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FILED
JAN 22 2021

K. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA
BY D. WALSH

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA
UNLIMITED JURISDICTION

JIMMY WALSH, individually, and on
behalf of others similarly situated

Plaintiff,

vs.

BP PRODUCTS NORTH AMERICA INC.;
and DOES 1 through 10, inclusive

Defendant.

Case No. **C 21 - 00119**

CLASS ACTION COMPLAINT

- (1) Violation of California Civil Code Sections §§1749.45 *et seq.*;
- (2) Violation of the California False Advertising Act (Cal. Business & Professions Code §§ 17500 *et seq.*); and
- (2) Violation of Unfair Competition Law (Cal. Business & Professions Code §§ 17200 *et seq.*)

Amount to Exceed \$25,000

Jury Trial Demanded

PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT. 39, FOR ALL
PURPOSES.

SUMMONS ISSUED

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BY FAX

1 Plaintiff JIMMY WALSH (“Plaintiff”), individually and on behalf of all other members
2 of the public similarly situated, allege as follows:

3 NATURE OF THE ACTION

4 1. Plaintiff brings this class action Complaint against Defendant BP PRODUCTS
5 NORTH AMERICA INC. (hereinafter “Defendant”) to stop Defendant’s practice of illegally
6 withholding the cash value of gift cards (“Class products”) to unfairly and unlawfully steal
7 funds due and owing all individuals who, during the applicable statute of limitations, failed to
8 receive reimbursement for the funds that they were owed on gift cards with an amount of \$10
9 or less (“Class Members”).

10 2. Defendant is a corporation with principal place of business and state of
11 incorporation in Maryland and sells convenience store items including supplying motor vehicles
12 with gasoline.

13 3. Defendant has a systemic policy and practice of refusing to redeem the cash value
14 of gift cards that are under \$10 in cash value. Instead, Defendant unfairly profits from these
15 funds by never providing their value to customers and keeping their value for themselves.

16 4. Plaintiff and others similarly situated purchased, obtained or attempted to redeem
17 these gift cards.

18 JURISDICTION AND VENUE

19 5. All claims in this matter arise exclusively under California law.

20 6. Plaintiff seeks an individual amount not to exceed \$74,999 and on a class wide
21 basis not to exceed \$4,999,999.

22 7. This matter is properly venued in the Superior Court for the County of Contra
23 Costa, in that Plaintiff used the gift card and attempted to redeem it from Defendant in Contra
24 Costa County, and Defendants do business, inter alia, in this county.

25 THE PARTIES

26 8. Plaintiff JIMMY WALSH is a citizen and resident of the City of Oakley, State
27 of California in the County of Contra Costa.

1 policy.

2 17. Defendant represented that it is their policy to not redeem any gift card for its
3 cash value no matter the balance remaining on the gift card.

4 18. Had Plaintiff known that Defendant would not redeem the balance on the gift
5 card, when it fell below \$10, Plaintiff would not have purchased Defendant's gift card.

6 19. Furthermore, Plaintiff did not discover, nor could he have discovered, the true
7 nature and quality of the gift card until after Plaintiff had purchased the gift card and attempted
8 to redeem it for its cash value, when the balance fell below \$10.

9 20. In fact, Defendant never intended to redeem the cash value of the gift card, when
10 its balance fell below \$10, nor follow the applicable California statute regarding gift card
11 redemption.

12 21. For the gift card, Plaintiff paid more than valuable consideration. Plaintiff relied
13 on the fact that the gift card was being advertised as being of a particular nature and quality,
14 namely that Defendant would follow the applicable California laws and redeem the cash value
15 on the gift card, at the time of purchase. Plaintiff was never informed, in writing, orally, or in
16 any conspicuous manner, that he would receive a gift card that did not conform with the
17 applicable California laws.

18 22. When purchasing Defendant's gift card, Plaintiff understood Defendant would
19 be guaranteed a gift card that complies with California standards. Plaintiff relied on Defendant's
20 statements about the nature and quality of the gift card in deciding to purchase gift cards from
21 Defendant over other competitors. Plaintiff felt assured by Defendant that the gift card would
22 be as represented by Defendant, namely that it complied with the applicable California laws.
23 Plaintiff would not have agreed to purchase Defendant's gift card if he had known that
24 Defendant would deliver gift cards of a nature and quality other than what Defendant
25 represented.

26 23. Knowledge of the true nature and quality of Defendant's gift cards would have
27 impacted Plaintiff's decision to purchase gift cards from Defendant over other brands or sellers
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1 of gift cards. Plaintiff would have found it important to his purchase decision to know exactly
2 what he was purchasing, and he believed that he was purchasing gift cards that was at least
3 compliant with California's regulations regarding redemption of its cash value. This much is
4 demonstrated by the fact that Defendant made express representations that it would not redeem
5 the gift card for its cash balance.

6 24. Plaintiff felt ripped off and cheated by Defendant. Plaintiff believes that
7 Defendant will continue its action of refusing to redeem gift cards, unless Defendant's practices
8 are halted by way of an injunction.

9 25. As a result of Defendant's fraudulent practices, described herein, Plaintiff has
10 suffered emotional distress, wasted time, and anxiety.

11 26. Plaintiff alleges on information and belief that Defendant refuses to redeem these
12 gift cards and fails to inform consumers of its policy to do so when selling these gift cards.

13 27. Plaintiff alleges on information and belief that it is Defendant's policy and
14 practice to misrepresent the true nature and quality of its gift cards regarding their redemption
15 policy. Plaintiff asserts that this practice constitutes a fraudulent omission of a material fact
16 relating to the nature and quality of its products that would be important to a reasonable
17 consumer to know at the time they purchase Defendant's gift cards.

18 28. Plaintiff alleges on information and belief that Defendant's policy and practice
19 is to materially misrepresent the nature and quality of its gift cards, through said fraudulent
20 omissions and misrepresentations, to induce consumers to reasonably rely on the said
21 misrepresentations, in order to induce their purchase of gift cards from Defendant over law
22 abiding competitors.

23 29. Such sales tactics rely on falsities and have a tendency to mislead and deceive a
24 reasonable consumer.

25 30. Plaintiff alleges on information and belief that it is Defendant's policy and
26 practice to represent to consumers, including Plaintiff, that they will not redeem gift cards for
27 any cash value at any time.

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1 31. Plaintiff alleges that such actions were part of a common scheme to mislead
2 consumers and unfairly and unlawfully profit from their unused funds on their gift cards.

3 32. In purchasing the Class products, Plaintiff relied upon Defendant's
4 representations.

5 33. Such representations were clearly false because the true nature and quality of the
6 gift cards was different than represented.

7 34. Plaintiff would not have purchased the products if he knew that the above-
8 referenced statements made by Defendant were false.

9 35. Had Defendant properly marketed, advertised, and represented the Class
10 products, Plaintiff would not have purchased the products.

11 36. Plaintiff agreed to give his money, attention, and time to Defendant because of
12 the nature and quality of the gift cards that was advertised. Defendant benefited from falsely
13 advertising the nature and quality of its gift cards. Defendant benefited on the loss to Plaintiff
14 and provided nothing of benefit to Plaintiff in exchange.

15 37. Had Defendant properly marketed, advertised, and represented the Class
16 Products, no reasonable consumer who purchased or attempted to purchase the gift cards would
17 have believed that they would be able to redeem the gift cards for its cash value.

18 38. On information and belief, thousands of consumers have been refused the
19 redemption of gift cards. It is this practice that Plaintiff seeks to put an end to, and recover
20 compensation for class members.

21 **CLASS ACTION ALLEGATIONS**

22 39. Plaintiff brings this action, on behalf of himself and all others similarly situated,
23 and thus, seeks class certification under California Rules of Civil Procedure.

24 40. The class Plaintiff seeks to represent (the "Class") is defined as follows:

25 All consumers, who, between the applicable statute of limitations
26 and the present, owned a Class Product that was not redeemed for
its Cash Value.

27 41. As used herein, the term "Class Members" shall mean and refer to the members
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1 of the Class described above.

2 42. Excluded from the Class is Defendant, its affiliates, employees, agents, and
3 attorneys, and the Court.

4 43. Plaintiff reserves the right to amend the Class, and to add additional subclasses,
5 if discovery and further investigation reveals such action is warranted.

6 44. Upon information and belief, the proposed class is composed of thousands of
7 persons. The members of the class are so numerous that joinder of all members would be
8 unfeasible and impractical.

9 45. No violations alleged in this complaint are contingent on any individualized
10 interaction of any kind between class members and Defendant.

11 46. Rather, all claims in this matter arise from the identical, policy and practice of
12 failing to provide redemptions.

13 47. There are common questions of law and fact as to the Class Members that
14 predominate over questions affecting only individual members, including but not limited to:

- 15 (a) Whether Defendant engaged in unlawful, unfair, or deceptive business
16 practices in refusing to redeem Class Products to Plaintiff and other Class
17 Members;
- 18 (b) Whether Defendant made misrepresentations with respect to the Class
19 products sold to consumers;
- 20 (c) Whether Defendant profited from the sale of the wrongly advertised gift
21 cards;
- 22 (d) Whether Defendants profited from both the sale and refusal to redeem
23 Class Products;
- 24 (e) Whether Defendants violated California Bus. & Prof. Code § 17200, *et*
25 *seq.*, California Bus. & Prof. Code § 17500, *et seq.*, and California Civil
26 Code Sections §§1749.45 *et seq.*;
- 27 (f) Whether Plaintiff and Class Members are entitled to equitable and/or
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injunctive relief;

(g) Whether Defendants' unlawful, unfair, and/or deceptive practices harmed Plaintiff and Class Members; and

(h) The method of calculation and extent of damages for Plaintiff and Class Members.

48. Plaintiff is a member of the class he seeks to represent

49. The claims of Plaintiff are not only typical of all class members, they are identical.

50. All claims of Plaintiff and the class are based on the exact same legal theories.

51. Plaintiff has no interest antagonistic to, or in conflict with, the class.

52. Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class Member, because Plaintiff bought Class Products from Defendants during the Class Period. Defendant's unlawful, unfair and/or fraudulent actions concerns the same business practices described herein irrespective of where they occurred or were experienced. Plaintiff's claims are typical of all Class Members as demonstrated herein.

53. Plaintiff will thoroughly and adequately protect the interests of the class, having retained qualified and competent legal counsel to represent himself and the class.

54. Common questions will predominate, and there will be no unusual manageability issues.

FIRST CAUSE OF ACTION

Violation of California Civil Code Sections §§1749.45 et seq.

55. Plaintiff incorporates by reference each allegation set forth above.

56. Pursuant to California Civil Code Sections §1749.5, it is unlawful to sell "... any gift certificate with a cash value of less than ten dollars (\$10) [that] is [not] redeemable in cash for its cash value."

57. Defendant sold gift cards that constitute "gift certificates" as defined by §1749.45(a).

1 class members in order to solicit these transactions.

2 64. Defendant knew that its representations and omissions were untrue and
3 misleading, and deliberately made the aforementioned representations and omissions in order
4 to deceive reasonable consumers like Plaintiff and other Class Members.

5 65. As a direct and proximate result of Defendant's misleading and false advertising,
6 Plaintiff and the other Class Members have suffered injury in fact and have lost money or
7 property, time, and attention. Plaintiff reasonably relied upon Defendant's representations
8 regarding the Class products. In reasonable reliance on Defendant's false advertisements,
9 Plaintiff and other Class Members purchased the Class products. In turn Plaintiff and other
10 Class Members ended up with products that were different in ways that put them in danger, and
11 therefore Plaintiff and other Class Members have suffered injury in fact.

12 66. Plaintiff alleges that these false and misleading representations made by
13 Defendant constitute a "scheme with the intent not to sell that personal property or those
14 services, professional or otherwise, so advertised at the price stated therein, or as so advertised."

15 67. Defendant advertised to Plaintiff and other putative class members, through
16 written representations and omissions made by Defendant and its employees that the Class
17 Products would be of a particular nature and quality.

18 68. Thus, Defendant knowingly sold Class products to Plaintiff and other putative
19 class members.

20 69. The misleading and false advertising described herein presents a continuing
21 threat to Plaintiff and the Class Members in that Defendant persists and continues to engage in
22 these practices, and will not cease doing so unless and until forced to do so by this Court.
23 Defendant's conduct will continue to cause irreparable injury to consumers unless enjoined or
24 restrained. Plaintiff is entitled to preliminary and permanent injunctive relief ordering
25 Defendant to cease its false advertising, as well as disgorgement and restitution to Plaintiff and
26 all Class Members Defendant's revenues associated with their false advertising, or such portion
27 of those revenues as the Court may find equitable.

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1 **THIRD CAUSE OF ACTION**

2 **Violation of Unfair Business Practices Act**

3 **(Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**

4 70. Plaintiff incorporates by reference each allegation set forth above.

5 71. Actions for relief under the unfair competition law may be based on any business
6 act or practice that is within the broad definition of the UCL. Such violations of the UCL occur
7 as a result of unlawful, unfair or fraudulent business acts and practices. A plaintiff is required
8 to provide evidence of a causal connection between a defendants' business practices and the
9 alleged harm--that is, evidence that the defendants' conduct caused or was likely to cause
10 substantial injury. It is insufficient for a plaintiff to show merely that the Defendant's conduct
11 created a risk of harm. Furthermore, the "act or practice" aspect of the statutory definition of
12 unfair competition covers any single act of misconduct, as well as ongoing misconduct.

13 **UNFAIR**

14 72. California Business & Professions Code § 17200 prohibits any "unfair . . .
15 business act or practice." Defendant's acts, omissions, misrepresentations, and practices as
16 alleged herein also constitute "unfair" business acts and practices within the meaning of the
17 UCL in that its conduct is substantially injurious to consumers, offends public policy, and is
18 immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any
19 alleged benefits attributable to such conduct. There were reasonably available alternatives to
20 further Defendant's legitimate business interests, other than the conduct described herein.
21 Plaintiff reserves the right to allege further conduct which constitutes other unfair business acts
22 or practices. Such conduct is ongoing and continues to this date.

23 73. In order to satisfy the "unfair" prong of the UCL, a consumer must show that the
24 injury: (1) is substantial; (2) is not outweighed by any countervailing benefits to consumers or
25 competition; and, (3) is not one that consumers themselves could reasonably have avoided.

26 74. Here, Defendant's conduct has caused and continues to cause substantial injury
27 to Plaintiff and members of the Class. Plaintiff and members of the Class have suffered injury
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1 in fact due to Defendant's decision to sell and refuse to redeem its gift cards (Class Products).
2 Thus, Defendant's conduct has caused substantial injury to Plaintiff and the members of the
3 Class.

4 75. Moreover, Defendant's conduct as alleged herein solely benefits Defendant
5 while providing no benefit of any kind to any consumer. Thus, the injury suffered by Plaintiff
6 and the members of the Class is not outweighed by any countervailing benefits to consumers.

7 76. Finally, the injury suffered by Plaintiff and members of the Class is not an injury
8 that these consumers could reasonably have avoided.

9 77. Thus, Defendant's conduct has violated the "unfair" prong of California Business
10 & Professions Code § 17200.

11 **FRAUDULENT**

12 78. California Business & Professions Code § 17200 prohibits any "fraudulent ...
13 business act or practice." In order to prevail under the "fraudulent" prong of the UCL, a
14 consumer must allege that the fraudulent business practice was likely to deceive members of
15 the public.

16 79. The test for "fraud" as contemplated by California Business and Professions
17 Code § 17200 is whether the public is likely to be deceived. Unlike common law fraud, a §
18 17200 violation can be established even if no one was actually deceived, relied upon the
19 fraudulent practice, or sustained any damage.

20 80. Here, not only were Plaintiff and the Class members likely to be deceived, but
21 these consumers were actually deceived by Defendant. Such deception is evidenced by the fact
22 that Plaintiff believed through the use of his gift card that he could redeem it with Defendant.
23 Plaintiff's reliance upon Defendant's deceptive statements is reasonable due to the unequal
24 bargaining powers of Defendant and Plaintiff. For the same reason, it is likely that Defendant's
25 fraudulent business practice would deceive other members of the public.

26 81. As explained above, Defendant deceived Plaintiff and other Class Members by
27 representing the Class Products as omitting that the gift cards were not capable of redemption,
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1 and thus falsely represented the Class Products.

2 82. Thus, Defendant's conduct has violated the "fraudulent" prong of California
3 Business & Professions Code § 17200.

4 **UNLAWFUL**

5 83. California Business and Professions Code Section 17200, et seq. prohibits "any
6 unlawful...business act or practice."

7 84. As explained above, Defendant deceived Plaintiff and other Class Members by
8 refusing to redeem class products in violation of California Civil Code Sections §§1749.45, *et*
9 *seq.*

10 85. These actions by Defendant are therefore an "unlawful" business practice or act
11 under Business and Professions Code Section 17200 *et seq.*

12 86. Defendant has thus engaged in unlawful, unfair, and fraudulent business acts
13 entitling Plaintiff and Class Members to judgment and equitable relief against Defendant, as set
14 forth in the Prayer for Relief. Additionally, pursuant to Business and Professions Code
15 section 17203, Plaintiff and Class Members seek an order requiring Defendant to immediately
16 cease such acts of unlawful, unfair, and fraudulent business practices and requiring Defendant
17 to correct its actions.

18 **MISCELLANEOUS**

19 87. Plaintiff and Class Members allege that they have fully complied with all
20 contractual and other legal obligations and fully complied with all conditions precedent to
21 bringing this action or that all such obligations or conditions are excused.

22 **REQUEST FOR JURY TRIAL**

23 88. Plaintiff requests a trial by jury as to all claims so triable.

24 **PRAYER FOR RELIEF**

25 89. Plaintiff, on behalf of himself and the Class, requests the following relief:

- 26 (a) An order certifying the Class and appointing Plaintiff as Representative
27 of the Class;


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- (b) An order certifying the undersigned counsel as Class Counsel;
- (c) An order requiring ARCO, at its own cost, to notify all Class Members of the unlawful and deceptive conduct herein;
- (d) An order requiring ARCO to engage in corrective advertising regarding the conduct discussed above;
- (e) Actual damages suffered by Plaintiff and Class Members as applicable or full restitution of all funds acquired from Plaintiff and Class Members;
- (f) Punitive damages, as allowable, in an amount determined by the Court or jury;
- (g) Any and all statutory enhanced damages;
- (h) All reasonable and necessary attorneys' fees and costs provided by statute, common law or the Court's inherent power;
- (i) Pre- and post-judgment interest; and
- (j) All other relief, general or special, legal and equitable, to which Plaintiff and Class Members may be justly entitled as deemed by the Court.

Dated: January 21, 2021

Respectfully submitted,

LAW OFFICES OF TODD M. FRIEDMAN, PC

By: 

Todd M. Friedman, Esq.
Attorney for Plaintiff