
5 he would contact me, or she would contact me, or who
6 would.

7 BY MR. GLOWNEY:

8 Q. So how did -- so as the day progressed, did you have
9 any contact from them?

10 A. No, we did not have any contact from them.

11 Q. Did you see any payment from them?

12 A. No, I did not.

13 Q. So what did you do?

14 A. We had a conversation, Joe McCarthy and I, to review
15 the account and our concerns.

16 I had an opportunity, at that point, to review the
17 November financial statement and the November
18 financial statement just on the raw data, reflected
19 that there was a cash and bank credit balance again, I
20 believe it was approximately \$140,000. I would have
21 to see the financial statement.

22 Q. Ms. Smith, let me hand you what has been marked as
23 exhibit 79. If you will take a look at that document
24 and identify it, please.

25 Can you tell me what it is?

1 A. This is the November 30th, 2008 operating report for
2 Everett Chevrolet.

3 Q. Is this a document that you just referred to in your
4 testimony that you have looked at?

5 A. Yes.

6 Q. I guess around the December 15th time frame?

7 A. Correct, December 18th time frame.

8 Q. Oh, I'm sorry, okay.

9 I offer exhibit 79.

10 MR. WHEELER: No objection.

11 THE COURT: 79 is admitted.

12
13 (Exhibit 79 was offered
14 and received into
evidence.)

15 BY MR. GLOWNEY:

16 Q. Okay. Now, with respect to what you looked at on
17 December 19th, what in this document are you referring
18 to?

19 A. The cash and bank credit balance.

20 Q. Where is that shown?

21 A. That would be line 8, on the liability side, I'm
22 sorry, line 7 on the liability side of \$157,175.

23 Q. What does that mean to you?

24 A. That means in conjunction with line 8 on the other
25 side, cash and bank, \$3,155, when you net those two,

- 1 he had a negative cash balance of approximately
2 \$154,000.
- 3 Q. On December 19th, as of the date of this?
- 4 A. As of the date of this operating report.
- 5 Q. All right. Did you look at anything else in this
6 that gave you concern?
- 7 A. The continuing losses had grown to \$717,000.
- 8 Q. Where does that show?
- 9 A. That is line 63, that's \$717,000. I believe that's
10 571.
- 11 Q. Okay. Anything else that you looked at?
- 12 A. Yes, that now his net worth had now deteriorated to
13 \$307,694.
- 14 Q. Did you look at the profit and loss summary?
- 15 A. Yes. For the month of November he had lost \$94,068
16 and he was selling 17 new vehicles and 40 used.
- 17 Q. And how did that compare to his performance when he
18 made money?
- 19 A. That was below what his numbers were on his profit and
20 loss back in January and February.
- 21 Q. Did you see a trend there?
- 22 A. There was a continuing decline in sales and continuing
23 losses, yes, as well as various strained cash
24 position.
- 25 Q. Anything else?

RP VOL. VIII

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

GMAC, A DELAWARE CORPORATION,)	
)	
Plaintiff,	)	Cause No. 08-2-10683-5
	)	COA. 63331-7-I
vs.)	
)	
EVERETT CHEVROLET, INC., A DELAWARE CORPORATION,)	
Et al.)	
)	
Defendants.)	

VERBATIM REPORT OF PROCEEDINGS
VOLUME VIII

BE IT REMEMBERED that on 26th day of March, 2009,
the above-entitled and numbered cause came on for
Replevin Hearing before JUDGE ERIC Z. LUCAS, Snohomish
County Superior Court, Everett, Washington.

A P P E A R A N C E S

For the Plaintiff	JOHN E. GLOWNEY
For the Defendant	WILLIAM WHEELER and KARL HAUSMANN

REPORTED BY:
DIANA NISHIMOTO, OFFICIAL COURT REPORTER
SNOHOMISH COUNTY COURTHOUSE
3000 EVERETT, WA 98201
PHONE (425)388-3281
CSR. 3222

1 Q. Where is that?

2 A. 25.6 to one it's the third box down.

3 Q. On the front page?

4 A. On the front page, that's correct.

5 Q. And anything else in particular that you looked at on
6 this document?

7 A. The used inventory on the second page.

8 Q. Used inventory versus cost of sales?

9 A. Versus cost of sales is still over valued.

10 Q. Now, I think you had a telephone call from Ms. Cady
11 the morning of the 19th?

12 A. That is correct.

13 Q. And what did she tell you, in brief?

14 A. I asked her with respect to the money that was due
15 from the 18th, then why it was not paid. She had
16 asked me if I received an e-mail, which I had not, to
17 confirm that she had the wrong e-mail address.

18 She said that the bank had closed and they were not
19 able to pay. So I asked her about how they would
20 handle it today, and she indicated she would have to
21 touch base with Mr. Reggans and would follow back up
22 on it.

23 Q. And did you have any call from Ms. Cady the rest of
24 the day?

25 A. No, I did not.

1 Q. Did you get a call from Mr. Reggans?

2 A. No, I did not.

3 Q. Did you get a call from anyone at Everett Chevrolet?

4 A. No, I did not.

5 Q. And so then you looked at this November financial
6 information that you described here?

7 A. Correct.

8 Q. What occurred then at -- if anything, with respect to
9 Everett Chevrolet on the 19th?

10 A. I spoke to Mr. McCarthy, Joe McCarthy, and we had some
11 discussions with regards to my concerns about the lack
12 of cash in the store, based on the November financial
13 statement, as well as the fact that we were not paid
14 for the inventory that was sold and that was due on
15 the 18th.

16 And the decision was made, based on the continuing
17 deteriorating trends as well as the lack of cash in
18 the store and the vehicles that were being sold and
19 not paid for that we would request to have the
20 relationship ended at that point.

21 Q. Did you then send anything in writing to Everett
22 Chevrolet?

23 A. Yes, a letter was sent to Mr. Reggans at Everett
24 Chevrolet that day.

25 Q. Ms. Smith, I'm going to hand you what the clerk has

1 marked as exhibit 83 and ask you to look at that
2 document, please, and tell me if you recognize it?

3 A. Yes, I do.

4 Q. And what is that?

5 A. It is a letter regarding a Notice of Default and
6 demand for payment to Mr. Reggans.

7 Q. What's the date of the letter?

8 A. Date of the letter is December 19th, 2008.

9 Q. And how is this letter sent to him?

10 A. I believe we sent it via Federal Express as well as to
11 e-mail to Mr. Reggans, as it's outlined at the top of
12 the letter.

13 Q. Okay. And do you recall what time of day this letter
14 was produced and sent out?

15 A. It was later in the day, approximately sometime after
16 2:30, after Smart Cash had closed.

17 Q. And what does that mean, Smart Cash closed?

18 A. Smart Cash is our ACH ability for the dealer to fund
19 payments to GMAC. And why we were waiting until that
20 had closed to ensure that for some reason they
21 wouldn't have tried to make those payments via Smart
22 Cash.

23 Q. Did that happen?

24 A. No, it didn't happen.

25 Q. So you sent that letter out at that point?

1 A. Correct.

2 Q. Okay.

3 THE COURT: Are you going to move for 83?

4 MR. GLOWNEY: Yes. I will move to admit exhibit
5 83. Thank you, your Honor.

6 MR. WHEELER: No objection.

7 THE COURT: All right 83 is admitted.

8
9 (Exhibit 83 was offered
and received into
10 evidence.)

10

11 BY MR. GLOWNEY:

12 Q. Now on the 20th, did you receive any calls from Ms.
13 Cady that you recall?

14 A. No, I did not.

15 Q. Did you receive any calls from Mr. Reggans?

16 A. No, I did not.

17 Q. Over the course of the next few days, did you receive
18 calls from Everett Chevrolet?

19 A. No, we did not.

20 Q. Any that you can recall?

21 A. That I can recall, no.

22 Q. And any written communications, e-mails?

23 A. No, I do not believe so.

24 Q. Did you receive payment for the cars that were due to
25 be paid on the 18th?

- 1 A. No, we did not.
- 2 Q. Did Everett Chevrolet, to your knowledge, continue
3 selling floored cars in December of 2008?
- 4 A. Yes, to my knowledge they were continuing to sell
5 cars.
- 6 Q. And through December 31st, 2008, do you have any idea
7 how many cars they sold?
- 8 A. Yes, I believe it was around 30, 34 cars, somewhere in
9 that neighborhood.
- 10 Q. And did Everett Chevrolet make payment on any of those
11 cars?
- 12 A. No, we did not receive any funds from Everett
13 Chevrolet during that time frame.
- 14 Q. Did you receive funds from any other source?
- 15 A. Yes, I believe we received some proceeds directly from
16 a bank on one or two units.
- 17 Q. Now, did GMAC send out notices to any retail banks for
18 Everett Chevrolet?
- 19 A. Yes, we did.
- 20 Q. And when did that occur?
- 21 A. That occurred late on the 19th. I believe it was in
22 the afternoon.
- 23 Q. And is that the date the letters went out?
- 24 A. That would be the date that I believe most of the
25 letters went out.

RP VOL. IX

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

3	GMAC, A DELAWARE)	
4	CORPORATION,)	
5		)	Cause No. 08-2-10683-5
6	Plaintiff,	)	COA. 63331-7-I
7)	
8	vs.)	
9)	
10	EVERETT CHEVROLET, INC., A)	
11	DELAWARE CORPORATION,)	
12	Et al.)	
13)	
14	Defendants.)	

VERBATIM REPORT OF PROCEEDINGS
VOLUME IX

BE IT REMEMBERED that on 30th day of March, 2009,
the above-entitled and numbered cause came on for
Replevin Hearing before JUDGE ERIC Z. LUCAS, Snohomish
County Superior Court, Everett, Washington.

A P P E A R A N C E S

19	For the Plaintiff	JOHN E. GLOWNEY
20		
21	For the Defendant	WILLIAM WHEELER and KARL HAUSMANN

22

23 REPORTED BY:
24 DIANA NISHIMOTO, OFFICIAL COURT REPORTER
25 SNOHOMISH COUNTY COURTHOUSE
3000 EVERETT, WA 98201
PHONE (425)388-3281
CSR. 3222

1 THE COURT: Any redirect?

2 MR. GLOWNEY: No redirect, your Honor.

3 THE COURT: So are we finished with her, Mr.
4 Wheeler?

5 MR. WHEELER: Yes, your Honor.

6 THE COURT: Hang on a second. I have some
7 questions.

8 My first question is this. All this really
9 technical fancy financial analysis, is this anything
10 that you ever share with the dealer?

11 THE WITNESS: I am not sure if the financial review
12 that was done in April, there was a conversation that
13 indicated there were some specific concerns. I'm just
14 not sure of what the depth of that conversation was.

15 THE COURT: Because you weren't there?

16 THE WITNESS: Correct.

17 THE COURT: Well, didn't you take over in July?

18 THE WITNESS: Yes, I did.

19 THE COURT: So when you were in charge, did you
20 have any discussions about this with the dealer, using
21 this financial information?

22 THE WITNESS: The specific numbers, no, sir. My
23 conversations were more geared to the liquidity
24 position and the lack of cash in the store.

25 THE COURT: Okay. So when you said it was more

1 related to the liquidity position, what do you mean by
2 that?

3 THE WITNESS: The inability for the dealership to
4 pay his flooring in a timely manner and the continued
5 losses at the store.

6 THE COURT: Did you have any discussion with the
7 dealer, you, or if you know, anyone else, about the
8 break even analysis, how many units you think you
9 should be selling, did you ever tell him that?

10 THE WITNESS: I can not recall, sir.

11 THE COURT: You can't recall that?

12 THE WITNESS: No, I can not.

13 THE COURT: Did you ever ask him what he thinks
14 his break even point is, or how he arrives at it?

15 THE WITNESS: I do not recall that, sir.

16 THE COURT: So \$800,000, he was told he had to
17 have \$800,000 cash injection into his business, right?

18 THE WITNESS: That's correct.

19 THE COURT: So where did that figure come from?

20 THE WITNESS: That was based off the April
21 financial analysis, which revealed approximately about
22 a 660 or 70 thousand dollar thirty day cash supply
23 needed, as well as the existing year to date losses
24 through April, was roughly \$800,000.

25 THE COURT: Okay. So is there a formula for

1 that?

2 THE WITNESS: The day supply, the thirty day supply
3 of cash is outlined in the CARS report for April.

4 THE COURT: Yes, but you just added a variable in
5 there, did you not?

6 THE WITNESS: Yes, plus the year to date losses --

7 THE COURT: It's --

8 THE WITNESS: It's a number, it's a specific
9 number.

10 THE COURT: It's addition?

11 THE WITNESS: Yes, it's addition.

12 THE COURT: A plus B?

13 THE WITNESS: A plus B, sir.

14 THE COURT: Okay. So here's the next question,
15 that number was arrived from April, right?

16 THE WITNESS: Correct.

17 THE COURT: Well, was that number still valid in
18 July?

19 THE WITNESS: The \$800,000?

20 THE COURT: Yes.

21 THE WITNESS: The losses had grown, so the number
22 could have been increased.

23 THE COURT: Could have been?

24 THE WITNESS: The required amount could have been
25 increased.

1 THE COURT: So what that means is that number was
2 not valid in July, the \$800,000?

3 THE WITNESS: The \$800,000 number was based off the
4 April financial statement approved by management --

5 THE COURT: Well, you got to remember who you are
6 talking to. You need to answer my question directly.
7 So the number is not valid in July, is it?

8 THE WITNESS: No.

9 THE COURT: So did you tell him that?

10 THE WITNESS: No, I do not believe so, sir.

11 THE COURT: Okay. Now, if it's not valid in
12 July, that number is not valid in October, is it?

13 THE WITNESS: No, because the losses had continued
14 to grow.

15 THE COURT: All right. If the formula is A plus
16 B, then that number has gone up dramatically, has it
17 not?

18 THE WITNESS: That is correct, sir.

19 THE COURT: Did you tell him that?

20 THE WITNESS: We had conversations with respect to
21 the deteriorating losses and the need for additional
22 working capital. We had already outlined a specific
23 number and that was the number we were working for.
24 We gave him a specific timeline to get that number
25 together.

1 But during all of our conversations, we continued
2 to discuss the fact that the store was losing money.

3 THE COURT: Go ahead.

4 THE WITNESS: As well as having excessive inventory
5 supplies and having substantial liquidity issues, with
6 respect to paying GMAC in a timely matter, so yes, we
7 did discuss the continuing deteriorating trends.

8 THE COURT: But you didn't tell him that the
9 number was increasing? You didn't tell him that?

10 THE WITNESS: Well, we didn't formally change the
11 number, sir. We had outlined --

12 THE COURT: Okay, okay.

13 THE WITNESS: I guess I'm misunderstanding your
14 question.

15 THE COURT: I understand that you didn't write him
16 a letter and change the \$800,000, but if you look at
17 your financial statements and if you run the formula
18 that you just told me, according to your financial
19 statements, then the number is going to be much higher
20 is it not?

21 THE WITNESS: Yes, it is, sir.

22 THE COURT: And you didn't tell him that, did you?

23 THE WITNESS: No, I did not, sir.

24 THE COURT: Why?

25 THE WITNESS: Because we had already outlined a

1 specific agreement.

2 THE COURT: So if he had met that agreement in
3 October of 2008, he still would not have met your
4 requirements, would he?

5 THE WITNESS: Based on the letter that was
6 outlined, he would have provided enough equity or
7 capital injection, and we would continue to talk to
8 him about putting additional capital into the store.

9 THE COURT: Okay. So tell me what the standard
10 is then. You provided five hundred thousand, but
11 that wasn't enough, right?

12 THE WITNESS: That's correct.

13 THE COURT: So then what would have been enough?
14 You said \$800,000 would have been enough. Show me.

15 THE WITNESS: It was based on the letter that had
16 already been outlined.

17 THE COURT: It has to be based on your financial
18 calculations, counsel.

19 The letter is a snapshot in time. It's frozen in
20 time, is it not?

21 THE WITNESS: That is correct.

22 THE COURT: So tell me what the number would have
23 been to get right?

24 THE WITNESS: In October we would have looked at
25 the cash position as well as the losses and figured

1 out what that number would be.

2 THE COURT: Could you figure out that number right
3 now?

4 THE WITNESS: Yes, I could.

5 THE COURT: How fast?

6 THE WITNESS: Very quickly, sir.

7 THE COURT: Okay. So tell me, what would it have
8 been?

9 THE WITNESS: Can I get some exhibits, please?

10 THE COURT: You can get whatever exhibits you
11 need.

12 MR. GLOWNEY: What exhibits, if I may assist here?

13 THE WITNESS: The October financial statement, as
14 well as a day supply of cash for the October exhibit.

15 MR. GLOWNEY: Your Honor, while he is doing the
16 calculations, it's certainly within the Court's
17 prerogative to ask any questions it wishes.

18 THE COURT: Absolutely.

19 MR. GLOWNEY: Absolutely. I don't know if I have a
20 right, I think I would have a right to put in the
21 record my objections.

22 THE COURT: You can object, I don't have a problem
23 with that.

24 MR. GLOWNEY: And it seems to me, I understand what
25 the Court is asking, but it's asking what seems to me

1 to be not what occurred.

2 Whether this GMAC should have or could have done it
3 differently, could have given them a different number
4 in October, they did not. That's clear, they didn't
5 ask for a different number. Nobody has testified
6 otherwise.

7 You are asking what they could have asked for based
8 upon this formula.

9 THE COURT: No, I am not, counsel.

10 MR. GLOWNEY: Well --

11 THE COURT: I've indicated what the ratio analysis
12 was, the ratio analysis goes up, the cash injection
13 has got to get him somewhere close to ratio analysis.
14 I am not making this up.

15 MR. GLOWNEY: I am not suggesting at all that you
16 are making it up, the fact is that they did not ask
17 for it and why they did or did not may have involved
18 other factors than just the application of the
19 formula.

20 THE COURT: When I asked her why, she can just
21 tell me that, can't she?

22 MR. GLOWNEY: I think she can, and I think part of
23 her answer is that she did. I just don't know that
24 it's necessarily --

25 THE COURT: Well, this isn't a debate at this

1 point.

2 MR. GLOWNEY: No, your Honor, just stating my
3 objection.

4 THE COURT: Objection is noted.

5 MR. GLOWNEY: Thank you, your Honor.

6 THE COURT: Did you come up with a number?

7 THE WITNESS: \$1,195,172.

8 THE COURT: That's the number that would have been
9 equivalent to \$800,000 in October, right?

10 THE WITNESS: Correct.

11 THE COURT: Okay so with the injection of
12 \$800,000 -- let's go back to the April situation --
13 would that have improved his ratio, because -- because
14 his debt to equity ratio, is that the three to one?
15 Is that the one that you testified had to be three to
16 one?

17 THE WITNESS: Yes.

18 THE COURT: Okay. So if he had injected \$800,000
19 when you asked for it, the first time you asked for
20 it?

21 THE WITNESS: Uh-hum.

22 THE COURT: Would that have gotten him to three to
23 one?

24 THE WITNESS: I do not believe so. But if it was
25 complete unencumbered cash injection that we asked for

1 that would have meant that his net worth would have
2 gone up.

3 THE COURT: In terms of his debt to equity ratio,
4 where would that have gotten him?

5 THE WITNESS: Are we talking about, I'm sorry, the
6 April financial statement?

7 THE COURT: Yes.

8 THE WITNESS: I need the April financial statement
9 to be able to provide you that information.

10 MR. GLOWNEY: If I may, your Honor, I will try to
11 find that.

12 THE COURT: Thanks. And Madam Clerk, if you can
13 find it on your list that would be --

14 MR. GLOWNEY: You are certainly quicker than me.

15 THE WITNESS: Or the asset quality and leverage
16 report for April also, would be --

17 MR. GLOWNEY: I think that's April financial and
18 asset -- April asset quality and leverage.

19 THE WITNESS: Yes, easier to read.

20 MR. GLOWNEY: Your Honor, it's exhibit 62 I've
21 handed the witness and exhibit 60.

22 THE COURT: Thank you, counsel.

23 THE WITNESS: It would have gotten it to five to
24 one, sir.

25 THE COURT: Okay. And what was it in April

1 before?

2 THE WITNESS: 9.73 to one.

3 THE COURT: Okay. So I don't know if I asked
4 this question already, let me check.

5 So why do you not share this financial analysis
6 with the dealer?

7 THE WITNESS: Our conversations are typically a
8 higher level in nature when we are talking about their
9 debt structure or their day's supply. We don't dive
10 down to specific percentages, it's a conversation
11 going over their current trends.

12 THE COURT: Go ahead, I'm listening.

13 THE WITNESS: And I feel that in several of my
14 conversations with Mr. Reggans, when we discussed his
15 losses and his continued excessive inventory and the
16 fact that that was increasing his expenses because of
17 floor plan charges, as well as the aged inventory
18 versus curtailments, we touched on many of those areas
19 without quoting debt to equity numbers.

20 THE COURT: Well, I am not talking just about debt
21 to equity, no one that I know of does a financial
22 analysis by just talking about one ratio, you talk
23 about all of them, don't you?

24 THE WITNESS: Yes.

25 THE COURT: That's what you do in your reports,

1 isn't it?

2 THE WITNESS: Correct.

3 THE COURT: You look at all of them. So maybe
4 it's not important for him to know his debt to equity
5 ratio, but isn't important for him to know about what
6 you guys think his break even should be?

7 THE WITNESS: Yes, sir.

8 THE COURT: Okay. So in your conversations, your
9 higher level conversations, did you talk about break
10 even?

11 THE WITNESS: I believe we already discussed that,
12 no, sir, I do not recall speaking about break even.

13 THE COURT: Okay. So the \$800,000 injection, if
14 he had brought that in in October what would his debt
15 to equity ratio be then, in October?

16 THE WITNESS: 6.09 to one, net worth would have
17 increased to 2 mill --

18 THE COURT: Now, you are adding the \$800,000 plus
19 the five hundred thousand you already had, aren't you?
20 It should only be an additional 300,000 in October,
21 because you already put in \$500,000, so I think you
22 did that wrong, didn't you?

23 THE WITNESS: No, I don't believe so, because if I
24 remember correctly the dealer did not reflect the
25 \$500,000 as unencumbered and he increased his long

1 term debt, so it would have not have impacted net
2 worth, if I remember correctly, sir.

3 THE COURT: Okay. So show me, flip one of those
4 charts up. Go to the paper board there, flip up the
5 chart and show me the numbers that you had to get to
6 the debt equity ratio 6.09 to point one -- flip
7 another one, make it a clean one.

8 THE WITNESS: Net worth, \$401,763, and actually
9 since the \$500,000 had already been injected are you
10 talking about the additional \$300,000, or a full
11 \$800,000?

12 THE COURT: Wait a minute.

13 THE WITNESS: I'm sorry.

14 THE COURT: I told you in my question to assume
15 the \$800,000 injection in October and give me the debt
16 to equity ratio, you gave me 6.09 to one, and I want
17 you to tell me how you arrived at that and put the
18 numbers up there. So just do that.

19 I should have put my glasses on. And you still
20 don't think that's a mistake, you still don't think
21 that already include the \$500,000 injection?

22 THE WITNESS: Well, I was trying to clarify that
23 and the \$500,000 was injected, but it was listed as a
24 long term debt so there was no impact to net worth.

25 What I was trying to clarify a moment ago is should

1 I take it as if the additional three hundred was put
2 into the score as unencumbered and then that would
3 change my net worth and then, yes, you are correct.
4 This would be wrong, just wanted to -- need to
5 clarify.

6 THE COURT: So tell me what you are trying to
7 clarify?

8 THE WITNESS: You asked me to take the October
9 financial statement and add \$800,000 cash injection
10 and figure out what the debt to equity would be, which
11 is what this is.

12 Now, assuming, which we both know, \$500,000 was put
13 into the store, it was put in as long term debt, and
14 that's already impacted net worth, so what I should be
15 doing is taking the a original three hundred making
16 the assumption it's unencumbered and making the
17 changes in my figures that way, which I could do and
18 then they'll be different than this.

19 THE COURT: All right. Do that, just draw the
20 line down between them.

21 All right. You can retake your seat. Thank you.

22 So let's talk about curtailments, isn't it true
23 that the curtailment charge comes straight out of
24 working capital?

25 THE WITNESS: That is correct, it's an impact to

1 working capital.

2 THE COURT: So if you have a struggling dealer and
3 a declining market, why would you start a charge that
4 reduces his working capital?

5 THE WITNESS: It is our desire to have the
6 inventory level at a value as to what we think it is
7 actually worth.

8 THE COURT: But isn't that going to negatively
9 impact his ability to perform?

10 THE WITNESS: Our true desire is that they would
11 retail out of the inventory or work on moving out of
12 the inventory in lieu of making the curtailments.

13 THE COURT: What does that mean? I have no idea
14 what you just said.

15 THE WITNESS: He has an excessive day's supply of
16 inventory. And I believe he was right around 180 day
17 supply in October, but don't quote me on that number.
18 A desirable day's supply of inventory on new inventory
19 is in the 120 day range, so he has too much inventory.
20 We would much rather see him work on moving out of
21 that inventory, not take in as many new cars and/or
22 maybe work on trying to get some either spiffed so
23 that the sales people are energized in need of selling
24 inventory or going through the auctions, but its a
25 desire to move the inventory down to a reasonable

1 number.

2 THE COURT: All right. But that is all a lot of
3 abstract talk for selling more cars, isn't it?
4 That's what you are saying, you just want him to sell
5 more cars?

6 THE WITNESS: Correct, turn his inventory.

7 THE COURT: Okay. All right. By reducing his
8 working capital, haven't you damaged his ability to
9 actually sell more cars?

10 THE WITNESS: I believe it would make it
11 challenging.

12 THE COURT: All right. So it's a little bit past
13 4:30. And I think -- I think I'm done. But I know
14 the questions that I have asked are probably pretty
15 provocative and you all want to ask additional
16 questions based on those questions, so am I wrong?

17 Do you need to ask more questions of her after my
18 questions, Mr. Wheeler?

19 MR. WHEELER: Possibly, I still have to review my
20 options.

21 THE COURT: Mr. Glowney?

22 MR. GLOWNEY: I'm like Mr. Wheeler, I'm trying to
23 digest and think of what I need.

24 THE COURT: All right. She needs to be back in
25 the morning. So thank you for your testimony this

RP VOL. X

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

GMAC, A DELAWARE CORPORATION,)	
)	
Plaintiff,	)	Cause No. 08-2-10683-5
	)	COA. 63331-7-I
vs.)	
)	
EVERETT CHEVROLET, INC., A DELAWARE CORPORATION,)	
Et al.)	
)	
Defendants.)	

VERBATIM REPORT OF PROCEEDINGS
VOLUME X

BE IT REMEMBERED that on 31st day of March, 2009,
the above-entitled and numbered cause came on for
Replevin Hearing before JUDGE ERIC Z. LUCAS, Snohomish
County Superior Court, Everett, Washington.

A P P E A R A N C E S

For the Plaintiff	JOHN E. GLOWNEY
For the Defendant	WILLIAM WHEELER and KARL HAUSMANN

REPORTED BY:
DIANA NISHIMOTO, OFFICIAL COURT REPORTER
SNOHOMISH COUNTY COURTHOUSE
3000 EVERETT, WA 98201
PHONE (425) 388-3281
CSR. 3222

1 of a decline in the market existed, let's say from the
2 beginning of 2008 in January through the end of March,
3 about?

4 A. From the beginning of January through March, based on
5 the numbers that I saw, I think in January and
6 February we out performed the market.

7 Q. But I'm talking about the market, not the performance
8 of the dealership, I'm talking about the market.

9 A. Yes, the market was in decline in that period.

10 Q. And from April of 2008 through the end of that second
11 quarter, June?

12 A. Yes.

13 Q. 2008?

14 A. Yes.

15 Q. What would you assess the status of the market?

16 A. We would probably describe it as off the cliff, it was
17 in decline.

18 Q. In decline. Off the cliff meaning what? You are
19 talking to the judge, what would you tell the judge
20 the status of the market was during the second quarter
21 of 2008?

22 A. The market, based upon the previous year and the year
23 before that had declined significantly in the range of
24 40 to 50 percent.

25 Q. All right.

- 1 A. And also I would like to stand corrected on the dates
2 that you had inquired about in 2007.
- 3 Q. All right.
- 4 A. The dealership earned approximately 28 thousand. And
5 in 2006, the dealership earned over seven hundred
6 thousand. And it was 2005 that we earned about five
7 hundred thousand.
- 8 Q. Thank you.
- 9 A. You're welcome.
- 10 Q. Now, in the third quarter of 2008, what was the status
11 of the market conditions for the sale of Chevrolet
12 product?
- 13 A. It continued in a steep decline.
- 14 Q. And for the last quarter of 2008, what would you say
15 is the status -- was the status of the market
16 conditions for Chevrolet product?
- 17 A. The market had continued and declined the entire year.
18 And at that point in time General Motors itself was in
19 the position of possible bankruptcy, along with
20 GMAC.
- 21 Q. Now, as it relates to that exhibit, P 64, I believe --
- 22 A. 69.
- 23 Q. Oh, P 69, it refers to market conditions?
- 24 A. Yes.
- 25 Q. And that letter says as a result of market conditions,

1 directed to you, right?

2 A. Yes, it is.

3 Q. Did you receive that letter on or about that date of
4 November, I think it's the 25th?

5 A. Yes, I did.

6 Q. And that letter discusses a variety of lending
7 arrangements that GMAC has with you, right?

8 A. Yes, it does.

9 Q. And it discusses various requirements that GMAC was
10 placing upon you, right?

11 A. Yes, it does.

12 Q. And one of the requirements -- let's take the first
13 requirement. What was that first requirement?

14 A. It states by no later than October 30th, 2008, that I
15 needed to have \$800,000 in unencumbered capital placed
16 into the dealership.

17 Q. And what, if anything, did you do to try to satisfy
18 that \$800,000 requirement in a tough market?

19 A. Well, initially I had tried to be proactive because as
20 I stated earlier I actually observed the market
21 declining in 2006, 2007, and also 2008. And at that
22 time I had an option to purchase my facility. And
23 then --

24 Q. Mr. Reggans, when you say facility, what are you
25 talking about?

1 A. Land and building of the dealership.

2 Q. All right.

3 A. And in July of 2007 I had a conversation with Greg
4 Moffit, who at the time was the branch manager for
5 GMAC, and explained to him that that was my objective
6 to purchase the land and the building of the
7 dealership and use the equity that I had in that
8 facility to put in the dealership as working capital.
9 That figure was approximately a million dollars.

10 Q. And what --

11 MR. GLOWNEY: Before you --

12 Your Honor, just for point of clarification, I
13 think we all understand, but I want to be sure that he
14 is testifying to this option personally. I don't
15 think he meant he personally held it, I think he meant
16 Everett Chevrolet held the option, is that correct, or
17 not?

18 THE COURT: I don't think there is an option at
19 this point, there is just discussions. That's my
20 under --

21 THE WITNESS: At that point in time we were
22 discussing the big picture of --

23 MR. GLOWNEY: I guess my question is, who holds the
24 option to purchase, you personally or Everett
25 Chevrolet?

1 THE WITNESS: Everett Chevrolet.

2 MR. GLOWNEY: Okay. So when you say you held it,
3 you really mean Everett Chevrolet?

4 THE WITNESS: Well, I owed own a hundred percent of
5 the business and the real estate purchase of land and
6 building would have gone into an LLC, which I owned
7 with my -- well, I own a hundred percent of that.

8 MR. GLOWNEY: But just to be clear, the option was
9 held by Everett Chevrolet, not by you personally,
10 right?

11 Sorry to interrupt, he stated like he owns it, and
12 I just need to clarify.

13 THE WITNESS: Well, Everett Chevrolet had the
14 option to purchase the land and building for Everett
15 Chevrolet.

16 THE COURT: Go ahead.

17 BY MR. WHEELER:

18 Q. So Everett Chevrolet had this option to purchase the
19 land and the building, right?

20 A. Yes.

21 Q. And you brought this potential transaction to GMAC,
22 right?

23 A. Yes, I did.

24 Q. For financing?

25 A. Yes, I did.

1 Q. What did they do?

2 A. They sent me a wire transfer to the dealership for
3 \$500,000.

4 Q. And what did you do with that \$500,000?

5 A. Well I then put it into the dealership and I used it
6 for dealership expenses, one of which was to pay
7 GMAC.

8 Q. All right. Now, GMAC -- strike that.

9 Motors Holding knew that GMAC wanted you to invest
10 \$800,000 in the dealership, right?

11 A. Yes, they did.

12 Q. And you satisfied \$500,000, right?

13 A. That's what they sent to me, yes.

14 Q. So obviously, there is a \$300,000 balance?

15 A. Yes.

16 Q. What, if anything, did you do with Motors Holding
17 regarding this \$300,000 balance?

18 A. There was a gentlemen, his name is Jim Medirus,
19 (Phonetic spelling) he was assigned as my account
20 manager from Motors Holding. And I did ask him why
21 did they send the \$500,000 and not the \$800,000. And
22 his response to me was if I needed additional capital
23 to inform Motors Holding of that a request.

24 Q. All right. And did you -- when did you have this
25 conversation with Mr. Medirus?

RP VOL. XIII

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

GMAC, A DELAWARE CORPORATION,)	
)	
Plaintiff,	)	Cause No. 08-2-10683-5
	)	COA. 63331-7-I
vs.)	
)	
EVERETT CHEVROLET, INC., A DELAWARE CORPORATION,)	
Et al.)	
)	
Defendants.)	

VERBATIM REPORT OF PROCEEDINGS
VOLUME XIII

BE IT REMEMBERED that on 7th day of April, 2009,
the above-entitled and numbered cause came on for
Replevin Hearing before JUDGE ERIC Z. LUCAS, Snohomish
County Superior Court, Everett, Washington.

A P P E A R A N C E S

For the Plaintiff	JOHN E. GLOWNEY
For the Defendant	WILLIAM WHEELER and KARL HAUSMANN

REPORTED BY:
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SNOHOMISH COUNTY COURTHOUSE
3000 EVERETT, WA 98201
PHONE (425)388-3281
CSR. 3222

1 Q. In 2007 your net profitability was only 28 thousand,
2 correct?

3 A. Yes, all over it was difficult that year for the
4 marketplace.

5 Q. And in fact, I think you told me in your deposition
6 you saw that and you became proactive about getting
7 some financing, correct?

8 A. Yes, I did.

9 Q. And you were looking for equity, were you not? You
10 were looking for capital, correct?

11 A. No. I think what I had explained to you is I had
12 spoke with Rick Moffit in July of 2007 and explained
13 to him that I had approximately a million dollars in
14 equity in my land and building, the real estate for
15 the dealership, and was seeking to purchase the
16 property and use that equity to put into the
17 dealership as working capital.

18 Q. And I think what you told me was that your idea of
19 equity was that you would get GMAC, or someone else,
20 to loan you one hundred percent loan to value,
21 correct?

22 A. I don't believe I stated loan to value.

23 Q: Well, you expected that GMAC was going to do a hundred
24 percent value loan to you, correct?

25 A. Hundred percent financing of the purchase price.

1 Q. Right. Okay. And that would be a hundred percent of
2 the loan to value, would it not?

3 A. Yes.

4 THE COURT: You lost me guys. I have no idea what
5 you are talking about.

6 MR. GLOWNEY: Let me try and clarify.

7 BY MR. GLOWNEY:

8 Q. You were looking for some financing --

9 THE COURT: What year are we talking about?

10 MR. GLOWNEY: In 2007.

11 THE COURT: All right. Go ahead.

12 BY MR. GLOWNEY:

13 Q. That's what it started, correct, Mr. Reggans?

14 A. Yes.

15 Q. And you believed you had an option to purchase the
16 land on which the Everett Chevrolet dealership set,
17 correct?

18 A. Yes.

19 Q. And you viewed that if you could exercise that option
20 at the option price, that it actually had -- it was
21 worth about a million dollars more than the option
22 price, correct?

23 A. Yes.

24 Q. And so you wanted to access that million dollars by
25 getting someone to not only loan you the money to

1 Q. Doesn't it make you better able to pay your bills
2 timely?

3 A. Yes, it does. Not that that was an issue in June of
4 2007, because it wasn't.

5 Q. But you were being proactive in 2007, correct, as you
6 told me?

7 A. Yes, absolutely.

8 Q. And coming back to the question, at what point, if
9 ever, did you independently decide that you needed to
10 put more working capital in?

11 A. As I stated earlier, in June of 2007 I had a meeting
12 with Greg Moffit, I explained to him that I had --

13 Q. I am not trying to draw a restatement of the whole
14 facts, is that the point in which you decided you
15 wanted to put more working capital in?

16 A. Yes, I did.

17 Q. Now, isn't it true that Motor's Holding advised you
18 that you needed to put 1.72 million dollars of your
19 own money into the deal, the real estate deal before
20 they were willing to do anything with you, isn't that
21 correct?

22 A. No.

23 Q. Did they tell you an amount that you had to put into
24 the deal before they would invest?

25 A. No.

RP VOL. XIV

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

GMAC, A DELAWARE CORPORATION,)	
)	
Plaintiff,	)	Cause No. 08-2-10683-5
	)	COA. 63331-7-I
vs.)	
)	
EVERETT CHEVROLET, INC., A DELAWARE CORPORATION,)	
Et al.)	
)	
Defendants.)	

VERBATIM REPORT OF PROCEEDINGS
VOLUME XIV

BE IT REMEMBERED that on 8th day of April, 2009,
the above-entitled and numbered cause came on for
Replevin Hearing before JUDGE ERIC Z. LUCAS, Snohomish
County Superior Court, Everett, Washington.

A P P E A R A N C E S

For the Plaintiff	JOHN E. GLOWNEY
For the Defendant	WILLIAM WHEELER and KARL HAUSMANN

REPORTED BY:
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1 Q. And you apparently did not consummate that
2 transaction?

3 A. No, I did not.

4 Q. In the year 2007, 2008, it's fair to say that you had
5 no written commitment from GMAC ever to make you a
6 loan, correct?

7 A. Yes.

8 Q. Mr. Reggans, let me hand you exhibit 8, which is the
9 revolving line of credit agreement. Do you recognize
10 that document?

11 A. Yes, I do.

12 Q. Could you turn to the last page, please. Is that
13 page 8?

14 A. No.

15 Q. Page 9?

16 A. No.

17 Q. Page 11?

18 A. Yes.

19 Q. Towards the bottom above your signature -- your
20 signature appears on that page, does it not?

21 A. Yes, it does.

22 Q. And above your signature, written in bold letters is a
23 statement that says "Notice is here by given",
24 correct?

25 A. Yes, sir.

1 Q. Could you read that out loud, please?

2 A. "The revolving line of credit agreement is on page one
3 and it says notice is hereby given that oral
4 agreements or oral commitments to loan money, extend
5 credit or to forebear from enforcing repayment of debt
6 are not enforceable under the Washington state law."

7 Q. Thank you. Now you spent some time on direct talking
8 about dealings with Motors Holding in the fall of
9 2008, correct?

10 A. Yes.

11 Q. And in October you signed an agreement with them
12 called a pre investment agreement?

13 A. Yes, I did.

14 Q. And that's exhibit 109, correct? Let me hand it to
15 you.

16 A. I don't see the disagreement. It's dated, but I did
17 sign this. I don't see the name on it, so.

18 Q. Well, do you have a recollection of signing it in or
19 about October of 2008?

20 A. Probably so, yes.

21 Q. And you received in October of 2008, \$500,000 from
22 Motors Holding, correct?

23 A. Yes, I did.

24 Q. And you describe that as coming to you in a wire
25 transfer, I take it?

1 A. Yes, I did.

2 Q. And you used that money either to pay GMAC or to pay
3 delinquent excise taxes? I don't remember which it
4 was.

5 A. It was a combination.

6 Q. Combination of those?

7 A. Yes.

8 Q. And you told me in your deposition that the \$500,000
9 was advanced to you in exchange for a percentage of
10 the ownership of the dealership, correct?

11 A. Yes.

12 Q. And that that percentage had not been determined at
13 that time, correct?

14 A. Well, I had been presented documents with one
15 percentage and I think I was presented documents with
16 a slightly different percentage at a later time or
17 some place in there, yes.

18 Q. Well, Mr. Reggans, did you tell me in your deposition
19 under oath that it was a percentage that was to be
20 determined?

21 A. I don't recall.

22 Q. Well, do you have a copy of your deposition there?

23 A. Yes, I do.

24 Q. If you could turn to page -- let's go to page 25. I'm
25 going to read a series of questions starting at page