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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

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

STATUTES

TREATISES

1. INTRODUCTION

Plaintiffs[1] and their counsel, by this motion, seek an Order of the Court:

(1) Conditionally certifying the stipulated Settlement Classes; [2]

(2) Granting preliminary approval to the proposed settlement;

(3) Appointing Kurtzman Carson Consultants, LLC ("KCC") as the settlement administrator;

(4) Approving the Class Notice Plan;

(5) Approving filing of Fourth Amended Complaint for settlement purposes only; and

(5) Establishing a schedule for the provision of notice of the settlement and for final approval proceedings with respect to the settlement.

For the reasons explained herein, Plaintiffs submit that: (1) the settlement in this action is fair, reasonable and adequate and in the best interests of the Settlement Classes and, therefore, merits this Court's preliminary approval; (2) the Settlement Classes should be conditionally certified for settlement purposes; and (3) the Notice Plan designed by KCC provides the best practicable notice to the Settlement Classes under the circumstances of this case. Accordingly, the Court should grant Plaintiffs' motion, which is unopposed, and enter the parties' Order Granting Preliminary Settlement Approval that has been submitted for the Court's consideration.

2. BRIEF SUMMARY OF FACTS

Plaintiffs allege the following facts in the case:

This action involved a deceptive and misleading promotional and advertising campaign that was designed and implemented by Defendant Equilon Enterprises, LLC dba Shell Oil Products US (hereinafter "Shell Oil" or "Defendant"), and its partner, OutWest Promotions. For

[1] The term "Plaintiffs" includes Plaintiff John Martin Kearney ("Kearney"), Carly LaForest ("LaForest"), Alysia Rowe ("Rowe"), Richard Schempp ("Schempp"), and Jeffrey Paul Gilpin, Jr. ("Gilpin").
[2] The Settlement Classes are defined below.

purposes of this action, this promotional campaign known as "Ski Free" ran from 2010 through 2014 in Oregon, California, Washington and Michigan. Below is a typical advertisement found at a participant Shell gas station that is part of the Ski Free Program to which class members were exposed:

Plaintiffs filed their complaint alleging that the Ski Free promotional print campaign is deceptive and misleading, and violates various state statutes and consumer protection acts for at least two separate reasons.

First, the misleading representation from 2010 through 2014—to which every class member was exposed—stated "Ski Free with Purchase." Objectively the sign can only be read to require a *single* "Purchase" in order to Ski Free (the word Purchase is singular). However, as admitted by Shell Oil's 30(b)(6) designee, Shannon Hubbard, the sign is misleading because two purchases are required in order to Ski free:

> Q. Is there a reason why the word "purchase" is singular? It requires two purchases, correct, fuel and a purchase of an adult lift ticket; right?
> A. Correct.
> Q. Any reason that you're aware of why the word "purchase" is singular as opposed to plural?
> A. I do not know why it's that way.

> Q. But you would agree with me that in takes – in order to SKI FREE it takes purchases?
> A. Yes, it does take two purchases.

(Declaration of Robert A. Curtis filed in Support of Plaintiff's Motion for Class Certification, ("Curtis Certification Decl."), Exh. B, Hubbard Depo. 59:22-60:6.)

In addition, Ms. Hubbard admitted that none of the Pole Signs, Building Signs or Bollard Signs—all signs that class members were exposed to—reference the fact that a subsequent purchase of a full price adult lift ticket is required.

> Q. So you would admit that none of the window signs, pole signs, or bollard signs for the SKI FREE promotion from 2010 all the way through 2014 ever mentioned that this is a buy one get one free offer; correct?
> A. That is correct.
> Q. And you would admit that each of the window signs, pole signs, or bollard signs for the SKI FREE promotion from 2010 through 2014 states SKI FREE with purchase, but do not mention that in addition to the purchase of gas, the customer must also buy a full price adult lift ticket, correct?
> A. Correct.

(Curtis Certification Decl., Exh. B, Hubbard Depo. 72:5-16.)

Thus, Plaintiffs' action alleges that *no* advertisement located at a participant Shell gas station *conspicuously* discloses that the voucher the consumer will receive is a "two-for-one" voucher or that a subsequent purchase of a full price lift ticket will be required. Below are the actual designs for the Pole Signs, Large and Small Building Signs and Bollard Signs for the 2010 through 2014 Ski Free promotional campaigns.

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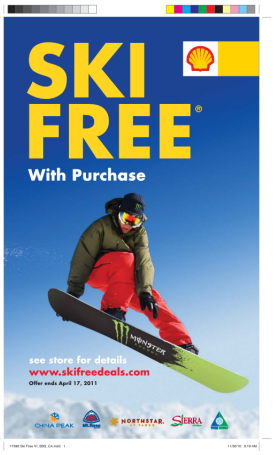
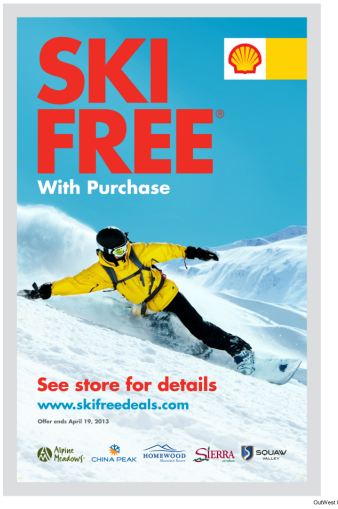
2010

2011

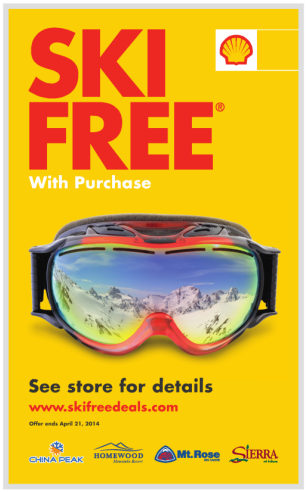


2012

2013



2014



* Larger copies of each of these signs can be found attached to the Curtis Certification Decl., as Exhibit "Z."

As seen from the above signs, in each year from 2010 through 2014, the sign read "Ski Free with Purchase." Objectively the sign can only be read to require a single "Purchase" in order to Ski free (the word Purchase is singular). Even one of Shell Oil's own 30(b)(6) designees, Corey Cuvelier, testified to the meaning of the sign in this fashion:

> Q. Let me ask you this: When it says "with purchase," what purchase is required there?
> MR. HARRIS: Same -- asked and answered. You may answer again.
> THE WITNESS: Ten gallons of Shell fuel of diesel.

(Curtis Certification Decl., Exh. A, Cuvelier Depo. 44:19-24.)

In addition to the above print advertisements, OutWest Promotions sought and received

Shell Oil's approval to do large billboard adverting along the freeways and roads. (Curtis Certification Decl., Exh. C, Wildman Depo. 17:15-18:16, 39:9-22.) Below is the actual billboard for the 2011 Ski Free promotional campaigns (but billboard were ran in at least 2012 and 2013 as well):

Again, the billboards do not refer to the fact that a customer must purchase 10 gallons of gas and then subsequent to the fuel purchase, the consumer must purchase a full-price adult ticket in order to get the "free" ticket.

As to the second deceitful act, plaintiffs allege none of the signs for the 2010 through 2014 Ski Free promotion or billboards informs the consumer that the voucher is subject to various blackout dates (for example, Mt. Shasta only allowed use on Tuesdays during the day or Thursdays at night). As Ms. Hubbard testified:

> Q. And lastly from 2010 to 2014, none of the promotional materials contained in the POP kit mentioned the vouchers are subject to blackout dates and times; correct?
> A. Correct, as far as I know.

(Curtis Certification Decl., Exh. B, Hubbard Depo. 73:9-12.)

The deceptive and misleading nature of the Ski Free advertising campaign is not just hypothetical as demonstrated by the experiences of the class representatives.

i) Jeffery Paul Gilpin, Jr. Was Deceived by The "Ski Free" Advertising.

Plaintiff and Washington Sub-Class Representative Gilpin is a Washington resident, who, within the class period, purchased ten or more gallons of fuel at a Shell Oil station located within

the state of Washington with the intention of participating in the "Ski Free" promotion. (Curtis Certification Decl., Exh. F, Gilpin Depo. 6:23-24; 34:8-16, 20-25; 47:13-17.) Gilpin learned about the Ski Free Promotion while driving by a Shell Oil station and seeing a large sign advertising the Ski Free program (presumably a building sign or pole sign). (Curtis Certification Decl., Exh. F, Gilpin Depo. 32:3-9, 34:8-13.) Upon completion of the fuel purchase, Gilpin requested a Voucher that would allow him to obtain a free lift ticket. (Curtis Certification Decl., Exh. F, Gilpin Depo. 37:9-38:3, 52:5-11.) Gilpin traveled to a ski resort, and only once there, learned that the Voucher was not for a free lift ticket; but rather, was a 2 for 1 Voucher. Gilpin had to ask a random person to split the price of a full ticket in order to redeem the Voucher. (Curtis Certification Decl., Exh. F, Gilpin Depo. 40:2-11; 64:19-65:16.) Thus, in order 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. (Curtis Certification Decl., Exh. F, Gilpin Depo. 71:16-20.) Gilpin was understandably upset that the Voucher was not for a free ski lift ticket. (Curtis Certifiction Decl., Exh. F, Gilpin Depo. Depo. 60:8-10).

ii) Richard Schempp Was Deceived by The "Ski Free" Advertising.

Plaintiff and California Sub-Class Representative Schempp is a California resident, who within the class period purchased ten or more gallons of fuel at a Shell Oil station located within the state of California with the intention of participating in the "Ski Free" promotion. (Curtis Certification Decl., Exh. D, Schempp Depo. 7:7-11, 49:25-50:14; 59:8-13, 62:1-4; 65:25-66:4.) Schempp testified that he typically used the Safeway gas station in Dublin and the Costco gas station in Livermore but was drawn from the street by a Ski Free promotion sign at a Shell Oil station. (Curtis Certification Decl., Exh. D, Schempp Depo. 31:8-16, 44:12-45:7). At the station, he saw a Ski Free sign in the window and based on that sign, chose to pump fuel at the Shell Oil station. (Curtis Certification Decl., Exh. D, Schempp Depo. 47:24-48:10.) Schempp

purchased fuel at the Shell Oil station for the purpose of obtaining (what he believed to be) the Ski Free Voucher. (Curtis Certification Decl., Exh. D, Schempp Depo. 65:25-66:4.) Upon completion of the fuel purchase, Schempp requested a voucher that would allow him to obtain a free lift ticket. (Curtis Certification Decl., Exh. D, Schempp Depo. 62:12-17.) Schempp only learned that it was a 2 for 1 deal when he attempted to redeem the Voucher at a participating ski resort; there, he was required to pay the full purchase price for a second lift ticket. (Curtis Certification Decl., Exh. D, Schempp Depo. 75:5-17.)

iii) John Martin Kearney Was Deceived by The "Ski Free" Advertising.

Plaintiff and Oregon Sub-Class Representative Kearney is an Oregon resident, who within the class period purchased ten or more gallons of fuel at a Shell Oil station located within the state of Oregon with the intention of participating in the "Ski Free" promotion. (Curtis Certification Decl., Exh. E, Kearney Depo. 9:5-10, 44:10-17, 60:5-16.) Kearney first became aware of the Ski Free program when he was driving by a Shell Oil station and saw a big sign advertising Ski Free. (Curtis Certification Decl., Exh. E, Kearney Depo. 38:15-20, 42:19-43:9.) 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 would have been required to pay the full purchase price for a second lift ticket at a participating ski resort. (Curtis Certification Decl., Exh. E, Kearney Depo. 47:9-22.)

iv) Carly LaForest and Alysia Rowe Was Deceived by The "Ski Free" Advertising.

Plaintiffs and Michigan Sub-Class Representatives Carly LaForest and Alysia Rowe are Michigan residents, who within the class period purchased ten or more gallons of fuel at a Shell Oil station located within the state of Michigan with the intention of participating in the "Ski Free" promotion. (Curtis Certification Decl., Exh. H, LaForest Depo. 6:16-21, 74:7-12; Exh. G,

Rowe Depo. 6:13-14; 26:7-24; 64:8-11, 15-17). While at the Shell station, both LaForest and Rowe were exposed to at least one deceptive Building Sign. (Curtis Certification Decl., Exh. H, LaForest Depo. 83:15-21; Exh. G, Rowe Depo. 68:4-24). Upon completion of the fuel purchase, each requested a voucher allowing them to obtain a free lift ticket. (Curtis Certification Decl., Exh. H, LaForest Depo. 74: 7-12; Exh. G, Rowe Depo. 73:22-74:20.) Instead, they were presented a voucher that provided for a "buy one, get one free" offer. (Curtis Certification Decl., Exh. H, LaForest Depo. 77:13-78:2; Exh. G, Rowe Depo. 28:12-23.)

Therefore, because all class members were exposed to these misleading misrepresentations and/or omissions, as discussed more fully below, this is a prototypical class action in which all of the statutory prerequisites for class certification are satisfied. The class is numerous, common questions are central, and thus predominate, and the amounts at stake in any individual action are so small that the only practical means to vindicate consumers' rights is via the class action mechanism.

3. SUMMARY OF PROCEDURAL HISTORY

Plaintiff Jack Kearney filed suit on February 14, 2014. Defendant filed a Motion to Dismiss based on failure to state a claim on July 30, 2014. On December 1, 2014 the court granted the motion in part, and denied it in part, and plaintiffs were ordered to file a Second Amended Complaint. On January 15, 2015 Plaintiffs filed a Second Amended Complaint addressing the court's ruling on Defendant's Motion to Dismiss. Additional class representatives were added for various subclass states through amendment of pleadings on June 30, 2014 (First Amended Complaint - Colorado, Michigan), January 5, 2015 (Second Amended Complaint – Washington, California).

The parties negotiated and entered a stipulated protective order and stipulation regarding e-discovery, engaged in extensive document discovery and e-discovery, served and responded to

interrogatories, took depositions of class representatives, defense witnesses, and third party witnesses. In total, five class representatives were deposed, three Defense corporate representative witnesses who were designated on a wide range of topics, and one third-party witness involved in the promotion at issue.

The Plaintiffs filed their Motion for Class Certification on December 18, 2015, Defendant responded in opposition on January 8, 2016, and Plaintiffs filed a reply on February 1, 2016. Plaintiffs also filed evidentiary objections to the expert declarations filed by Defendant in support of its opposition to Plaintiffs' motion to certify the class. These objections asked the Court to strike portions of Defendant's expert testimony.

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. (Declaration of Robert Curtis in Support of Motion for Preliminary Approval ("Curtis Approval Decl.") ¶9.) 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. (Curtis Approval Decl., ¶10.) The term sheet agreement memorialized the principal terms of the settlement which formed the basis for the Settlement Agreement (Curtis Approval Decl., Exh. 1) that is being submitted for this Court's approval.

4. SUMMARY OF SETTLEMENT TERMS

The key terms of the Settlement Agreement are as follows:

A. The Settlement Classes

As a part of the Settlement, subject to the Court's approval, the parties have stipulated to conditional certification of the following Settlement Classes:

(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.

B. Settlement Class Member Benefits

The settlement class members who submit a claim form will receive the benefits outlined in the Settlement Agreement including as much as $40 per claimant. (Curtis Approval Decl., Exh. 1, ¶ 19(a).) To submit an approved claim, the claimant must provide the following information under penalty of perjury: (i) name; (ii) address; (iii) the station location (specifically by address or by cross streets) where the Class Member participated in Ski Free®; (iv) affirm 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. (Curtis Approval Decl., Exh. 1, ¶ 39(a).)

In addition, Plaintiffs' have secured valuable injunctive relief on a class-wide basis, namely, commencing with the 2017 ski season, the Ski Free® advertising will (1) contain substantially the same terms as the 2015 Ski Free® advertising, (2) indicate that it is a buy one, get one free offer; and, (3) indicate that the Ski Free® promotion is "subject to restrictions or blackouts." (Curtis Approval Decl., Exh. 11, ¶ 39(a).)

C. Total Settlement Amount

The Settlement establishes a $2.2 million common fund. (Curtis Approval Decl., Exh. 1, ¶ 10.) Under the Settlement, Shell Oil will pay the $2.2 million in cash into a Settlement Fund to be administered by the Court-appointed Settlement Administrator. The cost of Notice to the Classes and settlement administration (not to exceed $450,000) will be taken from the Settlement Fund. (Curtis Approval Decl., Exh. 1, ¶ 15.) Also from the Settlement Fund, Plaintiffs' counsel will make separate applications to the Court for (1) an award of attorneys' fees not to exceed 30% (Curtis Approval Decl., Exh. 1, ¶ 21); (2) reimbursement of litigation expenses not to exceed $40,000 (*Ibid.)*; and, (3) an award of incentive awards for the named Class Representatives not to exceed $5,000 each (Curtis Approval Decl., Exh. 1, ¶ 22.). Plaintiffs' counsel will make a separate motion for an award of attorneys' fees, expenses and incentive awards to be heard at the time of the final approval hearing. Therefore, the fairness and reasonableness of these attorneys' fees, expenses and incentive awards will be fully briefed for the Court at that time. Any monies remaining in the Settlement Fund after payment of all of the above and all class members' claims, if any, will be distributed to a Court-approved *cy pres* recipient. (Curtis Approval Decl., Exh. 1, ¶ 17.)

5. THE SETTLEMENT WARRANTS PRELIMINARY APPROVAL

The procedure for review of a proposed class action settlement at the preliminary approval stage is well-established:

> Review of a proposed class action settlement generally involves two hearings. First, counsel submits the proposed terms of settlement and the judge makes a preliminary fairness evaluation. In some cases, this initial evaluation can be made on the basis of information already known, supplemented as necessary by briefs, motions, or informal presentations by the parties. If the case is presented for both class certification and settlement approval, the certification hearing and preliminary fairness evaluation can usually be combined. The judge should make a preliminary determination that the proposed class satisfies the criteria set out in Rule 23(a) and at least one of the subsections of Rule 23(b). … The judge must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing.

Manual for Complex Litigation (4th ed. 2005) §21.632 at p. 382.

A. The Law Favors The Settlement Of Disputed Claims

It is well-established that the law both nationally and in this state favors the settlement of disputed claims. *Carson v. American Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981). Indeed, the Ninth Circuit has declared that a strong judicial policy favors settlement of class actions. *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992). Nevertheless, where "parties reach a settlement agreement prior to class certification, courts must peruse the proposed compromise to ratify both [1] the propriety of the certification and [2] the fairness of the settlement." *Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003). In conducting the first part of its inquiry, the court "must pay 'undiluted, even heightened, attention' to class certification requirements." *Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997); accord *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). The parties cannot "agree to certify a class that clearly leaves any one requirement unfulfilled," and consequently the court cannot blindly rely on the fact that the parties have stipulated that a class exists for purposes of settlement. *Berry v. Baca*, 2005 WL 1030248, at *7 (C.D. Cal. May 2, 2005).

B. The Classes Warrant Certification For The Purposes Of This Settlement

A class action should only be certified for settlement purposes if it meets the four

prerequisites identified in Federal Rule of Civil Procedure 23(a) and additionally fits within one of the three subdivisions of Federal Rule of Civil Procedure 23(b). Although a district court has discretion in determining whether the moving party has satisfied each Rule 23 requirement, *Montgomery v. Rumsfeld*, 572 F.2d 250, 255 (9th Cir. 1978), the court must conduct a rigorous inquiry before certifying a class. *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 161 (1982).

Rule 23(a) restricts class actions to cases where "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and, (4) the representative parties will fairly and adequately protect the interests of the class." These requirements are more commonly referred to as numerosity, commonality, typicality, and adequacy of representation, respectively. *Hanlon v. Chrysler Corp.*, *supra*.

An action that meets all the prerequisites of Rule 23(a) may be maintained as a class action only if it also meets the requirements of one of the three subdivisions of Rule 23(b). *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 163 (1974). One of those subsections, Rule 23(b)(3), allows for a class action if (1) "the court finds that questions of law or fact common to class members predominate over any questions affecting only individual members," and, (2) "that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). These requirements are more commonly referred to as predominance and superiority.

This case was settled after a fully-briefed Motion for Class Certification and, therefore, Plaintiffs will not repeat the extensive factual record and legal reasoning set forth in Plaintiffs' Motion for Class Certification into this Motion for Preliminary Approval but will instead incorporate the Class Certification briefings by reference herein and highlight that each of the required class action prerequisites for the Settlement Classes (defined above) are met as

discussed below:

1. Numerosity

No magic number exists with regard to the requisite number of class members, however, classes of forty or more are considered sufficiently numerous. *Holloway v. Full Spectrum Lending, et. al.*, 2007 U.S. Dist. LEXIS 59934, *7 (C.D. Cal. June 26, 2007); *See also, Jordan v. Los Angeles County*, 669 F.2d 1311, 1319 fn. 10 (9th Cir. 1980), opinion amended 726 F.2d 1366 (9th Cir. 1984) (collecting cases). Precise enumeration of the members of a class is not necessary for the named plaintiff to proceed as the representative of the class. *Weinberger v. Thornton*, 114 F.R.D. 599, 602 (S.D. Cal. 1986). Rather, "[a] reasonable estimate of the number of purported class members satisfies the numerosity requirement of Rule 23(a)(1)." *In re Badger Mountain Irr. Dist. Securities Litigation*, 143 F.R.D. 693, 696 (W.D. Wash. 1992).

Numerosity exists here. 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. (Curtis Approval Decl., ¶13.)

2. Commonality

The commonality requirement of Rule 23(a)(2) is "construed permissively" and requires only a common issue of law or fact, or that the defendant has engaged in a common course of conduct in relation to the potential class members. *Hanlon v. Chrysler Corp., supra*. The allegations in the Fourth Amended Complaint relating to Defendants' actions and conduct alone can provide sufficient common questions of law and fact to support class certification. *In re Badger Mountain Irrigation Dist. Sec. Litigation*, 143 F.R.D. at 698.

All of the claims of the members of the Settlement Classes arise from a common core of salient facts. All: (a) went to a Shell Oil station, (b) after November 1, 2009, (c) were exposed to a deceptive sign (e.g., "Ski Free with Purchase") (d) were exposed to a sign that did not disclose

blackout dates, (d) paid for at least 10 gallons of gas and, (e) received a 2-for-1 voucher that was subject to blackout dates. Here, all of the Shell gas stations that participated in the Ski Free program displayed identical advertisements that contained the same content, all of which were displayed uniformly by each gas station participant.

To the extent there is any variation among class members in their motivation for entering into the transaction, the factual circumstances behind entering into the transaction, or the price that was paid as part of the transaction does not defeat the relatively "minimal" showing required to establish commonality. *See*, e.g.*, Ries v. Arizona Beverages USA LLC*, 287 F.R.D. 523, 537 (N.D. Cal. 2012); *Chavez v. Blue Sky Natural Beverage Co.*, 268 F.R.D. 365, 377 (N.D. Cal. 2010) (holding that the commonality requirement was satisfied by allegations that the defendant beverage supplier's "packaging and marketing materials [were] unlawful, unfair, deceptive or misleading to a reasonable consumer").

Here, there are more than enough common facts and common issues of law to support conditional-certification in this action.

3. Typicality

Typicality is present where the representative's claims arise from the same event, practice, or course of conduct as the class claims and rely on the same legal theories. *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). As discussed above, the claims of the all the named Class Representatives arise from uniform exposure to the misleading misrepresentations and/or omissions of the Ski Free print advertising campaign. In seeking to remedy Defendant's wrongdoing, Plaintiffs are asserting identical legal claims against Defendant on behalf of themselves and the respective members of the Settlement Classes. As a result, Plaintiffs' claims are coextensive with those of absent class members and, thus, typical of the claims of the class. Accordingly, the typicality element is met.

4. Adequacy of Representation

Representation is adequate where Plaintiffs' counsel are qualified and competent to represent the class, and the class representatives do not possess interests that are antagonistic to the remainder of the class. *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978). Here, there is no conflict between the claims of the individual class representatives and the class, and Plaintiffs' counsel have vigorously pursued the classes' claims. Moreover, class counsel have been appointed class counsel in a number of similar consumer cases. (Curtis Approval Decl., ¶¶3-8.) Therefore, the requirements of Rule 23(a)(4) have been met.

5. Predominance

Under Rule 23(b)(3), a class action may be maintained where the court finds that common questions of law or fact predominate and a class action is a superior method to other forms of adjudication. Fed. R. Civ. P. 23(b)(3). As noted, consumer claims such as those in this case are the paradigmatic case for class certification. "Predominance [of common issues] is a test readily met in certain cases alleging consumer or securities fraud." *Amchem*, *supra*, 521 U.S. at 625. "The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights." *Id.* at 617 (quoting *Mace v. Van Ru Credit Corp.*, 109 F.3d 338 at 344 (7th Cir. Ill. 1997)).

"The Rule 23(b)(3) predominance inquiry tests whether the Class is sufficiently cohesive to warrant adjudication by representation." *In re Phenylpropanolamine Prods. Liab. Litig.*, 227 F.R.D. 553, 562 (W.D. Wash. 2004) (quoting *Amchem*, 521 U.S. at 623). Rule 23(b)(3) focuses on the relationship between the common and individual issues. "When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative rather

than on an individual basis." *Hanlon, supra* at 1022 (quoting 7A Wright & Miller, Federal Practice & Procedure § 1778 (2d ed. 1986)).

As set forth in great detail in the certification briefings, all of the legal claims in this case turn on whether Shell Oil's Ski Free advertising campaign was misleading or contained material omissions. The factual allegations here are common, namely, what did the advertisements convey and what were the real terms of the Ski Free offer. Here, as addressed above, there is a "common nucleus" of operative facts that underlies all of the claims asserted in this action as to each subclass. *See Siegel v. Chicken Delight, Inc.*, 271 F. Supp. 722, 726 (N.D. Cal. 1967) (common questions exist and predominate when there is present a "common nucleus of operative facts"). These questions predominate over any conceivable individual issues because Defendant's practices are uniform, and therefore necessarily common, as to each of the members. Also, the main legal issues are also common to all class members: Did Shell Oil's Ski Free advertising campaign violate state consumer protection laws or constitute a breach of contract?

Issues of reliance do not preclude class-certification. As discussed in more detail in the certification briefings, the consumer protection statutes that are being pursued either require mere exposure to the deceptive advertisement (no reliance)—and all class members, in order to purchase gasoline, were exposed to at least one deceptive advertisement—and to the extent reliance is required, an objective reasonable consumer standard applies. *Berger v. Home Depot USA, Inc.*, 741 F.3d 1061, 1068 (9th Cir. Cal. 2014); *Steroid Hormone Prod. Cases*, 181 Cal. App. 4th 145, 157 (2010); *Gasperoni v. Metabolife*, 2000 U.S. Dist. LEXIS 20879, *20-21 (E.D. Mich. Sept. 27, 2000); *Strawn v. Farmers Ins. Co. of Oregon*, 350 Or. 336, 356-57 (2011); *Grays Harbor Adventist Christian Sch. v. Carrier Corp.*, 242 F.R.D. 568, 573 (W.D. Wash. 2007).

These common factual and legal issues show that the overriding issues in the case are

identical for all class members.

6. Superiority

A class action is superior to other methods of litigation "[w]here class wide litigation of common issues will reduce litigation costs and promote greater efficiency . . ." and "no realistic alternative exists." *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234-1235 (9th Cir. 1996).

It cannot be disputed that class wide resolution of the issues in this case will reduce litigation costs and promote efficiency for the Court as well as the litigants. As even Plaintiffs' limited discovery to date has shown, the evidence which relates to advertising practices of Defendant does not vary from one class member to another. (Curtis Certification Decl., Exh. B, Hubbard Depo. 108:17-18, 109:12-15, and Exhs. M, N, O, P and Q.) Any trier of fact will draw the same conclusions from the same advertisements in the same manner from one class member to the next. Absent a class action, the trier of fact – be it judge or jury – will hear the same facts regarding Defendant's practices, over and over again.

Moreover, in this case, the typical claim is far too small for any individual class member to be expected to pursue a separate action. Each individual's claim, standing alone, is a "negative value" claim – that is, a claim whose value would be dwarfed by the cost of litigating the claim. A class action is the only feasible means by which individual class members with negative value claims can hope to obtain a cost-effective remedy. As was pointed out by Judge Weinfeld in *duPont Glore Forgan, Inc. v. American Telephone and Telegraph Co.*, 69 F.R.D. 481 (S.D.N.Y. 1975), a case in which one of the class representatives had a claim of $130,000 (an amount far in excess of the anticipated individual claims in this action):

> [T]he time-cost factor of legal fees in view of the vigor of defendants' opposition make it uneconomical to proceed with the suit on an individual basis even assuming an ultimate recovery – in fact, Monsanto would, if required to proceed on an individual basis, forego its claim ... Thus, the assertion that this action will not go forward at all if class action status is denied is plausible. The hard fact is

> that economic reality indicates the likelihood that unless this action is permitted to proceed as a class suit, it is the end of this litigation.

Id. at 487. (Emphasis is added.) Here, the average damage per Settlement Class member was arguably the price of a ski-lift ticket (between $35 and $78).

In the absence of class certification in this action, it is virtually certain that none of the other class members' individual claims will go forward, and none of the myriad of customer complaints regarding Defendants' practices will be addressed – much less resolved. "Where it is not economically feasible to obtain relief [in separate suits]…, aggrieved persons may be without effective redress unless they may employ the class-action device." *Deposit Guaranty Nat. Bank v. Roper*, 445 U.S. 326, 339 (1980). "[T]here is a strong presumption in favor of a finding of superiority" where, as here, "the alternative to a class action is likely to be no action at all for the majority of class members." *Cavin v. Home Loan Ctr. Inc.*, 236 F.R.D. 387, 396 (N.D. Ill. 2006). This presumption is rooted in the policy that lies "'at the very core of the class action mechanism'"—namely, "'overcom[ing] the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights.'" *Amchem*, 521 U.S. at 617, *quoting Mace v. Van Ru Credit Corp.*, 109 F.3d 228, 344 (7th Cir. 1997).

In sum, the class action device is superior because there simply are no practical or economic alternative procedures available to the parties which might be used to adjudicate the claims for relief asserted in this action in a more fair and/or more efficient manner. Accordingly, a class action is the superior method for adjudicating these claims.

7. Conclusion

As demonstrated above, the stipulated Settlement Classes meet all the prerequisites of Rule 23(a) and Rule 23(b)(3) and, thus, this Court should ratify the propriety of the stipulated certification for the purposes of settlement. *See Staton v. Boeing Co.*, 327 F.3d 938, 952 (9th Cir. 2003).

6. PRELIMINARY APPROVAL SHOULD BE GRANTED TO THE SETTLEMENT

At the preliminary approval stage, a court determines whether a proposed settlement is "within the range of possible approval" and whether or not notice should be sent to class members. *In re M.L. Stern Overtime Litigation*, 2009 U.S. Dist. LEXIS 31650 (S.D. Cal. 2009); see also *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 205 (5th Cir. 1981). In determining whether a settlement is fair, reasonable, and adequate, courts balance several factors, including:

> The strength of plaintiffs' case; the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class action status throughout the trial; the amount offered in settlement; the extent of discovery completed, and the stage of the proceedings; the experience and views of counsel; the presence of a governmental participant; and the reaction of the class members to the proposed settlement.

Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1291 (9th Cir. 1992), citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982).

As many district courts have identified, analyzing a class action settlement begins with a presumption that a class settlement is fair and should be approved if it is the product of arm's-length negotiations conducted by capable counsel with extensive experience in complex class action litigation. *See* 4 Alba Conte & Herbert B. Newberg, Newberg on Class Actions, § 11:41 (4th ed. 2006).

Each of these factors is present here: Class Counsel have extensive experience in class action litigation (see Curtis Approval Decl., ¶¶3-8.), the settlement was reached only after ample investigation (*see* Section 6(C) below) and an extensive arm's-length mediation facilitated by an experienced mediator, Jeffery Batchelor, and substantial negotiation about the specific terms of the settlement. *See M. Berenson Co. v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819, 822 (D. Mass. 1987) ("Where, as here, a proposed class settlement has been reached after meaningful

discovery, after arm's length negotiation, conducted by capable counsel, it is presumptively fair"(citation omitted)).

In addition, as set forth below, the factors identified in *City of Seattle* weigh heavily in favor of preliminary approval of the Stern I settlement.

A. The Strength of Plaintiff's Case, the Comp1exity, Expense and Likely Duration of Further Litigation and the Risk of Maintaining Class Action Status Throughout the Trial

There were a number of obstacles facing the Plaintiffs' case if this action did not settle. While counsel for the Plaintiffs are confident in their position, in the absence of a settlement, there would be several risks associated with this case going forward:

First, Defendant has contested liability and class certification vigorously in this case, and it is believed that Defendant would continue to vigorously oppose the merits of the case. While Plaintiffs' counsel are confident in their ability to certify the four state classes and maintain the class action status through trial, there are always risks inherent in litigation, and the Plaintiffs' counsel acknowledge that there are always challenges in proving liability and damages, as well as the possibility that Defendant will raise meritorious defenses to the certified claims. This is especially true in class action litigation. As one court observed:

> It is known from past experience that no matter how confident one may be of the outcome of litigation, such confidence is often misplaced. Merely by way of example, two instances in this Court may be cited where offers of settlement were rejected by some plaintiffs and were disapproved by this Court. The trial in each case then resulted unfavorably for plaintiffs; in one case they recovered nothing and in the other they recovered less than the amount which had been offered at settlement.

West Virginia v. Chas. Pfizer & Co., 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970), aff'd, 440 F.2d 1079 (2d Cir. 1971), cert. denied, 404 U.S. 871 (1971) but disapproved on other grounds by *Illinois Brick Co. v. Illinois*, 431 U.S. 720 (1977).

Second, based on the discovery conducted to date, it appears that there would be

complicated damage issues in view of the difficulties in valuing the damage that can be attributed to a false or misleading advertisements in the four different states.

Lastly, even assuming class certification was obtained, there would be extensive discovery regarding the class size and class damages. Expenses would have been significant because notice to the class members is a costly endeavor, merits discovery would take place in multiple locations throughout the country in view of Defendant's extensive operations, and the calculation of damages likely would have required expert analysis and extensive document production.

Thus, this factor weighs in favor of preliminary approval of the settlement. The Settlement will allow Settlement Class members to avoid additional delays and avoid the risk that Defendant Shell may ultimately prevail.

B. The Amount Offered in Settlement

The settlement class members who submit a claim form will receive the benefits outlined in the settlement agreement including up to $40 in cash. The total amount of settlement benefit available to the class is $2,200,000.

"In order to assess the reasonableness of a settlement in cases seeking primarily monetary relief, 'the present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing, should be compared with the amount of the proposed settlement.'" *In re Warfarin Sodium Antitrust Litigation*, 391 F.3d 516 (3rd Cir. 2004). 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. (Curtis Approval Decl., ¶13.) When viewed in light of the potential risks discussed above the settlement is more than fair; it is excellent and weighs in favor of preliminary approval of the settlement.

In addition, Plaintiffs' have secured valuable injunctive relief on a class-wide basis, namely, 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." (Curtis Approval Decl., Exh. 11, ¶ 39(a).) This further supports approval of the settlement.

C. The Extent of Discovery Completed and the Stage of the Proceedings

This factor requires the Court to evaluate whether "the parties have sufficient information to make an informed decision about settlement." *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1239 (9th Cir. 1998). As the Ninth Circuit reiterated, "[i]n the context of class action settlements, 'formal discovery is not a necessary ticket to the bargaining table' where the parties have sufficient information to make an informed decision about settlement.'" *In re Mego Financial Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000).

As this Court is aware, this case has been extensively litigated for over two years. The case involved numerous contested motions before the court. (*See* Section 3, above.) In addition, during the course of the litigation, the parties conducted extensive discovery -- counsel for Plaintiff alone reviewed over 11,000 documents, conducted third-party discovery, propounded interrogatories and took four 30(b)(6) depositions on over 40 different topics. (Curtis Approval Decl., ¶12.) Thus, it is clear that the parties have sufficient information to make an informed decision about settlement, and this factor weighs in favor of preliminary approval of the settlement.

D. The Experience and Views of Counsel

The judgment and views of experienced counsel entering into a settlement are entitled to great weight. Counsel for the Plaintiffs are well known for their experience and success in litigating class actions and fully support this settlement. (Curtis Approval Decl., ¶¶3-8, 14.)

The fact that such qualified and well-informed counsel endorse the settlement as being fair, reasonable and adequate heavily favors this Court's approval of the settlement. Courts recognize that the view of the attorneys conducting the litigation "is entitled to significant weight." *Fisher Bros. v. Cambridge-Lee Industries, Inc.*, 630 F. Supp. 482, 488 (E.D. Pa. 1985).

Plaintiffs' Counsel 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. (Curtis Approval Decl., ¶14.) Class Counsel believe that the Settlement is an excellent result for the Settlement Class Members and worthy of this Court's preliminary and, ultimately, final approval. *Ibid*.

E. <u>There Are No Red Flags Raised By The Settlement</u>

In making its preliminary determination as to the fairness, reasonableness and adequacy of a proposed class action settlement, no one factor above should be determinative for the Court. There are, however, certain "red flags" of which the Court should be aware:

> The judge should raise questions at the preliminary hearing and perhaps seek an independent review if there are reservations about the settlement, such as unduly preferential treatment of class representatives or segments of the class, inadequate compensation or harms to the classes, the need for subclasses, or excessive compensation for attorneys.

Manual for Complex Litigation (4th ed. 2005) §21.632 at p. 383.

There are no issues related to the Settlement that should be of concern to the Court at the preliminary approval stage. Under the Settlement, all class members who claim will participate equally, up to a maximum of $40 per claimant, in the balance of the $2.2 million of the Settlement Fund that remains after the costs of notice and settlement administration, court-approved attorneys' fees and expenses, and payments to the Class Representatives are deducted. Therefore, there is no potential for differential treatment of the members of the Settlement Classes.

Nor is there any need for subclasses. The definitions of the Settlement Classes do not raise any intra-class conflicts, because all members of each respective Settlement Class are similarly situated and will be entitled to receive an equal pro rata share of the settlement benefits, up to a maximum of $40 per claimant.

While Class Counsel will seek, by separate motion to be filed and heard at the Final Approval hearing, reasonable incentive awards for the Class Representatives (i.e., Plaintiffs) to compensate them for the time that they have devoted to pursuing this litigation for the benefit of all of the other Settlement Class Members, requests for reasonable incentive payments are typically granted by the courts where, as here, the Class Representatives' involvement in the case has been significant, the duration of the case has been long, and the settlement benefits are substantial.

Additionally, Class Counsel will be seeking, by separate motion to be filed and heard at the Final Approval hearing, attorneys' fees in an amount not to exceed 30% of the $2.2 million common fund – an amount which is within the range of fee awards typically granted by the district courts in the Ninth Circuit. Moreover, the amount of attorneys' fees was neither discussed, negotiated nor agreed upon by the parties as part of the Settlement, and therefore had no impact on the negotiation of the terms of the Settlement. Rather, the determination of the attorneys' fees to be awarded to Class Counsel will be made by the Court.

In summary, the Settlement in this action satisfies the factors that district courts in the Ninth Circuit typically consider at the preliminary approval stage and raises none of the "red flags" that a district court may consider to be troubling.

7. THE COURT SHOULD APPROVE THE FILING OF A FOURTH AMENDED COMPLAINT.

The Court should approve the filing of a Stipulated Fourth Amended Complaint in order to: (1) conform the class definitions to the settlement agreement; and (2) allow an amendment reflecting damages sought for all claims pleaded for all State Subclasses so as to afford all State Subclasses the greatest possible relief. Defendant has reviewed the Stipulated Fourth Amended Complaint and agrees to it strictly for purposes of settlement. The Stipulated Fourth Amended Complaint is attached to the Curtis Approval Declaration as Exhibit 2.

8. SUMMARY OF NOTICE PLAN

The Notice Plan is attached as Exh.1 to the Declaration of Gina Intrepido-Bowden of Settlement Notice Plan ("Intrepido-Bowen Decl.") and summarized in the Settlement Agreement at paragraphs 35-42. The Notice Plan that is being proposed in connection with the Settlement was designed by KCC, a class action settlement administrator with extensive experience in the field. (Intrepido-Bowen Decl., ¶¶1-4 and Exh. 1.)

The Notice Plan utilizes publication notice in a host of print periodicals (National Geographic, Parade Magazine and People magazine), in skiing-related publications (Outdoor NW, SKI magazine and Skiing Magazine) and by an extensive Internet banner ad campaign to reach unknown Settlement Class Members. (Intrepido-Bowen Decl., ¶¶24-27.) KCC estimates that the Notice Plan will reach in excess of 73.4% of likely Settlement Class Members, on average 1.5 times each. (Intrepido-Bowen Decl., ¶33.)

The "reach" of the Notice Program is consistent with other court-approved settlement notice programs and is designed to meet due process requirements. For example, the Federal Judicial Center's (FJC) Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide (the FJC Checklist) considers 70-95% reach among class members to be a high

percentage. (Intrepido-Bown Decl., ¶36.) The Notice Plan in this case falls squarely within these parameters. (Intrepido-Bown Decl., ¶36.)

Plaintiffs' Counsel, counsel for Shell, and KCC worked collaboratively 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. Proposed forms of the three types of Notice (publication notice, long-form/website-accessible notice and Internet/banner) are attached to the Notice Plan, which is Exh. 1 to the Intrepido-Bowen Decl. (Intrepido-Bowen Decl., ¶6, Exh. 1.) Further details regarding the Notice, as well as the timing and method of their dissemination, are set forth in the Intrepido-Bowen Decl., in the Notice Plan (Intrepido-Bowen Decl., Exh. 1) and in the Settlement Agreement (Curtis Approval Decl., Exh. 1, ¶ 35-42.)

In summary, the Notices have been designed to be "noticed" and understood by Settlement Class Members. They contain easy-to-read summaries of all of the key information affecting Settlement Class Members' rights and options. All information required by Federal Rule of Civil Procedure 23, as well as the Manual for Complex Litigation, Fourth, has been incorporated into the notice documents. (Intrepido-Bowen Decl., ¶34.)

In addition to the three forms of Notices, an informational website will be established to allow Settlement Class Members to obtain additional information and documents about the Settlement. (Intrepido-Bowen Decl., ¶31.) 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. (Curtis Approval Decl., ¶¶15-16.) The website address will be prominently displayed in all printed notice materials and accessible through a hyperlink embedded in Internet banner notices. (Intrepido-Bowen Decl., ¶31.) Lastly, a toll-free number will be established to allow a simple way for Settlement Class Members to: (a) learn more about

the Settlement in the form of frequently asked questions and answers; and (b) request that more information be mailed directly to them. The toll-free number will be prominently displayed in all printed notice materials. (Intrepido-Bowen Decl., ¶32.)

In the opinion of KCC, the Notice Plan provides the best notice practicable and meets the "desire to actually inform" due process communications standard of *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). It provides the same range of reach and frequency that courts have approved and that has withstood appellate scrutiny as well as critiques by other experts. The Notice Plan also is consistent with the 70-95% reach guideline in the FJC's Checklist. (Intrepido-Bowen Decl., ¶36.)

Plaintiffs request that the Court approve the Notice Plan recommended by KCC and appoint KCC as the Settlement Administrator in this action.

9. SCHEDULE FOR FINAL APPROVAL HEARING

The deadlines that need to be set in advance of the hearing on the motion for final approval of the Settlement (including the deadlines for submitting objections to the Settlement, for submitting requests for exclusion, and for filing the final approval and related motions), as well as the date for the final approval hearing itself, are dependent upon the date on which the Court grants preliminary approval of the Settlement.

The parties have submitted to the Court a proposed Order Granting Preliminary Approval of Proposed Settlement ("Preliminary Approval Order"). Set forth below by paragraph reference to the Proposed Preliminary Approval Order are the dates that have been inserted in the Preliminary Approval Order for deadlines to be set before the hearing on the motion for final approval of the Settlement.

The dates proposed below assume the Court will enter the Preliminary Approval Order on or before June 7, 2016.

	Event	Date
¶8	File Motions for Final Approval	September 26, 2016
¶13	Request for Exclusion (Opt-Outs)	October 6, 2016
¶15	Objections to Settlement	October 6, 2016
¶13	Report re Requests for Exclusion	October 14, 2016
¶15	Notice of Intent to Appear at Hearing	October 14, 2016
¶16	Optional Brief re Objections (if any)	October 18, 2016
¶7	Final Approval Hearing	October 25, 2016

Plaintiffs respectfully submit that this schedule provides adequate notice and opportunity to be heard. Under the schedule, notice to the Settlement Class Members will be completed within 90 days after entry of the Preliminary Approval Order (i.e. no later than September 6, 2016), and the deadline for any objections will be at least 30 days later on October 6, 2016. *See* FJC Checklist at p. 4 (minimum 30 days).

If the Court enters the Preliminary Approval Order after June 7, 2016, the parties request that the Court modify the Order to specify dates that correspond to the time increments between the dates set forth above.

10. CONCLUSION

For the foregoing reasons, this Court should enter the parties' Order Granting Preliminary Settlement Approval that has been submitted for the Court's consideration.

DATED: April 29, 2016

FOLEY BEZEK BEHLE & CURTIS, LLP

/s/ Robert A. Curtis

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