

1 informed of the supplies purportedly provided and is therefore denied the
2 information necessary to judge whether or not the charge is justified.

3 7. Indeed, there are no shop supplies consumed during the typical oil
4 change, nor were any such supplies provided to any of the class members. In
5 reality, so called supply items are items used in the business (for example rags or
6 tools) that constitute overhead expense— as distinguished from items sold to the
7 consumer, such as filters and oil.

8 **Bogus Fees Implemented By Centers**
9 **Operators With the Knowledge and Consent of Chevron Utilizing Standard**
10 **Invoices Required by Chevron**

11 8. Both the oil recycling or disposal fees and shop supply fees were
12 charged with the knowledge, consent and active participation of Chevron. The
13 Operators were at all times required to print and issue to customers an invoice
14 identical to that depicted in the Guide. which features the HXL-Chevron logo in the
15 upper left hand corner of the invoice. See § 8 ¶ 2 of Ex. 2. In addition, Chevron
16 regularly published coupons, that specifically reference and attempt to legitimize
17 these deceptive charges, for use by participating Centers across the country. *See*
18 *HXL-Chevron logo below required on invoices and exemplar of coupons issued*
19 *by HXL-Chevron as a part of its nationwide marketing campaign.*



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25 HXL-Chevron trademark in upper left corner of required invoice.
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02/20/17

www.havolineexpresslube.com/print/

Please note that most offers cannot be combined.



http://www.havolineexpresslube.com/print/

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9. These Centers operate under the daily guidance and control of Chevron d/b/a Havoline Xpress Lube (“Chevron”) as mandated by the *Standard Sales Program Agreement* between these Operators and Chevron, attached as *Exhibit 2*, as well as a comprehensive ‘*Guide to Operators*’ *Exhibit 3* both contracts formed in the State of California. [“Contracts”]

10. The word mark “Havoline Xpress Lube Chevron” along with its mark drawing is a trademark wholly owned by Chevron, which was prominently displayed

1 on the exterior and interior of these Centers, as provided for by the Contracts. See
2 trademark below. Specifically, an unobstructed view of the HXL Chevron trade
3 mark was required by the “Guide to Operators” to be affixed to the lobby door, front
4 and side walls of the building exterior and on an interior menu of services and
5 prices, all as required by the *Guide to Operators, Exhibit 3*.

6 11. The purpose or reason for the recycling and shop supply fees were not
7 provided to the customers, nor was the method of calculating the fees disclosed to
8 its customers at the point-of-sale or at any time before or after the oil change. The
9 sole motive behind both fees, was to enhance profits, disadvantage honest
10 competitors and conceal the true nature of the charges.

11 12. The whole scheme and artifice practiced by Chevron was to charge
12 phony add-on fees to its customers, thereby increasing the profits made by the
13 Operators, who were better able to purchase contractually required Havoline
14 branded products. The Operators’s policy and practices of charging (all with the
15 knowledge and consent of Chevron) illicit fees dramatically increased each Centers’
16 profits on a nationwide scale by cheating numerous individual consumers, who
17 compose this putative class.

18 13. Defendants and their affiliated entities or Operators, under common
19 management control, conspired and acted in concert with one another to impose the
20 charges asserted herein. Defendants are jointly and severally liable along with their
21 affiliated Centers for these fees charged to their customers.

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1 14. The combined terms and substance of these Contracts provided
2 Chevron with daily control over virtually every nuance of the oil change enterprise
3 at each Center, including such standards as: exterior and interior signage bearing
4 the Chevron/HXL brand, logo and trademarks, and specified menu boards; paint,
5 materials and furniture; building exterior and interior; driveway and grounds
6 appearance, specifications and operations; service bay operations; method of
7 driving into the service bays; employee standards; Chevron approved uniforms; echo
8 system of communication; cash out procedures; costumer consultations; handling
9



1 complaints; customer retention; various checklists. All of which were compulsory.¹

2 See *Standards Checklist pgs 31-33 of Guide Exhibit 3*.

3 15. The operational systems and signage required by Chevron led their oil
4 change customers to reasonably believe that the Centers were owned and operated
5 by Chevron.



17 Required exterior signage

18 16. Notably absent from the Contracts is any requirement that the
19 individual Operators post any sign or notice stating the service center is owned or
20 operated by an individual or entity separate from Chevron. Rather the Guide,
21 *Exhibit 3*, requires extensive exterior and interior signage that exclusively
22 highlights the HXL Chevron name and logo as illustrated above.

23
24
25 ¹ "This guide describes and illustrates the appearance and service standards
26 required of every authorized Havoline Xpress Lube facility. These standards are
27 important to the success of each Havoline Xpress Lube facility because they meet
28 the expectations of current and potential customers. Strictly enforced, they are the
guidelines that enhance overall brand value, making every Havoline xpress lube
facility more successful." [pg 1 of guide]

1 stores ceased charging an environmental surcharge. [¶11, 13 & 20 respectively of
2 *Exhibit 5*]

3 20. Unlike defendant in this case, Walmart, a competitor of HXL and
4 probably the largest retailer of oil change services in this country, does not charge
5 consumers for sham ‘oil recycling or disposal fees’ or ‘shop fees’ nor does Valvoline
6 Instant Oil Change Centers, which has over 1,000 shops nationwide.

7 **A CLASS ACTION IS THE APPROPRIATE REMEDY**

8 21. Rather than having an unmanageable number of plaintiffs
9 unrealistically filing \$4.00 lawsuits, this class action empowers the individual
10 consumer to contest the deplorable conduct of the mammoth corporate foe equipped
11 with unlimited resources. And if plaintiffs prevail, this corporation will longer be
12 able to lift \$4.00 from countless vulnerable consumers pockets.

13 **PARTIES**

14 22. Plaintiff, Donald E. Potter is a natural person and citizen in the State
15 of Illinois.

16 23. Plaintiff, Phillip M. Novak is a natural person and citizen of the State
17 of Illinois.

18 24. Defendant, Chevron Products Company, d/b/a Havoline Xpress Lube
19 (“Chevron”) is a corporation existing under the laws of the State of Pennsylvania
20 with its headquarters and principal place of business located at 6001 Bollinger
21 Canyon Road, San Ramon, California.

22 25. Defendant Chevron Products Company, a division of Chevron U.S.A
23 does business throughout the United States and the state of California, including
24 this District.

25 **JURISDICTION AND VENUE**

26 26. Plaintiffs incorporate the foregoing allegations as if fully set forth
27 herein.

28 27. This court has jurisdiction over this action pursuant to 28 U.S.C

1 §1332 (d)(2), because (i) at least one member of the class is a citizen of a different
2 state than defendants, (ii) the amount in controversy exceeds \$5,000,000, exclusive
3 of interest and costs and (iii) none of the exceptions under that subsection apply to
4 this action.

5 28. This court has personal jurisdiction over defendant because it
6 conducts business in this District, is headquartered and registered to do business in
7 this District and the unlawful conduct alleged in the complaint occurred, was
8 directed to, and/or emanated from this District at Defendants' California
9 headquarters.

10 29. Venue is proper in this District under 28 U.S.C. §1391(b) because
11 defendant resides in this District. The events underlying this action occurred here.

12 30. The contracts entered into between the Operators and Chevron
13 namely *Exhibit 2 Havoline Xpress Lube Sales Program Agreement*
14 (*"Agreement"*) and *Exhibit 3 Havoline's Standard of Appearance and Guide to*
15 *Operators ("standards" or Guide)* were entered into in the State of California in
16 this District and provides that "the courts in the state of California, USA, shall have
17 exclusive jurisdiction to entertain actions relating to this agreement or the making
18 thereof" . . . *Exhibit 2 ¶129 of Agreement.*

19 31. The bogus add on fees charged named plaintiffs and putative class
20 members were permitted, authorized, encouraged, enabled and emanated from the
21 terms and conditions of these Contracts . In fact, these Contracts gave Chevron the
22 power and control to prohibit such billing practices, however, Chevron chose not to
23 prohibit such charges, but rather allowed, aided and abetted such charges to take
24 place throughout the U.S.A., as well as the State of California from its headquarters
25 in Ramon, Ca.

26 32. The invoice used by the Operators to charge putative class members
27 disputed fees was mandated by the dual Contracts formed in San Ramon,
28 California, between the various Operators and Chevron. Agreement §8 ¶12 (invoice to

1 be printed to be identical to that depicted in the guide which invoice includes
2 Chevron and HXL names and logos in upper left hand corner of the invoice.) True
3 to form this standard invoice was given to both named Plaintiffs at Potter and
4 Novak at the point of sale.

5 33. The unlawful conduct that forms the basis of plaintiffs' claims (i.e
6 deceptive or unfair add on charges that induced consumer transactions) were
7 enabled by the terms of these contracts entered into in the State of California and
8 justifies the application of California law to resolve these claims.

9 34. Chevron's computers in San Ramon, California on a daily basis
10 captured all sales and consumer charges occurring nationwide at the point of sale
11 at its Centers. The deceptive fee practices alleged herein were known, reviewed
12 and otherwise controlled, encouraged, aided or abetted or emanated from
13 Defendants' headquarters in San Ramon, California.

14 35. Moreover, scores of putative class members, who at all relevant times
15 were residents of the State of California, were charged and injured by add on fees,
16 which form the basis of this action.

17 **Intradistrict Assignment**

18 Civil L.R. 3-2 (a) provides that all civil actions that arise...in Contra Costa
19 County be assigned to the San Francisco or Oakland Division. This action arose in
20 said county where defendant's corporate headquarters is located.

21 **COMMON ALLEGATIONS**

22 **The Substance of the Contracts Between** 23 **Chevron and its Operators Afforded Chevron Complete Control Over Daily** **Business Activities**

24 36. Plaintiffs reallege and incorporate the foregoing allegations as if set
25 forth herein.

26 37. Although, the pertinent contract are innocuously titled as a "program
27 agreement" and a "guide" endeavoring to insulate Chevron from any liability
28 arising from the acts of its Operators and further contains self serving boilerplate

1 clauses, which claim the Operators are independent contractors and were at liberty
2 to set their own prices — the actual substance and terms of the contract are
3 tailored to afford Chevron complete control and dominion over day to day conduct of
4 the operations, yet ostensibly empower the Operators to charge consumer class
5 members, without limitation, spurious and unjust oil recycling/disposal fees and
6 shop supply fees for example:

7 **Operator’s Retail Automation System**
8 **was Required to Be Interface with Chevron’s System**

9 (a) The standard written agreement entered into between Chevron
10 and its shops requires each shop to install, at its own expense, a retail automation
11 system (RAS) acceptable to Chevron and is required to *be interfaced with*
12 *Chevron’s system*. In addition, the agreement provides that Chevron has the right
13 to access the RAS capturing all of the sales and charges by each store on a daily
14 basis. Consequently, Chevron has and had complete and total access, knowledge
15 and control over all sales, revenue and fees charged by HXL Operators. See
16 *Exhibit 2 to sales agreement par. 1*

17 (b) The binding guide requires the operator to acknowledge that
18 “any deviation from the standards of appearance and operations (the guide) will be
19 considered a material breach of this agreement and grounds for termination of the
20 agreement.” *Exhibit 2 §2*

21 **Operator’s Non-Compliance with Quality**
22 **Image Clause Grounds for Termination**

23 (c) Further, the agreement between Chevron and its Operators
24 require Operators to acknowledge that “Chevron has developed and maintained a
25 quality image in conjunction with the operation of Xpress Lube facilities and to
26 uphold its standards. “ (“Quality image clause”) §3 *Program agreement*. Since
27 Chevron has knowledge of all daily transactions, and by virtue of the agreement,
28 has the right to enforce standards with termination as a sanction for non-
compliance with its “quality image,” Chevron has and at all times had, the

1 opportunity to control and monitor day to day charges and shield consumers from
2 illegal charges to protect its ‘quality image’, yet purposefully chose not to do so.

3 (d) Certainly the Centers that routinely charge its customers for
4 fictional recycling and shop supply fees are not consistent with anyone’s conception
5 of a quality image. And since Chevron reserved the power to enforce such high
6 standards, it should have prohibited these fabricated charges presented under false
7 pretenses rather than aiding and abetting such false charges with its nationwide
8 marketing and promotions efforts.²

9 **60 Item Checklist and Impromptu Inspections gives Chevron Control Over**
10 **All Aspects of Centers Operations**

11 (e) The 60-item checklist published in San Ramon, Ca is
12 mandatory and covers every conceivable aspect of the operations. *Exhibit 3, the*
13 *Guide at pgs 31-33.*

14 (f) The agreement provides that Chevron sets the price according
15 to its schedule for each item purchased by the Operators. This necessarily affects
16 the price the Operators must charge for their services to their customers. See
17 Exhibit 2 Agreement §5 ¶1.

18 (g) The standard agreement required that 100% of all bulk and
19 drum motor oil purchased by the Operators must be Havoline and Chevron branded
20 products. Agreement §4 ¶2.

21 (h) In addition, by the terms of the standard written sales
22 agreement, Chevron reserved the right at any time to enter the facilities, without
23 notice, to exercise Chevron’s rights under the RAS. Consequently, by virtue of the
24 RAS and impromptu visits to the facilities exercising its rights under the RAS,
25 Chevron, at all times had access to all sales and charges used on a daily basis, as

26
27 ²Indeed HXL sales agreement ¶ 13(b) provides: “Customer recognizes that it is in
28 the interest of the parties to this Agreement for Customer to affirmatively conduct
its business to reflect favorably on the parties and *to further promote public*
acceptance of Chevron’s products and its identification.” (emphasis supplied.)

1 well as any other information maintained in computer by each shop. Exhibit 2 to
2 sales agreement Par. 5(a) Agreement §8, ¶3.

3 (i) Chevron reserved the right to settle consumer complaints
4 directly without the intervention by the Operators.

5 **HXL-Chevron Signage Exclusively Displayed at Centers**

6 (j) Only Chevron signs and logos may be displayed in the building
7 exterior and interior in order to promote public acceptance of Chevron. In fact, the
8 HXL Sale program agreement paragraph 13 provides: *“Customer will be in breach*
9 *of this Agreement if Customer (Operator) does not display the required*
10 *identification of Chevron.”*

11 (k) The guide required Operators to post exclusively Havoline
12 Xpress Lube/Chevron signs in the building exterior and interior leading a
13 reasonable person to believe that station was exclusively owned and operated by
14 Chevron.

15 (l) Conspicuous by its absence is the lack of any requirement that
16 the Operators post any notice that they are independent Operators or contractors

17 **Standard Invoice Prominently Bearing HX-Chevron trademark required**

18 (m) The Operators were required to use a standard invoice
19 mandated by Chevron that included the name and logo of Havoline Xpress Lube and
20 Chevron in the upper left hand corner of the invoice, which gave the customer the
21 impression that they were dealing directly with Chevron.

22 (n) As a part of joint marketing plan, Chevron disseminates
23 coupons to potential customers bearing the Chevron trademark and Logo, which
24 mentioned hazardous waste and shop supply fees. *Exhibit 1*

25 (o) Operators were required to buy and resell Havoline and
26 Chevron branded products almost exclusive.

27 38. These express and implied actions or manifestations of Chevron would
28 lead a reasonable third party or person, such as its customers, to believe the

1 Operators has authority to act on behalf of Chevron. Chevron is liable for the
2 actions of its Operators in the course of operating Chevron's lube centers across the
3 nation.

4 39. The oil recycling or disposal fees and shop supply fees charged
5 customers are profit enhancers unlawfully obtained by defendants at the expense of
6 its customers and constituted a breach of contract. All customers who were
7 charged and paid these fees were monetarily damaged in the amount of the add on
8 fees paid by customers for which Chevron is responsible for restitution.

9 40. Each HXL outlet, including the outlet visited by the named plaintiffs
10 has uniform extensive exterior and interior signage that brands the business as
11 being owned and operated by defendants HXL and Chevron.

12 41. The required Chevron branded signage, coupled by the lack of any
13 sign or notice stating that the facility is independently owned and operated, the sole
14 use of Havoline branded products and other actions or manifestations mentioned
15 above and in the attached sales agreement and 'Guide' led the consumer to
16 reasonably believe that the Center were being operated by Chevron. The thrust of
17 the Agreement and Guide was to promote public acceptance of the Chevron and its
18 Havoline branded products at its Centers.

19 42. Chevron, pursuant to the terms of standard contracts with its
20 Operators, exercised a high degree of control over its Operators' day to day
21 practices and activities and had the means and reserved the right to curtail any
22 deceptive or unfair acts or practices. Chevron clothed its Operators expressly or
23 impliedly with actual and apparent authority to act as agents of Chevron regarding
24 business practices that included rogue charges such as 'recycling and disposal fees'
25 as well as shop supply fees.

26 43. These add-on charges allow Chevron and its dealers to advertise a
27 base price lower than the competition while obtaining the same revenue or more.

28

1 44. Although these charges are relatively small, \$3-\$5 on each occasion
2 and not of the magnitude for any one consumer to file suit, the return to Chevron
3 and its dealers is huge. Plaintiffs are informed and believe that conservatively
4 Chevron has approximately 300 locations in 33 states which are open an average of
5 307 days a year and service at least 30 cars a day.

6 45. Chevron, at the expense of its customers is unjustly enriched by the
7 assessment of these fee and is obligated and class members are entitled to
8 restitution.

9 **FACTS SPECIFIC TO THE NAMED PLAINTIFFS**

10 46. Plaintiffs reallege and incorporate the foregoing allegations as if set
11 forth herein.

12 **Plaintiff Donald E. Potter**


13 47. On June 16, 2017, Donald E. Potter had the oil and filter changed on
14 his 2011 Nissan Rogue at the Havoline Xpress Lube located at 8717 Ogden Ave,
15 Lyons, Illinois.

16 48. After the oil and filter were changed, he was presented with a
17 standard invoice with the Havoline Xpress Lube-Chevron logo and trademark in the
18 upper left hand corner, that itemizes charges for a hazardous waste disposal fee of
19 \$4.14, which unbeknownst to Plaintiff Potter was unlawful. unfair or deceptive. He
20 would have objected to paying the fees if advised of their nature and demanded a
21 refund.

He paid the full amount of the above invoice which includes a phony HAZ.

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FOR PARTS -- THIS MANAGEMENT MADE COPY



HAVOLINE Xpress LUBE
8717 Ogden Ave
Lyons, IL 60534
Phone - (708)442-6188
WWW.CHICAGOGLANDHXL.COM

DON POTTER
2227 MAYFLOWER
Pekin, IL 61554
(309)303-1178
A

Invoice
834595

License	Year	Make	Model	Engine	Mileage	Date	Time
AHNP3	2013	Nissan	Logan	I-14 Cyl 2.5 L(-)	31641	8/20/17	10:40 AM
VIN: JNBASMT1DWD43663		Purchase Total: 1					
Checklist Item			Status	Services Completed	Qty	Total	
Checkpoints			Sealed	SYNTHETIC FULL SERVICE OIL CHANGE	1.000	64.99	
Lubrication Points			Checked & OK	9W30syn SYNTHETIC OIL	4.900		
Transmission Fluid			Checked & OK	POP4622 OIL FILTER	1.000		
Power Steering Fluid			Checked & OK				
Radiator Fluid			Checked & OK				
Washer Fluid			Added				
Battery			Checked & OK				
Air Filter			Checked & OK				
Belts			Checked & OK				
Lights			Checked & OK				
Tire Pressures			Nitro, not adjusted				
Transfer Case			N/A				
Front Differential			N/A				
Rear Differential			N/A				
Wiper Blades			Checked & OK				
Fuel Filter			N/A				
Plug Gasket			Checked & OK				
Cabin Filter			N/A				
Vacuum Interior			N/A				
Wash Windows			N/A				
Pre-Service Oil Level			1/2 Qt Low				
Cust Shown Full Dipstick			Yes				
				Subtotal		64.99	
CSA: JOHN.G				LB: JOHN.G	Coupon:	110.00	
CT: JOHN.G				UB: JOHN.G	HAZ WASTE DISPOSAL:	4.14	
					Subtotal:	89.13	
					Tax (10.000%)	8.10	
					Total	97.23	
				Amount Tendered: Cash 51.00		46.23	
					Change	46.23	
<p>Service Remarks</p> <p>FULL OIL LEVEL CHECKED AND VERIFIED BY CUSTOMER. CUSTOMER WITNESSED OLD OIL FILTER REMOVED FROM VEHICLE. CUSTOMER WITNESSED OLD OIL REMOVED FROM VEHICLE. CUSTOMER WITNESSED NEW OIL FILTER INSTALLED TO VEHICLE. CUSTOMER WITNESSED NEW OIL ADDED TO VEHICLE. CUSTOMER WAS SHOWN OLD PARTS AND GIVEN OPTION TO TAKE WITH. OUR SERVICE IS GUARANTEED. IF A PROBLEM ARISES PLEASE CALL US IMMEDIATELY. HOWEVER, WORK DONE ELSE WHERE WILL NOT BE HONORED. THANK YOU HAVE A NICE DAY SEE YOU IN 3000 MILES.</p>				Return For Service			
				Next Service Date 09/20/2017			
				Signature			
Oil changes are warranted for 90 days or 3,000 miles whichever comes first. Thank you and have a wonderful day.							

http://pm.mtendents.com/show_invoice_10.php?id=13826976 3/1

1 **TOLLING OF THE STATUTES OF LIMITATIONS**

2 **Discovery Rule**

3 51. The tolling doctrine applies to cases of concealment like this one.
4 Plaintiffs did not discover and could not discover through the exercise of due
5 diligence that Chevron conspired to charge Plaintiffs' fabricated shop and
6 environmental/hazardous waste disposal fees which had no basis in fact. Plaintiffs
7 relied upon Chevron's expertise and knowledge. Otherwise, it is reasonable to infer
8 that the consumer, if he or she knew the charges were invalid, would not have paid
9 such fees. On the other hand, Chevron knew the charges were illegal and provided
10 no benefit to the consumer.

11 52. Any statute of limitations otherwise applicable to any claims asserted
12 herein have been tolled by the discovery rule.

13 **Fraudulent Concealment**

14 53. All applicable statutes of limitations have also been tolled by
15 Chevron's active and ongoing fraudulent concealment of the facts alleged herein.
16 Defendant knew that the add-on fees should not have been charged class members,
17 but chose not to prohibit its dealers from charging them. Any otherwise applicable
18 statutes of limitations have, therefore, been tolled by Chevron's active concealment
19 of the facts alleged.

20 **Estoppel**

21 54. Defendants, Chevron and Havoline Xpress Lube, are under continuous
22 duty to disclose to plaintiffs and class members the character and nature of their
23 services but instead actively concealed the fact that these charges were fabricated.
24 Plaintiffs and class members reasonably relied upon Chevron's representations that
25 the charges were legitimate.

1 **CLASS DEFINITION**

2 55. All adult persons who were charged and paid a fee purportedly
3 associated with recycling or disposing of used oil and/or for shop supplies, in
4 connection with an oil change performed by Havoline Xpress Lube at any time
5 within the United States. Excluded from the class are defendants, including any
6 entities in which defendants have a controlling interest, as well as their agents,
7 representatives, officers, directors, employees, trustees, parents, children, heirs,
8 assigns and successors, and other persons or entities related to or affiliated with
9 defendants; and the judges to this case as assigned, their staff, and their immediate
10 families. Plaintiffs reserve the right to amend the class definition.

11 **CLASS REPRESENTATIONS ALLEGATIONS**

12 56. Plaintiffs reallege and incorporate the foregoing allegations as if set
13 forth herein.

14 57. Certification of plaintiffs claims for class wide treatment is
15 appropriate. Plaintiffs can prove the elements of their claims on a class wide basis
16 using the same evidence that would be used for actions alleging the same claims.
17 This action has been brought, may be proper and may be properly maintained on
18 behalf of the class proposed herein under FRCP 23 satisfying the commonality,
19 typicality, adequacy, predominance, representation and superiority requirements of
20 its provisions.

21 **Numerosity and Ascertainability**

22 58. The members of the class are so numerous and geographically
23 dispersed that individual joinder is impractical. There are no less than 10,000
24 members in this nationwide class. The precise number of nationwide class members
25 may be ascertained from Chevron's and/or HXL books and RAM computer records.
26 Defendants have comprehensive lists of class vehicle owners and the vehicles that
27 had their oil changed in their possession. As reflected in the Havoline Xpress Lube
28 invoices, class members are readily identifiable. Defendants' computer files have

1 comprehensive lists of class members names and addresses, as well as the make,
2 model and identification number of their vehicle.

3 59. The identity of the customers who were charged shop supply and oil
4 recycling fees are in the possession of Chevron and HXL.

5 60. Accordingly, the disposition of the claims of class members in a single
6 action will provide substantial benefits to all parties and to the court. Class
7 members may be readily notified by recognized, court-approved notice
8 dissemination methods, which may include U.S. mail, electronic mail, internet
9 postings, comment and/or published notice.

10 **Typicality**

11 61. The claims of the representative plaintiffs are typical of the claims of
12 the other class members and that the representative plaintiffs, like all class
13 members, had their oil and filter changed at an HXL Center. The representative
14 plaintiffs, like all class members, have been damaged by defendants. The
15 representative plaintiffs, like all class members, have been injured by the same
16 conduct or course of action by defendants — sham charges for used oil recycling
17 and/or shop supplies . The factual basis of defendants misconduct is common to all
18 class and represent a common thread of misconduct resulting in injury to all class
19 members. The class representatives possess the same legal interest and have
20 endured the same legal injury as other class members.

21 **Adequate Representation**

22 62. Plaintiffs are members of the nationwide class and will fairly and
23 adequately represent and protect the interest of the class. Plaintiffs have retained
24 counsel with considerable experience in consumer class actions. Plaintiffs and their
25 counsel are committed to vigorously prosecuting this action on behalf of the class
26 and have the financial resources to do so. Neither plaintiffs, nor their counsel, have
27 interests adverse or antagonistic to the class.

28

1 answers to the common questions of knowledge, conduct, duty and breach that
2 predominate in this action.

3 **This Action is Brought Under Rule 23(b)(3)**

4 68. This action is brought under Rule 23(b)(3) primarily because the relief
5 sought per individual member of the class is small given the burden and expense of
6 individual prosecution of potentially extensive litigation necessitated by the conduct
7 of defendants. Hence, individual class members are unlikely to have any interest in
8 controlling the prosecution of their claims. There are no anticipated difficulties
9 likely to be encountered in the management of the claim on behalf of the class.

10 69. This class action is manageable because of the large number of
11 potential class members basing their claims on the same common course of conduct
12 by Chevron, emanating from its headquarters in this district. A class action is a
13 more manageable and more efficient use of judicial resources than individual
14 claims.

15 70. It would be virtually impossible for the class members to seek redress
16 on an individual basis and even if some class members themselves could afford such
17 individual litigation, the court system could not.

18 **CHOICE OF LAW**

19 71. California law applies because a substantial part of the alleged bad
20 faith, misleading, deceptive, unfair, and unlawful acts and practices were
21 implemented, facilitated, encouraged, authorized and emanated from Defendant's
22 corporate headquarters located in this District at San Ramon, California adversely
23 affecting the named plaintiffs and other class members nationwide, including
24 California residents all of whom paid the phony add on oil recycling and shop supply
25 fees. In addition, material and relevant contracts— between Chevron and its
26 operatives— implementing, enabling and authorizing the bad faith, deceptive,
27 unfair, and unlawful conduct were formed in the State of California within this
28

1 District at Defendant's corporate headquarters. (Ex. 2 & 3) These contracts
2 mandated that California law applied to all matters pertaining to these contracts.

3 **CLAIMS FOR RELIEF**

4 **COUNT I:**
5 **FIRST CAUSE OF ACTION**
6 **BREACH OF CONTRACT BY CHEVRON**

7 72. Plaintiffs restate and incorporate herein by reference the preceding
8 paragraphs as if fully set forth herein.

9 73. Defendants, through its agents, offered class members an oil and filter
10 change for a sum certain and in some cases, as low as \$18.99. Class members
11 accepted the offer or other lump sum offers, which did not include the add on
12 charges, and proceeded to have their oil and filter changed.

13 74. Prior to presenting the invoice to its customers, defendant, Chevron,
14 was responsible for setting or permitting a price structure that included add on oil
15 recycling or disposal fees and shop supply fees, thereby increasing the cost of the
16 oil change and thereby breaching the terms of the oral or implied in fact contract.

17 75. Defendant, Chevron, was responsible for the imposition of these add
18 on fees, when it set, approved, permitted or ratified the fee schedule for the Centers,
19 which included oil recycling or disposal fees and/or shop supply fees.

20 76. As a result of these breaches, class members were damaged by the
21 amount of these erroneous and unjustified add on fees.

22 77. Chevron breached the contracts entered into by class members with
23 Chevron's operatives damaging class members in amounts equal to the false
24 charges.

25 **COUNT II:**
26 **SECOND CAUSE OF ACTION**
27 **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

28 78. Plaintiffs reallege and incorporate by reference the allegations set
forth in the proceeding paragraphs is though alleged in this Count.

1 79. Plaintiffs and class members bring this claim in the alternative to
2 their breach of contract claim.

3 80. A covenant of good faith and fair dealing is implied in every contract.

4 81. Where a contract vests one party with discretion, but provides no
5 standard for the exercise discretion, the duty of good faith and fair dealing applies
6 and the party exercising discretion must do so in a commercially reasonable
7 manner that satisfies the objectively reasonable expectation of the other party.

8 82. Based upon defendant, Chevron's representation regarding the prices
9 of the oil change and filter was objectively reasonable for plaintiffs and class
10 members to expect that defendant, Chevron, by setting or approving the prices,
11 would not have permitted the inclusion of illicit oil recycling fees or shop supply
12 fees, which had no relationship whatsoever to the service performed by Chevron's
13 Operators. There exists no objectively reasonable reason on the part of class
14 members to expect that defendants would have inserted in their standardized
15 invoices charges that were fictitious.

16 83. Chevron abused any discretion they had in setting, approving,
17 ratifying, or enabling oil recycling or disposal fees or shop supply fees, which had no
18 relationship to the service performed.

19 84. Plaintiffs and class members perform all required duties and all
20 conditions required for defendants to accomplish oil and filter change, without the
21 added fees.

22 85. As a result of Defendants breach of the implied covenant of good faith
23 and fair dealing, plaintiffs in the class are entitled to damages in the amount of the
24 payment made by prospective class members for oil recycling or disposal fees and
25 shop supply fees.

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1 opportunity and ability to do so. Chevron was further guilty of negligently
2 facilitating or failing to prohibit oil recycling and shop supply fees.

3 104. As a direct and proximate result of the aforesaid negligence of
4 Chevron, class members sustained damages in the amount of the payment for false
5 charges and should be reimbursed therefore.

6 **COUNT VI:**
7 **SIXTH CAUSE OF ACTION**
8 **VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**
9 **(Business. & Professional Code §§17200 et seq.)**

10 105. Plaintiffs reallege and incorporate the foregoing allegations as if set
11 forth herein.

12 106. California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code
13 §§17200, *et seq.*, proscribes acts of unfair competition, including "any unlawful,
14 unfair or fraudulent business acts or practices and unfair, deceptive, untrue, or
15 misleading advertisements."

16 107. Chevron's conduct, as described herein, was and is in violation of the
17 UCL.

18 108. Chevron's conduct, as described herein, was and is in violation of the
19 UCL in at least the following ways:

- 20 (a) Chevron's acts and practices of aiding and abetting it's
21 Operators to repeatedly charge its customers oil recycling
22 and/or shop supply fees, constitutes unfair or deceptive acts
23 and practices, and is injurious to consumer class members;
24 (b) Defendants material misrepresentations or omissions that oil
25 recycling and shop supply fees were lawful, when they were
26 not, is unfair and deceptive. These deceptive acts or practices
27 were designed so that class members relied upon it and were
28 damaged by payment of the invalid fees;
(c) Charging these fees separately obscures the true nature of the
charge and makes it appear as though the fee is a dedicated
charge that is required by law, and that the fees cannot be
negotiated by any customer, which was false;
(d) Advertising prices that appear lower than they actually are
(because the fee is not plainly disclosed up front) is an unfair
practice for consumers and competitors in that it distorts

1 competition in the marketplace by preventing consumers from
2 accurately comparing the costs of the oil change, thus causing
consumers to needlessly incur unnecessary costs;

- 3 (e) The recycling and shop supply fees unfairly allow for an
4 increase in the advertised price that occurs after the customer
class members accepted the advertised price;
- 5 (f) Naming the add-on charge a “fee” is misleading;
- 6 (g) Adding such fees after the customers agree to pay a price that
7 does not include a fee;
- 8 (h) Adding the fee after services are already performed;
- 9 (i) Representing that the shop supply is reasonably related to the
cost of certain supplies when, in fact, it is not;
- 10 (j) Failing to inform consumers that the shop fees are not directly
11 and proportionally related to the cost of supplies involved in
their transaction but rather designed to increase defendant’s
12 profit;
- 13 (k) the shop supply fees are tacked-on to the advertised or agreed
upon price;
- 14 (l) These omissions of material information regarding the true
15 nature of recycling and shop supply fees at issue, constitute
unfair or deceptive practices;
- 16 (m) The misrepresentation of the both fees is an unfair or deceptive
17 practice;
- 18 (n) Plaintiff and Class have suffered ascertainable loss due to the
unfair and deceptive practices described in this Count; and
- 19 (o) The conduct of defendants was malicious, corrupt, and
20 intentional and/or reckless to a degree sufficient to support an
award of punitive damages against defendants.

21 109. As a direct and proximate result of defendants material
22 misrepresentations and non-disclosures. Plaintiffs and the class have been
23 irreparably harmed and have suffered losses.

24 110. On behalf of the class, plaintiffs seek an order enjoining defendants
25 engaging in such unfair, deceptive, or unconscionable practices. Plaintiffs also seek
26 damages, including but not limited to, awarding the full amount of money that
27 plaintiffs in class members paid as a result of these fees imposed. Plaintiffs also
28 seek an award of attorney’s fees and costs.

1 111. The acts, practices, misrepresentations and omissions by defendants
2 described above, and defendants dissemination of deceptive and misleading
3 advertising and marketing materials in connection therewith, occurring in the
4 course of conduct involving trade or commerce, constitute unfair methods of
5 competition and unfair or deceptive acts or practices within the meaning of each of
6 the above-enumerated statutes.

7 112. Defendant's acts and practices created a likelihood of confusion or of
8 misunderstanding and misled, deceived or damaged plaintiffs and members of the
9 class in connection with the sale or advertisement of the cheap oil changes.
10 Defendant's conduct also constituted the use or employment of deception, fraud,
11 false pretense, false promise, misrepresentation, or knowingly concealing,
12 suppressing, or omitting a material fact with intent that others rely upon the
13 concealment, suppression or omission in connection with the sale or advertisement
14 of goods or services whether or not a person has in fact been misled, deceived or
15 damaged in violation of each of the above-enumerated statutes.

16 113. Plaintiffs, on behalf of themselves and the class members, seek
17 monetary damages, treble damages and such other and further relief as set forth in
18 each of the above-enumerated statutes.

19 114. Plaintiffs seek to enjoin further unlawful, unfair, and/or fraudulent
20 acts or practices by Chevron under Cal. Bus. Prof. §17200.

21 115. Plaintiffs request that this court enter such orders or judgments as
22 maybe necessary to enjoin Chevron from continuing its unfair, unlawful, and/or
23 deceptive practices and to restore to plaintiff and members of the class any money
24 it acquired by unfair competition, including restitution and/or restitutionary
25 disgorgement, as provided in Cal. Bus. & Prof. Code §17203 and Cal. Civ. Code
26 §3345; and for such other relief set forth below.

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PRAYER FOR RELIEF

WHEREFORE, plaintiffs and the class members request that the court enter an order or judgment against defendants, including the following:

A. Certification of the action as a Class Action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, and appointment of plaintiffs as class representatives and their counsel of record as class counsel;

B. Damages in the amount of monies paid fees;

C. Actual damages, statutory damages, punitive or treble damages, and such other relief as provided by the statutes cited herein;

D. Pre-judgment and post-judgment interest on such monetary relief;

E. The costs of bringing this suit, including reasonable attorneys' fees;

F. An award of reasonable attorney fees and costs to be paid out of the common fund for the above;

G. All other relief to which plaintiffs and members of the class may be entitled at law or in equity; and

H. Chevron should be enjoined from charging add on fees.

JURY DEMAND

Plaintiffs hereby DEMAND TRIAL BY JURY on their own behalf and on behalf of class members.

DATED: November 20th 2017

Respectfully submitted,

/S/ _____
Donald K. Birner
One of Plaintiffs attorneys

Donald K. Birner
(admission sought *pro hac vice*)
Attorney at Law (0213152)
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CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Donald E. Potter and Phillip M. Novak, individually and on behalf of those similarly situated

(b) County of Residence of First Listed Plaintiff Tazewell County State of Illinois (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Donald K. Birner 2613 Mayflower Dr Pekin IL 61554 309 925 3037, Kaiser Khan 1388 Sutter Street Suite 910 San Francisco, CA 94102

DEFENDANTS

CHEVRON PRODUCTS COMPANY D/B/A Havoline Xpress Lube Contra Costa County (California)

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status. Includes options like 'Citizen of This State', 'Citizen of Another State', 'Citizen or Subject of a Foreign Country', 'Incorporated or Principal Place of Business In This State', etc.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Each category lists specific legal codes and descriptions.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C 1332 (d) (2)

Brief description of cause: action to recover unfair, deceptive or unlawful fees charged consumers by defendant

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ 5,000,000.00

CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 10/20/2017

SIGNATURE OF ATTORNEY OF RECORD

/s/ Donald K. Birner

Print

Save As...

Reset

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

Donald E. Potter, and Phillip Novak individually and on behalf of all others similarly situated

Plaintiff(s)

v.

Chevron Products Company, a division of Chevron U.S.A. Inc. d/b/a Havoline Xpress Lube.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Corporation service company which will do business in California as CSC - Lawyers incorporated service. 2710 Gateway Oaks Dr STE 150 N, Sacramento, CA 95833

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Donald K. Birner 2613 Mayflower Drive Pekin, IL 61554

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 11/20/2017

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Print

Save As...

Reset

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Chevron Accused of Adding 'Fictional' Recycling/Shop Supply Fees to Oil Change Prices](#)
