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ENDORSED
FILED
ALAMEDA COUNTY
JUL 21 2016
CLERK OF THE SUPERIOR COURT
By Green PLANNING

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 IN AND FOR THE COUNTY OF ALAMEDA

13 THE PEOPLE OF THE STATE OF CALIFORNIA,

14 Plaintiff,

15 vs.

16 Equilon Enterprises LLC, dba Shell Oil Products US,
17 a Delaware Limited Liability Company,

18 Defendant.

CASE NO. H616824067

COMPLAINT FOR VIOLATIONS
OF UNFAIR COMPETITION AND
ADVERTISING LAWS;
PERMANENT INJUNCTIVE
RELIEF; RESTITUTION; CIVIL
PENALTIES

19
20 COMES NOW, Plaintiff, The People of the State of California, by and through Nancy E.
21 O'Malley, District Attorney and Robert Hartman, Deputy District Attorney of Alameda County,
22 Dean D. Flippo, District Attorney and Robert Lauchlan, Jr., Deputy District Attorney of
23 Monterey County, Gary Lieberstein, District Attorney and Patrick Collins, Deputy District
24 Attorney of Napa County, Jeffrey F. Rosen, District Attorney and Tiyen Lin, Deputy District
25 Attorney of Santa Clara County, Jeffrey S. Rosell, District Attorney and Douglas Allen, Assistant
26 District Attorney of Santa Cruz County, Krishna A. Abrams, District Attorney and Criselda
27 Gonzalez, Deputy District Attorney of Solano County, Jill R. Ravitch, District Attorney and
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1 Matthew Cheever, Deputy District Attorney of Sonoma County (hereinafter collectively,
2 “Plaintiff” or “the People”), and upon information and belief alleges as follows:

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4 **PRELIMINARY ALLEGATIONS**
5 **Parties, Jurisdiction and Venue**

6 1. Plaintiff, by and through the District Attorneys above referenced, pursuant to their
7 authority under California Business and Professions Code §§17204 and 17535, and related
8 sections bring this action to protect the public from unlawful, unfair and fraudulent business
9 practices, and unfair, untrue and misleading advertising, and to obtain relief pursuant to
10 Business and Professions Code §§ 17200-17210, 17500-17509, 17535, 17536, and 13413, as
11 well as California Civil Code §§ 1750–1784, 1812.80-1812.98, 1572 and 1573.

12 2. Defendant, Equilon Enterprises LLC, doing business as Shell Oil Products US
13 (hereinafter “Defendant” or “SHELL”), is a Delaware limited liability company conducting
14 business in the State of California directly, and indirectly by and through contracted wholesalers,
15 retailers, franchisees, agents, and advertisers. Defendant committed acts of false advertising and
16 unlawful business practices, as alleged herein, in the State of California and within the counties of
17 Alameda, Monterey, Napa, Santa Clara, Santa Cruz, Solano and Sonoma and, as well as
18 elsewhere in the State of California.

19 **GENERAL ALLEGATIONS**

20 3. The conduct described herein occurred within four years preceding May 30, 2014,
21 at which time the parties executed an agreement tolling the applicable statutes of limitations,
22 entitled “AGREEMENT BETWEEN EQUILON ENTERPRISES LLC AND THE PEOPLE OF
23 THE STATE OF CALIFORNIA RE: TOLLING THE STATUTE OF LIMITATIONS.” The
24 parties subsequently amended and extended that agreement, such that conduct during the period
25 from May 30, 2014, up to the date of the filing of this complaint is properly encompassed in the
26 scope of this complaint.

1 4. During relevant times herein, Defendant has participated, along with other
2 businesses, in a “Fuel Rewards Network™ (FRN™) Program,” owned and/or operated by
3 Excentus Corporation. Consumers who enroll in or become members of the FRN™ purportedly
4 collect or earn cents per gallon rewards (Rewards) by, among other actions, purchasing qualified
5 products at participating retail locations or websites. Consumers may allegedly redeem Rewards
6 for discounts on gasoline (up to twenty (20) gallons) at participating fuel sites, including Shell™
7 branded stations. Consumers who enroll in or become members of the FRN™ are issued an
8 FRN™ card or Rewards card. Defendant advertised and promoted its participation in the FRN™.

9 5. During relevant times herein, and simultaneously with an FRN™ card or Rewards
10 card being available to consumers, numerous other cards, some of which bear the Shell™
11 emblem, identification, trademark, trade dress, service mark or color scheme, have been available
12 to consumers. These additional cards include gift cards as defined in California Civil Code §
13 1748.12(a)(2), supermarket club cards as defined in California Civil Code § 1749.61(c), and My
14 Shell Bucks Cards (i.e., a gift card with some Shell™ emblem, identification, trademark, trade
15 dress, service mark or color scheme and the words “My Shell Bucks” on the face of the card).

16 6. Complaints or concerns arose that at Shell™ branded stations in the State of
17 California, advertised discount(s) or saving(s) were not honored when two cards (e.g., an FRN™
18 or Rewards card, and a Shell Gift Card) were used in combination; advertised discount(s) or
19 saving(s) such as “Save 5¢ / gal” when gasoline is purchased with a Shell Gift Card were not
20 honored; Shell Gift Cards with a cash value of less than ten dollars (\$10.00) were not redeemed
21 for cash as required by California Civil Code § 1749.5(b), and language on the back of such cards
22 was unfair, untrue and misleading; Rewards balances as to gallons short of twenty (20) purchased
23 on one occasion were forfeited without adequate disclosure to consumers, or due to some clerical
24 or mechanical error or premature pump shut-off; and, without adequate disclosure, and contrary to
25 advertising, consumers were not allowed to use Shell Gift Cards or My Shell Buck Cards like
26 cash, but rather were charged higher credit or debit card prices for items.

27 7. By actions and conduct described in paragraph 6, Defendant committed unlawful
28 and unfair business acts and practices, engaged in unfair, untrue and misleading advertising, and

1 violated California law, such as California Business and Professions Code §§ 13413, 17200 and
2 17500, and California Civil Code §§ 1749.5(b) and 1770, including 1770(a)(5), 1770(a)(9),
3 1770(a)(13), 1770(a)(14), and 1770(a)(16).

4
5 **FIRST CAUSE OF ACTION**

6 **Violations of Unfair Competition, False Advertising and Other Laws**
7 **(Advertised discounts were not honored or not fully rewarded when multiple cards**
8 **were used in combination.)**

9 8. Plaintiff realleges and incorporates herein by this reference paragraphs 1 through 7,
10 inclusive, as though set forth in full here.

11 9. Within the applicable statutes of limitations, plus the applicable tolling period,
12 Defendant advertised discounts or savings which it knew or should have known were not
13 honored but instead were canceled or not fully rewarded when two cards (e.g. an FRN™ or
14 Rewards card, and a Shell Gift Card) were used in combination. In so doing, Defendant
15 engaged in false or misleading advertising and unlawful or unfair acts or practices in the
16 conduct of a business, in violation of Business and Professions Code sections 17500 et seq.,
17 17200 et seq. and 13400 et seq., and the Consumers Legal Remedies Act (“CLRA”), Civil
18 Code section 1770.

19 **SECOND CAUSE OF ACTION**

20 **Violations of Unfair Competition, False Advertising and Other Laws**
21 **(Specific advertised discounts (e.g., “Save 5¢ / gal” when gasoline is purchased with a**
22 **Shell Gift Card) were not honored.)**

23 10. Plaintiff realleges and incorporates herein by this reference paragraphs 1 through 9,
24 inclusive, as though set forth in full here.

25 11. Within the applicable statutes of limitations, plus the applicable tolling period,
26 Defendant advertised specific discounts or savings (e.g., “Save 5¢ / gal” when gasoline is
27 purchased with a Shell Gift Card) which it knew or should have known were not honored. In so
28 doing, Defendant engaged in false or misleading advertising and unlawful or unfair acts or
practices in the conduct of a business, in violation of Business and Professions Code sections

1 17500 et seq., 17200 et seq. and 13400 et seq., and the Consumers Legal Remedies Act
2 (“CLRA”), Civil Code section 1770.

3
4 **THIRD CAUSE OF ACTION**
5 **Violations of Unfair Competition, False Advertising and Other Laws**
6 **(Shell Gift Cards with a cash value of less than ten dollars (\$10.00) were not**
7 **redeemed for cash, and language on the back of such cards was unfair, untrue and**
8 **misleading.)**

9 12. Plaintiff realleges and incorporates herein by this reference paragraphs 1 through
10 11, inclusive, as though set forth in full here.

11 13. Within the applicable statutes of limitations, plus the applicable tolling period,
12 Defendant advertised and sold gift cards that included on the back of such cards language which
13 was unfair, and which Defendant knew or should have known was untrue and misleading, chilling
14 the statutory right of consumers to redeem such cards, beginning with a negative, untrue phrase
15 “[t]his card cannot be redeemed for cash . . . ,” followed by a phrase stating an exception beyond
16 the knowledge of most consumers (e.g., “This card cannot be redeemed for cash and no change
17 will be given, except in those states that require redemption for cash” and “This Card cannot be
18 redeemed for cash and no change will be given, except where required by law”). Moreover,
19 Defendant knew or should have known that numerous Shell branded stations were not redeeming
20 gift cards with balances of less than ten dollars for cash as required by California Civil Code
21 section 1749.5. In so doing, Defendant violated California Civil Code section 1749.5,
22 engaged in false or misleading advertising and unlawful or unfair acts or practices in the
23 conduct of a business in violation of Business and Professions Code sections 17500 et seq.,
24 17200 et seq. and 13400 et seq., and violated the Consumers Legal Remedies Act (“CLRA”),
25 Civil Code section 1770.

26 **FOURTH CAUSE OF ACTION**
27 **Violations of Unfair Competition, False Advertising and Other Laws**
28 **(Rewards balances as to gallons short of twenty (20) purchased on one occasion were**
29 **forfeited without adequate disclosure.)**

30 14. Plaintiff realleges and incorporates herein by this reference paragraphs 1 through
31 13, inclusive, as though set forth in full here.

1 15. Within the applicable statutes of limitations, plus the applicable tolling period,
2 Defendant advertised and promoted its participation in the FRN™, while forfeiting, without
3 adequate disclosure to consumers, Rewards balances as to gallons short of twenty (20) purchased
4 on one occasion, and forfeiting Rewards balances in some instances due to no action of
5 consumers but rather because of clerical or mechanical error or premature pump shut-off. In so
6 doing, Defendant engaged in false or misleading advertising and unlawful or unfair acts or
7 practices in the conduct of a business, in violation of Business and Professions Code sections
8 17500 et seq., 17200 et seq. and 13400 et seq., and the Consumers Legal Remedies Act
9 (“CLRA”), Civil Code section 1770.

10 **FIFTH CAUSE OF ACTION**

11 **Violations of Unfair Competition, False Advertising and Other Laws**
12 **(Advertising that certain cards may be “use[d] like cash” was untrue.)**

13 16. Plaintiff realleges and incorporates herein by this reference paragraphs 1 through
14 15, inclusive, as though set forth in full here.

15 17. Within the applicable statutes of limitations, plus the applicable tolling period,
16 Defendant advertised that certain cards such as Shell Gift Cards and My Shell Bucks Cards may
17 be “use[d] like cash,” while Defendant knew or should have known that such discounts were not
18 or would not be honored as consumers were not allowed to use Shell Gift Cards or My Shell
19 Bucks cards like cash as advertised, but rather were charged higher credit or debit card prices. In
20 so doing, Defendant engaged in false or misleading advertising and unlawful or unfair acts or
21 practices in the conduct of a business, in violation of Business and Professions Code sections
22 17500 et seq., 17200 et seq. and 13400 et seq., and the Consumers Legal Remedies Act
23 (“CLRA”), Civil Code section 1770.

24 **WHEREFORE, Plaintiff prays judgment as follows:**

25 1. That, pursuant to authority such as California Business and Professions Code
26 sections 17202, 17203 and 17535, Defendant, and all persons, corporations or other entities acting
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1 under, by, through or on behalf thereof, or acting in concert or participation therewith, be enjoined
2 from violating all of the laws referenced in the First through Fifth Causes of Action stated herein;

3 2. That, pursuant to sections 17206 and 17536 of the Business and Professions Code,
4 Defendant be ordered to pay a civil penalty in the amount of Two Thousand Five Hundred Dollars
5 (\$2,500.00) for each violation as alleged herein, according to proof;

6 3. That, pursuant to Business & Professions Code sections 17203 and 17535,
7 Defendant be ordered to make restitution for each act of false advertising and unfair competition,
8 according to proof.

9 4. That Plaintiff recover all costs incurred in this action.

10 5. For such other and further relief as the Court deems just and proper.

11 Dated: July 20, 2016

NANCY E. O'MALLEY
District Attorney of Alameda County

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15 By: Robert J. Hartman
16 Robert J. Hartman
17 Deputy District Attorney
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APPENDIX A

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