IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE
FOR THE SIXTH JUDICIAL DISTRICT AT KNOXVILLE

STATE OF TENNESSEE, *ex rel.* ROBERT E. COOPER, JR., Attorney General and Reporter,	)	
Plaintiff,	)	
v.	)	No. _____
LOVELL SHELL, INC., a Tennessee Corporation, doing business as SHELL,	)	
Defendant.	)	

AGREED FINAL JUDGMENT

Plaintiff, the State of Tennessee, by and through Robert E. Cooper, Jr., the Attorney General and Reporter, at the request of Mary Clement, the Director of the Division of Consumer Affairs of the Department of Commerce and Insurance, and Defendant, Lovell Shell, Inc. doing business as Shell and its officers, directors, owners, affiliates, and /or agents, as evidenced by their signatures, do consent to the entry of this Agreed Final Judgment and its provisions. This is a Judgment for which execution may issue.

The Defendant expressly waives ten day notice of the Attorney General's intention to file an action pursuant to Tenn. Code Ann. § 47-18-108(a)(2). This Judgment only resolves matters set forth in the State's Complaint commenced under the Tennessee Consumer Protection Act of 1977. Defendant hereby accepts and expressly waives any defect in connection with service of process issued on the Defendant by the State.

This Judgment shall bind Defendant and shall be binding on any and all future purchasers, merged parties, inheritors, or other successors in interest to Defendant.

1. JURISDICTION

1.1 Jurisdiction of this Court over the subject matter and over the Defendant for the purpose of entering into and enforcing this Judgment is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply to this Court for such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Judgment, including the enforcement of compliance therewith and penalties for violation thereof. Defendant agrees to pay all court costs and attorneys' fees associated with any successful petitions to enforce any provision of this Judgment against Defendant.

2. VENUE

2.1 Pursuant to Tenn. Code Ann. § 47-18-108(a)(3), venue as to all matters between the parties relating hereto or arising out of this Judgment is solely in the Chancery Court of Knox County, Tennessee.

3. PARTIES

3.1 Plaintiff, State of Tennessee *ex rel.* Robert E. Cooper, Jr., Attorney General and Reporter, is charged with enforcing the TCPA, including Tenn. Code Ann. § 47-18-104(b)(34). Pursuant to Tenn. Code Ann. § 47-18-108, actions for violations of the TCPA may be brought by the Attorney General at the request of the Division of Consumer Affairs in courts of competent jurisdiction to restrain violations, to secure equitable and other relief and to otherwise enforce the provisions of the TCPA.

4. APPLICATION OF JUDGMENT TO DEFENDANT AND ITS SUCCESSORS

4.1 Defendant agrees that the duties, responsibilities, burdens and obligations undertaken in connection with this Judgment shall apply to Defendant, to each of its officers, directors, owners, partners, subsidiaries, affiliates, managers, parents, related entities, agents, assigns, representatives, employees, successors, sales staff and any and all other persons or entities acting directly or indirectly on its behalf.

5. PERMANENT INJUNCTION AND REHABILITATION

It is hereby agreed by the Defendant that immediately upon the Court's approval and entry of this Judgment, pursuant to Tenn. Code Ann. § 47-18-108(a)(4), Defendant, its officers, directors and owners and anyone in concert with it, shall be permanently and forever enjoined, restrained and bound from directly or indirectly engaging in the practices set forth herein and further, permanently required to directly or indirectly satisfy the affirmative requirements set forth herein:

5.1 Defendant shall not unreasonably raise prices or unreasonably restrict supplies of essential goods, commodities, or services, including, but not limited to gasoline, diesel, or ethanol, in direct response to a crime, act of terrorism, war, or natural disaster, regardless of whether such crime, act of terrorism, war or natural disaster occurred in the State of Tennessee.

5.2 In the event a state of emergency is declared and is applicable to Defendant, the Defendant shall be required to maintain business records regarding fuel deliveries, fuel sales and pricing information for each retail location, including, but not limited to the following:

(A) Information regarding petroleum fuel deliveries from wholesalers, distributors or suppliers, including the date and time of each delivery; the type and grade of petroleum fuel product delivered; the cost per gallon paid to the wholesaler, distributor or supplier; the last tank inventory in gallons immediately before each delivery; and the name, address and telephone number of the wholesaler, distributor or supplier.

(B) Information regarding each retail price change for each petroleum fuel product offered for sale, including the date and time of each retail price change; the type and grade of petroleum fuel product; the retail price per gallon immediately after the price change; and the retail price per gallon immediately before the price change.

(C) The total dollars of retail sales.

(D) The total gallons of retail sales for each petroleum fuel product.

5.3 Defendant shall be prohibited from stating, implying or causing to be stated or implied that the Attorney General, the Division of Consumer Affairs, the Department of

Commerce and Insurance or any other governmental unit of the State of Tennessee approved, sanctioned or authorized any practice, act, or conduct of the Defendant.

5.4 Defendant shall be prohibited from representing or implying that any procedure or other acts or practices hereafter used or engaged in by Defendant have been approved, in whole or in part, by the State.

6. RESTITUTION

6.1 For sixty days from the execution of this Judgment, the Defendant agrees to refund to any consumer who purchased gasoline for $4.69 or more per gallon from Lovell Shell, Inc. doing business as Shell, located at 512 Lovell Road, Knoxville, Tennessee 37932 on September 14, 2008, 100% of the full amount of the actual gasoline sale, if the consumer presents a receipt or other evidence that the consumer purchased gasoline and paid $4.69 or more per gallon of gasoline.

6.2 Consumers who purchased gasoline from Lovell Shell using a debit card or credit card may receive restitution upon presenting a purchase receipt, bank statement or credit card statement. Lovell Shell may retain the original receipt or a copy of other documentation for accounting purposes. Lovell Shell must, at the end of the sixty day restitution period, provide the consumer a copy of the receipt if the consumer requested a copy, at no charge to the consumer. Lovell Shell may retain the consumer's name and contact information for the purpose of mailing copies of receipts. Lovell Shell agrees to provide a page of instructions to consumers, who present a bank statement or credit card statement, informing the consumers that they may redact personally identifying information, other than the consumer's name and address, from bank or credit card statements. Consumers may redact their account number and information regarding purchases unrelated to the restitution request. At the end of the sixty day restitution period set forth herein, Lovell Shell shall provide restitution to these consumers.

6.3 Consumers who purchased gasoline from Lovell Shell using cash may receive restitution upon presenting a receipt or an affidavit stating the date, the type or grade of gasoline purchased, the dollar amount per gallon and the approximate total dollar amount of the purchase.

The affidavit shall affirm that the consumer purchased gasoline at Lovell Shell on September 14, 2008 at a price of $4.69 or more per gallon. At the end of the sixty day restitution period set forth herein, Lovell Shell shall provide restitution to these consumers in an amount not to exceed Lovell Shell's total cash sales on September 14, 2008. Should the consumer claims exceed the amount of Lovell Shell's cash sales, consumers will be paid on a *pro rata* basis.

6.4 The Defendant shall report to the State in writing each request for a refund, with details about the Defendant's resolution of each request, within 75 days of the execution of this Judgment, to the following address:

Deputy Attorney General
Consumer Advocate and Protection Division
Office of the Attorney General of Tennessee
P.O. Box 20207
Nashville, Tennessee 37202-0207

7. ATTORNEYS' FEES AND COSTS TO THE STATE

7.1 Pursuant to Tenn. Code Ann. §§ 47-18-108(b)(3) and 47-18-108(a)(5), Defendant shall pay to the State of Tennessee the sum of Two Hundred and Fifty Dollars ($250.00) to the State of Tennessee for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes or other lawful purpose at the sole discretion of the Attorney General. Said payment shall be made by providing a certified or cashiers check made payable to the "Treasurer, State of Tennessee - Attorney General" and shall be delivered to the Attorney General on the day of execution of this Judgment. If the entire monetary amount anticipated by the State of Tennessee is not received, any monies received shall first be attributed to attorneys' fees pursuant to paragraph 7, and then to civil penalties pursuant to paragraph 8. If the State of Tennessee receives additional money beyond the amount set forth herein, it shall be used for attorneys fees set forth in this Paragraph.

8. CIVIL PENALTIES

8.1 Pursuant to Tenn. Code Ann. § 47-18-108(b)(3), Defendant shall pay the sum of One Thousand Dollars ($1,000.00) to the State of Tennessee as a civil penalty in this matter. Said payment shall be made immediately upon execution of this Judgment by providing the

Attorney General with a certified check made payable to the "Treasurer, State of Tennessee - Civil Penalties".

9. GENERAL PROVISIONS

9.1 The acceptance of this Judgment by the State shall not be deemed approval by the State of any of Defendant's business practices. Further, neither Defendant nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the State of Tennessee, the Attorney General, the Department of Commerce and Insurance, the Division of Consumer Affairs or any other governmental unit of the State of Tennessee has approved, sanctioned or authorized any practice, act, advertisement or conduct of the Defendant.

9.2 This Judgment may only be enforced by the parties hereto.

9.3 The titles and headers to each section of this Judgment are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Judgment.

9.4 As used herein, the plural shall refer to the singular and the singular shall refer to the plural and the masculine and the feminine and the neuter shall refer to the other, as the context requires.

9.5 Nothing in this Judgment shall limit the Attorney General's right to obtain information, documents or testimony from Defendant pursuant to any law, regulation or rule.

9.6 Nothing in this Judgment shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Judgment shall not bar the State, or any other governmental entity from enforcing laws, regulations or rules against the Defendant.

9.7 Nothing in this Judgment constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

9.8 Defendant waives and will not assert any defenses Defendant may have to any criminal prosecution or administrative action relating to the conduct described in the State's

Complaint, which defenses may be based, in whole or in part, on the Double Jeopardy or Excessive Fines Clauses of the Constitution or principles set forth in *Hudson v. United States*, 118 S. Ct. 488 (1997), and *Austin v. United States*, 509 U.S. 602 (1993), and agrees that the amount that Defendant has agreed to pay under the terms of this Judgment is not punitive in effect or nature for purposes of such criminal prosecution or administrative action.

9.9 Defendant hereby expressly waives and relinquishes any and all rights, remedies, appeals or other interests that he/she/it may possess to a jury trial or any derivative rights that flow from a trial by jury under the Tennessee Constitution or United States Constitution or any other law, regulation or rule.

9.10 No waiver, modification, or amendment of the terms of this Judgment shall be valid or binding unless made in writing, signed by the party to be charged, approved by this Honorable Court and then only to the extent set forth in such written waiver, modification or amendment.

9.11 Any failure by any party to this Judgment to insist upon the strict performance by any other party of any of the provisions of this Judgment shall not be deemed a waiver of any of the provisions of this Judgment, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Judgment and the imposition of any applicable penalties, including but not limited to contempt, civil penalties and/or the payment of attorneys fees to the State.

9.12 If any clause, provision or section of this Judgment shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceablity shall not affect any other clause, provision or section of this Judgment and this Judgment shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

9.13 Defendant waives any and all challenges in law or equity to the entry of the Judgment by the courts. Further, Defendant has waived any right to appeal, petition for

certiorari, move to reargue or rehear or to otherwise be heard in connection with any judicial proceedings under this Judgment.

9.14 This Judgment sets forth the entire agreement between the parties, and there are no representations, agreements, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Judgment which are not fully expressed herein or attached hereto.

9.15 Nothing in this Judgment shall be construed to waive any claims of Sovereign Immunity the State may have in any action or proceeding.

9.16 This Judgment constitutes the complete agreement of the parties.

9.17 If the Defendant declines to obtain the assistance of legal counsel, Defendant has expressly waived his/her/its right to counsel by executing this Judgment.

9.18 Defendant will not participate, directly or indirectly, in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Judgment or for any other purpose which would otherwise circumvent any part of this Judgment or the spirit or purposes of this Judgment.

9.19 Defendant also agrees that the consumer names, addresses, telephone numbers and other personally identifiable information gathered or otherwise obtained during the implementation of this Judgment will not be used for any marketing purposes or provided to any other person for any reason including but not limited for the purposes of marketing these consumers now or in the future.

9.20 The Defendant acknowledges and agrees that any information provided to the State(s) in no way constitutes the State's pre-approval, review for compliance with state or federal law, or with this Judgment, or a release of any issues relating to such documents.

10. REPRESENTATIONS AND WARRANTIES

10.1 Defendant represents and warrants that the execution and delivery of this Judgment is its free and voluntary act, that this Judgment is the result of good faith negotiations, and that Defendant agrees that the Judgment and terms hereof are fair and reasonable.

10.2 Defendant represents and warrants that signatories to this Judgment have authority to act for and bind the Defendant.

10.3 Defendant Lovell Shell, Inc. doing business as Shell warrants and represents that it is the proper party to this Judgment.

10.4 Defendant Lovell Shell, Inc. warrants and represents that it is the true legal name of the entity entering into this Judgment.

10.4 The Defendant understands that the State expressly relies upon these representations and warranties and if said representations or warranties are false, inaccurate, deceptive, unfair, incomplete, or misleading in any way, the State has the right to move to vacate or set aside in whole or in part this Judgment or request that the Defendant be held in contempt and/or seek statutory sanctions pursuant to the Consumer Act or other law, if the State so elects.

11. COMPLIANCE WITH ALL LAWS

11.1 Nothing in this Judgment shall be construed as relieving the Defendant of the obligation to comply with all state and federal laws, regulations or rules, nor shall any of the provisions of this Judgment be deemed to be permission to engage in any acts or practices prohibited by such law, regulation, or rule.

12. MONITORING FOR COMPLIANCE

12.1 Upon request, Defendant agrees to provide books, records, and documents to the State at any time, and further, to informally or formally under oath, provide testimony and other information to the State relating to compliance with this Judgment. Defendant shall make any requested information available within twenty (20) days of the request, at the Office of the Attorney General in Nashville, Tennessee, located at 425 Fifth Avenue North, Nashville, TN 37243, or at any mutually agreeable location within the State of Tennessee. This section shall in no way limit the State's right to obtain documents, information, or testimony pursuant to common law authority and/or any federal or state law, regulation, or rule.

12.2 Within thirty (30) days of the entry of this Judgment, Defendant shall submit a copy of this Judgment to each of its officers, directors, owners, employees and any third parties

who act directly or indirectly on behalf of the Defendant as an agent, independent contractor or who are involved in conducting business in the State of Tennessee. Within forty-five (45) days of entry of this Judgment, Defendant shall provide the State with an affidavit verifying and certifying that all required persons have been supplied with a copy of this Judgment.

12.3 The State of Tennessee has the right to test shop Defendant for the purpose of confirming compliance with this Judgment and state law. The test shoppers are not required to disclose that they are representatives of the State of Tennessee when making contact with Defendant. Further, the State of Tennessee may record (audio and/or video) any or all aspects of its solicitations or visit(s) with Defendant in audio or video form without notice to Defendant. The Defendant agrees to void any sale that is commenced by a test shopper at the conclusion of the sale upon notification that it was test shopping conducted by the State.

13. PRIVATE RIGHT OF ACTION

13.1 Nothing in this Judgment shall be construed to affect any private right of action that a consumer, person, entity, or by any local, state, federal or other governmental entity, may hold against Defendant.

14. NOTIFICATION

14.1 Any notices required to be sent to the State or the Defendant by this Judgment shall be sent by United States mail, certified mail return receipt requested or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

For the State:

Deputy Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, Tennessee 37202-0207
Telephone: (615) 741-1671

For the Defendant:

Lovell Shell, Inc.

512 Lovell Rd
Knoxville, TN 37932

15. PAYMENT OF COURT COSTS

15.1 All court costs associated with this action and any other incidental costs or expenses incurred thereby shall be borne by Defendant. No costs shall be taxed to the State as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to the State.

16. WAIVER OF SERVICE AND SUBMISSION TO COURTS JURISDICTION

16.1 Defendant expressly waives ten day notice of the Attorney General's intention to file an action pursuant to Tenn. Code Ann. § 47-18-108(a)(2).

16.2 Defendant, by signing this Agreed Final Judgment, waives service of process and voluntarily submits to the jurisdiction of this Court.

IT IS SO ORDERED, ADJUDGED AND DECREED.

JUDGE

JOINTLY APPROVED AND
SUBMITTED FOR ENTRY:

FOR THE STATE OF TENNESSEE

ROBERT E. COOPER, JR.
Attorney General and Reporter
B.P.R. No. 10934

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