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of Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

JOHN MARTIN KEARNEY, an Oregon resident; ROBIN A. BECK, a Colorado resident; CARLY LaFOREST, a Michigan resident; SHANE ALLPORT, a Michigan resident; ALYSIA ROWE, a Michigan resident; RICHARD SCHEMPP, a California resident; and, JEFFREY PAUL GILPIN, JR., a Washington resident; each on behalf of themselves and all similarly situated persons,

Plaintiffs,

v.

EQUILON ENTERPRISES LLC, a Delaware corporation dba SHELL OIL PRODUCTS US,

Defendant.

Case No.: 3:14-cv-00254-HZ

DECLARATION OF ROBERT A. CURTIS IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL

1. I am a Partner in the law firm of Foley Bezek Behle & Curtis, LLP ("FBB&C"), one of the law firms representing Plaintiffs and the putative subclasses in this action. I submit this declaration in support of Plaintiffs' Motion for Class Certification.

2. I am a member in good standing of the California State Bar, and I have never been the subject of any type of disciplinary proceeding. I am admitted to practice before all the Courts in California state courts, the United States District Courts for the Central, Northern, Eastern and Southern Districts of California, and the Western District of Michigan, and the Ninth Circuit Court of Appeals. I am admitted *pro hac vice* to appear and practice before this Court in this action.

Experience To Serve As Class Counsel

3. I graduated from the University of California at Los Angeles with a B.S. in 1996, and received my law degree from Pepperdine University School of Law in 1999. Upon graduating from law school, I was hired full time at Foley Bezek & Komoroske, LLP (the predecessor name of my current firm) and became a partner in January 2003. I was admitted to the California Bar in 1999. I am also admitted to practice in the U.S. District Courts for the Central, Southern and Northern Districts of California, the Western District of Michigan, and before the Ninth Circuit Court of Appeals. Over the past sixteen years, the primary focus of my practice has been complex business litigation and class actions. I, in conjunction with other partners at the firm, have litigated cases that have resulted in over $325 million in settlements and verdicts against some of the largest companies and biggest law firms in the country. Since 2011, I have maintained the rating of "AV - Preeminent" from Martindale Hubble. I have also been recognized as a "Rising Star" in the 2008, 2009, 2010, 2011, 2012, 2013, and 2014 editions

of the Super Lawyers publication.

4. I have tried numerous cases to verdict in many forums including the Superior Court of California, the Superior Court of Arizona and in the United States District Court. Recently, in September 2014, I was the lead trial attorney for the plaintiff and obtained a $38.9 million jury verdict in a 7-week lender liability trial in Los Angeles Superior Court against East West Bank. The East West Bank verdict was the 12th largest verdict in California and the 54th largest verdict in the entire United States for 2014. Also in December 2014, my partner Peter Bezek and I co-tried a 4-week jury trial in Santa Barbara Superior Court and obtained a complete defense verdict in a case where my firm's client was sued for damages allegedly exceeding $2.5 million for breach of fiduciary duty and alleged financial fraud.

5. During the past thirteen years, my partners and I collectively have been involved in the representation of plaintiffs in more than 25 different class action cases and have been certified to act as Class Counsel in the Superior Court of the State of California, in the Superior Court of the State of New Jersey and in the federal district courts of various jurisdictions throughout the country. During that time, I have had significant involvement with and have served as lead or co-lead counsel in a number of major class actions which were settled in a manner that resulted in substantial, material benefits for various classes of wronged individuals. Included below are some of my firm's larger settlements:

(a) *Demmick v. Cellco Partnership*, District of New Jersey, Case No. 06-2163 (JLL) , a $64.2 million settlement;

(b) *Lozano v. AT&T Wireless Services, Inc., et al.*, U.S. District Court, Central District of California, Case No. CV02-90-AHS(AJWx), which resulted in a potential recovery for the class of more than $42 million in cash benefits;

(c) *Stern v. AT&T Mobility Corporation, et al.*, U.S. District Court, Central District of California, Case No. CV05-08842-CAS(Ctx), which resulted in a potential recovery for the class of more than $38 million in cash benefits;

(d) *Rolnik/Godoy v. AT&T Wireless*, New Jersey Superior Court, Essex County, Case No. L-180-04, which resulted in benefits to the class of more than $49 million;

(e) *Roark v. GTE California*, California Superior Court, Santa Barbara County, Case No. 01035862, which settled for $20 million; and

(f) *In Re: Structured Settlement Litigation*, Los Angeles Superior Court, Master Case No. BC244111, co-lead counsel in case which resulted in a settlement of over $100 million.

6. Other class action litigation matters on which I worked extensively on and which were certified as class actions are: *Coldiron v. Bank of America*, Los Angeles Superior Court, Case No. BC 121154; *Kirksey v. Chicago Title Ins. Co.*, Los Angeles Superior Court, Case No. BC. 106189; *Young v. Western Cities Mortgage Corp.*, Los Angeles Superior Court, Case No. BC 121782; *Baron v. Great Western*, Los Angeles Superior Court, Case No. BC121153; *Blinkinsop v. Vegas Grand*, U.S. District Court for the District of Nevada, Case No. CV-S-05-0714-BES-RJJ; *Scott v. Vegas Icon*, U.S. District Court for the District of Nevada, Case No. 2:06-cv-00082; *Fletcher v. Brown & Brown, et al.*, Santa Barbara Superior Court Case No. 01131631; *Vinson v. Idearc Media*, Riverside Superior Court Case No. INC055768, *Internal Revenue Service §1031 Tax Deferred Exchange Litigation*, District Court of Nevada Case No. 2:07cv1394; *Denison v. The Salvation Army*, Superior Court of California Case No. BC368827; and *Behar International Counsel v. T-Mobile*, California Superior Court, San Diego County, Case No. GIC 820372.

7. Also, in the United States District Court for the District of New Jersey, my firm was appointed as Lead Class Counsel in the Multi-District Litigation (MDL) matter entitled *In Re: Verizon Wireless Data Charges Litigation*, Case No. 3:09 cv 04592 FLW TJB. The settlement of that MDL proceeding encompassed thirty-one cases filed in multiple jurisdictions throughout the country that were transferred to the District of New Jersey for coordinated pretrial proceedings. The case settled and over $55 million in benefits were provided to the class. The MDL at its core was a consumer class action for violations of federal and state consumer protection laws. In approving the settlement, Judge Wolfson specifically noted "it was the vigorous efforts of the Foley firm that led to the proposed settlement." Judge Wolfson stated that "lead counsel negotiated a sizeable settlement within a reasonable amount of time since the start of the litigation. Because of those timely efforts, the class will benefit more," and that FBBC was "skilled and experienced in litigating these types of class action cases." Transcript from Final Approval Hearing in *In re: Verizon Data Charges Litigation*, Case No. 10-1749 (SLW) dated March 1, 2012.

8. In addition to working on the plaintiff's side of class action litigation, my firm also has served as lead counsel for the defense in many class actions, including: (a) *Doe v. Darkside Productions, Inc.*, San Francisco Superior Court, Case No. CGC-05-439667; (b) *Bauer v. Darkside Productions, Inc.*, San Francisco Superior Court, Case No. CGC-05-443247; (c) *In re: Weekend Warrior Trailer Cases*, Orange County Superior Court, Case No. JCCP 4455; (d) *Anderson v. EFX Performance, Inc.*, Orange County Superior Court, Case No 30-2011-00442192-CU-MT-CXC; and (e) *Lopez v. Islay Investments*, Santa Barbara Superior Court, Case No. 15CV02255.

Mediation

9. After Plaintiffs' Motion for Class Certification was fully briefed, the parties began to discuss a possible framework for the settlement of this action and agreed to engage in mediation.

10. On February 17, 2016, Plaintiffs' counsel and counsel for Shell Oil participated in an all-day mediation conducted by Jeffery Batchelor in Portland, Oregon. The mediation was contentious but, at all times, professional and hard-fought. The mediation started in the morning and parties finally reached settlement late into the evening and drafted a term sheet agreement which was signed around 11:00 p.m.

11. The term sheet agreement memorialized the principal terms of the settlement which formed the basis for the Settlement Agreement that is being submitted for this Court's approval. A true and correct copy of the Settlement Agreement is attached hereto as **Exhibit 1**.

Brief Summary of Litigation Efforts

12. Plaintiffs' counsel have vigorously pursued the Settlement Classes' claims. I was the lead attorney on conducting discovery and I reviewed over 11,000 documents, conducted third-party discovery, propounded interrogatories and took four 30(b)(6) depositions on over 40 different topics.

13. As discussed at length in class certification briefing, and taking into consideration possible duplication and other defenses, the parties estimate that the Classes total approximately 300,000 consumers. Based on discovery, it is estimated that class members paid or would have had to pay between $35 to $78 for the lift ticket that Plaintiffs alleged should have been free under the Ski-Free promotion.

14. I believe that the Settlement achieved on behalf of the Settlement Classes in this action is fair, reasonable and in the best interests of the Settlement Class Members. I

believe that the Settlement is an excellent result for the Settlement Class Members and worthy of this Court's preliminary and, ultimately, final approval. A true and correct copy of the Proposed Stipulated Fourth Amended Complaint is attached hereto as **Exhibit 2.**

Notice Issues

15. I worked collaboratively with counsel for Shell and KCC to develop the various forms of notice for Court approval. All forms of notice are designed to be noticeable, clear and concise, and written in plain, easily-understood language.

16. The long-form notice, the Settlement Agreement, and all papers filed with the Court in connection with the motions for preliminary settlement approval and final settlement approval will be posted on the website for Settlement Class Members to access and review.

I declare under penalty of perjury, under the laws of the State of California and the United States of America, that the foregoing is true and correct.

Executed this 29th day of April, 2016, in Santa Barbara, California.

s/ Robert A. Curtis
Robert A. Curtis

EXHIBIT 1

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

JOHN MARTIN KEARNEY, et al. on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

EQUILON ENTERPRISES LLC, a Delaware corporation dba SHELL OIL PRODUCTS US,

Defendant.

Case No.: 3:14-cv-00254-HZ

SETTLEMENT AGREEMENT

Subject to the preliminary and final approval of the Court, and as further set forth below, this Settlement Agreement is made by and between the Class Representatives defined below, individually and on behalf of the Settlement Classes defined below ("Plaintiffs"), and Defendant Equilon Enterprises LLC ("Defendant"). Plaintiffs and Defendant are collectively referred to as the "Parties."

WHEREAS, Plaintiffs filed a putative class action lawsuit, *Kearney, et. al v. Equilon Enterprises LLC*, Case No. 3:14-cv-00254-HZ, in the United States District Court for the District of Oregon alleging a variety of claims against Defendant related to the Ski Free® program (the "Lawsuit");

WHEREAS, on January 15, 2016, Plaintiffs filed their Third Amended Class Action Allegation Complaint ("Complaint");

WHEREAS, during the relevant time period, certain Shell-branded motor fuel retail stations participated in the Ski Free® program in the States identified below;

WHEREAS, in the Complaint, Plaintiffs allege that Defendant engaged in conduct that violated various state consumer protection and other state statutes and also gave rise to common law causes of action for breach of contract, including but not limited to claims based on alleged Ski Free® program advertising or promotion;

WHEREAS, Plaintiffs have sought relief, including but not limited to damages, injunctive relief, punitive damages and attorneys' fees and costs for the alleged conduct of Defendant;

WHEREAS, Rick Klingbeil, Robert Curtis, Brady Mertz and Brooks Cooper have served as Plaintiffs' Counsel in the Lawsuit;

WHEREAS, on February 4, 2016, Defendant filed an Answer and Affirmative Defenses to the Complaint, which asserted a number of defenses to Plaintiffs' claims, denied that Defendant has violated any law or other duty, and denied each of the Plaintiffs' claims of liability, wrongdoing, injuries, damages, and entitlement to any relief;

WHEREAS, as a result of extensive arm's-length negotiations, Plaintiffs and Defendant reached an agreement in principle to settle and resolve the claims asserted in the Lawsuit, based on the terms and conditions set forth below and subject to the approval of the Court;

WHEREAS, Plaintiffs' Counsel have investigated the facts relating to the claims in the Lawsuit and the underlying events and transactions forming the subject matter of the Lawsuit, have analyzed the applicable legal principles, and have concluded, based upon their investigation, taking into account the sharply contested issues involved, the unsettled state of the applicable law, and the inherent risk of class certification and proof and legal defenses which may be an impediment to prevailing in whole or in part on the claims asserted, and taking into account the risks, uncertainties, burdens, and costs of further prosecution of the Lawsuit, and taking into account the substantial benefits to be received pursuant to this Settlement Agreement, that a resolution and compromise on the terms set forth herein is fair, reasonable, adequate, and in the best interests of Plaintiffs and the Settlement Classes;

WHEREAS, Plaintiffs' Counsel represent and warrant that they are fully authorized to enter into this Settlement Agreement for all Plaintiffs in the Lawsuit; and

WHEREAS, Defendant, solely for the purpose of avoiding the burden, expense, risk, and uncertainty of continuing to litigate the Lawsuit, and for the purpose of putting to rest all controversies engendered by the Lawsuit, and without any admission of liability or wrongdoing whatsoever, desires to settle the Lawsuit and all claims asserted in or subsumed by the Lawsuit,

including unasserted claims related to the subject matter of the Lawsuit that Plaintiffs could have asserted in the Lawsuit, on the terms and conditions set forth in this Settlement Agreement;

NOW, THEREFORE, without any admission or concession by Plaintiffs of any lack of merit to their allegations and claims, and without any admission or concession by Defendant of any liability or wrongdoing or lack of merit in its defenses, in consideration of the foregoing clauses and the mutual covenants, terms, representations, and payments contained herein, and subject to the final approval of the Court, Plaintiffs and Defendant agree as follows:

Definitions

1. As used in this Settlement Agreement, the terms set forth in this section will have the following meanings:

(a) "Class Member" means any member of a Settlement Class who has not submitted a valid Request for Exclusion from this Settlement Agreement, as preliminarily and finally approved by the Court.

(b) "Class Representatives" means John Martin Kearney, Jeffrey Gilpin, Jr., Richard Schempp, Carly LaForest and Alysia Rowe.

(c) "Court" means the Honorable District Judge Marco A. Hernández, United States District Judge, District of Oregon, or such other judge to whom the Lawsuit may hereafter be assigned.

(d) "States" means and refers to California, Michigan, Oregon and Washington.

Settlement Classes

2. For the purposes of this Settlement Agreement only, Plaintiffs will seek, and Defendant will not oppose, certification of settlement classes consisting of the classes described

below, to which Defendant will provide settlement consideration and from which Defendant will obtain a release of claims, subject to the Court's preliminary approval of this Settlement Agreement, the provision of notice to members of the settlement classes, and the Court's final approval of the notice provided and this Settlement Agreement, under the terms and conditions stated below.

3. For the purposes of this settlement only, Plaintiffs will seek, and Defendant will not oppose, the Court's certification of four state-wide classes (the "Settlement Classes"), for the States, and for all the claims and forms of relief asserted in the Lawsuit. The Settlement Classes are defined as follows:

(a) The California Class: All persons in the state of California who (a) between November 1, 2009 and the date that the Court enters the Order Granting Final Approval purchased ten or more gallons of fuel at a Shell-branded station that offered the "Ski Free®" promotion, and (b) in connection with such purchase, obtained from that Shell station that participated in the "Ski Free®" program a "Ski Free®" voucher. The class representative is Richard Schempp.

(b) The Michigan Class: All persons in the state of Michigan who (a) between November 1, 2009 and the date that the Court enters the Order Granting Final Approval purchased ten or more gallons of fuel at a Shell-branded station that offered the "Ski Free®" promotion, and (b) in connection with such purchase, obtained from that Shell station that participated in the "Ski Free®" program a "Ski Free®" voucher. The class representatives are Carly LaForest and Alysia Rowe.

(c) The Oregon Class: All persons in the state of Oregon who (a) between November 1, 2009 and the date that the Court enters the Order Granting Final Approval purchased ten or more gallons of fuel at a Shell-branded station that offered the "Ski Free®" promotion, and (b) in connection with such purchase, obtained from that Shell station that participated in the "Ski Free®" program a "Ski Free®" voucher. The class representative is John Martin Kearney.

(d) The Washington Class: All persons in the state of Washington (a) between November 1, 2009 and the date that the Court enters the Order Granting Final Approval purchased ten or more gallons of fuel at a Shell-branded station that offered the "Ski Free®" promotion, and (b) in connection with such purchase, obtained from that Shell station that participated in the "Ski Free®" program a "Ski Free®" voucher. The class representative is Jeffrey Gilpin, Jr.

4. Excluded from the Settlement Classes are (A) the Defendant; (B) any person, firm, trust, corporation, officer, member, director or other individual or entity in which Defendant has a controlling interest; (C) counsel for the Parties; (D) the key representatives associated with this matter on behalf of the Settlement Administrator identified below; (E) the judge, the judge's immediate staff and judge's immediate family; and (F) the legal representatives, agents, successors-in-interest or assigns of any such excluded party.

5. The Parties stipulate and agree that the definitions of the proposed classes in the Lawsuit are amended to be the same as the Settlement Classes for the States at issue, and that the Court's orders preliminarily and finally approving this Settlement Agreement shall so amend the operative complaint.

6. For the purposes of this settlement only, Plaintiffs will seek, and Defendant will not oppose, amendment to the Complaint for purposes of adding monetary damage claims for each of the existing California Class claims in the Complaint.

7. Certification of the Settlement Classes applies to all claims, including without limitation all forms of injunctive relief, damages, and statutory remedies sought in the Complaint, as well as the amendment to be sought for the California Class.

8. In the event the settlement is not approved, all such settlement class certifications and amendments to pleadings shall be null and void without prejudice to the Parties seeking respectively to certify or oppose certification of any class.

9. Plaintiffs will seek, and Defendant will not oppose, the Court's appointment of Rick Klingbeil, Robert Curtis, Brady Mertz and Brooks Cooper as counsel for the Settlement Classes ("Class Counsel"), and the appointment of the Class Representatives as representatives of the Settlement Classes as indicated above.

Settlement Consideration

10. Subject to the provisions hereof, Defendant will pay or cause to be paid a total of Two Million and Two Hundred Thousand Dollars ($2,200,000) (the "Settlement Amount") for the benefit of the members of the Settlement Classes, the payment of which shall fully satisfy any and all of Defendant's payment obligations pursuant to this Settlement Agreement.

11. As further consideration for settlement, Plaintiffs shall seek entry of an order, and Defendant shall not oppose, requiring that, commencing with the 2017 ski season, the Ski Free® advertising will (1) indicate that it is a buy one, get one free offer and (2) indicate that the Ski Free® promotion is "subject to restrictions or blackouts." The order will require Defendant to utilize its best efforts to provide notice of the injunction to its relevant Shell-branded wholesalers in the States and its relevant contractors in the States, including but not limited to OutWest Promotions, and they will be bound by terms of the injunction. In the event that any of Defendant's contractors are alleged to have violated the injunction, that contractor shall be responsible for any such non-compliance.

12. The payments of Defendant described above shall exhaust and fully satisfy any and all of its payment obligations under this Settlement Agreement, and shall extinguish entirely any further obligation, responsibility, or liability to pay any settlement sums, attorneys' fees, litigation costs, expenses incurred in administering this Settlement Agreement, including the cost of class notice, the claims process, taxes, or sums of any kind to Plaintiffs, the Settlement Classes, Class Counsel, and any other counsel, experts, advisors, agents, and representatives. In no circumstances shall this Settlement Agreement be construed to require Defendant to pay more than the Settlement Amount.

13. Except in accordance with the provisions of paragraphs 15 and 21 of this Settlement Agreement, Defendant shall not be liable for (i) any of the costs or expenses of the litigation of the Lawsuit, including attorneys' fees or expenses, fees and expenses of any expert witnesses and consultants, or costs and expenses associated with discovery, motion practice, hearings before the Court or other judicial officer, or mediation; or (ii) any expenses incurred in administering this Settlement Agreement, including the cost of class notice and claims process.

14. This Settlement Agreement shall become final five business days after all of the following conditions have occurred and been satisfied:

(a) The Court has entered: (i) a final non-appealable order approving this Settlement Agreement under Federal Rule of Civil Procedure 23(e); (ii) an injunctive order as described in paragraph 11; and (iii) a final non-appealable judgment granting the relief described in this Settlement Agreement, including the relief described in paragraph 43; and

(b) The time for appeal or to seek permission to appeal from the Court's approval of this Settlement Agreement, injunctive relief and entry of final judgment as to Defendant described in subsection (a) of this paragraph has expired or, if appealed, approvals of this Settlement Agreement and any final judgment as to Defendant have been affirmed by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

15. Upon the Settlement Agreement becoming final as outlined in paragraph 14 of this Settlement Agreement and the Settlement Administrator has determined the Class Members to receive payment, Defendant shall pay to the Settlement Administrator the Settlement Fund minus any amount that will be paid as Cy Pres Funds as described in paragraphs 17 and 19(d) of this Agreement. However, Defendant will pay up to $450,000 of the Settlement Amount to

advance costs invoiced directly to Defendant's Counsel by the Settlement Administrator for the purpose of notice and claims administration (the "Notice Amount"). As used in this Settlement Agreement, the "Settlement Fund" is, with respect to Defendant, the Settlement Amount defined above, paid by Defendant, plus any accrued interest or income on said deposits.

16. Upon the Settlement Agreement becoming final as outlined in paragraph 14 of this Settlement Agreement, Class Counsel will direct the Settlement Administrator to apply and distribute the Settlement Fund in the manner provided herein, subject to the approval of the Court.

17. Any remaining amount of the Settlement Fund to be paid to cy pres recipients as provided in paragraphs 19(d)-(e) of this Settlement Agreement (the "Cy Pres Funds") shall be paid by Defendant by the later of twenty (20) business days after the Settlement Agreement becomes final as outlined in paragraph 14 of this Settlement Agreement or January 2, 2017. None of the Cy Pres Funds shall be due from Defendant prior to January 2, 2017.

18. The proceeds of the Settlement Fund, after deducting attorneys' fees, litigation costs, notice expenses, incentive awards (if any), and costs of settlement or claims administration, as provided in paragraphs 15 and 21 of this Settlement Agreement (the "Net Settlement Fund"), shall be allocated to each Class Member, as defined above, in accordance with the plan summarized below.

19. The amount of the Net Settlement Fund shall be distributed as follows:

Payment to Class Members

(a) For each claim approved by the Settlement Administrator, a Class Member may receive up to $40 in total compensation. Each Class Member is entitled to only one claim.

(b) If approved claims of all Class Members on an aggregate basis exceed the Net Settlement Fund, the payment to Class Members will be reduced accordingly on a proportionate basis to not exceed the Net Settlement Fund.

(c) To receive a payment from the Net Settlement Fund under subparagraph (a) above, an eligible Class Member must provide to the Settlement Administrator identified below a Claim Form, pursuant to the requirements described below, that is approved by the Settlement Administrator. The Settlement Administrator will approve the payment of claims to Class Members.

Unpaid Amounts Paid to Cy Pres

(d) If the total amount of claims ultimately approved by the Settlement Administrator, including but not limited to claims submitted by Class Members, together with amounts paid for the Notice Amount, any attorneys' fees or expenses, incentive awards or costs the Class is awarded, is ultimately lower than the Settlement Fund, then Defendant shall pay such unsubscribed amount to cy pres recipients as outlined below and approved by the Court.

(e) The following cy pres recipients shall receive any such remaining amounts, on an equal basis, as follows:

i. Better Business Bureau Center; and

ii. AARP Foundation.

20. In no event shall Defendant have any obligation, responsibility, or liability, including liability for costs and expenses, arising from or relating to the administration, maintenance, distribution, or disposition of its payments, or the Settlement Fund.

21. Class Counsel shall be awarded such fees and reimbursed such costs and expenses from the Settlement Fund as are approved by the Court. Defendant shall not be liable for any

costs, fees, or expenses of any of the Plaintiffs' attorneys, experts, advisors, agents, or representatives, or any other costs, fees or expenses of any kind. Class Counsel may submit an application to the Court for distributions from the Settlement Fund, for: (i) an award of attorneys' fees not in excess of thirty percent (30%) of the Settlement Fund; and (ii) reimbursement of attorney expenses or costs up to $40,000. With respect to this Settlement Agreement, Plaintiffs, the Settlement Classes, and their attorneys, experts, advisors, agents, and representatives agree to waive any claim for, and will not seek, any attorneys' fees, expenses or costs in an amount in excess of those outlined in this paragraph. Defendant agrees not to oppose any application to the Court for payment of attorneys' fees, expenses and costs in an amount not to exceed those outlined in this paragraph. For purposes of this paragraph, the term "costs" includes, but is not limited to, fees and expenses of expert witnesses and consultants, and costs and expenses associated with discovery, motion practice, hearings before the Court or other judicial officer, appeals and mediation.

22. Class Counsel may request that the Court authorize payment of an incentive fee for the Class Representatives in the amount of not more than Five Thousand Dollars ($5,000) each, with such amounts included within the Settlement Fund. Defendant agrees not to oppose any application to the Court for payment of such incentive fees.

23. Defendant shall not have any responsibility for, or interest in, or liability whatsoever with respect to the allocation among counsel for the Settlement Classes, and/or any other person who may assert some claim thereto, of any fee and expense award that the Court may make in the Lawsuit.

24. Taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be

imposed upon Defendant with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as "qualified settlement funds" for federal or state income tax purposes ("Taxes") shall be paid out of the Settlement Fund held by the Settlement Administrator. The Settlement Administrator shall be responsible for issuance of any 1099s or other necessary documents and make any filings associated with any Taxes.

25. Neither Defendant nor its counsel shall have any liability or responsibility for the Taxes, or for maintaining or securing any desired tax status for the Settlement Fund, nor for any negligence, fraud, or malfeasance regarding the Settlement Fund. Further, Taxes shall be treated as, and considered to be, a cost of administration of the Settlement Fund, and shall be timely paid by the Settlement Administrator out of the Settlement Fund without prior order from the Court, and the Settlement Administrator shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution any funds necessary to pay such amounts, including the establishment of adequate reserves for any Taxes. Defendant is not responsible, nor shall it have any liability for, any Taxes. The Parties agree to cooperate with the Settlement Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of paragraphs 24-25.

Release of Claims

26. The Parties stipulate and agree that the period for any damages, injunction, restitution, or other relief sought against Defendant in the Lawsuit is amended to include the period up to and including the date that the Court enters the Order Granting Final Approval.

27. The "Releasing Parties" in this Settlement Agreement are all Class Representatives and all members of the Settlement Classes and their respective heirs, executors, administrators, trustees, successors, assigns, attorneys, representatives and anyone claiming by,

through or on behalf of the Classes, who have not timely opted out and excluded themselves from the Lawsuit and this Settlement Agreement as provided below.

28. The "Released Parties" in this Settlement Agreement is Equilon Enterprises LLC, and its respective past and present officers, directors, members, stockholders, agents, employees, legal representatives, trustees, parents, associates, affiliates, joint ventures, subsidiaries, divisions, partners, heirs, executors, administrators, purchasers, predecessors, successors, legal representatives, contractors and assigns, including but not limited to OutWest Promotions and Shell-branded wholesalers or Shell-branded dealers, including their owners, employees, agents, insurers and legal representatives. For purposes of this Settlement Agreement, the term "subsidiary" refers to an affiliate of Defendant in which Defendant owns or owned at least ten percent (10%) of such affiliate at the relevant time.

29. In addition to the effect of any final judgment entered in accordance with this Settlement Agreement, including but not limited to any preclusive effect, the Releasing Parties hereby expressly and irrevocably waive and fully, finally, and forever settle, discharge, remise and release the Released Parties from any and all manner of claims, demands, judgments, actions, suits, obligations, promises and causes of action, whether individual, class, or otherwise in nature, for damages whenever incurred, and for liabilities of any nature whatsoever, including for penalties, fines, charges, costs, expenses, injunctive relief, declaratory relief, attorneys' fees, claims for contribution or indemnification, or the like, whether known or unknown, suspected or unsuspected, in law or equity, that any Releasing Party ever had, now has, or hereafter can, shall, or may have, arising out of or relating in any way to: (i) the allegations that were made in the Lawsuit or that could have been made in the Lawsuit; (ii) any conduct or failure to act of any Released Party alleged and causes of action asserted in the Lawsuit, or that could have been

alleged or asserted in the Lawsuit and that relate to the Ski Free® program, advertising or promotion; and/or (iii) any act, representation, or omission of any Released Party concerning the Ski Free® program, advertising or promotion or to injurious results arising now or hereafter from the Ski Free® program.

30. For the avoidance of doubt, the types of claims released in the preceding paragraph are released regardless of the type of cause of action, common law principle, or statute under which they are asserted; for example, and without limitation, such claims are released whether asserted under any federal, state, or local unfair competition, unfair practices, deceptive practices, common law breach of contract, or similar law or regulation of any jurisdiction within the United States.

31. Each Releasing Party further expressly and irrevocably waives and fully, finally, and forever settles and releases, upon the Court's final approval of this Settlement Agreement, any and all defenses, rights, and benefits that the Releasing Party may have or that may be derived from the provisions of applicable law which, absent such waiver, may limit the extent or effect of the release contained in paragraphs 26-30. Without limiting the generality of the foregoing, each Releasing Party expressly and irrevocably waives and releases any and all defenses, rights, and benefits that the Releasing Party might otherwise have in relation to the release by virtue of the provisions of California Civil Code § 1542 or similar laws of any other state or jurisdiction. Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN

BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Plaintiffs acknowledge that they understand, and their attorneys have explained, the importance, meaning, and legal effect of this section, including the above Civil Code section, and that they fully understand both this Settlement Agreement and the Civil Code section.

32. The Releasing Parties hereby covenant and agree that they shall not, hereafter, seek to establish liability against any of the Released Parties based, in whole or in part, upon any of the released claims.

Preliminary Court Approval

33. Plaintiffs and Defendant shall recommend approval of this Settlement Agreement by the Court and all reviewing courts. Plaintiffs and Defendant shall use their best efforts to effectuate this Settlement Agreement, including cooperating in seeking amendments to the Complaint, as necessary, and obtaining judicial approval for the establishment of procedures to secure the prompt, complete, and final dismissals with prejudice of the Lawsuit.

34. On or before April 29, 2016, Class Counsel shall submit to the Court a Motion for Preliminary Approval of this Settlement Agreement, which will recommend approval of this Settlement Agreement by the Court as being fair, reasonable and adequate. With the filing, Plaintiffs will request a hearing date for the Final Approval Hearing. As part of that filing, or contemporaneously therewith, Plaintiffs shall seek, and Defendant will not oppose, the Court's entry of an order(s) (the "Preliminary Approval Order"), to:

(a) Preliminarily approve this Settlement Agreement.

(b) Approve the provisional amendment of the Complaint as described in this Settlement Agreement for settlement purposes only, and declare that in the event of termination

of this Settlement Agreement as provided below, amendment of the Complaint shall automatically be vacated and the Lawsuit returns to the Complaint as of January 15, 2016 (Doc. 93).

(c) Approve the provisional certification of the Settlement Classes for settlement purposes only, and declare that in the event of termination of this Settlement Agreement as provided below, certification of the Settlement Classes shall automatically be vacated and Defendant may fully contest certification of any class as if no Settlement Classes had been certified.

(d) Appoint Rick Klingbeil, Robert Curtis, Brady Mertz and Brooks Cooper as Class Counsel.

(e) Appoint K.C.C. Class Action Services, LLC ("Settlement Administrator") to (1) process any claims submitted for payment from the Net Settlement Fund and perform such related duties as may be necessary; (2) assist in developing and effectuating the Notice Plan and exclusion procedures defined below and perform such related duties as may be necessary; and (3) assist the Parties in effectuating the claims process defined in this Settlement Agreement and perform such related duties as may necessary.

(f) Determine that notice and exclusion rights should be provided to members of the Settlement Classes, with the Notice Amount being used to cover the cost of notice and the claims process.

(g) Approve the method of notice to be provided to the Settlement Classes that will be submitted by Class Counsel (the "Notice Plan"), and find that it complies with the requirements of Federal Rule of Civil Procedure 23.

(h) Approve the procedures described below for members of the Settlement Classes to submit claims for payment from the Net Settlement Fund, opt out and exclude themselves from those Classes, the Lawsuit, and this Settlement Agreement, or to object to this Settlement Agreement.

(i) Stay all proceedings in the Lawsuit, except those related to effectuating and complying with the Settlement Agreement, pending the Court's determination of whether the Settlement Agreement should be finally approved.

Notice, Exclusion and Claims Procedures

35. Class Counsel and the Settlement Administrator approved by the Court shall provide notice to the Settlement Classes and exclusion procedures in the form and manner approved by the Court, shall establish a claims process for Class Members to submit a claim, and shall perform such related duties as may be necessary to provide the claims, notice and exclusion procedures. Class Counsel and the Settlement Administrator shall work with Defendant to develop the form and manner of notice, which will comply with the requirements of Federal Rule of Civil Procedure 23, be by publication notice only, with a reach to exceed the judicial guideline of 70%.

36. The Parties will request that the Preliminary Approval Order provide for a period of no more than thirty (30) days after completion of the notice described in the Notice Plan, for any member of the Settlement Classes that does not wish to participate in this Settlement Agreement to opt out and be excluded from the Settlement Classes. Any Class Member may opt out of the Class by submitting a written or online Request for Exclusion to the Settlement Administrator within the timeframe indicated in the notice. Such exclusion may be effected in the form and manner approved by the Court.

37. Within ten days after the conclusion of the period for exclusion, the Settlement Administrator shall provide counsel for Plaintiffs and Defendant with a list of each member of the Settlement Classes that sought to opt out and be excluded from this Settlement Agreement, stating whether the request for exclusion was properly and timely made, and attaching a copy of all documentation, if any, concerning each request for exclusion submitted.

38. The Parties will request that the Preliminary Approval Order provide for a period of no more than thirty (30) days after completion of the notice described in the Notice Plan, for any member of the Settlement Classes that does not submit a request for exclusion to object to this Settlement Agreement or the any request for Class Counsel's attorneys' fees, costs or expenses. Any objection must be submitted in a writing to the Court, the Settlement Administrator and all attorneys of record in the Lawsuit within the timeframe indicated in the notice. Such objection may be effected in the form and manner approved by the Court.

39. The Parties will request that the Preliminary Approval Order provide for a period up and through the date of the Final Approval Hearing for any member of the Settlement Classes that does not submit a request for exclusion to submit a written claim form to the Settlement Administrator for payment from the Net Settlement Fund ("Claim Form").

(a) The Claim Form submitted to the Settlement Administrator must be submitted in writing or online and signed under penalty of perjury and contain, at a minimum, the following information: (i) name; (ii) address; (iii) the station location (specifically by address or by cross streets) where the Class Member participated in Ski Free®; (iv) verify that the Class Member falls within a Settlement Class; (v) affirm that the Class Member was deceived by Ski Free® advertising; and (vi) affirm the Class Member did not participate in Ski Free® prior to November 1, 2009.

40. The Settlement Administrator will collect, review, audit and verify the validity of submitted Claim Forms to determine the validity of claims and examine the proof submitted on claims, including through use of anti-fraud measures, normal procedures applied to determine if claims are fraudulently submitted, filters to determine whether a claim has any other suspicious characteristics requiring further review (e.g., the residential address is a prison; the claim originated electronically overseas), confirm the claim is not duplicative of another submitted claim, verification that the Claim Form is adequately completed with the required information, validate the claimant's identity and address, verify the identified station location participated in Ski Free® during the relevant time frame, and the claimant falls within a Settlement Class. The Settlement Administrator will also ensure that only one claim is approved per Class Member.

41. After the expiration of the period for submission of claims, and not later than ten (10) days after the scheduled Final Approval hearing, the Settlement Administrator shall submit a report to Class Counsel regarding the basis for rejection of any claims (the "Rejected Claims"). Any disputes over Rejected Claims shall be resolved by the Court prior to the Settlement Agreement becoming final as outlined in paragraph 14 of this Settlement Agreement. Within sixty (60) days after the Order Granting Final Approval, the Settlement Administrator shall provide the Parties verification that all valid claims have been paid under this Settlement Agreement.

42. The Settlement Administrator's expenses for the foregoing activities, including those of any third-party vendors it uses to perform tasks necessary for the implementation or effectuation of its duties, shall be paid from the Notice Amount of the Settlement Fund. In no event shall Defendant or any of the Released Parties have any obligation, responsibility, or liability with respect to the Settlement Administrator, the Notice Plan, the claims process, or the

exclusion procedures, including with respect to the costs, administration expenses, or any other charges for any notice or claims and exclusion procedures, except as provided in paragraphs 15 and 21 of this Settlement Agreement.

Final Court Approval

43. As soon as practicable after expiration of the period to opt out or object, Class Counsel will make a motion for the Court to enter an order (the "Order Granting Final Approval") and a judgment ("Judgment") which will:

(a) Determine that the Court has personal jurisdiction over Defendant and all members of the Settlement Classes, and jurisdiction to finally approve this Settlement Agreement.

(b) Resolution of any objections to this Settlement Agreement or any request by Class Counsel for fees, costs or expenses.

(c) Finally approve this Settlement Agreement as being fair, reasonable, and adequate for the members of the Settlement Classes within the meaning of Federal Rule of Civil Procedure 23 and any other applicable rules, and direct its consummation according to its terms.

(d) Enter an injunction in the form described in paragraph 11, declare that any of Defendant's contractors that are alleged to have violated the injunctions are responsible for any such non-compliance, and declare that in the event of termination of this Settlement Agreement, the injunction order shall automatically be vacated.

(e) Approve the releases set forth in paragraphs 26-32 of this Settlement Agreement, and enjoin the members of the Settlement Classes and anyone acting on their behalf from asserting any of the released claims.

(f) Approve the cy pres recipients that will receive the Cy Pres Funds and make a finding that the cy pres recipients are appropriate.

(g) Amend the Complaint as described in this Settlement Agreement for settlement purposes only, and declare that in the event of termination of this Settlement Agreement as provided below, amendment of the Complaint shall automatically be vacated and the Lawsuit returns to the Complaint as of January 15, 2016 (Doc. 93).

(h) Define the Settlement Classes and finally certify them for settlement purposes only, and declare that in the event of termination of this Settlement Agreement, certification of the Settlement Classes shall automatically be vacated and Defendant may fully contest certification of any class as if no Settlement Classes had been certified.

(i) Approve the notice provided to the Settlement Classes as due, adequate, and sufficient, as the best practicable notice under the circumstances, and as fully satisfying the requirements of due process, the Federal Rules of Civil Procedure, and any other applicable laws or rules.

(j) Approve the claims process used for the Settlement Classes as due, adequate and sufficient, and as fully satisfying the requirements of the Federal Rules of Civil Procedure and any other applicable laws or rules.

(k) Find that Defendant has ensured that a notice of proposed settlement that complies with the requirements of the Class Action Fairness Act, 28 U.S.C. § 1715 is served upon the appropriate State official of each State in which a Class member resides, and the appropriate Federal official,.

(l) Direct that the Lawsuit be dismissed with prejudice and, except as provided for in this Settlement Agreement, with each side to bear their respective attorneys' fees

and costs other than those allowed by the Court as set out in paragraphs 15 and 21 of this Settlement Agreement.

(m) Provide that the Court retains continuing jurisdiction over the Settlement Classes and Defendant to implement, administer, consummate, and enforce this Settlement Agreement and the Judgment and the Order Granting Final Approval.

(n) Determine under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and direct that the judgment of dismissal with prejudice as to Defendant shall be final and appealable.

44. Once there is a non-appealable Judgment, Class Counsel shall fully comply with the terms of the Protective Order entered on April 16, 2015 (Doc. 54) in the Lawsuit and shall destroy or return to the Released Parties all documents and material produced, as required by the terms of the Protective Order, and all copies of same. Equilon will destroy any financial information produced by Plaintiffs.

Representations and Warranties

45. Plaintiffs and Class Counsel represent and warrant that there are no pending personal injury claims in the Lawsuit, and that they are unaware of any such claims. Plaintiffs and Class Counsel further represent that they are unaware of any insurance, hospital, medical, Medicaid, Medicare, ERISA, Social Security, SSI, attorney liens, or any other type of lien of any kind whatsoever for any claims alleged in the Lawsuit, and that no parties other than those named in this Settlement Agreement have any interest in or right to the settlement proceeds being paid.

Termination

46. Plaintiffs and Defendant each may terminate this Settlement Agreement by providing written notice to counsel for the other parties and the Court within ten business days after any of the following occurrences:

(a) The Court does not enter a Preliminary Approval Order containing the provisions set forth in paragraph 34 of this Settlement Agreement, or subsequently seeks to significantly modify any of its terms.

(b) The Court does not enter a Judgment and an Order Granting Final Approval containing the provisions set forth in paragraph 43 of this Settlement Agreement, or subsequently seeks to significantly modify any of its terms. For the avoidance of doubt, any order of the Court that purports to impose additional financial obligations or other material obligations on Defendant, or any order on review or appeal that would have the foregoing effect, constitutes a basis for termination of this Settlement Agreement.

(c) The Court does not provisionally or finally grant leave to amend the Complaint for settlement purposes only as described in this Settlement Agreement.

(d) The Court does not provisionally or finally certify for settlement purposes only the Settlement Classes as defined in paragraph 3 above, or significantly limits or changes the composition of those Classes.

(e) Any terms of this Settlement Agreement, the Court's Preliminary Approval Order, the Court's Judgment, or the Court's Order Granting Final Approval are not substantially affirmed or are significantly modified on any appeal or otherwise. A modification or reversal on appeal of any amount of attorneys' fees and expenses awarded by the Court from

the Settlement Fund, or of an order approving a plan of distribution from the Settlement Fund, shall not be deemed a basis for termination of this Settlement Agreement.

(f) Any court issues an order affecting in whole or in part the Settlement Class definitions in paragraph 3 above, the settlement consideration in paragraphs 10-25 above, the release of claims in paragraphs 26-32 above, or other material terms or conditions of this Settlement Agreement.

47. In the event that the number of members of the Settlement Classes who timely and validly request exclusion exceeds 500 members total of members of the Settlement Classes, based on estimate sizes of the Settlement Classes, Defendant may terminate this Settlement Agreement by providing written notice to Class Counsel and the Court within ten business days after Class Counsel provides to counsel for Defendant the list of requests for exclusion described in paragraph 37 of this Settlement Agreement.

48. In the event of an occurrence giving rise to a basis for termination of this Settlement Agreement, Plaintiffs and Defendant agree to negotiate reasonably and in good faith within thirty (30) days of any termination or disapproval by the Court, in whole or in part, to negotiate an appropriate amended Settlement Agreement.

49. In the event of termination of this Settlement Agreement:

(a) This Settlement Agreement shall be null and void, and of no force and effect, except as provided in subparagraphs (b)-(f) below.

(b) Defendant shall not be required to make any further payments to the Settlement Fund, and all sums that Defendant paid that are held by the Settlement Administrator, as well as any unspent Notice Amount that Defendant paid to the Settlement Administrator, plus

any accrued interest less taxes and administrative costs with respect to those sums, shall be immediately paid to an account designated by Defendant.

(c) Any certification of the Settlement Classes by the Court, and any amendments to the Complaints in the Lawsuit, made pursuant to this Settlement Agreement, will automatically be vacated. Defendant will retain all defenses to certification and their non-opposition to the Settlement Classes for settlement purposes only shall not be used as evidence, and shall not be admissible as such, in support of class certification in the Lawsuit, or any other civil action or proceeding.

(d) Plaintiffs and Defendant shall revert to their positions prior to the execution of this Settlement Agreement, including with respect to the appropriateness of class certification, as if the Settlement Agreement had not been reached or executed.

(e) The Lawsuit shall proceed according to the scheduling order as of February 17, 2016, subject to any modification entered by the Court or sought by either Plaintiffs or Defendant.

(f) The terms and conditions of this Settlement Agreement, the facts and circumstances surrounding this settlement, any publicly disseminated information regarding the Settlement Agreement, and any orders or motion filings or objections concerning the Settlement Agreement (including without limitation the Court's Preliminary Approval Order, the Order Granting Final Approval, the Judgment, and all motion papers concerning those Orders), may not thereafter be used as evidence, and shall not be admissible as such, in the Lawsuit, or any other civil action or proceeding.

Communications

50. Plaintiffs, Defendant, and their respective counsel, including Class Counsel, shall not engage in any conduct or make any statements, directly or indirectly, to encourage, promote, or solicit members of the Settlement Classes or their counsel to request exclusion from the Settlement Classes or to object to this Settlement Agreement, or to facilitate, induce, or cause the non-fulfillment of a condition or the occurrence of an event giving rise to a right to terminate this Settlement Agreement.

51. Each party, their respective counsel, or anyone else acting on behalf of them, shall use reasonable efforts to ensure that any public statement made in connection with the Settlement is consistent with and fair comment on the contents of the Notice, the allegations contained in the operative Complaint and Answer, or confirmation that the Parties entered this Settlement Agreement. No party, or their respective counsel, or anyone else acting on behalf of them, may issue any press release, with the exception of any release issued by the Settlement Administrator. The parties' counsel may, however, make information about the Settlement available on their law firm website or blog so long as it is consistent with the other requirements of this Paragraph.

Continuing Jurisdiction

52. The Court will retain continuing jurisdiction over the Plaintiffs, the Settlement Classes, and Defendant to implement, administer, consummate, and enforce the Settlement Agreement, the Judgment, the injunction and the Order Granting Final Approval.

53. Plaintiffs, the Settlement Classes, and Defendant hereby irrevocably submit to the exclusive jurisdiction of the Court for any suit, action, proceeding, or dispute arising out of or relating to this Settlement Agreement, the Judgment, the injunction or the Order Granting Final

Approval, or to the applicability of this Settlement Agreement, the Judgment, the injunction or the Order Granting Final Approval, which cannot be resolved by negotiation and agreement by Plaintiffs and Defendant. Without limiting the generality of the foregoing, it is hereby agreed that any dispute, including but not limited to any suit, action, or proceeding by a Plaintiff or member of the Settlement Classes, in which the provisions of this Settlement Agreement, the Judgment, the injunction or the Order Granting Final Approval are asserted as a defense in whole or in part to any claim or cause of action, or otherwise raised as an objection, constitutes a suit, action, or proceeding arising out of or relating to this Settlement Agreement, the Judgment, the injunction or the Order Granting Final Approval.

54. In the event that the provisions of this Settlement Agreement, the Judgment, the injunction or the Order Granting Final Approval are asserted by Defendant as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection in any other suit, action, or proceeding by a Plaintiff or member of the Settlement Classes, it is hereby agreed that Defendant may seek, and that Plaintiffs and Settlement Class members will not oppose, a stay of that suit, action, or proceeding until the Court has entered an order or judgment determining any issues relating to the defense or objections based on such provisions.

Additional Terms and Conditions

55. Plaintiffs, the Settlement Classes, Defendant, their respective counsel, and Class Counsel shall execute all documents and perform any additional acts reasonably necessary and proper to effectuate the terms of this Settlement Agreement and to obtain the benefit of this Settlement Agreement for Plaintiffs, the Settlement Classes, and Defendant.

56. Defendant specifically denies any and all liability in the Lawsuit. By entering into this Settlement, it is expressly understood and agreed that Defendant is not admitting any

liability or wrongdoing whatsoever to Plaintiffs, any member of the Settlement Classes, or any other person or entity, and is not admitting the truth of any allegations or circumstances, nor is Defendant waiving any defense or affirmative defense.

57. This Settlement Agreement, and all negotiations, documents, and discussions associated with it, shall not be construed as, or deemed to be, evidence of any admission of any liability or wrongdoing on the part of Defendant or any of the Released Parties, or of the truth or merit of any allegations or claims in the Lawsuit, or evidence of any admission on the part of Plaintiffs and the Settlement Classes that their potential claims lack merit, or the propriety of the certification of a damages or liability class in the Lawsuit; and shall not be offered or accepted as evidence of such in any litigation, arbitration, or other proceeding between or among Plaintiffs or members of the Settlement Classes and Defendant or any Released Party, and shall have no precedential value; provided, however, that nothing contained herein shall preclude use of this Settlement Agreement in any proceeding to enforce the Settlement Agreement. This paragraph shall survive any termination or rescission of the Settlement Agreement.

58. This Settlement Agreement constitutes the entire, complete, and integrated agreement between and among Plaintiffs, on behalf of themselves and the Settlement Classes, and Defendant with respect to the settlement of the Lawsuit, and is not subject to any condition not provided for in this Settlement Agreement. This Settlement Agreement supersedes all prior and contemporaneous negotiations and agreements and may not be modified or amended except by a writing signed by Plaintiffs and Defendant or their respective counsel.

59. This Settlement Agreement shall not be construed more strictly against any party to it merely because it may have been prepared by counsel for one of them, it being recognized that because of the arm's-length negotiations resulting in this Settlement Agreement, all parties

to this Settlement Agreement have contributed substantially and materially to the preparation of it. All headings used in this Settlement Agreement are for reference and convenience only and shall not affect the meaning or interpretation of this Settlement Agreement.

60. The waiver by Plaintiffs, the Settlement Classes, or Defendant of any breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach of this Settlement Agreement, whether prior, subsequent, or contemporaneous.

61. This Settlement Agreement shall be construed, enforced, and administered in accordance with the substantive laws of the State of Oregon without reference to its conflict of laws principles.

62. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Plaintiffs and the Released Parties. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by Plaintiffs shall be binding upon all members of the Settlement Classes and the Releasing Parties.

63. Any notice or materials to be provided to Plaintiffs or the Settlement Classes pursuant to this Settlement Agreement shall be sent by e-mail and overnight delivery to:

Robert A. Curtis
FOLEY BEZEK BEHLE & CURTIS, LLP
15 W. Carrillo St.
Santa Barbara, CA 93101
rcurtis@foleybezek.com

or such other persons or addresses as Class Counsel may designate by giving notice to the other Parties.

64. Any notice or materials to be provided to Defendant pursuant to this Settlement Agreement shall be sent by e-mail and overnight delivery to:

David M. Harris
Abby L. Risner
Greensfelder, Hemker, & Gale, P.C.
10 South Broadway, Suite 2000

St. Louis, MO 63102
dmh@greensfelder.com
alr@greensfelder.com

or such other persons or addresses as Defendant may designate by giving notice to the other Parties.

65. In entering into and executing this Settlement Agreement, Plaintiffs and Defendant warrant that they are acting upon their respective independent judgments and upon the advice of their respective counsel, and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other person or entity, other than the warranties and representations expressly made in this Settlement Agreement.

66. This Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. A signature by facsimile or in PDF format will constitute sufficient execution of this Settlement Agreement.

IN WITNESS WHEREOF, the signatories have read and understood this Settlement Agreement, have executed it, represent that the undersigned are authorized to execute this Settlement Agreement on behalf of their respectively represented parties, have agreed to be bound by its terms, and have duly executed this Settlement Agreement.

FOR ALL PLAINTIFFS AND ON BEHALF OF THE CLASSES

Dated: April __, 2016

Robert Curtis
By: Robert Curtis

Dated: April __, 2016

By: Rick Klingbeil

St. Louis, MO 63102
dmh@greensfelder.com
alr@greensfelder.com

or such other persons or addresses as Defendant may designate by giving notice to the other Parties.

65. In entering into and executing this Settlement Agreement, Plaintiffs and Defendant warrant that they are acting upon their respective independent judgments and upon the advice of their respective counsel, and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other person or entity, other than the warranties and representations expressly made in this Settlement Agreement.

66. This Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. A signature by facsimile or in PDF format will constitute sufficient execution of this Settlement Agreement.

IN WITNESS WHEREOF, the signatories have read and understood this Settlement Agreement, have executed it, represent that the undersigned are authorized to execute this Settlement Agreement on behalf of their respectively represented parties, have agreed to be bound by its terms, and have duly executed this Settlement Agreement.

FOR ALL PLAINTIFFS AND ON BEHALF OF THE CLASSES

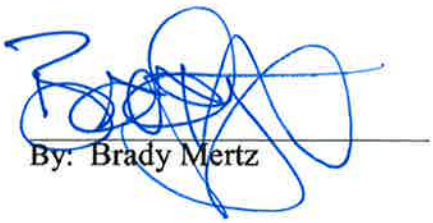
Dated: April __, 2016

By: Robert Curtis

Dated: April 28, 2016

By: Rick Klingbeil

Dated: April __, 2016



By: Brady Mertz

Dated: April __, 2016

By: Brooks Cooper

Class Counsel

FOR DEFENDANT EQUILON ENTERPRISES LLC

Dated: April __, 2016

By: Shawn Carsten, Vice President–Finance and Treasurer

Dated: April __, 2016

By: Brooks Cooper

Class Counsel

FOR DEFENDANT EQUILON ENTERPRISES LLC

Dated: April __, 2016

By: Shawn Carsten, Vice President–Finance and Treasurer

Dated: April __, 2016

By: Brady Mertz

Dated: April __, 2016

By: Brooks Cooper

Class Counsel

FOR DEFENDANT EQUILON ENTERPRISES LLC

Dated: April __, 2016

By: Shawn Carsten, Vice President–Finance and Treasurer

EXHIBIT 2

Rick Klingbeil, OSB #933326
email: rick@klingbeil-law.com
RICK KLINGBEIL, PC
2222 NE Oregon St., Ste. 213
Portland, OR 97201
Ph: 503-473-8565
Fx: 503-427-9001

of Attorneys for Plaintiffs
Additional attorneys listed on final page

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

JOHN MARTIN KEARNEY, an Oregon resident; **CARLY LaFOREST**, a Michigan resident; **ALYSIA ROWE**, a Michigan resident; **RICHARD SCHEMPP**, a California resident; and, **JEFFREY PAUL GILPIN, JR.**, a Washington resident; each on behalf of themselves and all similarly situated persons,

Plaintiffs,

v.

EQUILON ENTERPRISES, LLC, a Delaware corporation dba **SHELL OIL PRODUCTS US**,

Defendant.

Case No. 3:14-cv-00254-HZ

STIPULATED FOURTH AMENDED CLASS ACTION ALLEGATION COMPLAINT

(1) Breach of Contract
(2) State Unlawful Trade Practices
(3) Injunctive Relief

JURY TRIAL DEMANDED

Pursuant to Stipulation by the Plaintiffs and Defendant (for purposes of settlement only), Plaintiffs individually and on behalf of the Class and Subclasses described below, through counsel amend their Complaint and allege as follows:

NATURE OF THE CASE

1. This is a proposed class action. Plaintiffs, on behalf of themselves and all similarly situated persons seek money damages and injunctive relief based on Defendant's acts and omissions. This includes claims for breach of contract for all class members, and relief for state subclasses based on violations of individual state consumer protection acts and other state laws.

2. The claims relate to the seasonal "Ski Free" promotion offered or that have been offered at Shell-branded service stations throughout the states of Oregon, California, Washington, and Michigan ("Class States").

3. Concurrent with filing the initial Complaint for injunctive relief related to conduct within the state of Oregon, plaintiff provided the required notice to Defendant pursuant to ORCP 32 H. More than 30 days have passed, and Defendant has not satisfied the requirements of ORCP 32 I. Pursuant to ORCP 32 J, plaintiffs previously amended this complaint to add a request for money damages for claims arising in Oregon.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1367(a) and §1332, because: (a) Each plaintiff is a resident of one of the Class

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Portland, OR 97232
503-490-6763
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States and Defendant is a Delaware corporation with its principal place of business in Texas, and (b) the damage claims exceed $75,000 in the aggregate.

5. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. §1332(d)(2), the "Class Action Fairness Act." On information and belief, there are at 200,000 Class members in the proposed Class, over 20,000 members in each proposed Subclass, the amount in controversy exceeds $5,000,000, and Plaintiffs and substantially all members of the Class are citizens or residents of different states than the Defendants.

6. This Court has personal jurisdiction over Defendant because it does business in the state of Oregon and this District and a substantial portion of the wrongdoing alleged in this complaint took place here. Defendant has intentionally availed itself to markets and customers in the state of Oregon and this District through the presence of franchises, marketing and promotion, and sales of products and services. Defendant has contacts with this state and District sufficient to render the exercise of jurisdiction by this Court permissible under traditional notions fair play and substantial justice.

7. Venue is proper within the state of Oregon and this District pursuant to 29 U.S.C. §1391.

THE PARTIES

8. Plaintiff / Class representative JOHN MARTIN KEARNEY ("KEARNEY") is an individual who resided in the state of Oregon and participated in

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the "Ski Free" promotion within Oregon during the applicable class period. After seeing, and in reliance on Defendant's advertisement representing that the purchaser of ten gallons of Shell branded fuel would receive a voucher that entitled them to a "free" ski resort lift ticket, KEARNEY purchased fuel and requested a Ski Free voucher on February 25, 2012 from the Jacksons Stores (Store #506) Shell Station located at 519 NE Broadway, Portland, OR 97232. At no time before February 14, 2013 did KEARNEY know, or in the exercise of reasonable care should have known, facts that would make an objectively reasonable person aware of a substantial possibility that he had suffered injury or harm, the injury or harm implicated one or more of his legally protected interests, and the Defendant was the responsible party.

9. Plaintiff / Class representative CARLY LaFOREST ("LaFOREST") is an individual who resided in the state of Michigan and participated in the "Ski Free" promotion within Michigan during the applicable class period. After seeing, and in reliance on Defendant's advertisement representing that the purchaser of ten gallons of Shell branded fuel would receive a voucher that entitled them to a "free" ski resort lift ticket, LaFOREST purchased fuel and requested a Ski Free voucher in the Spring of 2014 from the Shell Station located at 2679 Saline Road, Ann Arbor, Michigan, 48103.

10. Plaintiff / Class representative ALYSIA ROWE ("ROWE") is an individual who resided in the state of Michigan and participated in the "Ski Free" promotion within Michigan during the applicable class period. After hearing, and in

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reliance on Defendant's advertisement representing that the purchaser of ten gallons of Shell branded fuel would receive a voucher that entitled them to a "free" ski resort lift ticket, ROWE purchased fuel and requested a Ski Free voucher in the Winter of 2014 from the Shell Station located at 10440 Highland Rd. Hartland, MI 48353 and 503 N James St., Grayling, MI 49738.

11. Plaintiff / Class representative RICHARD SCHEMPP ("SCHEMPP") is an individual who resided in the state of California and participated in the "Ski Free" promotion within California during the applicable class period. After seeing, and in reliance on Defendant's advertisement representing that the purchaser of ten gallons of Shell branded fuel would receive a voucher that entitled them to a "free" ski resort lift ticket, SCHEMPP purchased fuel and requested a Ski Free voucher on or about March 24, 2011 from the Shell Station located at Alcosta Shell, 8999 San Ramon Rd., Dublin, California, 94568, or Hopyard Shell & Car Wash, 5251 Hopyard Road, Pleasanton, CA 94588.

12. Plaintiff / Class representative JEFFREY PAUL GILPIN, JR. ("GILPIN") is an individual who resided in the state of Washington and participated in the "Ski Free" promotion within Washington during the applicable class period. After seeing, and in reliance on Defendant's advertisement representing that the purchaser of ten gallons of Shell branded fuel would receive a voucher that entitled them to a "free" ski resort lift ticket, GILPIN purchased fuel and requested a Ski Free voucher during the between December 2010 and April 2011 from the Shell Station located at 153 Easy

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Street, Wenatchee, Washington 98801, and Snohomish Food Mart Shell Station, 1221 Avenue D, Snohomish, Washington, 98290. At no time before February 14, 2012 did GILPIN know, or in the exercise of reasonable care should have known, facts that would make an objectively reasonable person aware of a substantial possibility that he had suffered injury or harm, the injury or harm implicated one or more of his legally protected interests, and the Defendant was the responsible party.

13. Defendant Equilon Enterprises LLC is a Delaware limited liability company with its principal place of business in Texas, and doing business as Shell Oil Products US ("EQUILON"). In connection therewith, EQUILON owns and operates a number of company-owned Shell branded service stations within the Class States.

14. Defendant EQUILON franchises a number of Shell-branded service stations within each of the Class States. As a requirement for each franchise, EQUILON requires periodic submittal, review, and approval of each franchisee's marketing, promotional, and business plan. The required franchisee business plan must set forth, among other things, marketing activities and plans for each of the franchisee's Shell service station, including the "Ski Free" promotion at issue. Franchisees cannot implement or maintain the Ski Free promotion absent approval by Defendant.

DEFENDANT'S CONDUCT

15. At various times during the class period, Defendant, through a substantial number of franchised and owned Shell-branded service stations located in

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the Class States, conducted a "Ski Free" promotion. In the Ski Free promotion, Defendant claimed and advertised that the purchaser of ten gallons of Shell- branded fuel would receive a voucher that entitled them to a "free" ski resort lift ticket.

16. The "Ski Free" promotion was advertised to passing motorists and customers in each Class State through use of a banner visible from the roadways adjacent to the service station premises, stating: "BUY 10 GALLONS OF FUEL, GET A VOUCHER FOR A FREE LIFT TICKET", "SKI FREE", and/or various other signs or indications on or about the store property indicating in large bolded lettering that free products or services were being offered by the station under the Ski Free promotion. The signage was consistent with signage contained on the www.skifreedeals.com website for various seasons during the class period. Signage has typically contained text of similar size and substance to the example below:

17.

18. Under the "Ski Free" promotion, after a motorist purchased and paid for ten or more gallons of fuel and requested a "VOUCHER FOR A FREE LIFT TICKET", or paperwork enabling them to "ski free", their fuel purchase receipt was stapled to a

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"Ski Free" voucher ("Voucher"), and both provided to them. The Voucher then provided indicated that it was not a coupon or voucher enabling the holder to obtain a "free lift ticket," but was instead was a "two for one" coupon or voucher that allowed the holder to obtain a lift ticket only by purchasing a second lift ticket at full price at a participating ski resort.

19. The Voucher also indicated that it could be redeemed only on certain limited days and times, depending on the ski resort at issue, and contained other substantial and material conditions and limitations.

20. For example, the Oregon 2012 Ski Free Voucher contained the following limitations that were typical of all Ski Free Vouchers at issue:

a. the "free" lift ticket was available only upon purchase of a second lift ticket at full price at a participating ski resort;

b. the "free" and purchased lift tickets must be redeemed and used the same day;

c. the holder of the Voucher and a second guest must both be present at the ticket window at time of redemption;

d. neither the Voucher nor lift ticket received in exchange for the Voucher could not be resold or transferred;

e. the Voucher or Ski Free promotion could not be used for commercial purposes;

f . by using the Voucher, the participant waived any claims,

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demands, actions or causes of action on account of any injury to them which may occur from any cause while participating in the promotional activity; and

d. the Oregon Voucher was redeemable at the resorts below which imposed the following date and time restrictions:

Resort	**Restriction**
Anthony Lakes	Fridays only
Hoodoo Ski Area	Thursday and Friday 9am-4pm only
Mt. Ashland	Thursday and Friday, 3pm-9pm only
Mt. Hood Meadows	Wednesday and Thursday, 3pm-9pm only
Mt. Hood Ski Bowl	Wednesday 3pm-10pm, Friday 9am-4pm only
Timberline Lodge	Tuesday-Thursday only. Blackout 3/24-3/31
Willamette Pass Resort	Friday 12:30-9pm only. Blackout 4/6, 4/13
Mt. Shasta	Tuesday - day, Thursday 3pm-9pm.

21. Terms, conditions, and limitations on Vouchers from other Class States during the same and other years and seasons during the class period contained substantially similar limitations, and imposed similar date and time restrictions at the participating resorts listed on those Vouchers.

22. Defendant provided directions for how the "Ski Free" promotion was implemented through its "How to Ski Free" document, posted at various times at participating Shell stations and on the internet sites related to the promotion.

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23.

24. Under the process required by Defendant and set forth above, to participate in the "Ski Free" promotion, a person was required to first obtain and pay for ten gallons of fuel at the participating Shell station. Only after consummating that transaction, they were then provided a Voucher containing the restrictive terms, conditions, and limitations of the Ski Free offer.

25. During the 2012 ski season over 70,000 Vouchers were redeemed at participating ski resorts within the class states. On information and belief, substantially more than 70,000 Vouchers were obtained by class members during each year within the class period.

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INDIVIDUAL ALLEGATIONS

26. Plaintiff / Oregon Sub-Class Representative KEARNEY is an Oregon resident, who within the class period purchased ten or more gallons of fuel at a Shell station located within the state of Oregon with the intention of participating in the "Ski Free" promotion. Upon completion of the fuel purchase, KEARNEY requested a Voucher that would allow him to obtain a free lift ticket. Instead, he was presented a Voucher that provided for a "buy one, get one free" offer. To obtain his "free" lift ticket, KEARNEY was required to pay the full purchase price for a second lift ticket at a participating ski resort. Further, his choice of dates and times available to redeem the Voucher was substantially limited by each of the participating ski resorts, and the transaction was subject to other terms, conditions, and limitations set forth on the Voucher, but not presented before he accepted the offer. KEARNEY was also required to secure the presence of another skier in order to successfully obtain his "free" lift ticket, even if he desired to ski alone.

27. At the time and place KEARNEY purchased the fuel and received his Voucher from the Oregon Shell station, there was no clear and conspicuous indication of: (1) the terms, conditions, and limitations of the offer; (2) that the Voucher was not redeemable for a "free" lift ticket, but was instead a voucher that provided for a "two for one" offer; (3) that the Voucher required expenditure of additional funds in order to obtain the "free" lift ticket; (4) the amount of cost, fees, or charges necessary to redeem or accept the "free" lift ticket offer; (5) that the Voucher

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could only be redeemed during certain days and times at the participating ski resorts; (6) he could not make use of the "free" lift ticket offer by himself, but required the presence of a second person; and (7) other restrictive terms, conditions, and limitations associated with the Voucher.

28. Plaintiffs / Michigan Sub-Class Representatives LaFOREST and ROWE are Michigan residents, who within the class period purchased ten or more gallons of fuel at a Shell station located within the state of Michigan with the intention of participating in the "Ski Free" promotion. Upon completion of the fuel purchase, each requested a Voucher allowing them to obtain a free lift ticket. Instead, they were presented a Voucher that provided for a "buy one, get one free" offer. To obtain their "free" lift ticket, each was required to pay the full purchase price for a second lift ticket at a participating ski resort. Further, their choice of dates and times available to redeem the Voucher was substantially limited by each of the participating ski resorts, and the transaction was subject to other terms, conditions, and limitations set forth on the Voucher, but not presented before he accepted the offer. They were also required to secure the presence of another skier in order to successfully obtain their "free" lift ticket, even if they desired to ski alone.

29. At the time and place they purchased the fuel and received their Voucher from the Michigan Shell station, there was no clear and conspicuous indication of: (1) the terms, conditions, and limitations of the offer; (2) that the Voucher was not redeemable for a "free" lift ticket, but was instead a voucher that

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provided for a "two for one" offer; (3) that the Voucher required expenditure of additional funds in order to obtain the "free" lift ticket; (4) the amount of cost, fees, or charges necessary to redeem or accept the "free" lift ticket offer; (5) that the Voucher could only be redeemed during certain days and times at the participating ski resorts; (6) she could not make use of the "free" lift ticket offer by herself, but required the presence of a second person; and (7) other restrictive terms, conditions, and limitations associated with the Voucher.

30. Plaintiff / Washington Sub-Class Representative GILPIN is a Washington resident, who within the class period purchased ten or more gallons of fuel at a Shell station located within the state of Washington with the intention of participating in the "Ski Free" promotion. Upon completion of the fuel purchase, GILPIN requested a Voucher that would allow him to obtain a free lift ticket. Instead, he was presented a Voucher that provided for a "buy one, get one free" offer. To obtain his "free" lift ticket, GILPIN was required to pay the full purchase price for a second lift ticket at a participating ski resort. Further, his choice of dates and times available to redeem the Voucher was substantially limited by each of the participating ski resorts, and the transaction was subject to other terms, conditions, and limitations set forth on the Voucher, but not presented before he accepted the offer. GILPIN was also required to secure the presence of another skier in order to successfully obtain his "free" lift ticket, even if he desired to ski alone.

31. At the time and place GILPIN purchased the fuel and received his

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Voucher from the Washington Shell station, there was no clear and conspicuous indication of: (1) the terms, conditions, and limitations of the offer; (2) that the Voucher was not redeemable for a "free" lift ticket, but was instead a voucher that provided for a "two for one" offer; (3) that the Voucher required expenditure of additional funds in order to obtain the "free" lift ticket; (4) the amount of cost, fees, or charges necessary to redeem or accept the "free" lift ticket offer; (5) that the Voucher could only be redeemed during certain days and times at the participating ski resorts; (6) he could not make use of the "free" lift ticket offer by himself, but required the presence of a second person; and (7) other restrictive terms, conditions, and limitations associated with the Voucher.

32. Plaintiff / California Sub-Class Representative SCHEMPP is a California resident, who within the class period purchased ten or more gallons of fuel at a Shell station located within the state of California with the intention of participating in the "Ski Free" promotion. Upon completion of the fuel purchase, SCHEMPP requested a Voucher that would allow her to obtain a free lift ticket. Instead, she was presented a Voucher that provided for a "buy one, get one free" offer. To obtain his "free" lift ticket, SCHEMPP was required to pay the full purchase price for a second lift ticket at a participating ski resort. Further, his choice of dates and times available to redeem the Voucher was substantially limited by each of the participating ski resorts, and the transaction was subject to other terms, conditions, and limitations set forth on the Voucher, but not presented before he accepted the

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offer. SCHEMPP was also required to secure the presence of another skier in order to successfully obtain his "free" lift ticket, even if he desired to ski alone.

33. At the time and place SCHEMPP purchased the fuel and received her Voucher from the California Shell station, there was no clear and conspicuous indication of: (1) the terms, conditions, and limitations of the offer; (2) that the Voucher was not redeemable for a "free" lift ticket, but was instead a voucher that provided for a "two for one" offer; (3) that the Voucher required expenditure of additional funds in order to obtain the "free" lift ticket; (4) the amount of cost, fees, or charges necessary to redeem or accept the "free" lift ticket offer; (5) that the Voucher could only be redeemed during certain days and times at the participating ski resorts; (6) he could not make use of the "free" lift ticket offer by himself, but required the presence of a second person; and (7) other restrictive terms, conditions, and limitations associated with the Voucher.

CLASS ALLEGATIONS

34. Plaintiffs bring this action for themselves, and on behalf all similarly situated persons who participated in the Ski Free promotion in such Class States as the Court may determine appropriate for class certification treatment pursuant to Federal Rules of Civil Procedure 23(a) and 23(b).

35. The Class and Subclasses of persons that Plaintiffs seeks to represent are initially defined as:

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(a) The California Class is defined as:

All persons in the state of California who (a) between November 1, 2009 and the date that the Court enters the Order Granting Final Approval purchased ten or more gallons of fuel at a Shell-branded station that offered the "Ski Free®" promotion, and (b) in connection with such purchase, obtained from that Shell station that participated in the "Ski Free®" program a "Ski Free®" voucher.

(b) The Washington Class is defined as:

All persons in the state of Washington who (a) between November 1, 2009 and the date that the Court enters the Order Granting Final Approval purchased ten or more gallons of fuel at a Shell-branded station that offered the "Ski Free®" promotion, and (b) in connection with such purchase, obtained from that Shell station that participated in the "Ski Free®" program a "Ski Free®" voucher.

(c) The Michigan Class is defined as:

All persons in the state of Michigan who (a) between November 1, 2009 and the date that the Court enters the Order Granting Final Approval purchased ten or more gallons of fuel at a Shell-branded station that offered the "Ski Free®" promotion, and (b)

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in connection with such purchase, obtained from that Shell station that participated in the "Ski Free®" program a "Ski Free®" voucher.

(d) The Oregon Class is defined as:

All persons in the state of Oregon who (a) between November 1, 2009 and the date that the Court enters the Order Granting Final Approval purchased ten or more gallons of fuel at a Shell-branded station that offered the "Ski Free®" promotion, and (b) in connection with such purchase, obtained from that Shell station that participated in the "Ski Free®" program a "Ski Free®" voucher.

36. Excluded from the Class and each State Subclass is: (a) any Defendant, person, firm, trust, corporation, officer, director, or other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any Defendant, and any current employee of any Defendant; (b) all persons who make a timely election to be excluded from the proposed Class; (c) the judge(s) whom this case is assigned and any immediate family members thereof; and (d) the legal representatives, heirs, successors-in-interest or assigns of any excluded party.

36. Plaintiffs' contract claims are appropriate for class-wide certification and treatment because each class representative can prove the elements of their

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claim on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claims.

37. The claims by each Class State class representative are appropriate for sub-class certification and treatment because each Class State representative can prove the elements of their claim on a sub-class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same Class State claims.

38. Numerosity Under Rule 23(a)(1). Members of the State Subclasses are so numerous that joinder of all members individually into one action, or into individual state-wide class actions, or otherwise is impractical. On information and belief, each State Subclass likely exceeds 20,000 members.

39. Commonality and Predominance under Rule 23(a)(2) and (b)(3). Common questions of law and fact are shared by Plaintiffs and members of the State Subclasses which predominate over any individual issues.

For all State Subclasses, common issues of law include:

a. Which of the various Shell corporations or holding corporations are the proper Defendant(s) in this matter?;

b. Was a contract was formed between Defendant and the Class Members?;

c. If a contract was formed, what were its terms?;

d. If a contract was formed, did Defendant breach its terms?;

e. What statute of limitation applies to the claims?;

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f. What is the appropriate damages for Defendant's breach?;

g. Is specific performance a proper remedy for Defendant's breach?;

40. For the State of Oregon Subclass ("Oregon Subclass"), common questions of law and fact include each of the above common questions of law and fact applicable to all State Subclasses, and in addition:

a. Did Defendant make the required disclosures of terms and limitations of the Ski Free promotion in a "clear and conspicuous" manner as required under ORS §646.644?;

b. Did Defendant properly disclose the costs, fees, or charges necessary to redeem the "Ski Free" offer are required by ORS §646.644?;

c. Was the banner advertising the Ski Free program at participating stations, stating: "BUY 10 GALLONS OF FUEL, GET A VOUCHER FOR A FREE LIFT TICKET!" or substantially equivalent language a false or misleading statement about a prize, contest, or promotion used to publicize a product, business, or service as proscribed by ORS §646.608?;

d. Were other written and/or posted representations made by Defendant at service stations in connection with the "Ski Free" promotion false or misleading statements about a prize, contest, or promotion used to publicize a product, business, or service as

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proscribed by ORS §646.608?;

e. Was Defendant's conduct proscribed by OAR 137-020-0015(2)(c), which prevents misleading or inappropriate use of "free" offers?;

f. Did Defendant violate ORS §646.608(e) by representing that goods or services had characteristics, uses, or benefits that they did not have?;

g. Was Defendant's reference to its promotion as "Ski Free" a false or misleading statement about a prize, contest, or promotion used to publicize a product, business, or service as proscribed by ORS §646.608?;

h. When did Plaintiffs / Class representatives discover Defendant's violations of ORS §646.608 for the purposes of ORS §646.638(6)?;

i. What damages are recoverable under ORS Chapter 646 based on the allegations in this case?;

j. Should the court grant equitable relief under ORS §646.638(8)(c)?;

k. What types of equitable relief is appropriate?

l. Was notice to Defendant required under ORCP 32H, and if so, was proper notice provided by the representative(s) of the Oregon Subclass?

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41. For the State of Michigan Subclass ("Michigan Subclass"), common questions of law and fact include each of the above common questions of law and fact applicable to all State Subclasses Class, and in addition:

a. Was Defendant's conduct an unfair or deceptive act or practice in the conduct of trade or commerce in violation of the state of Michigan's Consumer Protection Act, Michigan Compiled Laws (M.C.L.) 445.901 *et seq*.?;

b. Did Defendant make a false representation as to the characteristics, uses, or benefits of goods, services, or property in violation of M.C.L. 445.903(c)?;

c. Did Defendant cause a probability of confusion or misunderstanding as to the rights, obligations or remedies of a party to a transaction in violation of M.C.L. 445.903(n)?;

d. Did Defendant represent that Subclass Plaintiffs and Subclass Members would receive goods or services "free" or "without charge," or through similar words without clearly and conspicuously disclosing with equal prominence in immediate conjunction with the use of those words the conditions, terms, or prerequisites to the use or retention of the goods or services advertised, in violation of M.C.L. 445.903(r)?;

e. Did Defendant fail to reveal a material fact, the omission of which tended to mislead or deceive Subclass Plaintiffs and

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Subclass Members, and which fact could not reasonable be known by the consumer before entering into the transaction, in violation of M.C.L. 445.903(s)?;

f. Did Defendant represent that Subclass Plaintiffs and Subclass Members would receive a rebate, discount, or other benefit as an inducement for entering into a transaction, where the benefit was contingent on an event to occur subsequent to the consummation of the transaction, in violation of M.C.L. 445.903(w)?

g. Did Defendant make a representation or statement of material fact such that Subclass Plaintiffs and Subclass Members reasonably believed the represented or suggested state of affairs were other than they actually were, in violation of M.C.L. 445.903(bb)?;

h. Did Defendant fail to reveal facts that are material to the transaction in light of representations of fact made in a positive manner, in violation of M.C.L. 445.903(cc)?

i. Did Defendant engage in conduct declared to be unlawful by a final judgment of a circuit or appellate court within the state of Michigan pursuant, as proscribed by M.C.L. 445.911(3)(b)?;

j. Did Defendant engage in conduct declared by a Circuit Court of Appeals or the Supreme Court of the United States to be an

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unfair or deceptive act or practice within the meaning of section 5(a)(1) of the federal trade commission act, 15 U.S.C. 45(a)(1), as proscribed by M.C.L. 445.911(3)(c)?;

k. Are Subclass Plaintiffs and Subclass Members entitled to equitable relief pursuant to M.C.L. 445.911 (1)(a) and (b), and (3)?;

l. Are Subclass Plaintiffs and Subclass Members entitled to enhanced damages or attorney fees pursuant to C.R.S.6-1-113(4) allowance of other appropriate relief?;

42. For the State of California Subclass ("California Subclass"), common questions of law and fact include each of the above common questions of law and fact applicable to all State Subclasses, and in addition:

a. Did Defendant violate Cal.Civ.Code §1770(a)(5) by representing that goods or services had characteristics, uses, or benefits which they did not have?;

b. Did Defendant violate Cal.Civ.Code §1770(a)(14) by representing that a transaction conferred or involved rights which it did not have?;

c. Did Defendant violate Cal.Civ.Code §1770(a)(17) by representing that class members will receive a rebate, discount, or other economic benefit, when earning the benefit was contingent on an event to occur subsequent to the

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consummation of the transaction?;

d. Did Defendant make untrue or misleading statements under circumstances that violate the provisions of Cal.Civ.Code §17500?;

e. When did California Subclass Plaintiffs discover Defendant's violations of Cal.Civ.Code §1770(a) for the purposes of California's delayed discovery rule as set forth in *Jolly v. Eli Lilly & Co.*, 4 Cal.3d 1103, 1110 (1988)?;

f. Should the court grant equitable relief to the California Subclass pursuant to Cal.Civ.Code §1780(a)(2) and (3)?;

g. Should the Court award damages to the California Subclass pursuant to Cal. Civ. Code § 1780 (a)(1)?;

h. Should the Court award Restitution of property to the California Subclass pursuant to Cal. Civ. Code § 1780(a)(3)?

i. Did Defendant violate Cal. Bus. & Prof. Code § 17200, *et. seq.*?

j. Should the Court award Restitution of property to the California Subclass pursuant to Cal. Bus. & Prof. Code § 17203?

43. For the State of Washington Subclass ("Washington Subclass"), common questions of law and fact include each of the above common questions of law and fact applicable to all State Subclasses, and in addition:

a. Was Defendant's conduct an unfair or deceptive act or practice in the conduct of trade or commerce in violation of the state of

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Washington's Consumer Protection Act, RCW 19.86.020?;

b. Are Washington Subclass Plaintiffs and Subclass Members entitled to enhanced or trebled damages pursuant to RCW 19.86.090?;

c. Are Washington Subclass Plaintiffs and Subclass Members entitled to equitable relief pursuant to RCW 19.86.090?;

d. Are Washington Subclass Plaintiffs and Subclass Members entitled to attorney fees pursuant to RCW 19.86.090?;

e. Was Defendant's conduct injurious to the public interest pursuant to RCW 19.86.093 and as required RCW 19.86.920?

46. The claims of each state Plaintiff / State Subclass Representative for each State Subclass are typical of the claims of the members of that specific State Subclass. The claims arise from the same type events, practices, and course of conduct by Defendant -- the Shell "Ski Free" promotion. The legal theories asserted by each state Plaintiff / State Subclass Representative are the same as the legal theories asserted by the members of that State Subclass.

47. Plaintiffs are willing and prepared to serve the Court and proposed State Subclasses to which they belong in a representative capacity with all of the required material obligations and duties. Plaintiffs will fairly and adequately protect the interests of the State Subclasses to which they belong, and have no interests adverse to or which directly or irrevocably conflict with the other members of their State Subclass.

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48. The self-interests of Plaintiffs are co-extensive with, and not antagonistic to those of the absent members members of the State Subclasses to which they belong. The proposed representatives will represent and protect the interests of the respective Subclass to which they belong.

49. Plaintiffs have engaged the services of the following counsel and law firms: Rick Klingbeil, PC; Brady Mertz, PC, Brooks Cooper, and Robert Curtis of Foley Bezek Behle and Curtis, LLC. Counsel are experienced in litigation, complex litigation, and class action cases, and will protect the rights of and otherwise effectively represent the named class representatives and State Subclass members.

50. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because joinder of all parties is impracticable. The operative facts relating to Plaintiffs and members of each State Subclass are the same, the damages suffered by individual Class and State Subclass members are relatively small, the expense and burden of individual litigation makes it inefficient and ineffective for members of the Class and Subclass to individually redress the wrongs done to them, and proceeding as a class action will resolve hundreds of thousands of claims in a manner that is fair to Defendant and Class Members. There will be no difficulty in the management of this case as a class action with a four State Subclasses consisting of the same individuals from the same four states.

51. Class members may be notified of the pendency of this action by several means, including posted notice at Shell service stations and participating ski

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resorts, on promotional websites and social media related to the Ski Free promotion, directly based on charge and banking card records used in the transactions, and if deemed necessary or appropriate by the Court, through published notice.

Further, upon information and belief, participating Shell service stations recorded identifying details from credit card purchase transactions concurrent with stamping the Class Members' purchase receipts and Vouchers, which provides a direct method of notifying a substantial percentage of Class and Subclass members.

52. The prosecution of separate actions by individual Class and Subclass members would create a risk of inconsistent or varying adjudications with respect to individual members, which would establish incompatible standards of conduct for Defendant. Defendant has acted on grounds that apply generally to the Class and each State Subclass making equitable relief appropriate to the Class as a whole.

ALL STATE SUBCLASSES

(Breach of Contract)

53. On behalf of themselves and the members of the State Subclasses, Plaintiffs / Class Representatives reallege paragraphs 1 through 52, and further allege:

54. Defendant's promotional Ski Free banner posted at each participating Shell-branded station was an offer.

55. The terms of Defendant's offer was that if Plaintiffs or a Class Member purchased ten gallons of fuel at the Shell station displaying the Ski Free banner,

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Defendant or its agent would provide them with a Voucher that could be exchanged for a free lift ticket at a participating ski resort.

56. Plaintiffs and Class Members accepted Defendant's offer when they purchased ten gallons of fuel at the Shell station displaying the Ski Free banner, Defendant or its agent would provide them with a Voucher that could be exchanged for a free lift ticket at a participating ski resort.

57. Plaintiffs and Class Members accepted Defendant's offer when they purchased ten or more gallons of fuel, and requested a Voucher for a free lift ticket.

58. Defendant breached the terms of the contract because it failed to provide a Voucher that could be directly exchanged for a "free" lift ticket at a participating resort or otherwise, but instead provided a "two for one" voucher that required purchase of a second lift ticket in order to receive a "free" lift ticket.

59. Plaintiffs and Class Members are entitled to their damages incurred as a result of Defendant's breach.

OREGON SUBCLASS

FIRST CLAIM FOR RELIEF

(ORS §646.644 - Free Offer)

60. Oregon Plaintiff / Subclass Representative KEARNEY, on behalf of himself and the Oregon Subclass realleges paragraphs 1 through 59, and further alleges:

61. Defendant's conduct violated ORS §646.644.

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62. For each violation of ORS §646.644 KEARNEY and Oregon Subclass Members are entitled to an award of actual or statutory damages pursuant to ORS §646.638(1) and (8) as appropriate to compensate for defendant's conduct.

63. KEARNEY and Oregon Subclass Members are entitled to an award of punitive damages against defendant in an amount to be determined by the jury, but sufficient to prevent the same or similar conduct by defendant and others in the future, pursuant to ORS §646.638(1).

64. KEARNEY and Oregon Subclass Members are entitled to injunctive relief pursuant to ORS §646.638(8)(c).

OREGON SUBCLASS

SECOND CLAIM FOR RELIEF

(ORS §646.608 - Unlawful Trade Practices)

65 On behalf of himself and the Oregon Subclass, KEARNEY realleges paragraphs 1 through 64, and further alleges:

66. Defendant's conduct violated ORS §646.608(e).

67. Defendant's conduct violated ORS §646.608(o).

68. Defendant's conduct violated ORS §646.608(p).

69. Defendant's conduct violated ORS §646.608(u), through violation of OAR 137-020-0010 *et seq*.

70. For each violation of ORS §646.608 KEARNEY and Oregon Subclass Members are entitled to an award of actual or statutory damages pursuant to ORS

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§646.638(1) and (8) as appropriate to compensate for defendant's conduct.

71. KEARNEY and Oregon Subclass Members are entitled to an award of punitive damages against defendant in an amount to be determined by the jury, but sufficient to prevent the same or similar conduct by defendant and others in the future, pursuant to ORS §646.638(1).

72. KEARNEY and Oregon Subclass Members are entitled to an award of attorney fees and costs against defendant pursuant to ORS §646.638(3).

73. KEARNEY and Oregon Subclass Members are entitled to injunctive relief pursuant to ORS §646.638(8)(c).

OREGON SUBCLASS

THIRD CLAIM FOR RELIEF

(OAR 137-020-0015 - Unlawful Trade Practices)

74. On behalf of himself and the Oregon Subclass, KEARNEY realleges paragraphs 1 through 73, and further alleges:

75. Defendant's conduct violated Oregon Administrative Rule 137-020-0015.

76. For each violation of OAR 137-020-0015 KEARNEY and Oregon Subclass Members are entitled to an award of actual or statutory damages pursuant to ORS §646.638(1) and (8) as appropriate to compensate for defendant's conduct.

77. KEARNEY and Oregon Subclass Members are entitled to an award of punitive damages against defendant in an amount to be determined by the jury, but

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sufficient to prevent the same or similar conduct by defendant and others in the future, pursuant to ORS §646.638(1).

78. KEARNEY and Oregon Subclass Members are entitled to an award of attorney fees and costs against defendant pursuant to ORS §646.638(3).

79. KEARNEY and Oregon Subclass Members are entitled to injunctive relief pursuant to ORS §646.638(8)(c).

MICHIGAN SUBCLASS CLAIM FOR RELIEF

(Michigan Consumer Protection Act)

80. On behalf of themselves and the Michigan Subclass members, plaintiffs reallege paragraphs 1 through 79, and further allege:

81. Defendant's conduct violated one or more of the following provisions of the Michigan Consumer Protection Act:

a. M.C.L.A. 445.903(c);

b. M.C.L.A. 445.903 (n);

c. M.C.L.A. 445.903 (r);

d. M.C.L.A. 445.903 (s)

e. M.C.L.A. 445.903 (w);

f. M.C.L.A. 445.903 (bb); and

g. M.C.L.A. 445.903 (cc).

82. Michigan Subclass Plaintiffs and Subclass Members are entitled to actual damages pursuant to M.C.L.A. 445.911(3).

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83. Michigan Subclass Plaintiffs and Subclass Members are entitled to attorney fees pursuant to M.C.L.A. 445.911.

CALIFORNIA SUBCLASS

FIRST CLAIM FOR RELIEF

(Cal.Civ.Code §1750 *et seq.*)

84. On behalf of himself and the California Subclass, California Plaintiff SCHEMPP realleges paragraphs 1 through 53, and further alleges:

85. Defendant's conduct violated one or more of the following provisions of the California Consumers Legal Remedies Act:

a. Cal.Civ.Code §1770(a)(5);

b. Cal.Civ.Code §1770(a)(7);

c. Cal.Civ.Code §1770(a)(14); and

d. Cal.Civ.Code §1770(a)(17).

86. California Subclass Plaintiff and Subclass Members are entitled to an order enjoining defendant from further violations of the above provisions pursuant to Cal.Civ.Code §1780(2). California Subclass Plaintiff and the Subclass Members are entitled to damages and/or restitution of property.

CALIFORNIA SUBCLASS

SECOND CLAIM FOR RELIEF

(Cal. Bus. & Prof. Code)

(§17200 (Unfair Competition) and §17500 (False Advertising)

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87. On behalf of himself and the California Subclass, California Plaintiff SCHEMPP realleges paragraphs 1 through 53, and further alleges:

88. Defendant's conduct violated one or more of the following provisions of the California Business and Professions Code:

a. Cal. Bus. & Prof. Code §17200;

b. Cal. Bus. & Prof. Code §17500;

c. Cal. Bus. & Prof. Code §17508; and

d. Cal. Bus. & Prof. Code §17509.

89. California Subclass Plaintiff and Subclass Members are entitled to an order enjoining defendant from further violations of the above provisions pursuant to Cal.Civ.Code §17203 and 17204. California Subclass Plaintiff and the Subclass Members are entitled to damages and/or restitution of property.

CALIFORNIA SUBCLASS

THIRD CLAIM FOR RELIEF

(Cal. Bus. & Prof. Code)(§17537.11 (a) and (b). (Free Offer))

90. On behalf of himself and the California Subclass, California Plaintiff SCHEMPP realleges paragraphs 1 through 53, and further alleges:

91. Defendant's conduct violated Cal. Bus. & Prof. Code §17537.11(a) and (b) relating to free offers.

92. California Subclass Plaintiff and Subclass Members are entitled to an order enjoining defendant from further violations of the above provisions pursuant to

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Cal. Bus. & Prof. Code §17537.11(a) and (b). California Subclass Plaintiff and the Subclass Members are entitled to damages and/or restitution of property.

WASHINGTON SUBCLASS

CLAIM FOR RELIEF

(RCW §19.86.010 *et seq.*)

93. On behalf of himself and the Washington Subclass, Washington Plaintiff GILPIN realleges paragraphs 1 through 53, and further alleges:

94. Defendant's conduct was an unfair or deceptive act or practice in the conduct of trade or commerce, in violation of RCW §19.86.010.

95. Defendant's conduct was injurious to the public interest within the state of Washington.

96. Washington Subclass Plaintiffs and Subclass Members are entitled to actual damages pursuant to RCW §19.86.090.

97. Washington Subclass Plaintiffs and Subclass Members are entitled to three times their actual damages pursuant to RCW §19.86.090.

98. Washington Subclass Plaintiffs and Subclass Members are entitled to attorney fees and recoverable costs pursuant to RCW §19.86.090.

99. Washington Subclass Plaintiffs and Subclass Members are entitled to an order enjoining defendant from further violations of the above provisions pursuant to RCW §19.86.090

REQUEST FOR RELIEF

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Plaintiffs seeks the following for themselves and their respective State Subclass members:

Case Management

A. Certifying this action as a class action as set forth above, or as a class action or issue class as otherwise deemed appropriate by the Court pursuant to a Motion to Certify Class Action to be filed by Plaintiff in this case;

B. Appointing Plaintiffs as representatives for the State Subclasses as follows:

a. State of Oregon Subclass - Plaintiff John KEARNEY;

b. State of Michigan Subclass - Plaintiffs Carly LAFOREST and Alysia ROWE;

c. State of California Subclass - Plaintiff Richard SCHEMPP;

d. State of Washington Subclass - Plaintiff JEFFREY PAUL GILPIN.

C. Approving counsel listed herein as class counsel for all State Subclasses.

D. Setting a trial by jury for all issues so triable.

Injunctive / Equitable Relief

All State Subclasses - All claims

E. For a temporary and permanent injunction enjoining Defendant from engaging in any further misconduct at issue in this action within any Class State. Specifically, Defendant should be enjoined from:

a. representing its promotion as a “Free” offer when the recipient is required to pay money, in addition to the cost of the fuel purchased, to another person or entity in order to redeem the “free” offer.

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b. representing that its "Ski Free" promotion provides a "Free Lift Ticket" (or other similar claims of a "free" ticket) in exchange for the purchase of fuel;

c. misleading consumers by failing to indicate that the offer is for a Voucher that entitles the holder to a "Buy One Get One" lift ticket purchase;

d. failing to provide clear and conspicuous information or disclosure of all the terms, limitations, conditions, and costs of the offer before the consumer purchases or commits to purchase the quantity of fuel necessary to implicate the "Ski Free" offer, including:

i. the limitations related to the dates and times the offer and Voucher can be redeemed at the applicable ski resorts;

ii. that the offer and Voucher requires both lift tickets be purchased and used the same day;

iii. that the Voucher cannot be sold to a third party by the holder;

iv. where applicable, that the lift tickets obtained with the Voucher cannot be sold or transferred to a third party after purchase;

v. the cost of the lift ticket that must be purchased to redeem the Voucher at each of the applicable ski resorts;

vi. that the Voucher must be used in the same ski season it was obtained;

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vii. that the Voucher cannot be combined with any other offer or discount;

viii. any other terms or conditions of limitation relevant to the redemption or use of the Ski Free promotion or Voucher.

F. For reimbursement of the reasonable costs, disbursements, and litigation expenses incurred by Plaintiffs and the Class necessary to obtain injunctive relief.

California Subclass

Cal.Civ.Code - §1750 *et seq*.

G. An order enjoining Defendant from further violations of Cal.Civ.Code §1770 pursuant to Cal.Civ.Code §1780(2).

Cal. Bus. & Prof. Code - §17200 *et seq*., §17500 *et seq*.,

§17537.11 (a) and (b)

H. An order enjoining Defendant from further violations of the above provisions pursuant to Cal. Bus. & Prof. Code §17203, §17204, §17535, and §17537.11 (a) and (b).

Oregon Subclass

I. Injunctive relief to prevent future violations of ORS §646.644, ORS §646.608, or OAR 137-020-0015.

Washington Subclass

J. An order enjoining Defendant from further violations of RCW §19.86.010 et seq. pursuant to RCW §19.86.090.

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Michigan Subclass

K. Equitable relief pursuant to M.C.L.A. 445.911(4).

Monetary Damages

Oregon Subclass

L. For each violation of ORS §646.644, ORS §646.608, or OAR 137-020-0015 an award of actual or statutory damages pursuant to ORS §646.638(1) and (8) as appropriate.

M. Attorney fees pursuant to ORS §646.638(3) and ORCP 32M.

N. Reimbursement of the reasonable costs, disbursements, and litigation expenses necessary to obtain relief under ORS §646.644, ORS §646.608, or OAR 137-020-0015, pursuant to ORCP 32M.

O. Punitive damages against Defendant in an amount to be determined by the jury, but sufficient to prevent the same or similar conduct by Defendant and others in the future, pursuant to ORS §646.638(1).

Michigan Subclass

P. Actual damages resulting from each violation the Michigan Consumer Protection Act, M.C.L.A. 445.901 *et seq*., pursuant to M.C.L.A. 445.911(3).

Q. Attorney fees pursuant to M.C.L.A. 445.911.

Washington Subclass

R. Actual damages pursuant to RCW §19.86.090.

S. Three times actual damages pursuant to RCW §19.86.090.

T. Attorney fees and recoverable costs pursuant to RCW §19.86.090.

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California Subclass

U. Monetary Damages pursuant to Cal. Civ. Code § 1780(a)(1). Monetary Damages are sought as to each of the California claims pleaded herein.

V. Restitution pursuant to Cal. Civ. Code § 1780(a)(3) and Cal. Bus. & Prof. Code § 17203.

Dated: January 15, 2016.

Rick Klingbeil, PC

/s/ Rick Klingbeil

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