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Skiers Seek Cert. In Suit Over Shell's Lift Ticket Offer

By **Steven Trader**

Law360, New York (February 3, 2016, 9:12 PM ET) -- A group of consumers accusing Shell Oil Products US of violating consumer protection laws in four states by misrepresenting the terms of a free ski lift ticket offered for buying 10 gallons of gas asked an Oregon federal judge Wednesday to certify their four subclasses.

John Martin Kearney of Oregon, Carly LaForest and Alysia Rowe of Michigan, Richard Schempp of California and Jeffrey Paul Gilpin Jr. of Washington say that Shell violated consumer protection laws in each of their states by advertising a "ski free" voucher with a 10-gallon gas purchase, then handing out a two-for-one lift ticket instead, according to the motion for class certification filed Wednesday.

Each of the consumers sought to certify a group of skiers who bought Shell gas and received the voucher as part of Shell's Ski Free promotion between Nov. 1, 2009, and April 30, 2014, and to serve as class representatives.

The suit was launched in February 2014, with Kearney and seven others claiming Shell's practice of providing two-for-one vouchers instead of one free lift ticket was a breach of contract.

Kearney contends that the terms and conditions weren't disclosed before he accepted the offer of a ticket and, further, that his choice of dates and times available to redeem the voucher were significantly limited, a condition also not disclosed before he bought the gas.

In December 2014, U.S. District Judge Marco Hernandez **dismissed the proposed subclasses' claims** that Shell violated the respective states' consumer protection and unlawful trade laws, but he refused to toss the nationwide breach of contract claim, rejecting Shell's argument that an advertisement can't constitute an offer of a contract.

As recipients of the advertisement, the consumers "reasonably might have concluded that by acting in accordance with the request, a contract would be formed," Judge Hernandez said. He also granted the group leave to fix their state subclass claims.

Last January, the group submitted a second amended complaint providing more detail to support their state consumer protection claims, which have remained in the suit since then, although two consumers have since dropped out of the suit,

according to court documents.

In the group's third amended complaint, filed just a few weeks ago, Kearney argues that common questions, such as whether Shell's Ski Free promotion disclosed terms and limitations in a clear manner, made the proposed Oregon subclass ripe for certification.

Likewise, the other residents claim that the question of whether Shell violated Michigan's Consumer Protection Act or engaged in deceptive practices under California's Consumer Legal Remedies Act or Washington's Consumer Protection Act can be answered on a classwide basis. Each group is seeking damages and an injunction.

Representatives for the consumers and for Shell did not immediately return a request for comment late Wednesday.

The consumers are represented by Rick Klingbeil of Rick Klingbeil PC, Brady Mertz of Brady Mertz PC, Brooks Cooper of Draneas & Huglin PC and Robert Curtis of Foley Bezek Behle & Curtis LLP.

Shell is represented by Brad S. Daniels of Stoel Rives LLP and David M. Harris, Abby L. Risner, Dawn M. Johnson and Daniel R. Garner of Greensfelder Hemker & Gale PC.

The case is *Kearney v. Equilon Enterprises LLC et al.*, case number 3:14-cv-00254, in the U.S District Court for the District of Oregon.

--Additional reporting by Emily Field. Editing by Brian Baresch.

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