



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

A. G. Kawamura, Secretary

DMS Notice
QC – 08 – 10

November 24, 2008

Discard: Retain

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: **CSK Auto Inc (Kragen) Settlement**

Attached is a stipulation and final judgment involving recent litigation against CSK Auto Inc for violations of the California Business and Professions Code Section 12024.2. We are again very pleased with the fine work done on behalf of the people, by the prosecution team representing San Bernardino, Santa Clara, and Santa Cruz County District Attorneys. The settlement specified more than \$665,000 in penalties and reimbursements for investigative costs.

The prosecuting counties named above should report these penalties as received by each county in the County Monthly Report (CMR). All participating counties should also separately record their individual investigative cost reimbursements in the appropriate columns in the report. We in weights and measures are pleased with the continued support and hard work from the participating district attorneys.

Sincerely,

A handwritten signature in blue ink that reads "Edmund E. Williams".

Edmund E. Williams

Cc: QC Special Investigators
Kevin Masuhara, Director, County/State Liaison

COPY

1 MICHAEL A. RAMOS, District Attorney
County of San Bernardino
2 R. GLENN YABUNO, No. 109471
Deputy District Attorney
3 412 W. Hospitality Lane, Suite 301
San Bernardino, CA 92415
4 Telephone (909) 891-3330

Exempt from fee pursuant to
Government Code §6103

5 DOLORES A. CARR, District Attorney
County of Santa Clara
6 ROBIN B. WAKSHULL
Deputy District Attorney
7 70 W. Hedding Street, West Wing
San Jose, CA 95110
8 Telephone: (408) 792-2584

FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

OCT 28 2008

BY Olivia McDonald
DEPUTY

9 BOB LEE, District Attorney
County of Santa Cruz
10 WILLIAM ATKINSON
Assistant District Attorney
11 701 Ocean Street, Room 200
Santa Cruz, CA 95060
12 Telephone: (831) 454-2542

13 Attorneys for Plaintiff

14 SUPERIOR COURT OF CALIFORNIA

15 COUNTY OF SAN BERNARDINO

16
17 PEOPLE OF THE STATE OF CALIFORNIA,)
18 Plaintiff,)
19 v.)
20 CSK AUTO, INC.,)
21)
22 Defendant.)

NO. CIVSS 812774
FINAL JUDGMENT AND
PERMANENT INJUNCTION
PURSUANT TO STIPULATION

23 Plaintiff, appearing through its attorneys, Michael A. Ramos, District Attorney for the
24 County of San Bernardino by R. Glenn Yabuno, Deputy District Attorney, Dolores A. Carr,
25

Final Judgment and Permanent Injunction Pursuant to Stipulation

1 District Attorney for the County of Santa Clara by Robin B. Wakshull, Deputy District
2 Attorney and Bob Lee, District Attorney for the County of Santa Cruz by William Atkinson,
3 Assistant District Attorney, and Defendant, CSK Auto, Inc., appearing through its attorney,
4 Wayne Ducharme; and

5 Plaintiff and Defendant having stipulated to the entry of this Final Judgment and
6 Permanent Injunction prior to the taking of any proof and without trial or adjudication of any
7 issue of fact or law; and

8 The Court having considered the pleadings;

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

10 **JURISDICTION**

11 1. This action is brought under California law, and this Court has jurisdiction of
12 the subject matter and the parties.

13 **APPLICABILITY**

14 2. This Judgment, and the permanent injunction it contains, are applicable to
15 Defendant CSK Auto, Inc. ("CSK"), its officers, directors, representatives, successors,
16 assignees and all persons, partnerships, corporations, and other entities acting under, by,
17 through, on behalf of, or in concert with Defendant with actual or constructive knowledge of
18 this Judgment, and to the subsidiaries of CSK, and their respective officers, directors,
19 representatives, successors, assignees and all persons, partnerships, corporations, and
20 other entities acting under, by, through, on behalf of, or in concert with any such subsidiary
21 with actual or constructive knowledge of this Judgment (hereinafter collectively referred to
22 as "Enjoined Persons").

23 **INJUNCTION**

24 3. Pursuant to Business and Professions Code sections 17203 and 17535,
25

Final Judgment and Permanent Injunction Pursuant to Stipulation

1 Enjoined Persons, and each of them, are permanently enjoined and restrained from directly
2 or indirectly engaging in any of the following acts or practices:

3 A. Making or causing to be made to the public any statement
4 representing a price for an item offered for sale, including but not limited to
5 statements made on a store shelf, or sign near the item, and charging a greater
6 price at the time the item is purchased, in violation of Business and Professions
7 Code section 17500;

8 B. Charging at the time of sale of a commodity, a value which is more
9 than the lowest advertised, posted or quoted price for the commodity, in violation of
10 Business & Professions Code § 12024.2;

11 4. Pursuant to Business and Professions Code sections 17203 and 17535,
12 Enjoined Persons, and each of them, shall administer and enforce in every existing store
13 operated by CSK in California, and in every new store operated by CSK in California, a
14 Compliance Program to correct mislabeled shelf prices, incorrect in-store advertised prices,
15 and inaccurate scanner prices. The Compliance Program described in paragraphs 4 shall
16 terminate five (5) years after the date of entry of this Judgment. This program shall include,
17 but is not limited to, the following:

18 A. **CORPORATE PRICING PERSONNEL.** CSK shall appoint one person
19 at the corporate level (hereinafter "CPP") who shall be charged with overseeing, with
20 respect to all stores in California: (a) the maintenance of pricing accuracy in the
21 Price Scanning System, (b) price changes, and (c) resolution of Pricing
22 Discrepancies in the system or stores. The CPP may delegate duties to other CSK
23 employees, appoint "back-up" CPPs, or retain third-party providers as the CPP
24 deems reasonable and appropriate to assist with the CPP's responsibilities. The
25 CPP shall be the designated corporate contact for inquiries from State of California

1 Weights and Measures inspectors and/or any District Attorney for counties
2 representing The People of The State of California.

3
4 B. Each store in California shall designate for all hours it is open to the
5 public an employee or employees whose duties shall include those of Price Auditor
6 ("PA"). The store manager may serve the function of the PA.

7 (1) The duties of the PA shall be to maintain in-store pricing accuracy,
8 including, but not limited to, price scanner accuracy. The duties of the PA
9 shall include, but not be limited to, conducting price audits, promptly
10 correcting pricing errors, promptly communicating pricing errors to appropriate
11 management personnel, and recording the results of price audits.

12 (2) Each store PA shall conduct a minimum of one audit per month of
13 at least 50 items offered for sale in that store. The items for the audit may be
14 selected by the CPP and must include at least 30 items selected by
15 randomized process, taking into consideration the methods set forth in the
16 most current edition of the National Institute of Standards and Technology
17 Handbook 130—Examination Procedure for Price Verifications. The
18 remaining items selected for audit may include items targeted by the CPP
19 based on considerations such as items that were recently on sale, items that
20 were the subject of alleged pricing violations, items that have been the
21 subject of a recent price change, or other reasons. Pricing errors discovered
22 during such audits shall be corrected in the store. If it appears that a pricing
23 error may extend beyond a single store, the PA shall report it to the CPP to
24 take appropriate action statewide.

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

C. The PA shall maintain a log of each audit for that store, which store log shall include: (1) the date of the audit, (2) the name and title of the person conducting the audit, (3) the number of items audited, (4) a list of any pricing errors discovered during that audit including the item's description, correct price and scanned price, and (5) a certification that the errors were corrected, along with the date of the correction.

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

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

D. Upon the occurrence of any regular, sale or promotional price change covering one or more products in any CSK store in California, the PA or other qualified person at each store shall effectuate the price change(s) and as part of

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that process shall verify that all affected shelf prices and in-store signs are accurate. The PA or other qualified person shall assure that any pricing inaccuracies are corrected promptly

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

F. Whenever Defendant is notified by a customer and verifies that an item has scanned at a price that is higher than the lowest of either (a) any current advertised newspaper and/or insert price or (b) any posted in-store price, whether containing an expiration date or not, the customer shall receive a Five Dollar (\$5.00) reduction from the lowest advertised or posted price for one of the items or, if the item's lowest advertised or posted price is Five Dollars (\$5.00) or less, the customer shall receive one unit of such item for free. Additional purchases of the same item shall be at the lowest advertised or posted price.

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(1) Defendant shall inform customers of this policy by posting a sign in a location clearly visible to customers standing in the check-out line at every checkout stand in every store operated by it in California.

(2) The signs shall be at least seven inches by eleven inches (7 x 11") in size and shall state:

SCANNER PRICE GUARANTEE TO OUR CUSTOMERS: "IF AN ITEM SCANS AT A PRICE HIGHER THAN THE LOWEST CURRENTLY ADVERTISED OR POSTED PRICE, WE WILL CORRECT THE ERROR AND DEDUCT FIVE DOLLARS (\$5.00) FROM THE LOWEST CURRENTLY ADVERTISED OR POSTED PRICE OF ONE UNIT OF SUCH ITEM. IF THE LOWEST CURRENTLY ADVERTISED OR POSTED PRICE IS FIVE DOLLARS (\$5.00) OR LESS, YOU WILL RECEIVE ONE UNIT OF SUCH ITEM FOR FREE." A sample of the sign is attached as Exhibit A.

(3) The price guarantee shall not be available to CSK employees or members of their immediate family.

G. The records of the in-house procedures and audits required by or maintained pursuant to this Judgment shall not be admissible in any subsequent proceeding against or relating to any Enjoined Persons by Plaintiff herein or by any third parties; except that such records shall be admissible in subsequent proceedings to establish compliance or failure of compliance with the provisions of paragraph 4 of this Judgment.

5. Neither this Injunction, nor any provision hereof, shall be a defense, or be admissible in support of a defense, to an action by the People for any future violation(s) of

1 any consumer protection law including, but not limited to violations of the Business and
2 Professions Code

3
4 **MONETARY RELIEF**

5 6. On or before the filing of this Judgment, Defendant shall pay to Plaintiff as
6 and for costs the sum of \$75,610.24 by check made payable to the San Bernardino County
7 District Attorney and delivered to R. Glenn Yabuno, San Bernardino County District
8 Attorney's Office, 412 W. Hospitality Lane, Suite 301, San Bernardino, California 92415-
9 0023. Said costs shall be distributed by San Bernardino County District Attorney's Office to
10 the agencies listed below, as follows:

11	<u>San Bernardino</u>	<u>\$13,984.38</u>
12	<u>Del Norte County</u>	<u>\$328.10</u>
13	<u>Kings County</u>	<u>\$508.60</u>
14	<u>Lassen County</u>	<u>\$154.00</u>
15	<u>Marin County</u>	<u>\$1,155.95</u>
16	<u>Mendocino County</u>	<u>\$177.66</u>
17	<u>Napa County</u>	<u>\$330.00</u>
18	<u>Nevada County</u>	<u>\$73.07</u>
19	<u>Riverside County</u>	<u>\$3,607.70</u>
20	<u>San Diego County</u>	<u>\$13,543.48</u>
21	<u>San Francisco County</u>	<u>\$578.00</u>
22	<u>San Joaquin County</u>	<u>\$1,112.70</u>
23	<u>San Luis Obispo County</u>	<u>\$264.00</u>
24	<u>Santa Clara County</u>	<u>\$12,770.27</u>
25	<u>Santa Cruz County</u>	<u>\$1,664.00</u>
	<u>Shasta County</u>	<u>\$191.55</u>
	<u>Sonoma County</u>	<u>\$7,650.00</u>

Final Judgment and Permanent Injunction Pursuant to Stipulation

1	<u>Stanislaus County</u>	<u>\$2,015.51</u>
2	<u>Sutter County</u>	<u>\$124.09</u>
3	<u>Tehama County</u>	<u>\$288.71</u>
4	<u>Ventura County</u>	<u>\$4,224.00</u>
5	<u>Los Angeles County</u>	<u>\$3,023.46</u>
6	<u>CA. Dept. of Agriculture-DMS</u>	<u>\$7,700.76</u>

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8 7. On or before the filing of this Judgment, Defendant shall pay to Plaintiff as

9 civil penalties and attorney's fees the sum of \$515,000.00 by check made payable to the

10 San Bernardino County District Attorney and delivered to R. Glenn Yabuno. Pursuant to

11 Business and Professions Code 17200 and 17500, \$500,00.00 is designated as civil

12 penalties and \$15,000.00 is designated as attorney's fees. Pursuant to Government Code

13 Section 26506 said civil penalty shall be divided equally and paid to each of the prosecuting

14 agencies bringing this action as follows:

- 15 San Bernardino County District Attorney's Office \$172,000.00
- 16 Santa Clara County District Attorney's Office \$171,500.00
- 17 Santa Cruz County District Attorney's Office \$171,500.00

18 8. Recognizing the infeasibility of identifying injured consumers who suffered actual

19 loss, the impracticality of providing direct restitution to said consumers, and the

20 disproportionate cost of making restitution to individual consumers, which would far exceed

21 the benefit consumers would gain. CSK shall, pursuant to Business and Professions Code

22 sections 17203 and 17535, within thirty (30) days of Entry of Judgment deliver to R. Glenn

23 Yabuno a check in the amount of \$75,000.00 made payable to the Consumer Protection

24 Prosecution Trust Fund, previously created by the Stipulated Final Judgment and

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1 Permanent Injunction in the case of *People v. ITT Consumer Financial Corporation, et al.*
2 (Alameda County Superior Court No. 656038-0, filed on September 21, 1989), for the
3 purpose of enhancing the investigation, prosecution, and enforcement of consumer
4 protection actions brought pursuant to the Unfair Competition Law (Bus. & Prof. Code, §
5 17200 et seq.), by the California Attorney General, district attorneys, and city attorneys
6 authorized to bring such actions pursuant to Business and Professions Code section
7 17206.

8 9. Except as otherwise provided herein, each party shall bear its own attorney's
9 fees and costs.

10 10. The parties to this action shall not to seek any further relief relating to the
11 pricing accuracy matters alleged in the Complaint herein. This paragraph is intended to
12 inter alia, make clear that Plaintiff shall not seek further relief or penalties for the consumer
13 overcharges or advertising violations alleged in the Complaint which occurred prior to the
14 date of this Stipulated Final Judgment.

15 **RETENTION OF JURISDICTION**

16 11. Jurisdiction is retained for the purpose of enabling any party to this Final
17 Judgment to apply to the Court at any time for such further orders and directions as may be
18 necessary and appropriate for the construction or carrying out of this Final Judgment, for
19 the modification or termination of any of the injunctive provisions, and for the enforcement
20 of, compliance with, and punishment of violations of this Final Judgment. Without limiting
21 the foregoing, the Parties acknowledge that CSK may seek termination of the permanent
22 injunction at some future point based on CSK's compliance with the Final Judgment for an
23 extended period, changed circumstances and/or and the lack of any ongoing necessity for
24 the permanent injunction. The Stipulated Final Judgment is without prejudice to the grant
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Final Judgment and Permanent Injunction Pursuant to Stipulation

1 of any such motion

2 12. The Final Judgment has been reviewed by the Court, and based upon the
3 representations of the parties, the Court finds that it has been entered in good faith and is
4 fair, just, and equitable to protect the public interest. The terms of this Final Judgment are
5 intended to provide full statewide relief to the People of the State of California and the
6 individuals who were allegedly overcharged. This Final Judgment shall be given maximum
7 res judicata effect pertaining to any of the acts, practices, or conduct of the nature alleged
8 in the Complaint filed contemporaneously with this Final Judgment, which acts allegedly
9 occurred prior to the date of the entry of this Final Judgment.

10 13. This Stipulated Judgment shall take effect immediately
11 upon its filing and without the filing of a Notice of Entry of Stipulated Judgment

12 14. The clerk is directed to immediately enter this Judgment.

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15 IT IS SO ORDERED:

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17 DATED: OCT 28 2008

18 Janet M. Frazee
19 JUDGE OF THE SUPERIOR COURT
20 In the absence of Judge
21 John P. Wade.

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25

Final Judgment and Permanent Injunction Pursuant to Stipulation

1 [ADDITIONAL LIST OF PLAINTIFF'S COUNSEL BY ASSOCIATION]

2 DOLORES A. CARR, District Attorney
3 County of Santa Clara
4 ROBIN B. WAKSHULL
5 Deputy District Attorney
6 70 W. Hedding Street, West Wing
7 San Jose, CA 95110
8 Telephone: (408) 792-2584

9 BOB LEE, District Attorney
10 County of Santa Cruz
11 WILLIAM ATKINSON
12 Assistant District Attorney
13 701 Ocean Street, Room 200
14 Santa Cruz, CA 95060
15 Telephone: (831) 454-2542

16 IT IS HEREBY STIPULATED by and between the Plaintiff, THE PEOPLE OF THE
17 STATE OF CALIFORNIA, through its attorneys MICHAEL A. RAMOS, District Attorney for
18 the County of San Bernardino, by R. Glenn Yabuno, Deputy District Attorney; DOLORES A.
19 CARR, District Attorney of Santa Clara County by Robin B. Wakshull, Deputy District
20 Attorney and BOB LEE, District Attorney of Santa Cruz County by William Atkinson,
21 Assistant District Attorney and Defendant CSK AUTO, INC., appearing through its attorney
22 Shughart, Thompson & Kilroy by Wayne Ducharme, that the Court may enter the Judgment
23 attached to this Stipulation as Exhibit A and incorporated herein as if set forth in its entirety.

24 IT IS FURTHER STIPULATED that the Defendants have actual Notice of this
25 Judgment.

26 IT IS FURTHER STIPULATED that this Stipulation may be signed in counterparts.

27 IT IS FURTHER STIPULATED by all parties that the Judgment may be signed by
28 any Judge or Commissioner of the Superior Court of the State of California, County of San
Bernardino, and entered by the Clerk upon application of the Plaintiff, without notice,
providing that this Stipulation has been executed by counsel listed below.

IT IS FURTHER STIPULATED that any Complaint filed contemporaneously with this
Judgment shall be deemed timely filed if filed.

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DATED:

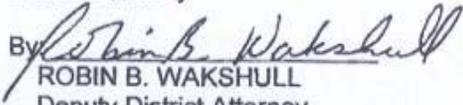
MICHAEL A. RAMOS
District Attorney

By: _____

R. GLENN YABUNO
Deputy District Attorney
Specialized Prosecutions Group

DATED: 10/1/08

DOLORES A. CARR
District Attorney

By: 
ROBIN B. WAKSHULL
Deputy District Attorney

DATED:

BOB LEE
District Attorney

By: _____

WILLIAM ATKINSON
Assistant District Attorney

DATED:

WAYNE PRICE
Vice-President, Risk Management

DATED:

WAYNE DUCCHARME
Attorney for CSK AUTO, INC.

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DATED:

MICHAEL A. RAMOS
District Attorney

By: _____
R. GLENN YABUNO
Deputy District Attorney
Specialized Prosecutions Group

DATED:

DOLORES A. CARR
District Attorney

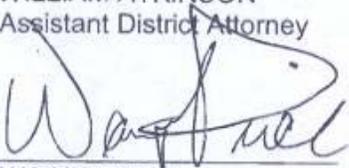
By: _____
ROBIN B. WAKSHULL
Deputy District Attorney

DATED:

BOB LEE
District Attorney

By: _____
WILLIAM ATKINSON
Assistant District Attorney

DATED: 9/25/08


WAYNE PRICE
Vice-President, Risk Management

DATED:

WAYNE DUCHARME
Attorney for CSK AUTO, INC.

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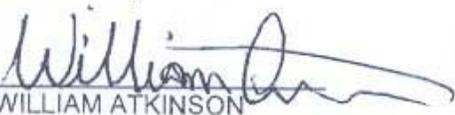
DATED: 9/30/08

MICHAEL A. RAMOS
District Attorney
By: 
R. GLENN YABUNO
Deputy District Attorney
Specialized Prosecutions Group

DATED:

DOLORES A. CARR
District Attorney
By: _____
ROBIN B. WAKSHULL
Deputy District Attorney

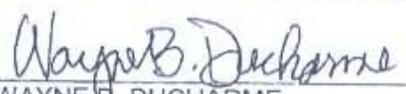
DATED: 10/21/08

BOB LEE
District Attorney
By: 
WILLIAM ATKINSON
Assistant District Attorney

DATED:

WAYNE PRICE
Vice-President, Risk Management

DATED: 9/25/08

SHUGHART THOMSON & KILROY, P.C.

WAYNE B. DUCHARME
Attorney for CSK AUTO, INC.