

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30<sup>TH</sup> JUDICIAL CIRCUIT  
INGHAM COUNTY

IN THE MATTER OF:

DEXTER GROHS CHEVROLET, INC.

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File No. 03-47-CP

Hon. James R. Giddings

AG File No. 200310163

**TRUE COPY**

ASSURANCE OF DISCONTINUANCE

MICHAEL A. COX  
Attorney General

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P.O. Box 30213  
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517-335-0855

Dated: October 28, 2003

STATE OF MICHIGAN  
CIRCUIT COURT FOR THE 30th JUDICIAL CIRCUIT  
INGHAM COUNTY

IN THE MATTER OF:

**DEXTER GROHS CHEVROLET, INC.**

Respondent.

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**ASSURANCE OF DISCONTINUANCE**

The Complainant is Michael Cox, Attorney General of the State of Michigan, on behalf of the People of the State of Michigan. The Respondent is Dexter Grohs Chevrolet, Inc. ("Dexter").

This Assurance of Discontinuance ("Assurance") concerns the resolution of alleged violations of the Michigan Consumer Protection Act ("MCPA"), MCL 445.901 et seq. Dexter agrees not to contest (a) the authority of the Department of Attorney General to execute this Assurance; or, (b) any terms or conditions set forth herein.

The entry of this Assurance by Dexter is neither an admission of liability with respect to any issue dealt with in this Assurance nor is it an admission or denial of any factual allegations or legal conclusions stated or implied in this Assurance.

The Parties agree that the terms and conditions of the Assurance are fair, reasonable and consistent with the public interest and the doctrines of applicable law.

**I. JURISDICTION AND VENUE**

The Ingham County Circuit Court has jurisdiction over the subject matter of this action pursuant to MCL 445.905(1). The Court also has personal jurisdiction over Dexter for the

enforcement of this Assurance. Dexter waives all objections and defenses regarding jurisdiction and venue.

## II. PARTIES BOUND

2.1 This assurance shall apply to and be binding upon Dexter, whether acting with or through officers, employees, representatives, agents successors, or through any other corporation, assumed name or business entity. Dexter is responsible for compliance with the terms of the Assurance, and shall ensure that all employees, selling and advertising agents and telemarketers acting on its behalf are in compliance with the terms and conditions of this Assurance.

2.2 The signatories to this Assurance certify that they are authorized to execute and legally bind the parties they represent.

2.3 Dexter and any successor shall notify the Department of Attorney General within 15 days of the occurrence of any significant change in the corporate structure such as dissolution, assignment, or sale, the formation of any successor corporation, the creation or dissolution of subsidiaries, involvement in bankruptcy, receivership or similar proceedings, or any other change which may affect any compliance obligations arising out of this Assurance.

## III. DEFINITIONS

3.1 "Assurance" means this Assurance and any appendix hereto.

3.2 "Respondent" means Dexter Grohs Chevrolet, Inc. whether doing business through any assumed name, or through officers, employees, representatives, agents acting on its behalf, or through any other affiliate, corporate or business entity. Sometimes in this Assurance, Respondent is also referred to as "Dexter."

3.3 "Parties" means the Complainant and Respondent.

3.4 "Complainant" means Michael Cox, Attorney General of the State of Michigan, on behalf of the People of the State of Michigan. In this Assurance, Complainant is also sometimes referred to as the "Department of Attorney General," "Department," "Attorney General," "Consumer Protection Division," and "CPD."

3.5 "Clear and conspicuous" or other forms of the words such as "clear" or "clearly and conspicuously" means a statement or representation is readily understandable, free from ambiguity, contradiction, and confusion, and presented in such size, color contrast, location audibility and visibility duration, compared to other matter with which it is presented or to which it is related so that it will be noticed and understood and will not be ambiguous or contradictory. If such statement or representation modifies, explains, or clarifies other information with which it is presented or to which it is related, the statement in order to be "clear and conspicuous," must also be present in close proximity to the information it modifies and the statement may not be obscured.

#### **IV. STATEMENT OF PURPOSE**

In entering into the Assurance, the mutual objective of Complainant and Dexter is to resolve, without litigation, the alleged violations of the MCPA, the demand for payment of civil penalties, and the reimbursement of costs and expenses incurred by the Department of the Attorney General in investigating this matter and enforcing the MCPA.

#### **V. IMPLEMENTATION OF COMPLIANCE MEASURES**

5.1 Dexter shall, immediately, comply with the MCPA which shall include but not be limited to, immediately complying with the advertising laws and regulations of the Truth In

Lending Act (TILA), 15 USC 1601 et seq., the Consumer Leasing Act (CLA), 15 USC 1667 et seq., and the Regulations promulgated under the TILA and the CLA (referred to as Regulation Z [12 CFR § 226 et seq.] and Regulation M [12 CFR § 213 et seq.]

5.2 More specifically and respecting Dexter's consumer credit and consumer lease advertisements involving the sale or lease of any new or used vehicle, the representations and terms in said advertisements:

- a. Must be clearly and conspicuously disclosed; and
- b. Must be free of any false representation.

## **VI. PAYMENT OF CIVIL PENALTY**

6.1 Dexter shall pay to the State of Michigan the sum of \$3,000 as a civil penalty. Payment shall be waived if Dexter immediately complies with the terms of this Assurance.

6.2 Payment shall be made by check payable to the "State of Michigan" and remitted to Stewart Freeman, Assistant-In-Charge, Consumer Protection Division, PO Box 30213, Lansing, MI 48909. The check shall reference Dexter Grohs Chevrolet, Inc. Assurance of Discontinuance.

6.3 In the event Respondent fails to comply with all terms of this Assurance, the entire monetary costs, fees and penalties referred to in this Section and any remaining due under Section VII, shall be immediately due and payable upon Complainant's mailing the written statement setting forth his proposed resolution of the dispute in accordance with the last sentence of paragraph 9.1. Said costs, fees and penalties may be collected by execution, garnishment or other legal process, together with interest (as interest on a judgment) from the date the Assurance is filed with the Ingham Circuit Court. Respondent shall pay all attorney fees and costs, including but not limited to court costs, associated with any such collection efforts.

## **VII. REIMBURSEMENT OF COSTS AND EXPENSES**

7.1 Within 30 days of the entry of this Assurance, Dexter shall pay the sum of \$1500 to the State of Michigan to reimburse the state for its legal, investigative and administrative expenses relating to historical compliance efforts directed at Dexter.

7.2 Payment shall be remitted in the same manner as specified in subsection 6.2.

## **VIII. CONSUMER REDRESS**

8.1 Complaints received: Dexter shall resolve complaints of individual consumers (if any) filed with the Attorney General's Consumer Protection Division ("CPD") prior to the effective date of this Assurance within 15 days by refund of all amounts paid by the consumer or, if payment has not been made, contract cancellation, cessation of collection efforts, and actions required to remove any adverse credit reporting by Dexter. Written confirmation of resolution shall be provided to the CPD within 30 days of the effective date of this Assurance, which shall include verification of the fact, date and amount of refund.

8.2 Future Complaints:

a. Dexter shall promptly investigate and respond, in writing, to the substance of any complaints filed (whether by individual consumers or other business entities) with the CPD after the effective date of this Assurance. The compliance terms set forth in Section V of this Assurance shall apply to complaints addressing advertising conduct occurring after the effective date of this Assurance, and shall be resolved by refund of any amounts paid by the consumer unless Dexter establishes by clear and convincing evidence that the consumer's complaint is invalid. This paragraph shall not be construed to preclude future enforcement actions by the Attorney General for violation of this Assurance or otherwise.

b. Resolution and response that is not completed within 30 days of notice shall be considered untimely for purposes of this section.

#### **IX. DISPUTE RESOLUTION**

9.1 The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Assurance and shall apply to all provisions of this Assurance. Any dispute that arises under this Assurance shall in the first instance be the subject of informal negotiations between the parties. The period of negotiations shall not exceed ten (10) days from the date of written notice by any party that a dispute has arisen, but it may be extended by agreement between the parties. The period for informal negotiations shall end when Complainant mails a written statement to Respondent setting forth its proposed resolution of the dispute.

9.2 If the parties fail to resolve a dispute by informal negotiations, then the dispute shall be resolved in accordance with the resolution proposed by the Complainant unless, within ten (10) days after receipt of the Complainant's proposed resolution, Dexter files a petition for resolution with the Ingham Circuit Court setting forth the matters in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to insure orderly implementation of this Assurance.

#### **X. COVENANT NOT TO SUE BY COMPLAINANT AND RESERVATION OF RIGHTS**

10.1 In consideration of the implementation of compliance measures, the payment of the civil penalty and the reimbursement of the costs and expenses that will be made by Dexter under the terms of this Assurance, and except as specifically provided in this Section,

Complainant covenants not to sue or to take administrative action against Dexter for Covered Matters.

10.2 "Covered Matters" shall include any liability to the State of Michigan for the following:

- a. All claims for violations of the MCPA through the period July 9, 2003;
- b. Payment of all civil penalties for violations through July 9, 2003; and
- c. Reimbursement of costs and expenses incurred by the Department's Consumer Protection Division through the date of this Assurance.

10.3 The covenant not to sue set forth in this Section does not pertain to any matters other than those expressly specified in "Covered Matters" in paragraph 10.2. Complainant reserves, and this Assurance is without prejudice to, all rights against Dexter with respect to all other matters including, but not limited to, the following:

- a. Any criminal liability;
- b. Liability arising from a violation by Dexter of a requirement of this Assurance;
- c. Liability for violations of the MCPA that occur after July 9, 2003.

## **XI. NOTICES**

All notices, deliveries or other communications required or permitted hereunder shall be in writing and shall be deemed given when sent by facsimile transmission and confirmed by certified or registered mail (unless otherwise specified) addressed as follows:

- a. If to Complainant:  
  
Assistant Attorney General In Charge  
Consumer Protection Division  
PO Box 30213

Lansing MI 48909

b. If to Dexter:

Fred J. Poe  
Dexter Grohs Chevrolet, Inc.  
7120 Dexter-Ann Arbor Road  
Dexter, MI 48130

## **XII. GENERAL PROVISIONS**

12.1 This Assurance is accepted and final upon signing by an assistant attorney general who is a member on staff of the Attorney General.

12.2 This Assurance shall not create any private rights or causes of action in any third parties.

12.3 No change or modification of this Assurance shall be valid unless in writing and signed by both parties.

12.4 Neither Respondent nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the State of Michigan, the Attorney General, or any other governmental unit of the State of Michigan has approved, sanctioned, or authorized any practice, act, advertisement or conduct of the Respondent.

12.5 This document shall not be construed against the "drafter" because both parties participated in the drafting of or had the opportunity to obtain the advice of counsel regarding the terms of this document.

12.6 As used herein, the plural shall refer to the singular and the singular shall refer to the plural and the masculine, the feminine and the neuter shall refer to the other, as the context requires.

12.7 Nothing in this Assurance shall limit the Attorney General's right to obtain information, documents or testimony from Respondent pursuant to any state or federal law or regulation.

12.8 Any failure by any party to this Assurance to insist upon the strict performance by any other party of any of the provisions of this Assurance shall not be deemed a waiver of any of the provisions of this Assurance, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Assurance and the imposition of any applicable penalties, including but not limited to contempt, civil penalties and/or the payment of reasonable and appropriate attorneys' fees to the State related thereto.

12.9 If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance and this Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

12.10 Respondent will not participate directly or indirectly in any activity to form a separate entity or corporation which engages in acts prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

12.11 This Assurance sets forth the entire agreement between the parties, and there are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Assurance that are not fully expressed in this Assurance.

12.12 Nothing in this Assurance shall be construed as relieving Respondent of its obligation to comply with all state and federal laws and regulations nor shall any of the provisions of this Assurance be deemed to be permission to engage in any acts or practices prohibited by such law or regulation.

12.13 This Assurance does not extinguish, limit, or otherwise affect any private cause of action that any consumer or any business entity may have against Respondent, whether arising under the MCPA or other laws. Further, nothing in this Assurance may prevent Respondent from raising any defenses it may have in any private right of action, including a claim of set-off for any restitution received under this order by a particular consumer.

12.14 The State of Michigan and the Attorney General and the attorneys, agents, employees, or servants acting for the Attorney General do not assume any liability by entering into this Assurance. This Assurance shall not be construed to be an indemnity by the State for the benefit of the Respondent or any other person.

12.15 This Assurance may be executed in counterparts.

### **XIII. APPLICABLE LAW**

This Assurance shall be construed in accordance with and governed by the internal laws of the State of Michigan.

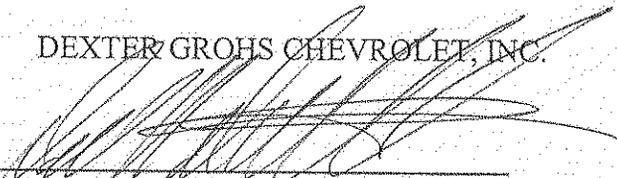
### **XIV. EFFECTIVE DATE**

The effective date of this Assurance is the date it is filed with the Ingham County Circuit Court.

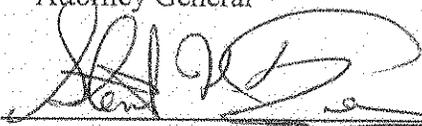
**XV. TERMINATION**

If Dexter meets all substantive terms of the Assurance, it shall terminate on October 31, 2005. The parties shall be allowed to reopen this Assurance for purposes of addressing any matters arising under Sections V, VIII or IX and Ingham County Circuit Court shall have continuing jurisdiction for such purposes.

Dated: 10/22/03

DEXTER GROHS CHEVROLET, INC.  
By:   
Its Authorized Agent  
DANIEL R. DELA DURANTAYE

Dated: October 28, 2005

MIKE COX  
Attorney General  
By:   
Stewart Freeman (P13692)  
Assistant Attorney General in Charge  
Consumer Protection Division  
P.O. Box 30213  
Lansing, MI 48909  
517-335-0855; Fax 517-335-1935