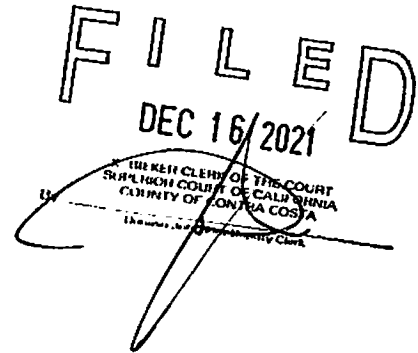


1 Todd M. Friedman (SBN 216752)
Adrian R. Bacon (SBN 380332)
2 **LAW OFFICES OF TODD M. FRIEDMAN, P.C.**
21031 Ventura Blvd., Suite 340
3 Woodland Hills, CA 91364
Phone: 323-306-4234
4 Fax: 866-633-0228
tfriedman@toddfllaw.com
5 abacon@toddfllaw.com
Attorneys for Plaintiff



7
8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF CONTRA COSTA**

10 JIMMY WALSH, individually and on behalf of
11 all others similarly situated,
12 Plaintiff,
13 v.
14 BP PRODUCTS NORTH AMERICA INC.;
and DOES 1 to 50, inclusive,
15 Defendants.

Case No. CIVMSC21-00119

**ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT**

Hon. Edward G. Weil
Dept: 39
Complaint Filed: January 22, 2021

17 Plaintiff has filed a Motion for an Order Preliminarily Approving Class Action Settlement,
18 conditionally Certifying Proposed Settlement Class, Directing Notice, and Setting Hearing on
19 Final Approval of Settlement ("Motion"). Having reviewed the Motion and supporting materials,
20 the Court determines and orders as follows:

21 On December 2, 2021, the Court issued a tentative ruling which it then affirmed as
22 follows:

23 "Plaintiff seeks preliminary approval of a class-action settlement with BP Products
24 of North America, Inc. ("BP"). The motion initially was heard on October 21,
25 2021, after which the Court requested supplemental briefing addressing specified
26 issues. The complaint alleges that BP failed to redeem gift cards with a value of
27 less than \$10 for cash, in violation of the "Gift Card Act," specifically Civil Code
28 section 1749.5(b)(2), and other authorities. BP sells gift cards redeemable at Arco
gas stations in California. It does not, however, own or operate the gas stations, but
instead provides gasoline to them. The gift card program is not operated by BP,
but by Tesoro Refining & Marketing Company LLC.

1 A. Terms of the Settlement.

2 BP will use its "best efforts to provide written notice to its ARCO-branded
3 dealers and operators of stations" in 43 specified northern California counties that
4 "any gift certificate with a cash value of less than ten dollars is redeemable in cash
5 for its cash value." Written notice would be provided "annually for the next two
6 years." As initially drafted, the settlement did not define "best efforts." The
7 individual stations would thereafter be responsible for compliance.

8 BP will pay \$5,000 to plaintiff as in incentive award, \$67,000 in attorney's
9 fees and costs (which will revert to BP if not approved by the court), and up to
10 \$10,000 in settlement administrator's expenses. No other monetary payments will
11 be made. (Paragraph 6 and 7 of the settlement agreement, read in combination,
12 indicate that the \$10,000 in settlement costs is in addition to the \$67,000.)

13 Class notice will be given by posting notice on the settlement
14 administrator's website and class counsel's website for 60 days. In addition, within
15 30 days of preliminary approval, BP will provided notices to the relevant ARCO
16 stations for posting at the premises. The notices will remain posted for sixty days.
17 Putative class members will have a 45-day opportunity to opt-out. There is no
18 mechanism for assuring that the ARCO stations actually post the notices. The
19 notice itself advises the class members that if they have a "card with a value of less
20 than \$10, [they] may redeem it for cash[.]" It also advises them that they "may be
21 part of a class action settlement," and that they may opt out. It does not, however,
22 advise them that there will be no monetary recovery for the class members.

23 The agreement contains a release, which releases all claims that arise out of
24 or relate in any way to the specific factual matters alleged in the Complaint in the
25 Action.

26 **B. Standard of Review.**

27 The primary determination to be made is whether the proposed settlement
28 is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co.* (1996) 48
29 Cal.App.4th 1794, 1801, including "the strength of plaintiffs' case, the risk,
30 expense, complexity and likely duration of further litigation, the risk of
31 maintaining class action status through trial, the amount offered in settlement, the
32 extent of discovery completed and the state of the proceedings, the experience and
33 views of counsel, the presence of a governmental participant, and the reaction ... to
34 the proposed settlement."

35 California law also provides some general guidance concerning judicial
36 approval of any settlement. First, public policy generally favors settlement. (*Neary*
37 *v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the
38 court should not approve an agreement contrary to law or public policy. (*Bechtel*
39 *Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106
40 Cal.App.4th 1121, 1127.) Moreover, "[t]he court cannot surrender its duty to see
41 that the judgment to be entered is a just one, nor is the court to act as a mere

1 puppet in the matter." (California State Auto. Assn. Inter-Ins. Bureau v. Superior
2 Court (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that
3 Neary does not always apply, because "[w]here the rights of the public are
4 implicated, the additional safeguard of judicial review, though more cumbersome
5 to the settlement process, serves a salutatory purpose." (Consumer Advocacy
6 Group, Inc. v. Kintetsu Enterprises of America (2006) 141 Cal.App.4th 48, 63.)

7 Ordinarily, a class action plaintiff seeks an attorney's fee of a percentage of
8 the recovery, and the Court requires a lodestar cross-check. (Lafitte v. Robert Half
9 International (2016) 1 Cal. 5th 480, 503.) In this instance, Plaintiff will seek a
10 lodestar fee, which must be supported in the ordinary manner, and will be
11 reviewed by the Court as such, at the time of final approval.

12 C. Analysis of the Agreement.

13 Counsel attests that the parties "engaged in informal discovery, including
14 the exchange of documents[,]" but provides no further description. In
15 supplementing the record, the matter has been clarified.

16 The definition of the class is people "who between January 22, 2017 and
17 the date of preliminary approval, presented an ARCO Pump Pass gift card with an
18 amount of less than \$10 for redemption of its cash value at an ARCO-branded
19 station in the Relevant California Counties and that request was rejected."

20 Class notice is difficult here, because there is no means for obtaining the
21 addresses of the class members. The terms of the proposed class notice are a
22 concern, because it may imply that some damages will be provided under the
23 settlement. Perhaps it should specify that "the proposed settlement does not
24 provide any monetary recovery for the class."

25 For this type of case, the greatest monetary concern would be that of the
26 customer who tried to redeem the card, was refused, and as a result disposed of the
27 card. No relief is provided for that circumstance, which would be hard to quantify.
28 Apparently, BP does not own or operate the stations, so it would not have refused
redemption. As supplemented, Tesoro Refining & Marketing LLC operates the gift
program, and therefore is the one who benefits from disposed cards. Nor does the
record indicate whether there is a means to determine the number of cards
outstanding and their balance.

After the initial hearing, the Court requested that additional information be
provided concerning the extent of the information exchange, the nature of "best
efforts" by BP to notify the stations of the duty to redeem low-balance cards, the
extent of low-balance cards outstanding, who retains funds from disposed cards,
and the terms of the class notice. The parties have executed an addendum to the
agreement which provides that "best efforts" means communication in writing
through BP's normal channel of communications. It also amends the website notice
to clarify that there is no separate payment as part of the settlement, and reminding
customers that cards with a balance of less than \$10 may be redeemed for cash.

1
2 The motion for preliminary approval is granted. Plaintiff's counsel are
3 directed to obtain a hearing date for a final approval hearing (which would include
4 the request for attorney's fees and representative payment) in consultation with the
5 Department Clerk."

6 The Court further rules as follows:

7 A. Counsel have advised the Court that the parties have agreed to settle this action, subject to
8 final approval by this Court following notice to the proposed Class as set forth in the Settlement
9 Agreement and Release (the "Agreement").

10 B. The Court has reviewed the Agreement, as well as the files, records, and proceedings to
11 date in this matter. The terms of the Agreement are hereby incorporated as though fully set forth
12 in this Preliminary Approval Order (the "Order"). Capitalized terms shall have the meanings
13 attributed to them in the Agreement except as otherwise indicated in this Order.

14 C. Based upon preliminary examination, it appears to the Court that the Agreement is
15 sufficiently fair, reasonable, and adequate to warrant notice to the proposed Class; that the Class
16 should be certified for settlement purposes only; and that the Court should hold a hearing after
17 notice to the Class as set forth in the Agreement to determine whether to enter a settlement
18 approval order and final judgment in this action, based upon that Agreement.

19 Based upon the foregoing, IT IS HEREBY ORDERED:

20 1. Preliminary Approval of Proposed Settlement. The Agreement, including all exhibits
21 thereto, is preliminarily approved as fair, reasonable and adequate. The Court finds that (a) the
22 Agreement resulted from extensive arm's length negotiations, and (b) the Agreement is sufficient
23 to warrant notice thereof to members of the Class and the Final Approval Hearing described
24 below.

25 2. Class Certification for Settlement Purposes Only.

26 (a) Pursuant to Code of Civil Procedure Section 382, the Court, for settlement purposes
27 only (and for no other purpose and with no other effect upon this or any other action,
28 including no effect upon this action should the Agreement not ultimately be approved by
the Court), conditionally certifies a class consisting of all consumers who, between

1 January 22, 2017 and the date of preliminary approval, presented an ARCO Pump Pass
2 gift card with an amount of less than \$10 for redemption of its cash value at an ARCO-
3 branded station in the Relevant California Counties and that request was rejected. The
4 Class does not include Defendant; any entities in which Defendant has a controlling
5 interest; the employees, officers, directors, affiliates, legal representatives, subsidiaries,
6 and affiliates of Defendant; and any persons who validly request exclusion from the Class.

7 (b) In connection with the certification, the Court makes the following preliminary
8 findings:

9 (1) The Class satisfies Code of Civil Procedure § 382 because the Class appears to
10 be so numerous that joinder of all members is impracticable;

11 (2) The Class satisfies Code of Civil Procedure § 382 because there appear to be
12 questions of law or fact common to the Class;

13 (3) The Class satisfies Code of Civil Procedure § 382 because the claims of the
14 plaintiff named in the caption appear to be typical of the claims being resolved
15 through the Agreement;

16 (4) The Class satisfies Code of Civil Procedure § 382 because the named plaintiff
17 appears to be capable of fairly and adequately protecting the interests of the Class
18 in connection with the proposed settlement and because Class Counsel are
19 qualified, competent and capable of prosecuting this action on behalf of the Class.

20 (5) The Class satisfies the requirements of Code of Civil Procedure § 382 because,
21 for purposes of settlement approval and administration, common questions of law
22 and fact appear to predominate over questions affecting only individual Class
23 Members and because settlement with the above-described Class appears to be
24 superior to other available methods for the fair and efficient resolution of the
25 claims of the Class. The Class appears to be sufficiently cohesive to warrant
26 settlement by representation.

27 (c) In making the foregoing findings, the Court has exercised its discretion in
28 conditionally certifying a settlement class.

- 1 (d) Jimmy Walsh is hereby designated as Class Representative for settlement purposes
2 only.
- 3 3. Class Counsel. The Court appoints the Law Offices of Todd M. Friedman, PC as counsel
4 for the Class ("Class Counsel") for settlement purposes only. For purposes of these settlement
5 approval proceedings, the Court finds that Class Counsel are competent and capable of exercising
6 their responsibilities as Class Counsel.
- 7 4. Final Approval Hearing. A hearing shall be held before this Court on April 21, 2022 at 9:00
8 a.m. ("Final Approval Hearing"), as set forth in the Class Notice (described in Paragraph 5
9 below), to determine whether the Agreement is fair, reasonable, and adequate and should be given
10 final approval. Papers in support of final approval of the Agreement and Class Counsel's
11 application for an award of attorneys' fees, costs and expenses and for a service award to the
12 Representative Plaintiff ("Fee and Expense Application") shall be filed with the Court according
13 to the schedule set forth in Paragraphs 9 and 10, below. The Court may postpone, adjourn, or
14 continue the Final Approval Hearing without further notice to the Class. After the Final Approval
15 Hearing, the Court may enter a Settlement Order and Final Judgment in accordance with the
16 Agreement ("Final Judgment"), which will adjudicate the rights of the Class Members with
17 respect to the claims being settled.
- 18 5. Class Notice. The Court approves the form and content of the notices substantially in the
19 forms attached as Exhibits B and C to the Agreement. BP PRODUCTS NORTH AMERICA INC.
20 ("BPPNA") shall comply with the notice requirements of Paragraph 25 of the Agreement. In
21 compliance with that Paragraph, within forty-five (45) days after entry of this Order, BPPNA
22 shall provide two copies of the notice to every ARCO-branded station in the Relevant California
23 Counties for posting (1) one under the canopy near fuel pumps; and (2) one at the cash register
24 counter. This notice and the Class Notice on the Settlement Administrator's website shall remain
25 posted for no less than 60 days.
- 26 6. Findings Concerning Class Notice. The Court finds that the Class Notice and the manner of
27 its dissemination described in Paragraph 5 above and Paragraph 25 of the Agreement constitutes
28 the best practicable notice under the circumstances and is reasonably calculated, under all the

1 circumstances, to apprise Class Members of the pendency of this action, the terms of the
2 Agreement, and their right to object to or exclude themselves from the Class. The Court finds that
3 the Class Notice is reasonable, that it constitutes due, adequate and sufficient notice to all persons
4 entitled to receive notice, and that it meets the requirements of due process, Rules of Court 3.766
5 and 3.769(f), and any other applicable laws.

6 7. Exclusion from Class. Each Class Member who wishes to exclude himself or herself from
7 the Class and follows the procedures set forth in this Paragraph shall be excluded. Any potential
8 member of the Class may mail a written request for exclusion, in the form specified in the Class
9 Notice, to the third-party Settlement Administrator at the address set forth in the Class Notice. All
10 such written requests must be postmarked within forty-five (45) days of the first date that the
11 Class Notice is posted by the Settlement Administrator. All persons who properly request
12 exclusion from the Class shall not be Class Members and shall have no rights with respect to, nor
13 be bound by, the Agreement, should it be approved. The names of all such excluded individuals
14 shall be attached as an exhibit to any Final Judgment.

15 8. Costs of Notice and Administration. The costs of notice to the Class and the necessary and
16 reasonable costs of administering the settlement shall be paid by BPPNA as set forth in the
17 Agreement.

18 9. Objections and Appearances.

19 (a) Written Objections. Any Class Member who has not timely submitted a written request
20 for exclusion from the Class, and thus is a Class Member, may object to the fairness,
21 reasonableness or adequacy of the Agreement, or the Fee and Expense Application. Any
22 Class Member who wishes to object to the settlement, must submit his or her objection in
23 writing to the Court and to Class Counsel (Attn: Todd Friedman, The Law Offices of
24 Todd M. Friedman, PC, 21550 Oxnard St., Suite 780 Woodland Hills, CA 91367) and
25 Defense Counsel (BP Products North America Inc., c/o Sharon D. Mayo, ARNOLD &
26 PORTER KAYE SCHOLER LLP, Three Embarcadero Center, 10th Fl., San Francisco,
27 CA 94111), postmarked no later than forty-five (45) days of the first date that the Class
28 Notice is posted by the Settlement Administrator, and appear at the Final Approval

1 Hearing. Objecting Class Members must include their name and address, the name and
2 number of the case, and a statement of the reasons why they (i) believe the Court should
3 find that the proposed settlement is not in the best interests of the Class or (ii) object to the
4 Fee and Expense Application. Any objection not timely made in this manner shall be
5 forever barred.

6 (b) Appearance at Final Approval Hearing. Any Class Member who does not timely
7 deliver a written objection and notice of intention to appear within forty-five (45) days of
8 the first date that the Class Notice is posted by the Settlement Administrator, in
9 accordance with the requirements of this Order, shall not be permitted to object or appear
10 at the Final Approval Hearing, except for good cause shown, and shall be bound by all
11 proceedings, orders and judgments of the Court.

12 (c) Papers for Final Approval and for Fees and Expenses. Plaintiff shall file his motion for
13 final approval of the settlement, and Class Counsel shall file their Fee and Expense
14 Application, together with all supporting documentation, by no later than thirty (30) days
15 prior to the Final Approval Hearing.

16 (d) Responses to Objections. Any responses to objections to the Agreement or the Fee and
17 Expense Application shall be filed with the Court within twenty-one (21) days after the
18 deadline for serving objections.

19 10. Dates of Performance. In summary, the dates of performance are as follows:

20 (a) BPPNA shall provide two copies of the Class Notice to every ARCO-branded station
21 in the Relevant California Counties for posting within forty-five (45) days after the service
22 of this Order;

23 (b) The Settlement Administrator shall post the Class Notice to the Settlement
24 Administrator's website within thirty (30) days after the service of this Order;

25 (b) Class Counsel's Fee and Expense Application, and all supporting materials, shall be
26 filed no later than thirty-eight (38) days after Class Notice is posted by the Settlement
27 Administrator;

28 (c) Plaintiff's final approval motion, and all supporting materials, shall be filed no later

- 1 than thirty days prior to the Motion for Final Approval;
- 2 (d) Class Members who desire to be excluded shall mail requests for exclusion
- 3 postmarked within forty-five (45) days of the first date that the Class Notice is posted by
- 4 the Settlement Administrator;
- 5 (e) All objections to the Agreement or the Fee and Expense Application shall be filed and
- 6 served within forty-five (45) days of the first date that the Class Notice is posted by the
- 7 Settlement Administrator;
- 8 (f) Responses to objections, if any, and in further support of the Fee and Expense
- 9 Application, shall be filed within two weeks after the deadline to submit an objection;
- 10 (g) The Final Approval Hearing shall be held on April 21,, 2022 at 9:00 a.m.
- 11 11. Effect of Failure to Approve the Agreement. In the event for any reason the Parties fail to
- 12 obtain a Final Judgment as contemplated in the Agreement, or the Agreement is terminated
- 13 pursuant to its terms for any reason, then the following shall apply:
- 14 (a) All orders and findings entered in connection with the Agreement shall become null
- 15 and void and have no further force and effect;
- 16 (b) The conditional certification of the Class pursuant to this Order shall be vacated
- 17 automatically, and the case shall return to its status as it existed before entry of this Order;
- 18 (c) Nothing contained in this Order is, or may be construed as, any admission or
- 19 concession by or against Defendant or Representative Plaintiff on any point of fact or law,
- 20 including, but not limited to, factual or legal matters relating to any effort to certify this
- 21 case as a class action for purposes of considering settlement approval; and
- 22 (d) Nothing in this Order or pertaining to the Agreement shall be used as evidence in any
- 23 further proceeding in this case pertaining to treatment of this case as a class action.
- 24 12. Discretion of Counsel. Counsel are hereby authorized to take all reasonable steps in
- 25 connection with approval and administration of the settlement not materially inconsistent with
- 26 this Order or the Agreement, including, without further approval of the Court, making minor
- 27 changes to the content of the Class Notice that they jointly deem reasonable or necessary.
- 28 13. Stay of Proceedings Pending Approval of the Settlement. All proceedings before the Court

1 are stayed pending final approval of the settlement, except as may be necessary to implement the
2 settlement or comply with the terms of the Agreement.

3 14. Injunction Against Asserting Released Claims Pending Settlement Approval. Pending
4 final determination of whether the settlement should be approved, Plaintiff, all Class Members
5 and any person or entity allegedly acting on behalf of Class Members, either directly,
6 representatively or in any other capacity, are preliminarily enjoined from commencing or
7 prosecuting against the Released Parties any action or proceeding in any court or tribunal
8 asserting any of the Released Claims, provided, however, that this injunction shall not apply to
9 individual claims of any Class Members who timely exclude themselves in a manner that
10 complies with this Order. This injunction is necessary to protect and effectuate the settlement, this
11 Order, and the Court's flexibility and authority to effectuate this settlement and to enter judgment
12 when appropriate, and is ordered in aid of the Court's jurisdiction and to protect its judgments.

13 15. Reservation of Rights and Retention of Jurisdiction. The Court reserves the right to
14 adjourn or continue the date of the Final Approval Hearing without further notice to Class
15 Members, and retains jurisdiction to consider all further applications arising out of or connected
16 with the settlement. The Court may approve or modify the settlement without further notice to
17 Class Members.

18
19 **IT IS SO ORDERED.**

20 Date: December 16, 2021



HON. EDWARD G. WEIL