



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

March 5, 2018

DMS NOTICE
P – 18 – 01
DISCARD: RETAIN

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Settlement – Oil Changer, Inc., a California Corporation

Enclosed is a copy of the Stipulated Final Judgment and Permanent Injunction issued against Oil Changer, Inc., a California Corporation. The civil enforcement action case was filed on January 2, 2018, by the District Attorney's office for Alameda County. This judgement is a permanent injunction relief for a period of five years under California Business and Professions Code (BPC) §§17203 - 17204 and §17535 for violating BPC §17200 et seq. and §17500 et seq. regarding unfair and fraudulent business acts or practices related to the sale, or offer for sale, of petroleum products. In this action, violations also included selling or using additives designed or intended to convert a multi-vehicle or universal transmission fluid, or other base transmission fluid (e.g., Dexron III), into a different type of transmission fluid (e.g., Dexron VI), unless such additives are lawful for use; selling or using non-conforming engine oil for use in an internal combustion engine; and selling or using non-conforming lubricating oil for use in lubricating manual transmissions, gears, or axles that do not meet the quality standards under California law (BPC §§13460 - 13461 and §13700 et seq.).

Additional violations were cited for failing to shred, erase, or otherwise modify consumer's personal information when disposing of consumer records under their control (California Civil Code §1798.81) and for disposing in an unauthorized fashion, or causing the unauthorized disposal, of hazardous waste, including automotive fluids containing pourable amounts of lubricating liquid [California Health and Safety Code §25189.2(c)].

The California Department of Food and Agriculture (CDFA), Division of Measurement Standards (DMS) worked with weights and measures investigators from six counties on this case. The total settlement was for \$250,000. Civil penalties amounted to \$150,000, agency costs were \$75,000, and *cy pres* restitution in the amount of \$25,000 was placed in the Consumer Protection Prosecution Trust Fund. The Department appreciates the work done by the District Attorneys' offices in Alameda County, Contra Costa County, Fresno County, San Diego County, Santa Cruz County and Sonoma County.



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Settlement – Oil Changer, Inc., a California Corporation
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Alameda County should report these penalties on their County Monthly Report. All participating counties should separately record their individual investigative cost reimbursements in the appropriate columns on the report.

If you have any questions, please contact John Larkin, Supervising Special Investigator, Enforcement Branch at (916) 229-3000 or john.larkin@cdfa.ca.gov.

Sincerely,

A handwritten signature in blue ink that reads "Kristin Macey".

Kristin Macey
Director

Enclosure

cc: County/State Liaison, CDFA

1 NANCY E. O'MALLEY
District Attorney of Alameda County
2 Matthew L. Beltramo, Deputy District Attorney (SBN 184796)
7677 Oakport Street, Suite 650
3 Oakland, CA 94621
Telephone: (510) 383-8600
4 Facsimile: (510) 383-8615

5 *Additional counsel listed in Appendix A*
6 *Attorneys for Plaintiff*

JAN 02 2018

FILED
ALAMEDA COUNTY

JAN - 2 2017
CLERK OF THE SUPERIOR COURT
By *[Signature]* Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

11 PEOPLE OF THE STATE OF CALIFORNIA,
12
13 Plaintiff,
14 vs.
15 OIL CHANGER, INC., a California corporation,
16 Defendant.

Case No.: *R 18 887526*
FINAL JUDGMENT PURSUANT TO
STIPULATION

18 Plaintiff, the People of the State of California, appears through its attorneys: Nancy O'Malley,
19 District Attorney of Alameda County, by Deputy District Attorney Matthew L. Beltramo; Jill Ravitch,
20 District Attorney of Sonoma County, by Deputy District Attorney Matthew T. Cheever; Diana Becton,
21 District Attorney of ~~Contra Costa~~ County, by Deputy District Attorney John Ortiz; Lisa Smittcamp,
22 District Attorney of Fresno County, by Deputy District Attorney Sabrina Ashjian; Summer Stephan,
23 District Attorney of San Diego County, by Deputy District Attorney Stephen M. Spinella; and Jeffrey
24 Rosell, District Attorney of ~~Santa Cruz~~ County, by Assistant District Attorney Edward T. Browne. OIL
25 CHANGER, INC., a California corporation (hereinafter "Oil Changer" or "Defendant"), appears
26 through its attorneys: Downey Brand, LLP, by Stan Van Vleck and Bradley Carroll. The parties have
27 agreed to entry of this Stipulated Final Judgment and Permanent Injunction (hereinafter "Stipulated
28 Final Judgment") without the taking of proof and without this Stipulated Final Judgment constituting

1 evidence of or an admission by any party regarding any issue of fact or law alleged in the Complaint,
2 and Defendant having waived the right to appeal, and good cause appearing,

3 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:**

4 1. The Final Judgment has been reviewed by this Court and is found to have been entered in
5 good faith and to be, in all respects, just, reasonable, equitable and adequate to protect the public from
6 the occurrence in the future of the conduct alleged in the Complaint.

7 2. Unless otherwise stated, all obligations imposed upon Defendant by the terms of this
8 Final Judgment are ordered pursuant to sections 17200, et seq., and 17500, et seq., of the California
9 Business and Professions Code, including sections 17203, 17206, and 17535.

10 3. The Parties waive the right to appeal this Final Judgment both as to form and content.

11 **JURISDICTION AND VENUE**

12 4. This civil enforcement action is brought by Plaintiff in the public interest under the laws
13 of the State of California. As Defendant has offered for sale and/or sold products or services throughout
14 the State of California, including Alameda County, the Alameda County Superior Court ("Court") has
15 jurisdiction of the subject matter hereof and of the Parties hereto and is a proper venue for this action.

16 **APPLICABILITY**

17 5. This Final Judgment is applicable to Defendant and to its agents, employees,
18 representatives, officers, directors, managers, parents, subsidiaries, successors and assigns. The Final
19 Judgment also applies to Defendant to the extent it controls marketing, selling or distributing products
20 through licensees, franchisees or distributors, or in connection with a licensing agreement or product
21 distribution agreement. Whenever the term "Defendant" is used herein, it shall be understood and
22 defined as described above.

23 6. Nothing in this Final Judgment shall excuse Defendant from meeting any more stringent
24 requirements which may be imposed hereinafter by changes in applicable and legally-binding
25 legislation, regulations, ordinances and/or permits.

26 7. For purposes of this Stipulated Final Judgment, the following definitions apply:
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1 A. "TRANSMISSION FLUID" shall have the same meaning as defined in California
2 Business & Professions Code Section 13700(b), i.e., a lubricant, coolant, or liquid medium product
3 intended for use in a motor vehicle transmission.

4 B. "DMS" shall mean California Department of Food and Agriculture, Division of
5 Measurement Standards.

6 C. "LUBRICATING OIL" shall have the same meaning as defined in California
7 Business & Professions Code Section 13400(m), i.e., motor oil, engine lubricant, engine oil, lubricating
8 axle oil, gear oil, or manual transmission fluid.

9 D. "SELL," or any of its variants, shall have the same meaning as defined in
10 California Business & Professions Code Section 13400(t), i.e., attempt to sell, offer for sale or assist in
11 the sale of, permit to be sold or offered for sale or delivery, offer for delivery, trade, barter, or expose for
12 sale.

13 E. "PERSONAL INFORMATION" shall have the same meaning as defined in
14 California Civil Code Section 1798.80(e).

15 F. "CUSTOMER" shall have the same meaning as defined in California Civil Code
16 Section 1798.80(c).

17 G. "RECORD(S)" shall have the same meaning as defined in California Civil Code
18 Section 1798.80(b).

19 H. "YOU/YOUR" shall mean defendant Oil Changer, Inc., its employees, agents,
20 officers, directors, managers, representatives, subsidiaries, parent corporations or entities.

21 I. "ELECTRONIC WASTE" or "E-WASTE" shall mean an "electronic device" as
22 defined in Cal. Code of Regulations, title 22, section 66273.9 that is also a waste pursuant to Cal. Code
23 of Regulations, title 22, section 66273.3. ELECTRONIC WASTE is a hazardous waste because the
24 device exhibits the characteristic of toxicity and may be managed as a universal waste.
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1 INJUNCTIVE RELIEF

2 8. Defendant shall be and is hereby enjoined and restrained for a period of five (5) years
3 from entry of this Judgment, pursuant to California Business & Professions Code sections 17203, 17204
4 and 17535, from doing, directly or indirectly, the following within California:

5 A. Selling or using any additive designed or intended to convert a multi-vehicle or
6 universal TRANSMISSION FLUID, or other base TRANSMISSION FLUID (e.g., Dexron III), into a
7 different type of TRANSMISSION FLUID (e.g., Dexron VI), unless such additives are lawful for use by
8 Defendant. Nothing herein shall excuse Defendant from complying with all of the requirements for
9 selling, offering for sale, using, distributing, or labelling of TRANSMISSION FLUIDS set forth in
10 Business and Professions Code section 13700, *et seq.*, or its implementing regulations.

11 B. Violating California Business & Professions Code Section 13460 by SELLING or
12 using non-conforming engine oil for use in an internal combustion engine, or by SELLING engine oil
13 that does not meet the viscosity parameters for the specified type of oil in question (e.g., "5W30" or
14 "5W20").

15 C. Violating California Business & Professions Code Section 13461 by selling or
16 using non-conforming LUBRICATING OIL for use in lubricating manual transmissions, gears or axles,
17 or by SELLING LUBRICATING OIL that does not meet the viscosity parameters for the specified type
18 of oil in question (e.g., "5W30" or "5W20").

19 D. Violating California Civil Code Section 1798.81 by failing to shred, erase or
20 otherwise modify consumer's PERSONAL INFORMATION when disposing of CUSTOMER
21 RECORDS under Defendant's control. Defendant shall not be liable for the acts of the CUSTOMER or
22 unrelated third parties for failing to properly dispose of PERSONAL INFORMATION.

23 E. Violating California Health and Safety Code Section 25189.2(c) by disposing in
24 an unauthorized fashion, or causing the unauthorized disposal, of hazardous waste, including bottles of
25 automotive fluids containing pourable amounts of lubricating liquid, and ELECTRONIC WASTE.
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1 F. For the purposes of any subsequent action alleging a violation of the terms of this
2 Final Judgment, the Court must find that the failure to comply with said terms was committed with the
3 requisite state of mind in order to sustain a finding under Business and Professions Code section 17207
4 or any theory of contempt. Nothing in this Final Judgment shall relieve Defendant from complying with
5 any and all laws and regulations applicable to its ownership and operation of any oil change facility.

6 9. Defendant is hereby mandated and required, pursuant to California Business &
7 Professions Code sections 17203, 17204 and 17535, to do the following within California for a period of
8 five (5) years:

9 A. Maintenance of Automotive Fluid Records: Defendant shall retain a copy of all
10 delivery records, receipts, invoices, or other documentation tracking its purchase of all
11 TRANSMISSION FLUID and LUBRICATING OIL types for sale or use at each of Defendant's
12 facilities. Defendant shall retain all such records for a period of five (5) years and make them available
13 to the People upon request.

14 B. Confidential Personal Information Program: Defendant shall maintain procedures
15 for insuring that documents containing PERSONAL INFORMATION are properly shredded, altered or
16 destroyed before disposal, as set forth below:

- 17
- 18 i. Defendant shall maintain a nightly courier bag, which is secured at all
19 times, at each of its facilities for purposes of disposal of documents
20 containing PERSONAL INFORMATION.
 - 21 ii. Defendant shall instruct and train all of its employees to place any paper
22 with PERSONAL INFORMATION in the nightly courier bag.
 - 23 iii. The nightly courier bags shall be sent to Defendant's headquarters in
24 Pleasanton where the documents containing PERSONAL
25 INFORMATION will be picked up and destroyed by a third-party
26 document destruction company.
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- iv. Defendant shall use the services of a third-party document destruction company that picks up and destroys the documents sent by nightly courier bag, which is secured at all times, and containing PERSONAL INFORMATION.
- v. All of Defendant's new hires shall receive training and documentation about proper protection and disposal of PERSONAL INFORMATION.
- vi. All of Defendant's employees shall receive follow up training at least once per year about proper protection and disposal of PERSONAL INFORMATION.
- vii. Defendant's Regional Managers shall perform onsite inspections quarterly of dumpsters or other large waste bins at each of Defendant's facilities to ensure proper protection and disposal of PERSONAL INFORMATION.
- viii. Defendant shall designate a Compliance Officer who shall perform annual onsite inspections of dumpsters or other large waste bins at each of Defendant's facilities to ensure proper protection and disposal of documents containing PERSONAL INFORMATION.

C. Proper Disposal of Automotive Fluid Containers: Defendant shall maintain procedures for insuring that all containers of automotive fluids are properly drained before disposal, such that no pourable amount of liquid remains, as set forth below:

- i. All of Defendant's new hires shall receive training and documentation about proper draining and disposal of automotive fluid containers.
- ii. All of Defendant's employees shall receive follow-up training at least once a year about proper draining and disposal of automotive fluid containers.

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- iii. Defendant's Regional Managers shall perform quarterly onsite inspections of dumpsters or other large waste bins at each of Defendant's facilities to ensure proper draining and disposal of automotive fluid containers.
- iv. A Compliance Officer designated by Defendant shall perform annual onsite inspections of dumpsters or other large waste bins at each of Defendant's facilities to ensure proper draining and disposal of automotive fluid containers.
- v. To facilitate the proper drainage of any residual fluids prior to disposal, Defendant shall utilize and maintain a container drain system or "rack" at each of its locations.
- vi. Defendant shall ensure that all drained automotive fluids are managed and disposed of properly.

D. Electronic Waste: Defendant shall maintain procedures for insuring proper recycling or disposal of ELECTRONIC WASTE, as set forth below:

- i. All of Defendant's new hires shall receive training and documentation about proper recycling and disposal of E-WASTE.
- ii. All of Defendant's employees shall receive follow-up training at least once a year regarding proper recycling and disposal of E-WASTE.
- iii. Defendant's Regional Managers shall perform quarterly onsite inspections of dumpsters or other large waste bins at each of Defendant's facilities to ensure proper recycling and disposal of E-WASTE.
- iv. A Compliance Officer designated by Defendant shall perform annual onsite inspections of dumpsters or other large waste bins at each of Defendant's facilities to ensure proper recycling and disposal of E-WASTE.

1 v. Defendant shall ensure that E-WASTE is properly managed and disposed
2 of pursuant to the Standards for Universal Waste Management (Cal. Code
3 of Regulations, title 22, division 4.5, Chapter 23).

4 E. Record Keeping: Defendant shall maintain records demonstrating its compliance
5 with the Paragraph 9 of the Final Judgment, and all of its subparagraphs. Such records shall be made
6 available to Plaintiff upon request within twenty (20) days.

7
8 **MONETARY RELIEF**

9 10. The total monetary relief in this matter is TWO HUNDRED FIFTY THOUSAND
10 DOLLARS (\$250,000.00), which shall be paid and allocated as follows:

11 A. Restitution: Recognizing the infeasibility of identifying injured consumers who
12 may have suffered actual loss, the impracticality of providing direct restitution to said consumers, and
13 the disproportionate cost of making restitution to individual consumers, which would exceed the benefit
14 consumers would gain, the parties agree that Defendants shall pay, pursuant to Business and Professions
15 Code sections 17203 and 17535, *cy pres* restitution in the sum of TWENTY-FIVE THOUSAND
16 DOLLARS (\$25,000.00) payable to the Consumer Protection Prosecution Trust Fund, established in
17 *People v. IIT Consumer Financial Corporation, et al.*, Alameda Superior Court Case No. 656038-0, for
18 the investigation and prosecution of consumer protection matters. Payment shall be in the form of a
19 check made payable to the "Consumer Protection Prosecution Trust Fund" and delivered via hand
20 delivery or overnight mail care of Matthew Beltramo, Deputy District Attorney, Alameda County
21 District Attorney's Office, 7677 Oakport Street, Suite 650, Oakland, California 94621, no later than
22 three (3) business days after the date this Final Judgment is entered.

23
24 B. Investigative Costs: Defendant is further ordered pursuant to Business and
25 Professions Code sections 17203 and 17535, to pay stipulated investigative costs in the total amount of
26 SEVENTY-FIVE THOUSAND DOLLARS (\$75,000.00). Investigative costs shall paid in the form of a
27 check made payable to the "California Department of Food and Agriculture/Division of Measurement
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1 Standards", and delivered via hand delivery or overnight mail care of Matthew Beltramo, Deputy
2 District Attorney, Alameda County District Attorney's Office, 7677 Oakport Street, Suite 650, Oakland,
3 California 94621, no later than three (3) business days after the date this Final Judgment is entered.

4
5 C. Civil Penalties: Defendant is hereby ordered pursuant to Business & Professions
6 Code sections 17206 and 17536, to pay civil penalties in the total amount of ONE HUNDRED FIFTY
7 THOUSAND DOLLARS (\$150,000.00). Civil penalties shall paid in the form of a check made payable
8 to "Alameda County f/b/o District Attorney", and delivered via hand delivery or overnight mail care of
9 Matthew Beltramo, Deputy District Attorney, Alameda County District Attorney's Office, 7677 Oakport
10 Street, Suite 650, Oakland, California 94621, no later than three (3) business days after the date this
11 Final Judgment is entered. The Alameda County District Attorney's Office shall distribute the payment
12 in equal amounts (i.e., \$25,000.00 each) to the six counties whose District Attorneys represent the People
13 in this action, in accordance with Business and Professions Code section 17206 and Government Code
14 Section 26506.

15 COMPLIANCE

16 11. For the purpose of securing compliance with the terms of this Final Judgment, Defendant
17 is hereby ordered and mandated to do all of the following:

18 A. Within thirty (30) days of the date of the entry of this Final Judgment, Defendant
19 shall provide a copy of this Final Judgment to each of its current principals, officers, directors and
20 managers, affiliates, subsidiaries and to all personnel, agents, and representatives having primary
21 authority over marketing and advertising with respect to the subject matter of this Final Judgment and
22 shall obtain from each such person a legible signed written acknowledgment indicating that he or she
23 has received a copy of this Final Judgment, read it, understood its terms, and agreed to fully abide by all
24 of its terms. Defendant shall provide written verification of such acknowledgments to representatives of
25 Plaintiff within fifteen (15) days of any written request to do so;

26 B. For a period of five (5) years after entry of this Final Judgment, Defendant shall
27 provide a copy of this Final Judgment to each of its future principals, officers, directors and managers,
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1 future subsidiaries, and to all future personnel, agents and representatives having primary authority over
2 marketing and advertising with respect to the subject matter of this judgment within ten (10) days after
3 the person commences his or her responsibilities. Defendant shall obtain from each such person a
4 legible signed written acknowledgment indicating that he or she received a copy of this Final Judgment,
5 read it, understood its terms, and agreed to fully abide by all of its terms. Defendant shall maintain and
6 upon request make available, within fifteen (15) days of receipt of a written request, to representatives of
7 Plaintiff for inspection and copying, all such legible signed written acknowledgments.

8 **JURISDICTION RETAINED**


9
10 12. Jurisdiction is retained for the purposes of enabling any Party to apply to the Court at any
11 time for such order or directions as may be necessary or appropriate for the construction of or carrying
12 out of this Final Judgment, for the modification or termination of any of the provisions thereof, for the
13 enforcement of compliance therewith, or for the punishment of violations thereunder.

14 **EFFECT AND ENTRY**

15 13. This Final Judgment shall take effect immediately upon entry hereof.

16 Dated:

17 January 2, 2018

18 
19 JUDGE OF THE SUPERIOR COURT
20 Judge Wynne Carvill

APPENDIX A

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JILL R. RAVITCH
District Attorney of Sonoma County
Matthew T. Cheever, Deputy District Attorney (SBN 191783)
2300 County Center Dr., Ste. B170
Santa Rosa, CA 95403
Matthew.Cheever@sonoma-county.org
Telephone: (707) 565-3161
Facsimile: (707) 565-3499

DIANA BECTON
District Attorney of Contra Costa County
John Ortiz, Deputy District Attorney
(SBN 118274)
900 Ward Street
Martinez, CA 94553
Telephone: (925) 957-8604
Facsimile: (925) 646-4683

LISA A. SMITTCAMP
District Attorney of Fresno County
Sabrina Ashjian, Deputy District Attorney
(SBN 256981)
2220 Tulare Street, Suite 1000
Fresno, CA 93721
Telephone: (559) 600-3141
Facsimile: (559) 600-4400

SUMMER STEPHAN
District Attorney of San Diego County
Stephen M. Spinella, Deputy District Attorney
(SBN 144732)
330 W. Broadway, Suite 750
San Diego, CA 92101
Telephone: (619) 515-8160
Facsimile: (619) 237-1351

JEFFREY ROSELL
District Attorney of Santa Cruz County
Edward T. Browne, Assistant District Attorney
(SBN 167638)
701 Ocean Street, Room 200
Santa Cruz, CA 95060
Telephone: (831) 454-2400
Facsimile: (831) 454-2694