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IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

STEVEN SCHARFSTEIN, individually and
on behalf of all other similarly situated
persons,

Plaintiff,

v.

BP WEST COAST PRODUCTS, LLC, a
Delaware limited liability company,

Defendant.

Case No. 1112-17046

**PRELIMINARY APPROVAL AND
NOTICE ORDER**

Assigned Judge: Hon. Stephen K. Bushong

Class Counsel has filed with the Court a Motion for Preliminary Approval of the Class Action Settlement, seeking an Order preliminarily approving the proposed Settlement (the “Settlement”) and ordering notice pursuant to the Notice Plan, in accordance with the Settlement Agreement (the “Agreement”) entered into by the parties on March 11, 2019.

Based on the consent of the parties, and after review and consideration of the Motion, the Agreement, and the exhibits attached thereto, and the related submissions,

IT IS HEREBY ORDERED that:

1. The Court, for purposes of this Preliminary Approval and Notice Order, adopts all defined terms set forth in the Agreement, and incorporates them herein by reference as if fully set forth herein and having the full force and effect of an Order of this Court.
2. The Court preliminarily approves the Settlement as embodied by the Agreement, subject to further consideration at the Final Approval Hearing described below. The Court finds that the requirements of ORCP 32 are satisfied with respect to the “Class Members” (as defined

1 in Paragraph 3 of this Order and the Agreement) and finds that the Agreement provides
2 substantial relief to the Class without the risk, cost, or delay associated with continued litigation.

3 3. The Court previously certified the following class in this Action:

4 All consumers who, between January 1, 2011, and August 30,
5 2013, bought BP-branded gasoline, including gasoline plus
6 additional items, at Oregon ARCO stations or Oregon *am/pm*
7 minimarkets, who paid with a debit card and who were charged a
8 debit-card fee. But excluded from the class are 2,441 former class
9 members who filed valid opt-out forms. Also excluded from the
10 class are attorneys for the class; jurors and alternate jurors in the
11 Lawsuit; any judge who sits on the Lawsuit; any person who
12 previously settled or had a court, arbitrator, or other legal authority
13 decide a claim involving a dispute over debit-card fees charged by
14 BPWCP, on or after January 1, 2011; and certain key employees of
15 Kinsella Media and the Claims Administrator.

16 4. The Agreement seeks to resolve the claims and outstanding liabilities of the Class
17 Members.

18 5. The Court approves, as to form and content, the Notice of Class Action
19 Settlement and Final Approval Hearing (the "Notice of Settlement"), a copy of which is attached
20 hereto as Exhibit 1.

21 6. The Court finds that the mailing of the Notice of Settlement in the manner
22 required by Section 5 of the Agreement shall be made pursuant to ORCP 32 D.

23 7. The Court finds that the Notice Plan set out in Section 5 of the Agreement
24 complies with ORCP 32 D and fully satisfies the requirements of due process and the Oregon
25 Rules of Civil Procedure.

26 8. This Court hereby orders the Parties and the Claims Administrator to administer
the Notice Plan in accordance with the terms of the Agreement.

9. Class Representative and the Class Members are hereby enjoined from
prosecuting any claim in the Action and from filing actions or proceedings against Defendant
related to the Action.

1 10. The Agreement shall not be offered or admitted into evidence and the Settlement
2 shall not be or referred to in any way (orally or in writing) in any action, arbitration, or other
3 proceeding, except as allowed by Rule 408 of the Oregon Evidence Code, and specifically
4 excepting the Lawsuit and/or a proceeding involving an effort to enforce the Settlement, as well
5 as reference to the Settlement or Agreement in any SEC disclosure.

6 11. The Agreement shall have no precedential, collateral estoppel, or *res judicata*
7 effect upon Defendant in any matter or proceeding other than (a) this Lawsuit and/or (b) a
8 proceeding involving an effort to enforce the Agreement.

9 12. The Court hereby authorizes the Claims Administrator, subject to the terms of the
10 Agreement, to supervise, administer, and carry out the Notice Plan as set out in Section 5 of the
11 Agreement. The deadline for mailing the Notice of Settlement to the Class Members shall be
12 fourteen (14) days after entry of this Order.

13 13. Any of the Class Members (other than the Class Representative) may object to the
14 Agreement by complying with the following procedures:

15 a. No later than the Objection Deadline, which is forty (40) days after the date that
16 the Notice of Settlement is sent to the Class Members, the objecting Class Member must
17 prepare, file with the Court, and provide the Class Administrator, Class Counsel and
18 Defendant's Counsel with a written objection containing the following:

- 19 i. A heading referring to the Case Number 1112-17046, pending before the
20 Multnomah County Circuit Court in the State of Oregon and entitled
21 “*Steven Scharfstein v. BP West Coast Products, LLC*”;
- 22 ii. A detailed written statement of the specific factual and legal basis for each
23 objection, including why the objector has chosen to object;
- 24 iii. If the objecting Class Member wants to appear at the Final Approval
25 Hearing, a statement that the Class Member intends to appear, and the
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1 grounds or specific reasons for the Class Member's desire to appear and
2 be heard;

3 iv. A list of and copies of all documents that the Class Member may seek to
4 use at the Final Approval Hearing, and a list of the names of any witnesses
5 that the Class Member wants to present at the Final Approval Hearing; and

6 v. If the Class Member is represented by counsel, counsel's name, address,
7 and telephone number. Any counsel representing an objecting Class
8 Member must file a notice of appearance and Points and Authorities in
9 support of the objection, which brief shall contain any and all legal
10 authority upon which the objector will rely and confirm whether the
11 attorney intends to appear at the Final Approval Hearing. Copies of these
12 documents must be filed with the Clerk of the Court and delivered to Class
13 Counsel and Defendant's Counsel no later than the Objection Deadline.

14 b. No Class Member shall be entitled to contest in any way the approval of the terms
15 and provisions of the Agreement or the General Judgment of Dismissal and Final
16 Approval Order to be entered except by filing and serving written objections in
17 accordance with the provisions of Section 6 of the Agreement.

18 14. Only Class Members who have not previously and timely excluded themselves
19 from the class shall be entitled to object to the approval of the Agreement or to the General
20 Judgment of Dismissal and Final Approval Order to be entered under the Agreement.

21 15. The Court hereby creates and approves the Qualified Settlement Fund pursuant to
22 Section 9 of the Agreement and Treasury Regulation §1.468B-1, 26 C.F.R §1.468B-1. (the
23 "Settlement Fund"). Huntington National Bank are appointed as escrow agents for the
24 Settlement Fund, pursuant to the terms of the Agreement.

25 16. The Court also creates and approves the Administrative Fund pursuant to
26 Section 10 of the Agreement.

1 17. The Court will conduct the Final Approval Hearing on June 4, 2019 at 3 p.m., to
2 rule on any timely objection filed by a Class Member, final approval of the Agreement, and
3 issuance of the Second Amended General Judgment.

4 18. Class Counsel and Defendant's Counsel are hereby authorized to use all
5 reasonable procedures in connection with the approval and administration of the Agreement that
6 are not materially inconsistent with this Order or the Agreement without further approval of the
7 Court.

8 19. If the Settlement, including any valid amendment made with the consent of all
9 parties to the Agreement or as otherwise specifically provided in the Agreement, is not approved
10 by the Court or shall not become effective for any reason whatsoever, the Agreement and any
11 actions taken or to be taken in connection therewith (including this Order and any judgment
12 entered herein) shall be terminated and shall become void and of no further force and effect
13 except for the obligations of Defendant to pay for any expense incurred in connection with the
14 Notice Plan and administration provided for by this Order, and neither the Agreement, nor any
15 provision contained in the Agreement, nor any action undertaken pursuant thereto, nor the
16 negotiation thereof by any party shall be deemed an admission or offered or received as evidence
17 at any proceeding in this or any other action or proceeding.

18 20. Neither the Agreement nor any term or provision contained in the Agreement, nor
19 any negotiations, statements or proceedings in connection therewith shall be construed as, or be
20 deemed to be evidence of, an admission or concession of the Class Representative, any Class
21 Member, Defendant, or any Related Party of any liability or wrongdoing by them, or any of
22 them, and shall not be offered or received into evidence in any action or proceeding or be used in
23 any way as an admission, concession, or evidence of any liability or wrongdoing of any nature,

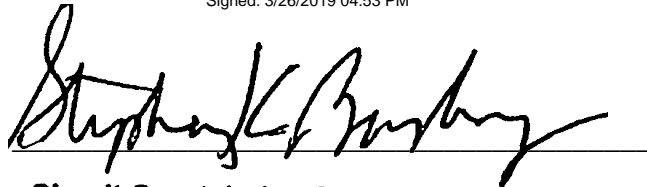
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1 and shall not be construed as, or deemed to be evidence of, an admission or concession that Class
2 Representative, any Class Member, or any other person has or has not suffered any damage.

Signed: 3/26/2019 04:53 PM

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8 **Circuit Court Judge Stephen K. Bushong**

9 Presented By:

10 Sarah J. Crooks, OSB No. 971512
11 Nathan R. Morales, OSB No. 145763
12 **PERKINS COIE LLP**
13 Attorneys for Defendant
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1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies under penalty of perjury under the laws of the State of
3 Oregon that, on March 20, 2019, they caused to be served on the person(s) listed below a true
4 copy of the **PRELIMINARY APPROVAL AND NOTICE ORDER** in the manner shown:

5 David F. Sugerman
6 David F. Sugerman Attorney PC
7 707 SW Washington Street, Suite 600
Portland, OR 97205

8 Amy Johnson
9 Amy Johnson Attorney-at-Law
10 5836 SE Madison St.
Portland, OR 97215

11 *Class Counsel*

Tim Alan Quenelle
Tim Quenelle PC
4800 SW Meadows Rd. #300
Lake Oswego, OR 97035

Class Counsel

Steven Wilker
Tonkon Torp LLP
888 SW Fifth Ave, Suite 1600
Portland, OR 97204

Counsel for Oregon State Bar

12 Jeffrey C. Thede
13 Thede, Culpepper, Moore, Munro &
14 Silliman LLP
111 SW Firth Ave, Suite 3675
Portland, OR 97204

15 *Counsel for Oregon Community
16 Foundation*

17 By eFiling

18 By Email

19 Dated March 20, 2019.

20 **PERKINS COIE LLP**

21 By *s/ Sarah J. Crooks*

22 Sarah J. Crooks, OSB No. 971512
23 SCrooks@perkinscoie.com
1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
24 Phone: 503.727.2000
Facsimile: 503.727.2222

25 *Attorneys for Defendant*

POSTCARD NOTICE

As a member of the Class in this matter

This Notice of Class Action Settlement (“Settlement”) and Final Approval Hearing has been sent to you because your legal rights may be affected by the settlement of this class action lawsuit pending in Multnomah County Circuit Court. The case is brought against BP West Coast Products, LLC (“BPWCP”), on behalf of ARCO and *am/pm* customers who used a debit card for their purchases in Oregon between January 1, 2011 and August 30, 2013 and were charged a 35-cent debit-card fee. The purpose of this notice is to advise you about the terms of a settlement in this class action.

What Are the Settlement Terms? After the Court approves the Settlement and it becomes final, each Class Member will receive a minimum of \$185.00 to be split into 2 payments: the first estimated to be paid within 30 days of July 15, 2019 and the second to be paid within 30 days of July 15, 2020.

Objections. If you have concerns about the Settlement, you may object to the Settlement in writing. The Detailed Notice available at the website below explains how to object to the Settlement. The Court will hold a Final Approval Hearing on **June 4, 2019**, to consider whether to enter a final approval of the Settlement and entry of a General Judgment of Dismissal of the matter.

debitcardclassaction.com

1-866-329-5931