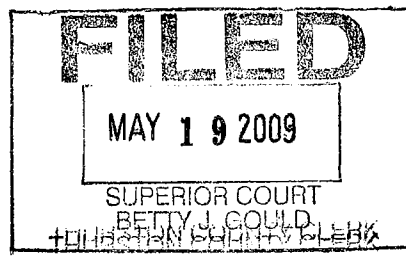


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1  EXPEDITE  
2  No Hearing Set  
3  Hearing is Set  
4 Date:  
5 Time:



7 **IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON**  
8 **IN AND FOR THE COUNTY OF THURSTON**

9 STATE OF WASHINGTON,

10 Plaintiff,

11 v.

12 SMART AUTOMOTIVE GROUP, LLC,  
13 dba The Smart Automotive Group; Smart  
14 Automotive Group, a for-profit Louisiana  
15 corporation; BERNARD E. BURST, III., as  
16 President and member of Smart Automotive  
17 Group, Inc., individually and on behalf of  
18 his marital community,

19 Defendants.

NO. **09 2 01224 2**

COMPLAINT FOR INJUNCTIVE AND  
OTHER RELIEF

17 Plaintiff, State of Washington, Office of the Attorney General, Consumer Protection  
18 Division, by and through its attorneys, Robert M. McKenna, Attorney General, and Mary C.  
19 Lobdell, Assistant Attorney General, brings this action against Smart Automotive Group, Inc.,  
20 dba The Smart Automotive Group, Smart Automotive and Bernard E. Burst, III, President of  
21 Smart Automotive Group, LLC., named herein, alleging as follows:

22 **I. JURISDICTION AND VENUE**

23 **1.1.** The State of Washington ("State") files this Complaint and these proceedings  
24 under the provisions of Chapter 19.86 RCW, Unfair Business Practices -- Consumer Protection  
25  
26

1 Act; chapter 19.170.010 RCW, Promotional Advertising of Prizes Act, and chapter 46.70 RCW,  
2 Unfair Business Practices – Dealers’ Licenses Act.

3 1.2. The Defendant Smart Automotive Group, Inc. does business in the State of  
4 Washington.

5 1.3. The Defendant Smart Automotive Group, Inc. is principally located in Metairie,  
6 Louisiana.

7 1.4. The Defendant Bernard E. Burst, III resides in New Orleans, Louisiana.

8 1.5. The violations alleged in this Complaint have been and are being committed in  
9 whole or in part in the state of Washington.

10 1.6. This Court has subject matter jurisdiction over this Complaint under the laws of  
11 the state of Washington.

12 1.7. Jurisdiction over the Defendants is vested in this Court pursuant to RCW  
13 19.86.160, RCW 46.70.250 and RCW 4.28.185 because Defendants engaged in conduct violating  
14 Chapter 19.86 RCW and Chapter 46.70 RCW and such conduct impacted consumers and  
15 businesses in the state of Washington. Jurisdiction over the subject matter of this Complaint is  
16 conferred by the above-referenced statutes.

17 1.8. Venue is proper in Thurston County pursuant to RCW 4.14.020 and Civil Rule 82.

18  
19  
20  
21 **II. PLAINTIFF**

22 2.1. The Plaintiff is the State of Washington.

23 2.2. The Attorney General is authorized to commence this action pursuant to RCW  
24 19.86.080 and RCW 19.86.140.

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**III. DEFENDANTS**

3.1. Defendant, Smart Automotive Group, Inc., is a for-profit Louisiana corporation organized under the laws of the state of Louisiana and is located at 1329 Gardenia Drive, Metairie, Louisiana.

3.2. The Defendant, Bernard E. Burst, III., is now and has been at all times relevant to this action, President of Smart Automotive Group and has individually controlled, directed, participated in, and formulated the policies relating to the acts, practices, and activities of said corporation that are the subject matter of this Complaint. Defendant, Bernard E. Burst, III, lives at 1006 Race Street, New Orleans, Louisiana 70130-4731. On information and belief, Defendant Bernard E. Burst, III, is married and all acts were done on behalf of the marital community.

3.3. For purposes of this Complaint, the term "Defendants," unless otherwise specified, shall refer to all Defendants; and when used in conjunction with allegations of unlawful conduct, shall mean that each Defendant committed such act and/or is legally accountable for such act.

**IV. NATURE OF TRADE OR COMMERCE**

4.1. Defendants are now and have been at all times relevant to this action, engaged in a trade or commerce within the meaning of RCW 19.86.020, specializing in creating and selling promotional materials and direct mailings for automobile dealerships.

4.2. Defendants are engaged in a trade or commerce within the meaning of RCW 19.86.020 by creating and providing promotional advertising services, consultations, prizes as that term is defined in RCW 19.170.020, and materials for automobile dealers of new and used motor vehicles in the State of Washington.

1           4.3. Defendants developed, promoted and/or participated in a number of sales events in  
2 Washington.

3           4.4. Defendants are engaged in a business that must comply with the provisions of  
4 RCW 46.70.180, the rules for advertising promulgated by the Department of Licensing in WAC  
5 308-66-152, the provisions of the Unfair Business Practices of the Consumer Protection Act,  
6 Chapter 19.86, and the provisions of the Prizes and Promotions Act, Chapter 19.170 RCW.  
7

8           4.5. A violation of RCW 46.70.180 and chapter 19.170 are *per se* violations of the  
9 Unfair Business Practices—Consumer Protection Act 19.86 RCW.

10           4.6. Defendants have been at all times relevant to this action in competition with others  
11 engaged in similar business in the State of Washington.  
12

13                   **V. FIRST CAUSE OF ACTION AGAINST DEFENDANTS**  
14                                   **(Advertising Rule Violations)**

15           5.1. Plaintiff realleges paragraphs 1.1 through 1.8 and 4.1 through 4.6 and  
16 incorporates them as if set fully herein.

17           5.2. From January 2006 to the present time, the Defendants have materially  
18 misrepresented the nature of certain “sales events” and failed to adhere to state and federal laws,  
19 regulations and guidelines, including but not limited to, RCW 46.70.180(1) and WAC 308-66-  
20 152.

21           5.3. Defendants caused to be advertised offers to sell vehicles that created a false  
22 premise for advertised sales by representing or implying that the vehicles included in a sale are  
23 from some source other than a dealer’s regular used vehicle inventory by using terms such as  
24 “Seized and Repossessed” and “Direct to the Public.”  
25

26           5.4. Defendants caused to be advertised offers to sell vehicles that created a false sense

1 of urgency by use of the terms such as "Forced Liquidation" or "AUDITOR ORDERS STOCK  
2 BALANCE" "Comptroller Demands Immediate Liquidation" when, in fact, the sales often  
3 recurred at certain dealer locations and were not in fact "forced" sales. Such statements created a  
4 false sense of urgency and are false, misleading or deceptive practices in violation of RCW  
5 46.170.180(1).  
6

7       **5.5.** The Defendants caused to be advertised offers to sell vehicles without disclosing  
8 all material limitations, including limitations related to credit, prizes, fees, rebates, used or new  
9 vehicles, time limit and trade-in. Advertising any offer in connection with the sale of a vehicle or  
10 model or type of vehicle without disclosing material limitations is a violation of RCW 46.70.180  
11 and WAC 308-66-152(4)(c).  
12

13       **5.6.** Defendants caused to be advertised offers to sell vehicles using a false reference  
14 price or false savings that states a discount that does not in fact exist, such as advertising "95% off  
15 their original price" or "50% OFF KELLY BLUE BOOK RETAIL."  
16

17       **5.7.** Defendants caused to be advertised misleading comparisons such as "95% off  
18 their original price" without, in the same advertisement, clearly and conspicuously stating a basis  
19 for determining the meaning of "original price."  
20

21       **5.8.** Defendants caused the advertisement of vehicles that failed to include a statutory  
22 statement regarding documentary fees. Defendants knew or should have known that dealers  
23 customarily and routinely charge vehicle documentary fees and Defendants failed to include  
24 language in the advertisement that "a vehicle documentary service fee in an amount up to fifty  
25 dollars may be added to the sale price of the vehicle" as required by RCW 46.70.180(2) and WAC  
26 308-66-152(4)(j).

1           **5.9.** Defendants caused the advertisement of words, phrases and initials that were not  
2 clear and conspicuous and in a type size sufficiently large to be read with reasonable ease and in  
3 relative close proximity to each of the terms that require disclosure and in such color and contrast  
4 so as not to be obscured.  
5

6           **5.10.** Defendants caused the advertisement of statements, such as “Don’t make your  
7 next car payment. We’ll make the next 6 for you,” “Buy these vehicles for pennies on the dollar,”  
8 “205 vehicles will be sold to the public for \$77 per month” and other similar statements. On  
9 information and belief, Defendants cannot establish any good faith reliance that the dealer  
10 customarily and regularly sells or provides consumers credit under such circumstances. Such  
11 conduct violates WAC 308-66-152.  
12

13           **5.11.** Defendants caused the advertisement of statements that a specific number of  
14 vehicles will be sold at a certain monthly payment when such is not in fact the case and the  
15 statement cannot be substantiated by the dealer.  
16

17           **5.12.** Defendants caused the advertisement of footnotes or asterisks that materially  
18 modify the primary terms advertised, such as stating “Seized And Repossessed Vehicle Event”  
19 with a corresponding footnote “Vehicles may have been obtained at auction” and other similar  
20 statements.  
21

22           **5.13.** Defendants caused the advertisement of statements that misrepresented the costs  
23 of vehicles and the ability of consumers to obtain financing.  
24

25           **5.14.** The practices described in paragraphs 5.1 to 5.13 constitute *per se* violations of  
26 RCW 46.70.180(1) and WAC 308-66-152.

1           5.15. The practices described in paragraphs 5.1 to 5.13 constitute *per se* violations of the  
2 Consumer Protection Act, RCW 19.86.020, under RCW 46.70.310.

3                           **VI. SECOND CAUSE OF ACTION AGAINST DEFENDANTS**  
4   **(Prizes and Promotions Act Violations)**

5           6.1. Plaintiff realleges paragraphs 1.1 through 1.8 and 4.1 through 4.6 and  
6 incorporates them as if set fully herein.

7           6.2. RCW 19.170.010, the Promotional Advertising of Prizes Act, provides that  
8 deceptive promotional advertising of prizes is a matter vitally affecting the public interest and  
9 is not reasonable in relation to the development and preservation of a business.

10           6.3. A violation of chapter 19.170 RCW is an unfair or deceptive act in trade or  
11 commerce under the Consumer Protection Act, chapter 19.86 RCW, and constitutes an act of  
12 deceptive promotional advertising.

13           6.4. From January 2006 to present, Defendants created, developed or caused to be  
14 disseminated promotional advertising of prizes on numerous occasions as that term is defined  
15 in RCW 19.170.020(2).

16           6.5. Defendants created, developed or caused materials to be directed to specific  
17 named consumers that included the award of or chance to be awarded a prize in which the  
18 recipient did not have the right to review the merchandise offered for sale without obligation  
19 for at least seven days and had a right to obtain a full refund in thirty days.

20           6.6. Defendants caused materials to be sent to consumers that failed to disclose  
21 material restrictions in the immediate proximity and on the same page with the first listing of  
22 the prize in type at least as large as the typeface used in the standard text of the offer as  
23 required by RCW 19.170.030, including but not limited to the following:  
24  
25  
26

1           **6.6.1.** Restrictions that required participants to present a notification letter in  
2 order to enter or be eligible to receive the offer.

3           **6.6.2.** Restrictions that required participants to register to be eligible for the  
4 contest.

5           **6.6.3.** Restrictions that required recipients of a prize or giveaway to pay for  
6 shipping and handling charges or take a test drive to redeem the “free” or  
7 implied “free” merchandise.

8           **6.6.4.** Restrictions that required participants of prize promotional offers to be  
9 present during sale dates to redeem an item or prize or requested participants to  
10 attend a sale presentation to redeem an item or prize.

11           **6.6.5.** Restrictions that limited the supply of the prize offered.

12           **6.6.6.** Restrictions that required winners of an item or prize promotional offers  
13 to provide verification of documentation.

14           **6.6.7.** Restrictions or qualifications such as the availability of the item or prize,  
15 travel dates, travel times, airlines, or accommodations.

16           **6.6.8.** Restrictions related to on-line Shopping.

17  
18           **6.7.** Promotional offers disseminated by Defendants did not contain conspicuous  
19 disclosures in bold-face type at least as large as the typeface used in the standard text of the  
20 offer that the person is required to view, hear or attend a sales presentation in order to claim a  
21 prize.  
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1           **6.8.** Promotional offers disseminated by Defendants did not contain the statutorily  
2 required alternate phrase “Details and qualifications for participation in this promotion may  
3 apply,” followed by a disclosure in the same type size where any restrictions may be found.

4           **6.9.** Defendants created, developed or caused materials to be sent to consumers that  
5 advertised promotional offers that failed to comply with requirements of RCW 19.170.030(1)-  
6 (4), including but not limited to the following:  
7

8                   **6.9.1.** Identifying the name and address of the sponsor of the promotion.

9                   **6.9.2.** Failing to state the verifiable retail value of the prizes offered.

10                   **6.9.3.** Failing to state the odds the participant has of being awarded the prize  
11 being offered.

12           **6.10.** On information and belief, Defendants did not comply with the provisions of  
13 RCW 19.170.030, including:  
14

15                   **6.10.1.** Advertising a prize, gift, award, premium or similar term that implied  
16 that the item was free when in fact the recipient must spend an amount of  
17 money, including but not limited to, shipping fees, deposits, handling fees,  
18 payment for one item in order to receive another item, or the expenditure of  
19 funds in order to obtain or make meaningful use of the item awarded in the  
20 promotion.  
21

22                   **6.10.2.** Advertising a prize, gift or award that is contingent upon a material  
23 restriction.

24                   **6.10.3.** Advertising a prize, gift or award that requires a “processing fee”  
25 without disclosing the amount of the fee.  
26

1           6.11. From January 2006 to present, the acts and practices of Defendants as described  
2 in paragraphs 6.4 through 6.10 constitute violations of RCW 19.170.030(7).

3                           **VII. THIRD CAUSE OF ACTION AGAINST DEFENDANTS**  
4                           **(Violations of RCW 19.170.050 – Simulated Checks)**

5           7.1. Plaintiff realleges paragraphs 1.1 through 1.8 and 4.1 through 4.6 and  
6 incorporates them as if set fully herein.

7           7.2. From January 2006 to present, Defendants on numerous occasions caused to be  
8 advertised, distributed or otherwise transferred a document that is not currency or a check or  
9 other negotiable instrument but has the visual characteristics of such. Hereinafter referred to as  
10 “simulated check.”

11           7.3. The simulated check included a dollar amount in both Arabic numerals and  
12 written text.

13           7.4. The simulated check included a signature line in the lower right corner for  
14 approval.

15           7.5. The simulated check included an amount payable in Arabic numerals in the  
16 upper right corner of the document.

17           7.6. The simulated check included the words “TO THE ORDER OF” written before  
18 the recipient’s name and “FOR TWO THOUSAND NINE HUNDRED EIGHTY-ONE AND  
19 42/100 DOLLARS.”

20           7.7. Defendants disseminated simulated checks that did not bear the phrase “THIS  
21 IS NOT A CHECK,” diagonally printed in the typeface at least as large as the predominant  
22 typeface used on the simulated check on the front of the check itself.  
23  
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1 7.8. The acts and practices of Defendants constitute violations of RCW  
2 19.170.050(1).

3 7.9. Pursuant to RCW 19.170.010, violations of the Promotional Advertising of  
4 Prizes Act, Chapter 19.170 RCW, constitutes *per se* violations of the Consumer Protection Act,  
5 Chapter 19.86 RCW.  
6

7 **VIII. FOURTH CAUSE OF ACTION AGAINST DEFENDANTS**  
8 **(Additional Violations of the Consumer Protection Act)**

9 8.1. Plaintiff realleges paragraphs 1.1 through 1.8 and 4.1 through 4.6 and  
10 incorporates them as if set fully herein.

11 8.2. Defendants, in the regular course of its business, as part of its promotional  
12 efforts and as a means of marketing merchandise to Washington consumers made material  
13 misrepresentations and failed to disclose material information to Washington consumers.  
14

15 8.3. Defendants advertised merchandise as “free” or made similar representations  
16 when in fact the item was not “free” and was included in the negotiated price of the vehicle in  
17 violation of Federal Trade Commission guides on advertising as well as industry standards.

18 8.4. Defendants caused the dissemination of misleading statements, including  
19 “Scratch here to see if you are an instant winner!” and “Scratch Off NOW To See If You’re An  
20 Instant Winner!” when, on information and belief, no rules or procedure existed for drawing  
21 and awarding a winning number nor was a winning number selected.  
22

23 8.5. Defendants caused the dissemination of advertisements that mislead recipients  
24 as to the true character of the promotion or offer.

25 8.6. Defendants used or caused to be used in advertisements such phrases as listed in  
26 paragraph 8.4 and misrepresented, directly or by implication, that consumers have won or that

