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

ORDER ON PLAINTIFFS' MOTION FOR FINAL APPROVAL

On June 6, 2016, this Court granted preliminary approval to the Settlement Agreement. On September 26, 2016, Plaintiffs filed their Motion for Final Approval of the Settlement. The Court, having considered the papers filed in support of the Motion for Final Approval, hereby makes the following findings of fact, reaches the following conclusions of law, and orders as follows:

1. The Court finds that it has jurisdiction over the subject matter of this action, over all claims raised therein and over all Parties thereto, including all members of the Settlement Classes.

2. 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.

3. As ordered in the Court's Order Granting Preliminary Approval to Settlement, Conditionally Certifying Settlement Classes and Approving Class Notice Plan (Doc. 123), the Fourth Amended Complaint was approved for settlement purposes. In the event of termination of the Settlement Agreement, amendment of the Complaint shall automatically be vacated and this matter returns to the Complaint at Doc. 93.

4. The papers supporting the Final Approval Motion, including, but not limited to, the Declaration of Robert A. Curtis and the two Declarations filed by Gina Intrepido-Bowden, describe the Parties' provision of Notice of the Settlement. Notice was directed to all members of the Settlement Classes defined in paragraph 2, above. No objections to the method or contents of the Notice have been received. Based on the above-mentioned declarations, *inter alia*, the Court finds that the Parties have fully and adequately effectuated the Notice Plan, as required by the Preliminary Approval Order, and, in fact, have achieved better results than anticipated or required by the Preliminary Approval Order.

5. Based on the above mentioned declarations, inter alia, the Court further finds that the Notice provided:

(a) constitutes the best notice practicable under the circumstances;

(b) constitutes notice that was concise, clear, written in plain, easily understood language, and was reasonably calculated, under the circumstances, to apprise the members of the Settlement Classes of the pendency of the action, the claims, issues, and defenses of the Settlement Classes, the definition of the Settlement Classes as certified, their right to exclude themselves from, or object to, the proposed settlement, their right to appear at the Final Approval Hearing, through counsel, if desired, and the binding effect of a judgment on the members of the Settlement Classes;

(c) constitutes due, adequate, and sufficient notice to the all members of the

Settlement Classes; and

(d) meets all applicable requirements of the Federal Rules of Civil Procedure, the United States Code, and the United States Constitution (including the Due Process clause), and fully complies with any other applicable law.

6. The Court finds that the 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, was served upon the appropriate State official of each State in which a member of the Settlement Classes resides, and the appropriate Federal official.

7. The Court Orders that Kurtzman Carson Consultants LLC ("KCC"), as the Settlement Administrator in this action, shall be responsible for determining whether a claimant has submitted a Claim Form that is an Approved Claim. Defendants may challenge a submitted Claim Form as set forth in the parties' Settlement Agreement. The settlement class members who submitted an Approved Claim will receive the benefits outlined in the Settlement Agreement including as much as $40 per claimant.

8. After payment of the separately-awarded attorneys' fees, expenses and incentive awards and the payment to KCC for its service as the Settlement Administrator and after payment of all Approved Claims, any monies remaining in the common fund shall be divided equally between the following two *cy pres* recipients: the Better Business Bureau Center and AARP Foundation, which shall be paid after January 2, 2017.

9. Defendant Equilon shall issue the settlement benefits, with the assistance of KCC, consistent with the dates set forth in the Settlement Agreement.

10. In determining whether to approve the Settlement Agreement, the Court has considered the "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 proceeding; 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). After consideration of each of these factors as applicable, the Court finds that the Settlement is fair, reasonable and adequate and is in the best interests of the Settlement Classes.

11. The Court makes these findings for the reasons articulated in Plaintiffs' briefing supporting the Motions for Preliminary Approval and Final Approval of the Settlement and for the reasons identified by the parties and the Court at the Final Approval Hearing on October 25, 2016. Specifically, the Court finds as follows:

(a) Plaintiffs face significant litigation risk and expense and the possibility of little or no recovery should the matter proceed to trial. In contrast, this Settlement provides substantial monetary and non-monetary benefits to the Settlement Classes. The Court finds that the monetary benefit is fair and reasonable.

(b) The claims of the Settlement Classes have been extensively litigated for over two and one-half years, and the case has involved numerous contested motions. The Parties have engaged in extensive discovery, allowing counsel to make informed decisions about settlement. All counsel involved in this case are experienced in class actions and knowledgeable about the claims. Accordingly, the Court finds that counsel's view of the settlement as fair, reasonable and adequate warrants great weight. See *In re Wash. Public Power Supply Sys. Sec. Litig*., 720 F. Supp. 1379, 1392 (D. Ariz. 1989).

(c) The Court finds that the Settlement Agreement was entered into at arms-length by experienced counsel and only after extensive arms-length negotiations.

(d) The Court finds that of the over 300,000 potential class members,

___0___ class members have opted out of the settlement and no class member has filed an objection to the Settlement. Each of these ___0__ individuals are excluded from the Settlement Classes. All members of the Settlement Classes, aside from these __0__ individuals, will be bound by this Final Approval Order and Judgment. The Court finds that the reaction of the members of the Settlement Classes to the Settlement weighs in favor of approving the settlement.

ORDER

IT IS HEREBY ORDERED AND ADJUDGED THAT:

1. The Court final approves the Settlement.

2. The Court deems the Settlement Agreement and every term and provision thereof incorporated herein as if explicitly set forth and with the full force of an order of this Court. The Parties shall effectuate the Settlement in accordance with the terms of the Settlement Agreement and this Order. In the event of a conflict between the terms of the Settlement Agreement and this Order, the terms of this Order shall take precedence.

3. Upon the Effective Date, the Released Parties shall be released and forever discharged by the Releasing Parties from the Released Claims. The Court orders that the terms of the Settlement Agreement and this Final Approval Order and Judgment shall have maximum res judicata, collateral estoppel and all other preclusive effect in any and all claims for relief, causes of action, suits, petitions, demands in law or equity, or any allegations of liability, damages, debts, contracts, agreements, obligations, promises, attorneys' fees, costs, interest, or expenses that are based on or in any way related to the Released Claims. The Court further enjoins all members of the Settlement Classes, and anyone acting on their behalf, from asserting any of the Released Claims.

4. The Court orders the Parties and their counsel to implement and consummate the

Settlement Agreement according to its terms and provisions, including the payment of benefits and attorneys' fees following the procedures described in the Settlement Agreement and described above.

5. The Court hereby dismisses this lawsuit on the merits and with prejudice and enters Final Judgment, with each side to bear their respective attorneys' fees and costs other than those allowed by this Order.

6. Without affecting the finality of this Order and Judgment, the Court shall retain exclusive and continuing jurisdiction to enforce the terms of the Settlement Agreement, the Judgment and this Order, and all Parties and the members of Settlement Classes submit to the exclusive jurisdiction of the Court with respect to the enforcement of the Settlement Agreement.

7. Consistent with the agreed-upon injunctive relief, the Court orders 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." Defendant is required 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. Any of Defendant's contractors that are alleged to have violated this injunction are responsible for any such non-compliance. In the event of termination of the Settlement Agreement, this injunction order shall automatically be vacated.

IT IS SO ORDERED:

Dated: this 25 day of Oct, 2016

Marco Hernández

MARCO A. HERNANDEZ
UNITED STATES DISTRICT JUDGE