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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Protest of )  
49ER CHEVROLET, ) Protest No. PR-271-80  
Protestant, )  
vs. )  
CHEVROLET MOTOR DIVISION, )  
GENERAL MOTORS CORPORATION, )  
Respondent. )

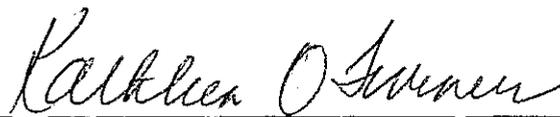
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DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted as modified by the New Motor Vehicle Board as its Decision in the above entitled matter.

This Decision shall become effective forthwith.

IT IS SO ORDERED this 28<sup>th</sup> day of January, 1981.



KATHLEEN O. TURNER  
President  
New Motor Vehicle Board

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49ER CHEVROLET, ) Protest No. PR-271-80  
Protestant, )  
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CHEVROLET MOTOR DIVISION, ) PROPOSED DECISION  
GENERAL MOTORS CORPORATION, )  
Respondent. )

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Procedural Background

1. On October 23, 1979, Chevrolet Motor Division, General Motors Corporation, (Chevrolet) notified 49er Chevrolet, Inc., (49er) that Chevrolet would "not enter into a new Dealer Sales and Service Agreement with 49er," when the then current 5 year agreement between the parties expired on October 31, 1980. Notice of Chevrolet's intention was received by the New Motor Vehicle Board (Board) on July 24, 1980.

2. On April 18, 1980, 49er filed a Protest with the Board under the provisions of Vehicle Code §3060.<sup>1/</sup>

3. At a pre-hearing conference held on May 9, 1980, Chevrolet moved to dismiss the Protest on the ground that the

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1. All references are to the California Vehicle Code unless otherwise indicated.

Board lacked jurisdiction to hear the matter in that §3060 was applicable only if Chevrolet was attempting to "terminate or refuse to continue" 49er's franchise. Chevrolet contended that the franchise agreement was to terminate by its terms on October 31, 1980, and that Chevrolet was not obligated to offer a new Sales and Service Agreement to 49er. It was determined that Chevrolet proposed action was within §3060, and the motion to dismiss the Protest was denied at the pre-hearing conference. Chevrolet filed a Petition for Writ of Mandamus in the Superior Court in San Francisco, seeking a judicial determination that the Board was without jurisdiction. A Demurrer was filed in response to Chevrolet's Writ. On July 19, 1980, the Superior Court sustained the Demurrer without leave to amend.

4. A hearing on the Protest was held before Anthony M. Skrocki, Administrative Law Judge for the Board. The hearing was conducted from August 25, 1980, to October 8, 1980, and required 25 hearing days.

5. Chevrolet was represented by J. Thomas Rosch and Randall D. Morrison of the law firm of McCutchen, Doyle, Brown & Enersen. 49er was represented by Jeffrey D. Heiser of the law firm of Kleinfeld & Heiser and by Richard E. Wilmshurst (Wilmshurst), President and owner of 49er.

#### Issues Presented

6. Vehicle Code Section 3066 imposes on Chevrolet the burden to establish that there is good cause to "terminate,

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or refuse to continue a franchise." Vehicle Code Section 3061 requires:

In determining whether good cause has been established for...terminating, or refusing to continue a franchise, the board shall take into consideration the existing circumstances, including, but not limited to:

- (1) Amount of business transacted by the franchisee, as compared to the business available to the franchisee.
- (2) Investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise.
- (3) Permanency of the investment.
- (4) Whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted.
- (5) Whether the franchisee has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles handled by the franchisee and has been and is rendering adequate services to the public.
- (6) Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be performed by the franchisee.
- (7) Extent of franchisee's failure to comply with the terms of the franchise.

7. Chevrolet contends that the business relationship of Chevrolet and 49er has been destroyed as a result of the conduct of its principal Richard E. Wilmshurst.

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Findings of Fact

Facts Relating to the Amount of Business Transacted by 49er,  
As Compared to the Business Available to It (§3061(1))

8. Sales penetration by Chevrolet in the area serviced by 49er is above the average for Chevrolet's Oakland Zone. Chevrolet was also first in sales registrations in Calaveras County in 1979.

9. Chevrolet stipulated that the amount of business transacted by 49er was adequate and that its decision to not offer a new agreement to 49er was not based on any deficiency of 49er in respect to the amount of business being conducted by 49er.

Facts Relating to the Investment Necessarily Made  
and Obligations Incurred by 49er  
to Perform Its Part of the Franchise (§3061(2))

10. 49er is a corporation presently solely owned by Wilmshurst who is also President and Chairman of the Board of Directors.

11. 49er was initially incorporated in April 1960, and Wilmshurst has been President since that time. Wilmshurst was first listed as one of the owners on the Dealer's Sales and Service Agreement in 1960 and has been the only person so listed since 1965.

12. The predecessor dealer of 49er was Wilmshurst Chevrolet, a business which was owned and operated by Wilmshurst's father.

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13. Wilmshurst Chevrolet and 49er have been Chevrolet franchisees for a total of 47 years.

14. Chevrolet stipulated that 49er did have a material investment and had incurred material obligations in the performance of 49er's part of the franchise.

Facts Relating to Permanency of 49er's Investment (§3061(3))

15. Chevrolet stipulated that 49er's investment is permanent.

Facts Relating to Whether It Is Injurious or Beneficial  
to the Public Welfare for the Business of 49er  
to be Disrupted (§3061(4))

16. 49er is located in Calaveras County, an area of approximately 1,000 square miles. Most of its customers reside in that county, and it is not uncommon for 49er's customers to travel 45 to 50 miles to reach 49er.

17. Chevrolet is uncertain as to where it would establish a replacement dealership in the event of termination of 49er. Other communities in the area are Murphys, approximately 9 miles from 49er; San Andreas, approximately 11 to 12 miles from 49er; Sonora, approximately 17 miles from 49er; and Jackson, approximately 25 to 26 miles from 49er.

18. Chevrolet is willing to continue doing business with 49er until a new Chevrolet dealer is established in 49er's area of responsibility. Chevrolet, however, has no definitive plans as to where or when the replacing dealer will be established. Nor does Chevrolet know who the replacing dealer will be.

19. There are presently Chevrolet dealers located in Jamestown and Jackson, approximately 18 miles and 26 miles, respectively, from Angel's Camp.

Facts Relating to Whether 49er Has Adequate Motor Vehicle Sales and Service Facilities, Equipment, Vehicle Parts, and Qualified Service Personnel to Reasonably Provide for the Needs of the Consumers of Chevrolet Vehicles and Has Been and is Rendering Adequate Services to the Public (§3061(5))

20. Chevrolet stipulated that 49er has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers of Chevrolet vehicles and has been and is rendering adequate services to the public.

Facts Relating to Whether 49er Has Failed to Fulfill the Warranty Obligations of Chevrolet to Be Performed by 49er (§3061(6))

21. Chevrolet stipulated that, except for 49er's failure to comply with the reimbursement procedure established by Chevrolet, 49er was providing adequate warranty service and fulfilling Chevrolet's warranty obligations.

Facts Relating to the Extent of 49er's Failure to Comply with the Terms of the Franchise (§3061(7))

22. Chevrolet stipulated that 49er has complied with the terms of the franchise with the exception of:

- 1) failing to comply with Chevrolet's policies and procedures with respect to submission of claims against Chevrolet, and

2) failure to pay all amounts charged to 49er by Chevrolet.

These matters will be addressed in detail below.

Facts Relating to the Conduct of Wilmshurst  
and Its Effect Upon the Business Relationship of 49er  
and Chevrolet

23. Although Chevrolet allegedly based its decision to terminate 49er upon Wilmshurst's conduct during the course of the present franchise agreement, beginning in November 1975, it is necessary to review events which occurred prior to that time in order to fully understand the dispute between the parties.

A. From Early 1973 to November 1975

24. During this time period, 49er contended that the prices which 49er was permitted to charge Chevrolet in performing warranty repairs were too low and did not enable 49er to operate at a profit in performing such repairs. Because Chevrolet refused to pay 49er more than the rates established by the Dealer Sales and Service Agreement, 49er increased the dollar amounts for the claims submitted by indicating a higher number of parts used in completing the warranty repairs than were actually needed. Wilmshurst informed Chevrolet of what he was doing in regard to submission of his warranty claims. These repair orders were then written in such a manner to reflect the higher prices to which 49er felt it was entitled.

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25. As a result of 49er's warranty billing practice, an audit was conducted by Chevrolet in early 1973. The audit resulted in Chevrolet charging back to 49er's open account approximately \$3,000.

26. Wilmshurst refused to pay the charged back portion of the open account. He withheld the sum that had been charged back against 49er from the 49er checks which were sent to Chevrolet in payment of the open account. Wilmshurst contended that the sums could not be properly charged back without his approval.

27. Wilmshurst justified his submission of inflated parts counts on the basis that Chevrolet's warranty policies were in his opinion criminal and unconscionable.

28. Wilmshurst accused the Chevrolet personnel who were attempting to implement the Chevrolet warranty policies of personally acting illegally and in bad faith. Wilmshurst wrote to the Chevrolet's Zone Service Manager, Mr. Jim Perkins (Perkins), that Perkins' attempts to collect such sums did "not constitute a lawful act in good faith..."

29. Chevrolet again sought to audit 49er's warranty records in 1974. Wilmshurst at that time wrote Chevrolet's Zone Manager, Mr. Luke Barrett (Barrett), accusing him of "harrassment" stating as follows: "Mr. Barret, we had little or no problem with our relationship with Chevrolet personnel until your select group slipped into the Oakland Zone. Your type of operation does not wear well with dealers and I might

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note that your reputation of business practices in past years has preceded you."

30. A second audit was conducted in 1974. During the course of this audit, Wilmshurst arranged for a local television station to video tape the Chevrolet audit team at work in the dealership. Wilmshurst charged in an interview on the tape that the auditors were there for purposes of harrassment and "must have something they do not want to disclose."

31. The 49er and Chevrolet dispute also involved late filed warranty claims. As a result of rejection by Chevrolet of 49er's late filed warranty claims, Wilmshurst accused the then Oakland Zone Manager of acting "in concert" with the then Zone Service Manager to convert 49er's funds and questioned his morals in doing so.

32. Wilmshurst also threatened to bring both civil litigation and criminal prosecution charging that Chevrolet was engaging in illegal price fixing by limiting the amount that Chevrolet would reimburse 49er for parts and labor used in performing warranty repairs. Wilmshurst warned of a federal class action which could have dire consequences on General Motors.

33. Wilmshurst warned the Zone Manager in a letter that "times are changing, as you may determine by reading the enclosed article from Time Magazine entitled, 'Jail for More Price Fixers?'"

34. Wilmshurst also told the Chevrolet employees who conducted the 1974 audit that Chevrolet's warranty policies violated the antitrust laws and that they could be held

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personally liable for those violations if they knew about them and that he was at that time supplying them with such knowledge.

35. As a result of Chevrolet's rejection of 49er's warranty claims, Wilmshurst filed a complaint in the Calaveras County Justice Court naming Chevrolet Assistant Zone Service Manager, Perkins, individually as a defendant. As a result of this suit, Perkins' name was circulated on a bad credit bulletin.

36. Due to Wilmshurst's course of conduct, Chevrolet considered not offering 49er a Sales and Service Agreement when their agreement expired in 1975. Chevrolet decided, however, to offer 49er another agreement hoping that the differences between the parties could be resolved. Wilmshurst, acting in behalf of 49er, entered into a new agreement with Chevrolet in November 1975.

B. November 1975 - May 1978

37. After the parties entered into the new agreement, Chevrolet continued to try to collect the unpaid balance of the open account which was attributable to 49er's earlier warranty claims which Chevrolet had charged back. Chevrolet deducted the disputed amount from the check which it sent 49er in payment of 49er's vehicle holdback account for 1976. In response, Wilmshurst again withheld this amount from 49er's subsequent payments on its open account. The Oakland Zone Manager, Barrett, and Chevrolet's Regional Manager, Mr. Harry Davidson (Davidson), then visited Wilmshurst in Angels Camp in early 1977 and told

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him that, if the balance was not paid, Chevrolet was going to sell parts to 49er on a C.O.D. basis.<sup>2/</sup>

38. Wilmshurst did not pay the balance. He wrote Barrett, accusing him of using "economic force", and threatened to "serve a temporary restraining order", and intimated that a "grand jury investigation" might be instituted in Calaveras County. On July 31, 1977, Chevrolet put 49er on C.O.D. with respect to the sale of parts.

39. Wilmshurst wrote a letter to General Motors' President, Mr. E. M. Estes (Estes), asserting that Chevrolet was violating civil and criminal antitrust statutes by limiting the amount of reimbursement for warranty work and that it was therefore a case of "steal or be stolen from".

40. Wilmshurst accused Barrett of engaging in "economic duress", "harrassment", and attempt to "extort", and several "crimes" in connection with the shipment of parts C.O.D. He also accused Barrett of a "lack of business principal and moral decay" and added: "Its a clean feeling to play according to societies (sic) rules; try it you might like it."

41. Chevrolet's Western Area Sales Manager, Mr. W. R. Stacy (Stacy), subsequently met with Wilmshurst in Las Vegas and told Wilmshurst that Chevrolet expected Wilmshurst to pay the account balance and otherwise adhere to Chevrolet's policies in accordance with the Sales and Service Agreement. Wilmshurst

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2. The parts and accessories terms of sale in effect between the parties provided that, if the account was not paid, "future shipments of Parts and Accessories may be made on a C.O.D. basis only."

then wrote Stacy, accusing him of engaging in "quasi-extortion", "conversion", and of trying to "steal" the amount in dispute.

42. In public testimony given before the Department of Consumer Affairs, Wilmshurst accused Stacy of having stated that Chevrolet was "above the law". Wilmshurst likewise wrote Davidson, who was at the Las Vegas meeting, accusing him of "conversion" and concluding: "It amazes me that a man that has obtained a position such as yours would participate in such a program to harass a small business man." Wilmshurst sent a copy of this letter to Estes.

43. Wilmshurst's accusations were accompanied by threats of civil litigation and criminal prosecution. He warned Barrett that "The time may come where you will find yourself caught up in complex litigation as did the General Electric executives who were indicted for price fixing and were sentenced to jail terms." He also wrote Barrett that he could expect to "receive a summons from the Calaveras County Justice Court" and could also expect "a number of judgments against you."

44. Wilmshurst similarly wrote Stacy that "you are taking a stand that will sometime in the future lead to the indictment of G.M. officials by a Federal Grand Jury for price fixing." Davidson was also warned that 49er would "bring a Small Claims Action...for conversion" in connection with the delivery of parts to 49er on a C.O.D. basis.

45. In November 1977 Barrett was replaced as Zone Manager by Mr. D. S. West (West). Wilmshurst in January 1978 wrote West, renewing his charge that shipping parts to 49er C.O.D. was

illegal and showing on the letter that a copy was being sent to staff counsel of the United States Department of Transportation, National Highway Traffic Safety Administration.

46. Wilmshurst began sending 49er's parts orders directly to West instead of to General Motors' Parts Division. When the parts were not shipped promptly to 49er, Wilmshurst wrote West, warning him that "the fact that parts are withheld can be a crime" and that 49er would "review our problem with the local District Attorney."

47. In March 1978 Wilmshurst directed accusations and threats at Perkins' successor as Zone Service Manager, Mr. George Croft (Croft). Wilmshurst wrote Croft that Chevrolet's policies respecting reimbursement for warranty work violated both the California Business and Professions Code as well as federal and state antitrust laws. Wilmshurst indicated:

After reviewing the Business and Professions Code it appears that all agents of General Motors Corporation along with G.M. itself are responsible for violations. (See § 17095 B & C). (sic) It also appears that such acts are crimes. (See § 17100 B & C) (sic) In this area it might be well to consult your attorney to establish your personal liability to a state penal action.

48. Wilmshurst also accused Chevrolet personnel of deliberately and illegally withholding 49er's allocation of vehicles. In January 1978 Wilmshurst sent a mailgram to Chevrolet's Assistant Zone Manager, Mr. Sal Alberti (Alberti), charging that Chevrolet's January 1978 vehicle allocations to 49er indicated "a possible violation of section 11713.2 and (a) of the California Vehicle Code." Wilmshurst directed the same

accusation at West and later charged that it was "reprehensible" and a "dirty trick" which was perpetrated because 49er had stood up for what it felt was right.

49. In November 1977 Wilmshurst wrote Stacy that vehicles were being shipped to 49er in "kit form" and asserted that "Chevrolet is passing their problems to us and forcing us to make repairs upon which we loose money." He also wrote West that Chevrolet was attempting to have its dealers "finish the manufacturing process at bargain basement prices."

50. In May 1978 Wilmshurst wrote Stacy a letter, charging that putting 49er on C.O.D. was an attempt to "extort funds from our business"; that Chevrolet's reimbursement for warranty parts was illegal; and that Chevrolet personnel had engaged in "'Plumbers' like retaliation."<sup>3/</sup> He went on to warn that both "civil and criminal penalties" were involved; that state agencies were "learning toward the criminal process"; and that action could be expected when the "1978-1979 Grand Juries are sworn in for the next fiscal year."

51. In May 1978 Wilmshurst wrote Davidson, alleging that "you have joined forces with others to force the present program

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3. This was one of several references which Wilmshurst made to "Watergate-like" conduct in letters addressed to West, Stacy, and Davidson. Wilmshurst learned during discovery proceedings that in February of 1974 a Chevrolet employee had telephoned State OSHA authorities under an assumed name and touched off an OSHA inspection of 49er's premises which ultimately required 49er to make some alterations. The record indicates that a telephone call was made to OSHA from the Chevrolet Zone Office in February 1974--and that, when Chevrolet discovered that fact, it conducted an unsuccessful investigation as to who made the call. Wilmshurst suspected in 1974 that Chevrolet was involved in initiating the OSHA inspection. It was not until the discovery proceedings in this case that his suspicions were confirmed.

of parts pricing upon 49er Chevrolet." Wilmshurst asserted that this program was illegal, accused Davidson's office of engaging in "retaliation", and predicted "Watergate-like" exposure. Wilmshurst went on to refer to his prior letters to Croft, in which Wilmshurst had stated that Chevrolet's warranty parts pricing was a crime for which Chevrolet's agents could be held responsible and suggesting that Croft consult a lawyer about his personal liability.

52. When Chevrolet failed to pay a late-filed claim for repair to a vehicle damaged in transit, 49er filed a complaint in the Calaveras County Justice Court naming Davidson as a defendant. Davidson was notified that he was obliged to appear in the Calaveras County Justice Court, and he did so, whereupon the claim against him was dismissed.

C. May 1978 - November 1979

53. In May 1978 West wrote Wilmshurst that 49er was being taken off of C.O.D. status as a good will gesture with the hope that this would indicate West's desire to establish a harmonious relationship.<sup>4/</sup>

54. West also wrote Wilmshurst, advising him that his accusations had considerably upset Chevrolet's employees and asking that any correspondence containing legal references or charges be directed to Chevrolet's counsel instead of Chevrolet

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4. In September 1978, however, West wrote Wilmshurst that, due to the expiration of the statute of limitations, Chevrolet was crediting his account for the warranty charge-backs which were in dispute and which were the basis of Chevrolet placing 49er on C.O.D.

employees in the interest of making the relationship more harmonious. Wilmshurst advised West that "We have no intent of contacting your attorney as our close business relationship demands that we deal directly."

55. When Stacy in May 1978 wrote to Wilmshurst complaining that Wilmshurst was publicly misquoting his remarks at the Las Vegas conference, Wilmshurst accused Stacy of actions which were designed to "put the squeeze" on 49er; which were "amoral and in violation of California law"; and which did not "look well when...taken out of a clandestine hotel meeting to the light of a public hearing." Wilmshurst went on to warn Stacy that he planned to bring Stacy's "apparent violations of the Business and Professions Code before our local Grand Jury and ask that they take the appropriate action." Wilmshurst concluded:

We are to the point where we are going to find out once and for all if I am correct about violations of the law. You have taken your stand similar to Nixon's practice where he was quoted as saying, 'Stonewall em.' (sic) It didn't work in 'Watergate' and it won't work in 'Motorgate'.

56. In August 1978 Wilmshurst wrote West, accusing West of "acting together" with Davidson and Croft in an effort to force 49er to provide warranty parts at prices which violated the Business and Professions Code. Wilmshurst went on to refer West to his prior letter to Croft, in which he had warned Croft that he could be held criminally liable for such conduct and suggested that he see a lawyer about his personal liability.

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57. When West replied that he was advised by counsel that Chevrolet's warranty parts pricing policy was legal, Wilmshurst again wrote him, charging that 49er had been "short changed" by Chevrolet's policies. Wilmshurst also alleged that 49er had been the victim of "corporate 'dirty tricks'" and exhorted West to "raise your sights to a higher standard of doing business". Additionally, Wilmshurst alluded to litigation which could open "'Pandora's Box'" for General Motors and result in "long term injury in business feeling between General Motors and 49er Chevrolet".

58. In September 1978 Wilmshurst signed a criminal complaint against West personally, which was filed by the Calaveras County District Attorney in the Calaveras County Justice Court. The complaint charged West with violating the Business and Professions Code with respect to warranty parts pricing. When West wrote Wilmshurst denouncing the initiation of such an action after West had advised Wilmshurst that he was acting on advice of counsel, Wilmshurst replied that a "person of average intelligence" could have understood the statute; that West could have determined whether there was a violation better than an attorney; and that "good judgment" would have dictated that West "follow the interpretation of the State of California rather than independent counsel". Wilmshurst added that he understood that "a district attorney in another jurisdiction is looking into the matter and could, if evidence develops, ask for indictments of high level personnel".

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59. When interviewed by Automotive Age, about the criminal action against West, Wilmshurst was quoted as saying West's conduct was "a crime and should be prosecuted like drunk driving or child molesting". This quotation was subsequently printed in two issues of Automotive Age which is circulated to dealers throughout California.

60. In February of 1979 West filed a Petition for a Writ of Prohibition in response to the criminal complaint with the Calaveras County Superior Court, alleging that Chevrolet's warranty obligations were governed exclusively by the Vehicle Code and were within the exclusive jurisdiction of the Board. The Court did not issue a formal ruling at that time, but it advised the parties that it intended to grant the Petition. In August of 1979 the criminal action was dismissed at the request of the District Attorney's Office.

61. Other Chevrolet policies were also the subject of dispute between the parties. One such subject is Chevrolet's 20 day free flooring policy. This policy provided that payment for vehicles shipped could be made either when the vehicle was sold or 20 days after the expiration of the projected transit time on the invoice, whichever occurred first. Chevrolet estimated the transit time, for purpose of free flooring, on the basis of an average of the actual transit time to 49er from each assembly plant over the previous six months. When vehicles were delivered to 49er after the transit time established by Chevrolet, Wilmshurst wrote West, asserting that Chevrolet's invoice constituted a "misrepresentation", was "laced with fraud", operated to

"defraud" 49er, provided Chevrolet with "unjust enrichment",<sup>5/</sup> and was a violation of "the California Penal Code, False Pretenses, which could be either a misdemeanor or a felony". Wilmshurst also asserted that West's "failure to correct these known overbillings amount to the element of intent".<sup>6/</sup>

62. In early 1978 Wilmshurst wrote Chevrolet a series of letters indicating that 49er had been modifying its parts counts and warranty billings in order to obtain what Wilmshurst considered adequate compensation for warranty work. In August 1978 West advised Wilmshurst that Chevrolet again wished to audit 49er's warranty records commencing with June 1, 1974. Wilmshurst responded by charging West with "harrassment" and threatened a suit for a temporary restraining order.

63. In May 1979 Wilmshurst accused Chevrolet's District Manager, Mr. John Hill (Hill), of trying to force Wilmshurst to participate in Chevrolet programs he did not want. Wilmshurst sent a letter to West asserting that Hill had told a 49er employee that he was under a lot of pressure from Chevrolet to get 100% participation on all Chevrolet programs. Wilmshurst alleged that Hill indicated his chances of advancement depended on 100% participation, and that 49er's allocation of vehicles and the production of sold orders were tied to 49er's purchase of programs. Wilmshurst alleged that Hill indicated, "If you

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5. When 49er received vehicles before the expiration of the transit time shown on the invoice, it had the benefit of an additional interest-free period.

6. Chevrolet credited dealers for losses in interest-free flooring attributable to transit delays upon receipt of necessary information from the dealer.

don't take my programs and play the game, you don't get the merchandise."

64. West told Wilmshurst that Hill had denied making these statements. Wilmshurst wrote West, accusing West of engaging in "the protective management philosophy 'you lie and I'll swear to it'". Wilmshurst asserted that West had taken Hill's word either because "he is doing just what you have told him to do or you are a poor judge of character". Wilmshurst challenged West and Hill to take a lie detector test. Wilmshurst went on to say:

Most likely G.M.'s top management would not tolerate what goes on in Chevrolet's dealings with its small dealers; however, the truth is most likely not relayed to top management by corporate ladder climbers.

65. In June 1979 after Alberti tried to persuade Wilmshurst to purchase a Chevrolet program, Wilmshurst wrote Alberti that "we are going along with the [program] so that the Zone can meet their dealer objective with Detroit; however, we feel the cost... is not justified".

66. Wilmshurst then wrote West, asserting that 49er was going along with the program only because Alberti had represented that it was required to give the Oakland Zone "100% compliance with a Chevrolet must program" and that 49er was going to "bite the economic bullet".

67. Following the dispute over programs, Wilmshurst accused West of "supervision" of "retaliatory distribution practices vis-a-vis 49er" due to business decisions not to purchase all Chevrolet programs. Wilmshurst also alleged that Chevrolet had retaliated by keeping his son out of Chevrolet's Dealer's Son Management School.

68. In May 1978 Wilmshurst wrote West, accusing him and others in the Chevrolet organization of violating the Civil Code and engaging in "inequitable" and "illegal" conduct by rejecting late-filed warranty claims. Wilmshurst accused Chevrolet of violating the Vehicle Code by operating a "planned rejection program" with respect to claims by dealers for price protection, and of violating the Penal Code by requiring 49er to pay a fee to participate in a sales campaign.

D. November 1979 - Present<sup>7/</sup>

69. After Chevrolet rejected a late-filed warranty claim in early 1980, Wilmshurst wrote several letters describing Chevrolet's time limitation as a "pretense". Wilmshurst questioned West's "good sense" and "personal morals"; accused him of "stone walling" the warranty payment problem; and threatened him with "untold future liability".

70. Wilmshurst also filed three Small Claims Court complaints relating to the rejection of late-filed claims and named West as a defendant. One of these was dismissed when Wilmshurst discovered that the underlying warranty claim had been paid. The other two were filed after 49er had filed its Protest with the Board.

71. Wilmshurst accused Chevrolet personnel of coercing him to purchase vehicles he did not want. In December of 1979 he wrote Alberti, accusing Hill of cancelling an allocation of Chevetttes because 49er had refused to order additional regular

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7. On October 23, 1979, Chevrolet mailed its notice of intention not to offer 49er a new franchise agreement.

size Chevrolets. In March of 1980 Wilmshurst accused Alberti of threatening that Chevrolet would not deliver any more vehicles to 49er if 49er would not accept some vehicles the orders for which had been cancelled by 49er. Wilmshurst sent a copy of this letter to the Calaveras County District Attorney.

72. Wilmshurst also wrote West, asserting that Chevrolet's District Service Manager, Mr. Anthony Mula (Mula), was "attempting to make our lives more difficult" when taking care of 49er's customers.

73. In a series of letters to Chevrolet's General Sales Manager, Mr. Robert E. Cook (Cook), and other General Motors executives, Wilmshurst asserted that he had been "bilked out of thousands of dollars" as a result of Chevrolet's unfair business practices. Wilmshurst asserted that he had met "only disinterest and arrogant conduct on the part of those concerned" and the "inevitable G.M. Stone Wall". He charged that the refusal to renew 49er's franchise was a "cover up of the wrongdoing . . . of personnel in the field". Wilmshurst warned Estes that "individuals within large corporations will be held accountable for the acts of the corporation over which they have management control", and suggested to Cook that he agree to a grand jury investigation.

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FACTS PERTAINING TO 49ER'S CONTENTIONS  
THAT CHEVROLET'S CONDUCT WAS UNLAWFUL

Issues

- A. 49er's refusal to pay warranty charge-backs.
- B. Chevrolet's reimbursement of 49er for parts used in performing warranty work and repairing transportation damage.
- C. Chevrolet's reimbursement of 49er for performance of labor necessary to accomplish warranty work and transportation damage repair.
- D. Chevrolet's alleged threats of cancellation of 49er's franchise to coerce acceptance of warranty payments.
- E. Chevrolet's delivery of Citations to fleet customers.
- F. Chevrolet's price protection policies.
- G. Chevrolet's alleged coercion of 49er to participate in Chevrolet's program.
- H. Chevrolet's alleged coercion of 49er to order unwanted vehicles.
- I. Chevrolet's time limitations for submission of warranty claims.
- J. Chevrolet's sales contests.
- K. Chevrolet's alleged price fixing of parts.

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