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ENDORSED
FILED
ALAMEDA COUNTY

JUL 25 2016
CLERK OF THE SUPERIOR COURT
By PAM WILLIAMS
Deputy

8 *Attorneys for Plaintiff*
9 Additional counsel for Plaintiff listed in Appendix A

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF ALAMEDA

13 PEOPLE OF THE STATE OF CALIFORNIA,

Case No.: **HG 16824067**

14 Plaintiff,

STIPULATED FINAL JUDGMENT AND
INJUNCTION

15 vs.

16 EQUILON ENTERPRISES LLC, dba Shell Oil
17 Products US, a Delaware Limited Liability
18 Company.

19 Defendant.

20 Plaintiff, the People of the State of California (hereinafter, "Plaintiff" or "the People"),
21 represented by Nancy E. O'Malley, District Attorney of Alameda County, by Deputy District Attorney
22 Robert Hartman; Dean D. Flippo, District Attorney of Monterey County, by Deputy District Attorney
23 Robert J. Lauchlan, Jr.; Gary A. Lieberstein, District Attorney of Napa County, by Deputy District
24 Attorney Patrick Collins; Jeffrey Rosen, District Attorney of Santa Clara County, by Deputy District
25 Attorney Tiyen Lin; Jeff Rosell, District Attorney of Santa Cruz County, by Deputy District Attorney
26 Douglas Allen; Krishna A. Abrams, District Attorney of Solano County, by Deputy District Attorney
27 Criselda Gonzalez; and Jill R. Ravitch, District Attorney of Sonoma County, by Deputy District
28 Attorney Matthew T. Cheever; and Defendant, EQUILON ENTERPRISES LLC, dba Shell Oil Products
US, a Delaware Limited Liability Company (hereinafter "Shell" or "Defendant"), represented by Wilson

1 Turner Kosmo LLP, by Robin A. Wofford, having agreed to entry of this Stipulated Final Judgment and
2 Injunction (hereinafter "Stipulated Final Judgment") without the taking of proof and without this
3 Stipulated Final Judgment constituting evidence of or an admission by any party regarding any issue of
4 fact or law alleged in the Complaint, and good cause appearing,

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

- 6 1. The Court has jurisdiction over the parties and subject matter of this case;
- 7 2. Venue is proper in the Alameda County Superior Court;
- 8 3. The District Attorneys for the Counties of Alameda, Monterey, Napa, Santa Clara, Santa
9 Cruz, Solano and Sonoma have the authority under the laws of the State of California to
10 bring this action for the protection of the People of the State of California;
- 11 4. This Stipulated Final Judgment has been reviewed by the Court, and the Court finds that it
12 has been entered into in good faith and is in all respects just, reasonable, equitable and
13 adequate.

14 **INJUNCTIVE RELIEF**

- 15 5. For purposes of this Stipulated Final Judgment, the following definitions apply:
 - 16 a. "ADVERTISEMENT" means anything created by Defendant or at Defendant's
17 direction and used by Defendant or made available by Defendant for use by SHELL
18 CALIFORNIA WHOLESALERS or SHELL CALIFORNIA RETAILERS to market
19 or promote SHELL GIFT CARDS, the FUEL REWARDS® PROGRAM, grocer
20 loyalty programs, or discounts for payment with SHELL GIFT CARDS or cash in
21 any Shell-branded retail station in the State of California. This includes by way of
22 example, but without limitation, internet web sites, signage and point of sale
23 materials, videos, telephone messages, flyers and materials for use in newspapers,
24 newsletters, magazines, phone books, or television or radio broadcasts.
 - 25 b. "ADVERTISE," "ADVERTISED," and "ADVERTISING" refers to any action by
26 Defendant to directly market or promote SHELL GIFT CARDS, the FUEL
27 REWARDS® PROGRAM, grocer loyalty programs, or discounts for payment with
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1 SHELL GIFT CARDS or cash in any Shell-branded retail station in the State of
2 California. This includes any action by Defendant to directly convey any
3 ADVERTISEMENT to California consumers or any action by Defendant to require
4 that any ADVERTISEMENT be conveyed to California consumers by
5 CALIFORNIA SHELL WHOLESALERS or CALIFORNIA SHELL RETAILERS.

- 6 c. "CALIFORNIA SHELL WHOLESALER" means any person or entity that is
7 authorized, by contract, to re-sell motor fuel under the Shell brand in the state of
8 California, either directly to consumers or to authorized retailers who, in turn, re-sell
9 motor fuel under the Shell brand to consumers.
- 10 d. "CALIFORNIA SHELL RETAILER" means any person or entity that operates any
11 Shell-branded retail station(s) in the State of California.
- 12 e. "CLEAR AND CONSPICUOUS" or "CLEARLY AND CONSPICUOUSLY" means
13 in larger type than the surrounding text, or in contrasting type, font, or color to the
14 surrounding text of the same size, or set off from the surrounding text of the same
15 size by symbols or other marks, in a manner that clearly calls attention to the
16 language.
- 17 f. "FUEL REWARDS® CARD" means a FUEL REWARDS® PROGRAM card issued
18 to a person enrolled in or a member of the FUEL REWARDS® PROGRAM.
- 19 g. "FUEL REWARDS® PROGRAM" means a program formerly known as the "Fuel
20 Rewards Network®" ("FRN") Program, which is owned and operated by Excentus
21 Corporation, in which persons may enroll or become members, and collect cents per
22 gallon rewards by, among other things, purchasing qualified products at participating
23 retail locations or online, and redeem the rewards for discounts on gasoline at
24 participating Shell-branded fuel sites. This definition shall apply in the event the
25 name of this program changes in the future.
- 26 h. "GIFT CARD" is a gift certificate as defined in Civil Code § 1749.45 (a).
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- 1 i. "MY SHELL BUCKS CARD" means a SHELL REFILLABLE CARD with the
2 words "My Shell Bucks" on its face.
- 3 j. "SHELL CUSTOMER SERVICE CENTER" means the customer service center
4 operated by Defendant to respond to customer questions and concerns, and reachable
5 at (888) GO-SHELL.
- 6 k. "SHELL GIFT CARD" means an authorized, legitimate GIFT CARD with a Shell
7 emblem, trademark, trade dress, service mark and/or the words "Shell Gift Card" on
8 its face. SHELL GIFT CARD includes, but is not limited to, SHELL REFILLABLE
9 CARDS and MY SHELL BUCKS CARDS.
- 10 l. "SHELL REFILLABLE CARD" means a SHELL GIFT CARD to which customers
11 may add value after the initial purchase of the SHELL GIFT CARD. A SHELL
12 REFILLABLE CARD may have the words "Refillable Card" or "My Shell Bucks"
13 on its face.
- 14 m. "SUPERMARKET CLUB CARD" means any card existing for the purpose of being
15 used from time to time upon presentation for price discounts on retail products
16 offered by the issuer, as defined in Civ. Code § 1749.61(c).

17 6. Pursuant to Business & Professions Code Sections 17203 and 17535, Defendant, its
18 employees, agents, officers, directors, managers, and representatives, with actual or
19 constructive knowledge of this Stipulated Final Judgment are hereby enjoined and restrained
20 for a period of five (5) years, beginning ninety (90) days after entry of this Stipulated Final
21 Judgment, from doing any of the following acts or practices in the State of California
22 violating the provisions of any of the following statutes:

- 23 a. California Business & Professions Code Sections 13413, 17200 and 17500, by:
24 engaging in false or misleading advertising and unlawful, unfair or fraudulent
25 business acts or practices related to the sale or offer for sale of petroleum products by:
26 i. ADVERTISING any discount or saving that a consumer will receive if the
27 consumer uses any FUEL REWARDS® CARD, SHELL GIFT CARD, or
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1 SUPERMARKET CLUB CARD, without CLEARLY AND
2 CONSPICUOUSLY disclosing on the Shell website: "It may not be possible
3 to combine multiple discounts and/or rewards in a single transaction."

4 ii. Not awarding any ADVERTISED discount or saving when two or more
5 rewards, discounts, or savings are applicable to a transaction (e.g., a FUEL
6 REWARDS® discount and discount for payment with a SHELL GIFT
7 CARD) without CLEARLY AND CONSPICUOUSLY disclosing on the
8 Shell website: "It may not be possible to combine multiple discounts and/or
9 rewards in a single transaction."

10 iii. Participating in the FUEL REWARDS® PROGRAM without CLEARLY
11 AND CONSPICUOUSLY disclosing on the Shell website: "Once you begin
12 to dispense fuel using your Fuel Rewards® savings, you must dispense to the
13 gallon limit or you forfeit any remaining reward balances. For example, if you
14 only pump fifteen (15) gallons of fuel, when the gallon limit was twenty (20)
15 gallons, you would abandon the remaining five (5) gallons worth of Reward
16 balance. If you have a rewards balance greater than the current per-gallon
17 price of fuel, the price will roll down to the maximum capability of the fuel
18 equipment, and your remaining rewards balance will be saved for a future fuel
19 purchase."

20 iv. ADVERTISING that any SHELL GIFT CARD may be used like cash.

21 b. California Civil Code § 1770(a)(5) by representing that some good or service has
22 characteristics, uses or benefits which they do not have by:

23 i. ADVERTISING any discount or saving that a consumer will receive if the
24 consumer uses any FUEL REWARDS® CARD, SHELL GIFT CARD, or
25 SUPERMARKET CLUB CARD, without CLEARLY AND
26 CONSPICUOUSLY disclosing on the Shell website: "It may not be possible
27 to combine multiple discounts and/or rewards in a single transaction."
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1 ii. Participating in the FUEL REWARDS® PROGRAM without CLEARLY
2 AND CONSPICUOUSLY disclosing on the Shell website: "Once you begin
3 to dispense fuel using your Fuel Rewards® savings, you must dispense to the
4 gallon limit or you forfeit any remaining reward balances. For example, if you
5 only pump fifteen (15) gallons of fuel, when the gallon limit was twenty (20)
6 gallons, you would abandon the remaining five (5) gallons worth of Reward
7 balance. If you have a rewards balance greater than the current per-gallon
8 price of fuel, the price will roll down to the maximum capability of the fuel
9 equipment, and your remaining rewards balance will be saved for a future fuel
10 purchase."

11 iii. ADVERTISING that any SHELL GIFT CARD may be used like cash.

12 c. California Civil Code § 1770(a)(9) by advertising some good or service with the
13 intent not to sell the good or service as advertised by:

14 i. ADVERTISING any discount or saving that a consumer will receive if the
15 consumer uses any FUEL REWARDS® CARD, SHELL GIFT CARD, or
16 SUPERMARKET CLUB CARD, without CLEARLY AND
17 CONSPICUOUSLY disclosing on the Shell website: "It may not be possible
18 to combine multiple discounts and/or rewards in a single transaction."

19 ii. Participating in the FUEL REWARDS® PROGRAM without CLEARLY
20 AND CONSPICUOUSLY disclosing on the Shell website: "Once you begin
21 to dispense fuel using your Fuel Rewards® savings, you must dispense to the
22 gallon limit or you forfeit any remaining reward balances. For example, if you
23 only pump fifteen (15) gallons of fuel, when the gallon limit was twenty (20)
24 gallons, you would abandon the remaining five (5) gallons worth of Reward
25 balance. If you have a rewards balance greater than the current per-gallon
26 price of fuel, the price will roll down to the maximum capability of the fuel
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1 equipment, and your remaining rewards balance will be saved for a future fuel
2 purchase.”

3 iii. ADVERTISING that any SHELL GIFT CARD may be used like cash.

4 d. California Civil Code § 1770(a)(13) by making false or misleading statements of fact
5 concerning reasons for, existence of, or amounts of price reductions by:

6 i. ADVERTISING any discount or saving that a consumer will receive if the
7 consumer uses any FUEL REWARDS® CARD, SHELL GIFT CARD, or
8 SUPERMARKET CLUB CARD, without CLEARLY AND
9 CONSPICUOUSLY disclosing on the Shell website: “It may not be possible
10 to combine multiple discounts and/or rewards in a single transaction.”

11 ii. Participating in the FUEL REWARDS® PROGRAM without CLEARLY
12 AND CONSPICUOUSLY disclosing on the Shell website: “Once you begin
13 to dispense fuel using your Fuel Rewards® savings, you must dispense to the
14 gallon limit or you forfeit any remaining reward balances. For example, if you
15 only pump fifteen (15) gallons of fuel, when the gallon limit was twenty (20)
16 gallons, you would abandon the remaining five (5) gallons worth of Reward
17 balance. If you have a rewards balance greater than the current per-gallon
18 price of fuel, the price will roll down to the maximum capability of the fuel
19 equipment, and your remaining rewards balance will be saved for a future fuel
20 purchase.”

21 iii. ADVERTISING that any SHELL GIFT CARD may be used like cash.

22 e. California Civil Code § 1770(a)(14) by representing that a transaction confers or
23 involves rights which it does not involve by:

24 i. ADVERTISING any discount or saving that a consumer will receive if the
25 consumer uses any FUEL REWARDS® CARD, SHELL GIFT CARD, or
26 SUPERMARKET CLUB CARD, without CLEARLY AND
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1 CONSPICUOUSLY disclosing on the Shell website: "It may not be possible
2 to combine multiple discounts and/or rewards in a single transaction."

3 ii. Participating in the FUEL REWARDS® PROGRAM without CLEARLY
4 AND CONSPICUOUSLY disclosing on the Shell website: "Once you begin
5 to dispense fuel using your Fuel Rewards® savings, you must dispense to the
6 gallon limit or you forfeit any remaining reward balances. For example, if you
7 only pump fifteen (15) gallons of fuel, when the gallon limit was twenty (20)
8 gallons, you would abandon the remaining five (5) gallons worth of Reward
9 balance. If you have a rewards balance greater than the current per-gallon
10 price of fuel, the price will roll down to the maximum capability of the fuel
11 equipment, and your remaining rewards balance will be saved for a future fuel
12 purchase."

13 iii. ADVERTISING that any SHELL GIFT CARD may be used like cash.

14 f. California Civil Code § 1770 (a)(16) by representing that the subject of a transaction
15 has been supplied in accordance with a previous representation when it has not by:

16 i. ADVERTISING any discount or saving that a consumer will receive if the
17 consumer uses any FUEL REWARDS® CARD, SHELL GIFT CARD, or
18 SUPERMARKET CLUB CARD, without CLEARLY AND
19 CONSPICUOUSLY disclosing on the Shell website: "It may not be possible
20 to combine multiple discounts and/or rewards in a single transaction."

21 ii. Participating in the FUEL REWARDS® PROGRAM without CLEARLY
22 AND CONSPICUOUSLY disclosing on the Shell website: "Once you begin
23 to dispense fuel using your Fuel Rewards® savings, you must dispense to the
24 gallon limit or you forfeit any remaining reward balances. For example, if you
25 only pump fifteen (15) gallons of fuel, when the gallon limit was twenty (20)
26 gallons, you would abandon the remaining five (5) gallons worth of Reward
27 balance. If you have a rewards balance greater than the current per-gallon
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1 price of fuel, the price will roll down to the maximum capability of the fuel
2 equipment, and your remaining rewards balance will be saved for a future fuel
3 purchase.”

4 iii. ADVERTISING that any SHELL GIFT CARD may be used like cash.

5 g. Nothing in this Stipulated Final Judgment shall be interpreted to mean that Defendant
6 is at any time relieved of any obligation it has under the laws of the State of
7 California.

8 7. Pursuant to Business & Professions Code Sections 17203 and 17535, Defendant is hereby
9 ordered and mandated to take the following actions for a period of five (5) years after entry
10 of this Stipulated Final Judgment:

11 a. **POS DEVICES AND COMPUTER SOFTWARE AND HARDWARE.**

12 i. Implement the “Shell Vantage” program at all Shell-branded retail stations
13 located in California, which shall eliminate current technical limitations on the
14 combination of FUEL REWARDS® PROGRAM rewards or
15 SUPERMARKET CLUB CARD rewards with discounts based on gift card or
16 cash payment. Defendant will use its best efforts to complete the
17 implementation of the “Shell Vantage” program at all Shell-branded retail
18 stations located in California by December 31, 2016, and will give written
19 notice to the People when implementation is fully completed.

20 b. **TRAINING.**

21 i. Within ninety (90) days after entry of this Stipulated Final Judgment,
22 Defendant shall prepare and make available to CALIFORNIA SHELL
23 WHOLESALERS supplemental training materials regarding:

24 a. How to configure the POS and EPOS devices to process a transaction
25 to redeem a SHELL GIFT CARD with a value of less than ten dollars
26 (\$10.00), paid by cash or check, upon request of a consumer; and
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1. b. How to redeem a SHELL GIFT CARD with a value of less than ten
2 dollars (\$10.00), paid by cash or check, upon request of a consumer.
- 3 ii. Defendant shall continue to make available to CALIFORNIA SHELL
4 WHOLESALERS training materials regarding:
- 5 a. How to process a transaction through the POS and EPOS devices and
6 computer software and hardware when a customer wishes to use a
7 FUEL REWARDS® CARD or SUPERMARKET CLUB CARD; and
- 8 b. The combination of multiple discounts and rewards in a single
9 transaction, and limitations on the combination of any such discounts
10 and rewards.
- 11 iii. Defendant shall, on a yearly basis, send a communication to all
12 CALIFORNIA SHELL WHOLESALERS reminding them of:
- 13 a. The obligation of all Shell-branded stations to comply with California
14 law governing the redemption of SHELL GIFT CARDS for cash
15 where the cash value of the SHELL GIFT CARD is less than ten
16 dollars (\$10.00); and
- 17 b. Their obligation to ensure that any advertising or messaging related to
18 locally-offered discounts or loyalty programs must include accurate
19 and appropriate disclosures and to ensure that locally-offered discounts
20 are honored for all qualifying purchases.
- 21 c. **GIVE CUSTOMER NOTICE.**
- 22 i. Customer Notification at Station
- 23 a. Within ninety (90) days after entry of this Stipulated Final Judgment,
24 Defendant shall distribute to each CALIFORNIA SHELL
25 WHOLESALER copies of a customer notice, with instructions that the
26 notice shall be placed in a specified location within each Shell-branded
27 retail station in California supplied or operated by or licensed to be
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1 operated by each such CALIFORNIA SHELL WHOLESALER. The
2 specified location shall be readily visible to customers. Defendant
3 shall distribute enough copies of the customer notice to each
4 CALIFORNIA SHELL WHOLESALER to allow placement in each
5 Shell-branded retail station in California supplied or operated by or
6 licensed to be operated by the wholesaler.

7 b. The customer notice shall notifying customers of the following:

- 8 1. A Shell Gift Card (including a Shell Refillable Card or My
9 Shell Bucks Card) with a value under \$10 must be redeemed
10 for cash in the station upon request;
- 11 2. It may not be possible to combine multiple discounts and/or
12 rewards in a single transaction;
- 13 3. Cash discounts may not apply to purchases made with Shell
14 Gift Cards (including Shell Refillable Cards or My Shell Bucks
15 Cards);
- 16 4. For questions regarding Shell Gift Cards (including Shell
17 Refillable Cards and My Shell Bucks Cards), call (800) 300-
18 8113. For questions regarding Fuel Rewards, call (888) 603-
19 0473. For all other questions, call (888) GO-SHELL (888-467-
20 4355).

21 c. Within one-hundred and eighty (180) days after entry of this
22 Stipulated Final Judgment, Defendant will begin to inspect each Shell-
23 branded retail station in California to determine whether the notice has
24 been placed in the specified location within each such station. Each
25 station will be visited at least three times per year to determine
26 whether the notice is in place. If a station fails to have the notice
27 posted during two consecutive visits, Defendant shall send a written
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1 notification to the CALIFORNIA SHELL WHOLESALER that
2 supplies or operates the station, stating the relevant station failed to
3 post the required notice and giving instructions to obtain a replacement
4 copy of the notice.

5 ii. Website

6 a. Within ninety (90) days after entry of this Stipulated Final Judgment,
7 Defendant shall post the following information on its website
8 regarding FUEL REWARDS®, which information shall remain on
9 Defendant's website until the earlier of: (i) a date three (3) years after
10 entry of this Stipulated Final Judgment, or (ii) such time as Defendant
11 stops participating in FUEL REWARDS®:

12 1. Once you begin to dispense fuel using your Fuel Rewards®
13 savings, you must dispense to the gallon limit or you forfeit
14 any remaining reward balances. For example, if you only pump
15 fifteen (15) gallons of fuel, when the gallon limit was twenty
16 (20) gallons, you would abandon the remaining five (5) gallons
17 worth of reward balance. If you have a rewards balance greater
18 than the current per-gallon price of fuel, the price will roll
19 down to the maximum capability of the fuel equipment, and
20 your remaining rewards balance will be saved for a future fuel
21 purchase. To learn more, visit www.fuelrewards.com or call
22 (888) 603-0473.

23 2. It may not be possible to combine multiple discounts and/or
24 rewards in a single transaction.

25 b. Within ninety (90) days after entry of this Stipulated Final Judgment,
26 Defendant shall post the following information on its website
27 regarding Kroger/Ralphs Rewards, which information shall remain on
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1 Defendant's website until the earlier of: (i) a date three (3) years after
2 entry of this Stipulated Final Judgment, or (ii) such time as Defendant
3 stops participating in Kroger/Ralphs Rewards:

- 4 1. It may not be possible to combine multiple discounts and/or
5 rewards in a single transaction.

6 iii. Additional Advertisements

- 7 a. This paragraph 7(c)(iii) shall apply to the following
8 ADVERTISEMENTS: Pump Toppers, Dispenser Inserts, Tear Pads,
9 Register Toppers, Change Mats, Websites, and print materials for
10 newspapers or magazines (hereinafter "DESIGNATED
11 ADVERTISEMENTS").
- 12 b. Defendant shall include the following language on any
13 DESIGNATED ADVERTISEMENTS developed and submitted for
14 printing after this Stipulated Final Judgment is entered and that refer to
15 any discount or saving that a consumer will receive if the consumer
16 uses any FUEL REWARDS® CARD, SHELL GIFT CARD, or
17 SUPERMARKET CLUB CARD: "It may not be possible to combine
18 multiple discounts and/or rewards in a single transaction."
- 19 c. Defendant shall include the following language on any
20 DESIGNATED ADVERTISEMENTS developed and submitted for
21 printing after this Stipulated Final Judgment is entered and that refer to
22 any discount for payment with cash: "Cash Discount may not be
23 applicable to payment with gift card or debit card. It may not be
24 possible to combine multiple discounts and/or rewards in a single
25 transaction."

1 d. For avoidance of doubt, this paragraph 7(c)(iii) applies only to newly-
2 generated ADVERTISEMENTS and does not require removal or
3 replacement of ADVERTISEMENTS already in circulation.

4 **d. GIFT CARD PACKAGING.**

5 i. The following language shall be printed on the back of any SHELL GIFT
6 CARD printed more than ninety (90) days after entry of this Stipulated Final
7 Judgment and on the packaging for any such SHELL GIFT CARD: "For
8 security reasons, protect this Card like cash." This language shall replace the
9 following statement, which was previously printed on the back of SHELL
10 GIFT CARDS and on the packaging for such cards: "For security reasons,
11 treat this Card like cash."

12 ii. Any SHELL GIFT CARD and the packaging for any such SHELL GIFT
13 CARD printed more than ninety (90) days after entry of this Stipulated Final
14 Judgment shall include the following disclosure: "Cash discounts may not
15 apply."

16 **e. CUSTOMER COMPLAINTS AND CONCERNS.**

17 i. Within ninety (90) days after entry of this Stipulated Final Judgment,
18 Defendant shall establish a procedure such that if any California resident
19 contacts the gift card help desk (currently reachable at (800) 300-8113) to
20 complain that a Shell-branded retail fuel station in California failed to provide
21 cash redemption of a SHELL GIFT CARD with a balance less than ten dollars
22 (\$10.00), and if the customer submits a valid SHELL GIFT CARD with a
23 balance less than ten dollars (\$10.00), the customer shall receive a check for
24 the value of the balance remaining on the SHELL GIFT CARD.

25 a. Defendant will implement a process by which the administrative costs
26 of providing the check redemption to each customer pursuant to this
27 procedure may be charged to the CALIFORNIA SHELL
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1 WHOLESALER(s) authorized to supply the station(s) that failed to
2 provide cash redemption to the customer, if the customer provides
3 information sufficient to identify the relevant station(s) in his or her
4 communications with the gift card help desk.

5 ii. Within ninety (90) days after entry of this Stipulated Final Judgment,
6 Defendant shall update Job Aids for the SHELL CUSTOMER SERVICE
7 CENTER to provide increased information on how to handle customer
8 calls/complaints regarding the following: failure to receive cash redemption of
9 a gift card with a balance less than ten dollars (\$10.00), failure to receive an
10 advertised discount for payment with a gift card, failure to receive the full
11 value of a FUEL REWARDS® PROGRAM reward due to pump malfunction
12 or cashier error, or failure to receive multiple rewards and discounts in a
13 single transaction.

14 iii. Within ninety (90) days after entry of this Stipulated Final Judgment,
15 Defendant shall designate an office in its corporate headquarters to address
16 customer calls/complaints regarding unresolved concerns regarding failure to
17 receive cash redemption of a gift card with a balance less than ten dollars
18 (\$10.00), failure to receive an advertised discount for payment with a gift
19 card, failure to receive the full value of a FUEL REWARDS® PROGRAM
20 reward due to pump malfunction or cashier error, or failure to receive multiple
21 rewards and discounts in a single transaction.

22 a. For purposes of this Stipulated Final Judgment, an “unresolved
23 concern” is a concern that has been raised by a single consumer in
24 multiple contacts with Shell’s Customer Support Center at (888) GO-
25 SHELL.
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1 b. This office shall be responsible for documenting the unresolved
2 concern(s), researching the issue(s), and working with the relevant
3 parties to address the issue(s).

4 f. **TRANSACTION CARD GUIDE.** Within ninety (90) days after entry of this
5 Stipulated Final Judgment, the Shell Transaction Card Guide shall be amended as
6 follows:

- 7 i. The following language shall be added to Section 5 - Honoring Cards
8 Directive: "Retailer shall provide cash refunds for Shell Gift Cards when
9 required to do so by state law."
10 ii. The following language shall be added to Section 6 - Transaction Cards
11 Accepted - Shell Gift Card: "Shell Gift Card Cash Refund: If the law in
12 Retailer's State requires merchants to provide "cash back" at the consumer's
13 request when the remaining balance on a gift card is below a certain dollar
14 value, Retailer must provide cash refunds for Shell Gift Cards in accordance
15 with such law. If Retailer fails to provide a cash refund required by law, and
16 the consumer contacts Shell's Gift Card Help Desk to receive the cash refund,
17 any administrative costs of providing such refund may be debited from
18 Retailer."

19 g. **COMMUNICATION WITH EXCENTUS.** Within ninety (90) days after entry of
20 this Stipulated Final Judgment, Shell shall communicate with Excentus Corporation
21 in writing and request that:

- 22 i. The following language currently included in the terms and conditions
23 disclosed by Excentus Corporation regarding the FUEL REWARDS®
24 PROGRAM be in larger print, bold-faced type, on the same page and in close
25 proximity to where a consumer enrolls, and not accessible only via hyperlink:
26 "Once you begin to dispense fuel using a Reward, you must dispense to the
27 gallon limit or you forfeit any remaining Reward balance, except in the case
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1 of a carry-over transaction as described below. For example, if you only
2 pump fifteen (15) gallons worth of fuel, when the gallon limit was twenty (20)
3 gallons, you would abandon the remaining five (5) gallons worth of Reward
4 balance.”

- 5 ii. The following language be included in the terms and conditions disclosed by
6 Excentus Corporation regarding the FUEL REWARDS® PROGRAM: “Fuel
7 Rewards may not be able to be combined with other discounts and/or rewards
8 in a single transaction.”

9 RESTITUTION

- 10 8. Recognizing the infeasibility of identifying injured consumers who may have suffered actual
11 loss, the impracticality of providing direct restitution to said consumers, and the
12 disproportionate cost of making restitution to individual consumers, which would far exceed
13 the benefit consumers would gain, the parties agree that Defendant shall pay, pursuant to
14 Business and Professions Code sections 17203 and 17535, *cy pres* restitution in the sum of
15 Sixty-Two Thousand Five Hundred Dollars (\$62,500.00) payable to the Consumer Protection
16 Prosecution Trust Fund, established in *People v. ITT Consumer Financial Corporation, et*
17 *al.*, Alameda Superior Court Case No. 656038-0, for the investigation and prosecution of
18 consumer protection matters, as the trustees of that trust fund in their discretion may direct.
19 Payment shall be in the form of a check made payable to the “Consumer Protection
20 Prosecution Trust Fund” and delivered care of Robert Hartman, Deputy District Attorney,
21 Alameda County District Attorney’s Office, 7677 Oakport Street, Suite 650, Oakland,
22 California 94621, for immediate disbursement to the Consumer Protection Prosecution Trust
23 Fund.

24 CIVIL PENALTIES AND INVESTIGATIVE COSTS

- 25 9. Pursuant to Business & Professions Code sections 17203, 17206 and 17536, Defendant shall
26 pay civil penalties and investigative costs in the total amount of Seven Hundred Thousand
27 Dollars (\$700,000.00) as set forth below:

- 1 a. Defendant shall pay investigative costs in the amount of One Hundred Forty
2 Thousand Dollars (\$140,000.00), said amount to be made payable as follows:
- 3 i. One check in the amount of Eighteen Thousand Sixty-Six Dollars and
4 Twenty-Six Cents (\$18,066.26) shall be made payable to the "District
5 Attorney of Alameda County – Costs";
- 6 ii. One check in the amount of Eighteen Thousand Sixty-Six Dollars and
7 Twenty-Six Cents (\$18,066.26) shall be made payable to the "District
8 Attorney of Monterey County – Costs";
- 9 iii. One check in the amount of Eighteen Thousand Sixty-Six Dollars and
10 Twenty-Six Cents (\$18,066.26) shall be made payable to the "District
11 Attorney of Napa County – Costs";
- 12 iv. One check in the amount of Eighteen Thousand Sixty-Six Dollars and
13 Twenty-Six Cents (\$18,066.26) shall be made payable to the "District
14 Attorney of Santa Clara County – Costs";
- 15 v. One check in the amount of Eighteen Thousand Sixty-Six Dollars and
16 Twenty-Six Cents (\$18,066.26) shall be made payable to the "District
17 Attorney of Santa Cruz County – Costs";
- 18 vi. One check in the amount of Eighteen Thousand Sixty-Six Dollars and
19 Twenty-Five Cents (\$18,066.25) shall be made payable to the "District
20 Attorney of Solano County – Costs";
- 21 vii. One check in the amount of Eighteen Thousand Sixty-Six Dollars and
22 Twenty-Five Cents (\$18,066.25) shall be made payable to the "District
23 Attorney of Sonoma County – Costs";
- 24 viii. One check in the amount of Thirteen Thousand Forty-One Dollars and
25 Twenty Cents (\$13,041.20) shall be made payable to the "California
26 Department of Food & Agriculture/Division of Measurement Standards"; and
27
28

1 ix. One check in the amount of Four Hundred Ninety-Five Dollars (\$495.00)
2 shall be made payable to the "Napa County Agricultural
3 Commissioner/Sealer."

4 b. Pursuant to Business and Professions Code Section 17206, Defendant shall pay civil
5 penalties in the amount of Five Hundred Sixty Thousand Dollars (\$560,000.00), said
6 amount to be made payable in accordance with Government Code section 26506 as
7 follows:

- 8 i. One check in the amount of Eighty Thousand Dollars (\$80,000.00) shall be
9 made payable to the "District Attorney of Alameda County";
10 ii. One check in the amount of Eighty Thousand Dollars (\$80,000.00) shall be
11 made payable to the "District Attorney of Monterey County";
12 iii. One check in the amount of Eighty Thousand Dollars (\$80,000.00) shall be
13 made payable to the "District Attorney of Napa County";
14 iv. One check in the amount of Eighty Thousand Dollars (\$80,000.00) shall be
15 made payable to the "District Attorney of Santa Clara County";
16 v. One check in the amount of Eighty Thousand Dollars (\$80,000.00) shall be
17 made payable to the "District Attorney of Santa Cruz County";
18 vi. One check in the amount of Eighty Thousand Dollars (\$80,000.00) shall be
19 made payable to the "District Attorney of Solano County"; and
20 vii. One check in the amount of Eighty Thousand Dollars (\$80,000.00) shall be
21 made payable to the "District Attorney of Sonoma County."

22 10. All payments due under paragraphs 8 and 9 shall be delivered to Robert Hartman, c/o District
23 Attorney's Office, 7677 Oakport Street, Suite 650, Oakland, CA 94621 on or before the date
24 thirty (30) days after entry of this Stipulated Final Judgment. Defendant shall issue payment
25 for all payments due under paragraphs 8 and 9 to the Wilson Turner Kosmo LLP Client Trust
26 Account, and Wilson Turner Kosmo LLP shall, in turn, issue the checks as specified in
27 paragraphs 8 and 9.
28

1 **RECORD KEEPING**

- 2 11. Any and all records made or kept pursuant to this Stipulated Final Judgment shall be retained
3 for a period of four (4) years after creation. Upon request by the People, Defendant shall
4 furnish any such record within thirty (30) days after the request is made, unless another date
5 is agreed upon in writing.
- 6 12. Any notices required to be made to the People pursuant to this Final Judgment shall be sent
7 to Robert Hartman, c/o District Attorney's Office, 7677 Oakport Street, Suite 650, Oakland,
8 CA 94621.

9 **FAIR, JUST AND EQUITABLE SETTLEMENT**

- 10 13. The Court finds that the injunctive provisions and civil penalties set forth and imposed in this
11 Stipulated Final Judgment constitute fair, reasonable, and appropriate resolution of this
12 matter and of the allegations contained in the Complaint.
- 13 14. Nothing in this Stipulated Final Judgment shall relieve Defendant of its obligations to
14 comply with any applicable laws, statutes or regulations, including any amendments thereto.

15 **RETENTION OF JURISDICTION AND OTHER TERMS**

- 16 15. This Court will retain jurisdiction to allow either party to apply at any time for any orders
17 and directions that may be necessary to understand and carry out this Stipulated Final
18 Judgment, or to seek modification or termination of any of the injunctive terms, or to seek
19 enforcement of any of those terms.
- 20 16. Both parties have waived their right to appeal.
- 21 17. This Stipulated Final Judgment becomes effective upon entry, which is ordered forthwith.
22 The People shall provide prompt notice of entry of judgment to Defendant.

23 Dated: _____

24 **JUL 25 2016**

25 **MORRIS JACOBSON**
26 **JUDGE OF THE SUPERIOR COURT**