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No Fee GC § 6103

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

JUL 01 2014

BY Ebony Shaw
EBONY SHAW, DEPUTY

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Deputy District Attorney
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San Bernardino, CA 92415
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County of Santa Clara
7 TIYEN LIN, No. 166202
Deputy District Attorney
8 70 W. Hedding Street, West Wing
San Jose, CA 95110
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10 BOB LEE, District Attorney
County of Santa Cruz
11 WILLIAM ATKINSON, No. 88933
Assistant District Attorney
12 701 Ocean Street, Room 200
Santa Cruz, CA 95060
13 Telephone: (831) 454-2542

14 JAN I. GOLDSMITH, City Attorney
City of San Diego
15 KATHRYN TURNER, No. 151477
Deputy City Attorney
16 1200 Third Avenue, Suite 700
San Diego, CA 92101-4103
17 Telephone: (619) 533-5500

18 Attorneys for Plaintiff

19 SUPERIOR COURT OF CALIFORNIA

20 COUNTY OF SAN BERNARDINO

21 THE PEOPLE OF THE STATE OF
CALIFORNIA,

22 Plaintiff,

23 v.

24 CSK AUTO, INC., AN ARIZONA
25 CORPORATION,

26 Defendant.

No. 2103 1409 523

STIPULATION FOR ENTRY OF FINAL
JUDGMENT

843

1 Plaintiff, the People of the State of California, appearing through its attorneys Michael A.
2 Ramos, San Bernardino District Attorney, by Douglas Poston, Deputy District Attorney; Jeff
3 Rosen, Santa Clara District Attorney, by Tiyen Lin, Deputy District Attorney; Bob Lee, Santa
4 Cruz District Attorney, by William Atkinson, Assistant District Attorney; and Jan I. Goldsmith,
5 San Diego City Attorney, by Kathryn Lange Turner, Deputy City Attorney; and Defendant,
6 appearing by and through its attorneys, Higgs Fletcher & Mack LLP, by James M. Peterson,
7 stipulate as follows:

8 1. The Complaint on file herein sets forth facts giving rise to a controversy between
9 Plaintiff and Defendant.

10 2. The Court has personal jurisdiction of Defendant and subject matter jurisdiction over
11 the instant action.

12 3. The parties to this Stipulation for Entry of Final Judgment (Stipulation) have
13 determined to compromise and settle their differences in accordance with the provisions of this
14 Stipulation. Neither this Stipulation nor any of the statements or provisions it contains shall be
15 deemed to constitute an admission or adjudication of any of the allegations of the Complaint.

16 4. Defendant warrants and represents that it has caused this Stipulation to be executed by
17 Jeffrey Groves, Vice President-General Counsel of CSK Auto, Inc., who has been authorized by
18 appropriate action to bind said Defendant to all terms and conditions of this Stipulation and of the
19 Stipulated Final Judgment.

20 5. This Stipulation may be executed in counterparts and by facsimile, each of which shall
21 be deemed an original, and all of which, when taken together, shall constitute one and the same
22 document.

23 6. The parties to this Stipulation consent to entry of the Stipulated Final Judgment in the
24 form attached and marked as Exhibit 1.

25 7. The Final Judgment may be entered forthwith and without the presentation of any
26 evidence and without trial or adjudication of any issue of law or fact herein.

27 8. It is the intent of all the parties that the attached Stipulated Final Judgment is a full and
28 final settlement of all claims relating to price scanning discrepancies and injunction violations

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that were or could have been raised under applicable law prior to and including the date on which the Complaint was filed.

IT IS SO STIPULATED.

Dated: 6/18/14

MICHAEL A. RAMOS
San Bernardino District Attorney

By 
Douglas Poston
Deputy District Attorney

Dated: _____

JEFF ROSEN
Santa Clara District Attorney

By
Tiyen Lin
Deputy District Attorney

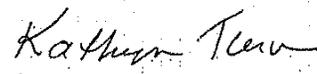
Dated: _____

BOB LEE
Santa Cruz District Attorney

By
William Atkinson
Assistant District Attorney

Dated: 5/19/2014

JAN I. GOLDSMITH, City Attorney

By 
Kathryn Turner
Deputy City Attorney

Attorneys for Plaintiff

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IT IS SO STIPULATED.

Dated: _____

MICHAEL A. RAMOS
San Bernardino District Attorney

By
Douglas Poston
Deputy District Attorney

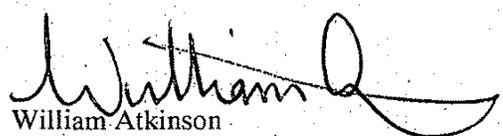
Dated: _____

JEFF ROSEN
Santa Clara District Attorney

By
Tiyen Lin
Deputy District Attorney

Dated: 5.2.14

BOB LEE
Santa Cruz District Attorney

By 
William Atkinson
Assistant District Attorney

Dated: _____

JAN I. GOLDSMITH, City Attorney

By
Kathryn Turner
Deputy City Attorney

Attorneys for Plaintiff

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IT IS SO STIPULATED.

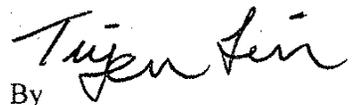
Dated: _____

MICHAEL A. RAMOS
San Bernardino District Attorney

By
Douglas Poston
Deputy District Attorney

Dated: 5/19/14

JEFF ROSEN
Santa Clara District Attorney

By 
Tiyen Lin
Deputy District Attorney

Dated: _____

BOB LEE
Santa Cruz District Attorney

By
William Atkinson
Assistant District Attorney

Dated: _____

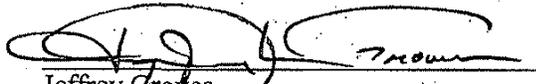
JAN I. GOLDSMITH, City Attorney

By
Kathryn Turner
Deputy City Attorney

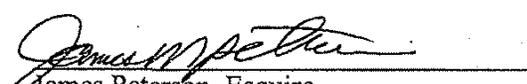
Attorneys for Plaintiff

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Dated: 6/23/14


Jeffrey Groves
Vice President-General Counsel
CSK Auto, Inc.
Defendant

Dated: 6/24/14


James Peterson, Esquire
Higgs Fletcher & Mack LLP

Attorneys for Defendant

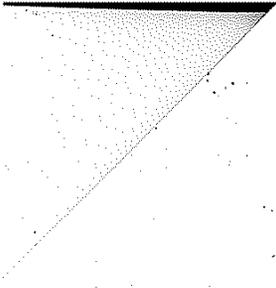


EXHIBIT 1

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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

CSK AUTO, INC., AN ARIZONA CORPORATION,

Defendant.

Case No.

STIPULATED FINAL JUDGMENT

EXHIBIT ONE (1)

Plaintiff, the People of the State of California, having filed its Complaint; and Defendant CSK Auto, Inc., ("CSK Auto, Inc.," or "Defendant"), an Arizona Corporation, having accepted service of the Complaint; and

Plaintiff, appearing through its attorneys, Michael A. Ramos, San Bernardino District Attorney, by Douglas Poston, Deputy District Attorney; Jeff Rosen, Santa Clara District Attorney, by Tiyen Lin, Deputy District Attorney; Bob Lee, Santa Cruz District Attorney, by William Atkinson, Assistant District Attorney; and Jan I. Goldsmith, San Diego City Attorney, by Kathryn Lange Turner, Deputy City Attorney; and Defendant, appearing by and through its attorneys, Higgs Fletcher & Mack LLP, by James M. Peterson; and

Plaintiff and Defendant having stipulated and consented to the entry of this Stipulated Final Judgment ("Judgment") prior to the taking of any proof, and without trial or adjudication of any issue of fact or law herein; and

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STIPULATED FINAL JUDGMENT - EXHIBIT ONE (1)

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The Court having considered the pleadings;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

JURISDICTION

1. This action is brought under California law and this Court has jurisdiction of its subject matter and parties.

DISCLAIMER OF ADMISSIONS

2. The provisions of this Judgment are entered as a result of the stipulation of the parties, without admission by Defendant regarding any factual or legal allegation in the Complaint.

APPLICABILITY

3. The provisions of this Judgment are applicable to Defendant, and to its officers, directors, employees, agents, servants and representatives acting within the course and scope of their agency and employment, and to successors and assignees of Defendant, and to all persons, partnerships, corporations, and other entities acting for, through, on behalf of or in concert with Defendant with actual or constructive notice of this Judgment. Unless otherwise stated, all obligations imposed upon Defendant by the terms of this Judgment are ordered by stipulation of the Parties based upon the alleged violations of Business and Professions Code sections 17203 and 17535.

INJUNCTIONS

4. Pursuant to this Judgment, Defendant, and all persons and entities set forth in Paragraph 3 above, and each of them, are permanently enjoined and restrained from directly or indirectly engaging in any of the following acts or practices in California:

A. Violating Business and Professions Code section 17500; and

B. At the time of sale of a commodity, charging an amount greater than the price that is then advertised, posted, marked, displayed or quoted for that commodity, in violation of Business & Professions Code section 12024.2;

5. Pursuant to this Judgment, Defendant and all persons and entities set forth in Paragraph 3 above, and each of them, shall administer and enforce for a period of five (5) years from the date of entry of this Judgment, in every existing store operated by Defendant in

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1 California, and in every new store operated by Defendant in California, a Compliance Program
2 intended to correct inaccurate shelf prices, in-store advertised prices, and scanner prices. This
3 program shall include, but is not limited to, the following:

4 A. Defendant shall appoint one (1) person at the corporate level (hereinafter
5 the Corporate Pricing Personnel or "CPP") who shall be charged with overseeing the Compliance
6 Program, with respect to all stores in California, addressing: (a) the maintenance of pricing
7 accuracy in the price scanning system, (b) price changes; and (c) resolution of pricing
8 discrepancies in the system or stores. The CPP may delegate duties to other employees, appoint
9 "back-up" CPP's, or retain third-party providers as the CPP deems reasonable and appropriate to
10 assist with the CPP's responsibilities. The CPP shall be the designated corporate contact for
11 inquiries from State of California Weights and Measures inspectors and/or any District Attorney
12 for counties representing The People of The State of California.

13 B. Each store in California shall designate a Price Auditor ("PA") who shall
14 be available between the hours of 8:30 a.m. and 5:00 p.m. on weekdays. The store manager may
15 serve the function of the PA.

16 (1) The duties of the PA shall be to maintain in-store pricing accuracy,
17 including, but not limited to, price scanner accuracy. The duties of the PA shall include, but not
18 be limited to, conducting price audits, promptly correcting pricing errors, promptly
19 communicating pricing errors to appropriate management personnel, and recording the results of
20 price audits.

21 (2) Each store PA shall conduct a minimum of one (1) audit per month of
22 at least fifty (50) items offered for sale in that store. The items for the audit may be selected by
23 the CPP and must include at least thirty (30) items selected by randomized process, taking into
24 consideration the methods set forth in the most current edition of the National Institute of
25 Standards and Technology Handbook 130—Examination Procedure for Price Verifications. The
26 remaining items selected for audit may include items targeted by the CPP based on considerations
27 such as items that were recently on sale, items that were the subject of alleged pricing violations,
28 items that have been the subject of a recent price change, or other reasons. Pricing errors

1 discovered during such audits shall be corrected in the store. If it appears to the PA that a pricing
2 error may extend beyond a single store, the PA shall report it to the CPP to take appropriate
3 action to correct potential pricing errors in other stores.

4 (3) The PA shall forward all reports and notices of inspections conducted
5 by the state or local department of Weights and Measures to the CPP.

6 C. The PA shall maintain copies of each audit for that store. All audits shall
7 be forwarded to the CPP who shall maintain a store log that identifies: (1) the date of the audit,
8 (2) the name and title of the person conducting the audit, (3) the number of items audited, (4) a
9 list of any pricing errors discovered during that audit including the item's description, correct
10 price and scanned price, and (5) a certification that the errors were corrected, along with the date
11 of the correction.

12 (1) The store audits shall be maintained in the store for a period of at least
13 three (3) months from the date of each audit. The store log shall be maintained in hard copy or
14 electronic format for a period of at least three (3) years from the date of the audit at the corporate
15 headquarters.

16 (2) The store log shall be made available for inspection within ten (10)
17 business days of the written request of any Weights and Measures Official to the corporate office.
18 (As used in this Judgment, the term Weights and Measures Official shall mean any representative
19 of the State of California Division of Measurement Standards, Department of Food and
20 Agriculture, or any representative of a County Sealer or Director of a County Department of
21 Agriculture, or any representative of the California Attorney General, a District Attorney, or a
22 City Attorney.)

23 D. Upon the occurrence of any regular, sale or promotional price change
24 covering one or more products in any of Defendant's stores in California, the PA or other
25 qualified person at each store shall effectuate the price change(s) and as part of that process shall
26 verify that all affected shelf prices and in-store signs are accurate. The PA or other qualified
27 person shall assure that any pricing inaccuracies are corrected promptly.

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1 E. Defendant shall establish a computer code at checkout registers identifying
2 the reason for any override of a scanner price reflecting a pricing error. Each store shall maintain
3 a daily price override report reflecting all scanner and pricing errors, if any, detected at the
4 cashier. These reports shall be maintained at each store for a period of at least three (3) months
5 from the date of each report and shall be made available promptly upon the request of any
6 Weights and Measures Official. The price override reports shall be maintained in hard copy or
7 electronic form at the corporate headquarters for a period of three (3) years from the date of the
8 report, and shall be made available for inspection within ten (10) days of a written request of any
9 Weights and Measures Official. The scanner and advertised prices for all items that were the
10 subject of a customer complaint resulting in a price override, shall be checked and if found
11 erroneous, corrected as soon as reasonably possible.

12 F. Whenever any employee of Defendant becomes aware that an item offered
13 for sale has scanned at a price that is higher than the lowest of either (a) any current advertised
14 newspaper and/or insert price or (b) any posted in-store price, whether containing an expiration
15 date or not, the customer shall receive a Five Dollar (\$5.00) reduction from the lowest advertised
16 or posted price for one of the items or, if the item's lowest advertised or posted price is Five
17 Dollars (\$5.00) or less, the customer shall receive one unit of such item for free. If a customer is
18 purchasing more than one of the same identical item for which a price discrepancy is found, in
19 addition to either the deduction of Five Dollars (\$5.00) from the price of one such item, or giving
20 the customer one such item for free, Defendant shall charge that customer the lowest advertised
21 or posted price on all remaining identical items purchased by that same customer in the same
22 purchase transaction. The duty to deduct Five Dollars (\$5.00) from the price of an overcharged
23 item or to provide it for free shall be honored for a period of fourteen (14) days from the date of
24 purchase. This program shall be referred to as the "\$5.00 Off Program." Nothing in this
25 paragraph deprives Defendant of the ability to reasonably verify the validity of any customer
26 claim made pursuant to the \$5.00 Off Program prior to providing any price deduction or free item
27 to the customer pursuant to the \$5.00 Off Program.

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1 (1) Defendant shall inform customers of the \$5.00 Off Program by posting
2 one "Scanner Price Guarantee" sign in every California store. Each sign shall be posted behind
3 the main counter where registers are located in the store on an end cap immediately to the right or
4 left of the recessed center cap. Each sign shall be unobstructed to customers standing at the
5 registers. The top of each sign shall line up with the bottom of the façade that reads,
6 "PROFESSIONAL Parts People." The signs shall be installed within one hundred twenty (120)
7 days after execution of this Judgment.

8 (2) Each Scanner Price Guarantee sign shall be twenty-three and one-half
9 by forty-eight inches (23.5" x 48") in size and shall be printed in Arial Narrow Bold font size 136
10 point in the header and 112 point in the body. The header on the sign shall read, "SCANNER
11 PRICE GUARANTEE TO OUR CUSTOMERS:" The body of the sign shall include the
12 following language:

13 "IF AN ITEM SCANS AT A PRICE HIGHER THAN THE SHELF OR
14 ADVERTISED PRICE, WE WILL CORRECT THE ERROR AND DEDUCT \$5.00
15 FROM THE LOWEST ADVERTISED PRICE OF ONE SUCH ITEM. IF THE
16 LOWEST ADVERTISED PRICE IS \$5.00 OR LESS, YOU WILL RECEIVE THE
17 ITEM FOR FREE. YOU WILL BE CHARGED THE LOWEST SHELF OR
18 ADVERTISED PRICE FOR ALL ADDITIONAL IDENTICAL ITEMS YOU ARE
19 BUYING AT THE SAME TIME.

20 (3) The price guarantee shall not be available to Defendant's employees or
21 members of their immediate family.

22 G. The records of the in-house procedures and audits required by or
23 maintained pursuant to this Judgment shall not be admissible in any subsequent proceeding
24 against or relating to any of the enjoined entities or persons by Plaintiff herein or by any third
25 parties; except that such records shall be admissible in subsequent proceedings to establish
26 compliance with or failure of compliance with the provisions of paragraph 5 of this Judgment.

27 H. After 42 (forty-two) months from the date of entry of this Stipulated Final
28 Judgment, Defendant may ask, and Plaintiff will agree, to meet and confer regarding the

1 continued imposition of the provisions of paragraph five.

2 6. Neither this Injunction, nor any provision hereof, shall be a defense, or be
3 admissible in support of a defense, to an action by the People for any future violation(s) of any
4 consumer protection law including, but not limited to, violations of the Business and Professions
5 Code.

6 **MONETARY RELIEF**

7 7. Pursuant to the Stipulation of the Parties, Defendant shall, within fifteen (15)
8 calendar days of the entry of this Judgment, pay to Plaintiff One Million One Hundred Twenty
9 Thousand Eight Hundred Fourteen Dollars and Twenty Cents (\$1,120,814.20) in the form of four
10 (4) certified checks, each in the amount of Two Hundred Eighty Thousand Two Hundred Three
11 Dollars and Fifty-Five Cents (\$280,203.55) payable to the "*San Bernardino District Attorney's*
12 *Office*," "*Santa Clara District Attorney's Office*," "*Santa Cruz District Attorney's Office*," and
13 "*San Diego City Treasurer*."

14 8. Defendant shall, within fifteen (15) calendar days of the entry of this Judgment,
15 pay to Plaintiff costs totaling One Hundred Sixty-One Thousand Nine Hundred Seventy-Seven
16 Dollars (\$161,977.00) in the form of twenty-eight (28) separate checks payable as follows:

17	San Bernardino District Attorney's Office	\$ 10,000
18	Santa Clara District Attorney's Office	\$ 5,000
19	Santa Cruz District Attorney's Office	\$ 5,000
20	San Diego City Attorney's Office	\$ 50,000
21	California Dept. of Food and Agriculture	\$ 17,766
22	Alameda Office of Weights & Measures	\$ 501
23	Contra Costa County Division of Weights and Measures	\$ 1,530
24	El Dorado County Dept. of Agriculture	\$ 193
25	Fresno County Dept. of Agriculture	\$ 3,157
26	Humboldt County Dept. of Agriculture	\$ 1,011
27	Imperial County Agricultural Commissioner	\$ 984
28	Kern County Dept. of Agriculture & Measurement Standards	\$ 873

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1	Los Angeles County Agricultural Commissioner	\$ 5,921
2	Madera County Dept. of Weights and Measures	\$ 251
3	Napa County Weights and Measures	\$ 880
4	Orange County Agricultural Commissioner	\$ 3,906
5	Riverside County Weights and Measures	\$ 9,053
6	Riverside District Attorney's Office	\$ 800
7	San Bernardino County Agriculture/Weights & Measures	\$17,970
8	San Diego County Agriculture, Weights and Measures	\$ 1,924
9	San Joaquin County Weights and Measures	\$ 1,825
10	San Luis Obispo County Dept. of Weights and Measures	\$ 225
11	San Mateo County Dept. of Agriculture/Weights and Measures	\$ 366
12	Santa Clara County Weights and Measures Division	\$ 4,946
13	Santa Cruz County Agricultural Commissioner	\$ 1,793
14	Sonoma County Sealer of Weights and Measures	\$ 5,424
15	Tulare County Agricultural Commissioner/Sealer	\$ 1,311
16	Ventura County Weights and Measures	\$ 9,367

17 9. Defendant shall, within fifteen (15) calendar days of the entry of this Judgment,
18 pursuant to this Stipulated Final Judgment, pay cy pres restitution in the sum of Two Hundred
19 Thousand Dollars (\$200,000.00) in the form of one (1) check payable to the Consumer Protection
20 Prosecution Trust Fund created by Stipulated Final Judgment and Permanent Injunction in the
21 case of *People v. ITT Consumer Financial Corporation, et. al.* (Alameda County Superior Court
22 No. 656038-0, filed on September 21, 1989), for the purpose of enhancing the investigation,
23 prosecution, and enforcement of consumer protection actions brought pursuant to the Unfair
24 Competition Law (Business and Professions Code section 17200 *et seq.*).

25 10. All checks shall be delivered to Deputy District Attorney Douglas Poston at the
26 Office of the San Bernardino District Attorney, Consumer and Environmental Protection Unit,
27 412 West Hospitality Lane, Suite 300, San Bernardino, California, 92415.

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11. In the event of default by Defendant as to any amount due hereunder, the whole amount due hereunder shall be deemed immediately due and payable as penalties to the Counties of San Bernardino, Santa Clara and Santa Cruz, and to the City of San Diego, and Plaintiff shall be entitled to pursue any and all remedies provided by law for the enforcement of this Judgment. Further, any amount in default shall bear interest at the prevailing legal rate from the date of default until paid.

RETENTION OF JURISDICTION

12. Jurisdiction is retained for the purpose of enabling any party to this Judgment to apply to the Court at any time for such further orders and directions as may be necessary and appropriate for the construction or carrying out of this Judgment, for the modification of any of its injunctive provisions, and for the enforcement of, compliance with, and for the punishment of violations of the Judgment.

13. The clerk is directed to immediately enter this Judgment.

DATE: 7/1, 2014



Keith D. Davis
Judge of the Superior Court

KEITH D. DAVIS



THE DOCUMENT TO WHICH THIS CERTIFICATION IS
ATTACHED IS A FULL, TRUE AND CORRECT COPY OF
THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE.

ATTEST CHRISTINA M. VOLKERS

Clerk of the Superior Court of the State of
California, in and for the County of
San Bernardino

Date JUL 08 2014

By Maria M. [Signature] Deputy