

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Settlement Agreement”) is made and entered into as of August \_\_, 2021, by and between Jimmy Walsh, individually and on behalf of the Settlement Class, and BP Products North America Inc. (“BPPNA”). Plaintiff and Defendant are collectively referred to as the “Parties.”

### **RECITALS**

A. On January 22, 2021, Jimmy Walsh filed a putative class action lawsuit, *Jimmy Walsh v. BP Products North America Inc.*, Case No. C21-00119, in the Contra Costa Superior Court, California, alleging a variety of claims against Defendant related to redemption of ARCO Pump Pass gift cards (the “Lawsuit”); and

B. The Parties wish to resolve and settle the Lawsuit without any admission of wrongdoing or liability upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, for good and valuable consideration and upon acknowledgement of each of the Parties of the receipt of valuable consideration, the Parties herein agree as follows:

### **DEFINITIONS**

1. As used in this Settlement Agreement, the terms set forth in this section will have the following meanings:

(a) “Administrative Expenses” shall mean costs and expenses associated with the Settlement Administrator, including but not limited to costs to receive any exclusions and objections from Settlement Class Members.

(b) “Class Counsel” shall mean Todd M. Friedman and Adrian Bacon of the Law Office of Todd M. Freidman, P.C.

(c) “Class Member” means any member of a Settlement Class who has not submitted a valid Request for Exclusion from this Settlement Agreement, as preliminarily and finally approved by the Court.

(d) “Class Representative” means Jimmy Walsh.

(e) “Court” means the Honorable Edward G. Weil, Judge of the Superior Court of Contra Costa, California, or such other judge to whom the Lawsuit may hereafter be assigned.

(f) The “Relevant California Counties” are: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, Yuba.

## **SETTLEMENT CLASS**

2. For the purposes of this settlement only, Plaintiff will seek, and Defendant will not oppose, the Court's certification of a class (the "Settlement Class") for all the claims and forms of relief asserted in the Lawsuit. The Settlement Class is defined as follows:

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

Excluded from the Settlement Class are (A) the Defendant; (B) any person, firm, trust, corporation, officer, member, director or other individual or entity in which Defendant has a controlling interest; (C) counsel for the Parties; (D) the key representatives associated with this matter on behalf of the Settlement Administrator identified below; (E) the judge, the judge's immediate staff and judge's immediate family; and (F) the legal representatives, agents, successors-in-interest or assigns of any such excluded party.

3. The Parties stipulate and agree that the definition of the proposed class in the Lawsuit is amended to be the same as the Settlement Class.

4. In the event the settlement is not approved, all such settlement class certifications and amendments to pleadings shall be null and void without prejudice to the Parties seeking respectively to certify or oppose certification of any class.

## **SETTLEMENT CONSIDERATION**

5. In consideration of the settlement, BPPNA will agree to the following injunctive relief: BPPNA will utilize its best efforts to provide written notice to its ARCO-branded dealers and operators of stations in the Relevant California Counties of the requirement set forth in California Civil Code Section § 1749.5 that "any gift certificate with a cash value of less than ten dollars (\$10) is redeemable in cash for its cash value." BPPNA will provide this written notice following final approval of this Settlement and thereafter annually for the next two (2) years. In the event that any of the ARCO-branded dealers and operators of stations in the Relevant California Counties are alleged to have violated the injunction or California Civil Code Section § 1749.5, that dealer or operator shall be responsible for any such non-compliance.

6. To fully settle this action, BPPNA agrees to pay \$72,000, consisting of \$5,000 as an incentive award for the Class Representative and \$67,000 in attorneys' fees and costs to Class Counsel. Both amounts awarded are solely within the discretion of the Court and any amounts not awarded will revert to BPPNA.

7. BPPNA shall pay all reasonable costs and expenses, no more than \$10,000, related to Administrative Expenses. The parties will agree that ILYM Group, Inc. will be the settlement administrator. BPPNA will pay the settlement administrator upon receipt of invoice(s).

8. The payments of Defendant described in Paragraphs 6 and 7 shall exhaust and fully satisfy any and all of its payment obligations under this Settlement Agreement, and shall extinguish entirely any further obligation, responsibility, or liability to pay any settlement sums, attorneys' fees, litigation costs, expenses incurred in administering this Settlement Agreement, including the cost of class notice, the

claims process, taxes, or sums of any kind to Plaintiff, the Settlement Class, Class Counsel, and any other counsel, experts, advisors, agents, and representatives.

9. After preliminary approval of the settlement, Class Counsel may apply to the Court for an award of attorneys' fees and costs and incentive award, which shall be paid by BPPNA within 30 business days of entry by the Court of the order(s) (1) awarding attorneys' fees, costs, and incentive award; and (2) final approval of the settlement. Any award of attorneys' fees and costs shall be separate from the settlement, and approval of the settlement shall not be contingent upon an attorneys' fees or cost award at all or in any particular amount. If the Court reduces or disapproves Plaintiff's counsel's request for an award of attorneys' fees or costs, that will not be grounds to terminate the settlement. Other than as stated in the settlement agreement, BPPNA shall have no responsibility for and no liability with respect to any attorneys' fees or cost award, or incentive award, or allocation of any attorneys' fees award among Plaintiff's counsel and/or any other person who may assert a claim to attorneys' fees. BPPNA will not oppose Class Counsel's motion for an award of attorneys' fees and costs and incentive award so long as the amount sought does not exceed the amounts listed in paragraph 6.

### **NO LIABILITY ADMISSION**

10. Class Counsel have investigated the facts relating to the claims in the Lawsuit and the underlying events and transactions forming the subject matter of the Lawsuit, have analyzed the applicable legal principles, and have concluded, based upon their investigation, taking into account that BPPNA does not operate the retail stations at issue, the sharply contested issues involved, the unsettled state of the applicable law, and the inherent risk of class certification and proof and legal defenses which may be an impediment to prevailing in whole or in part on the claims asserted, and taking into account the risks, uncertainties, burdens, and costs of further prosecution of the Lawsuit, and taking into account the substantial benefits to be received pursuant to this Settlement Agreement, that a resolution and compromise on the terms set forth herein is fair, reasonable, adequate, and in the best interests of Plaintiff and the Settlement Class.

11. Attached as **Exhibit A** is a declaration outlining BPPNA's reasons for entering into this settlement. Defendant, solely for the purpose of avoiding the burden, expense, risk, and uncertainty of continuing to litigate the Lawsuit, and for the purpose of putting to rest all controversies engendered by the Lawsuit, and without any admission of liability or wrongdoing whatsoever, desires to settle the Lawsuit and all claims asserted in or subsumed by the Lawsuit, including unasserted claims related to the subject matter of the Lawsuit that Plaintiff could have asserted in the Lawsuit, on the terms and conditions set forth in this Settlement Agreement.

12. The Parties agree that, by entering this Settlement Agreement, none of the Parties make any admission of liability or wrongdoing whatsoever or concedes the strength of their position in the case.

13. The Parties agree that this Settlement Agreement, the proposed settlement contemplated by it, whether or not finally approved, and any negotiations, proceedings, or agreements relating to them, and any matters arising in connection with settlement negotiations, proceedings, or agreements shall not be described as, construed as, offered, received, admitted, attempted to be used as evidence, or otherwise used against any Party in the Lawsuit as evidence of any presumption, concession, or admission of the truth of any fact, theory, or claim alleged in the Lawsuit or any other action or proceeding, except in connection with any proceeding to enforce the terms of the Settlement Agreement.

## **RELEASE OF CLAIMS**

14. The “Releasing Parties” in this Settlement Agreement are the Class Representative and all members of the Settlement Class and their respective heirs, agents, executors, administrators, trustees, successors, assigns, attorneys, representatives, estates, spouses, family members, and anyone claiming by, through or on behalf of the Settlement Class, who have not timely opted out and excluded themselves from the Lawsuit and this Settlement Agreement as provided below.

15. The “Released Parties” in this Settlement Agreement are BP Products North America Inc., and its respective past and present officers, directors, members, stockholders, agents, employees, legal representatives, trustees, parents, associates, affiliates, joint ventures, subsidiaries, divisions, partners, heirs, executors, administrators, purchasers, predecessors, successors, legal representatives, contractors and assigns, including but not limited to ARCO-branded dealers and operators in the Relevant California Counties, including their owners, employees, agents, insurers and legal representatives.

16. In addition to the effect of any final judgment entered in accordance with this Settlement Agreement, including but not limited to any preclusive effect, the Releasing Parties hereby expressly and irrevocably waive and fully, finally, and forever settle, discharge, remise and release the Released Parties from any and all manner of claims, demands, judgments, actions, suits, obligations, promises and causes of action, whether individual, class, or otherwise in nature and description, for damages whenever incurred, and for liabilities of any nature whatsoever, including for penalties, fines, charges, costs, expenses, injunctive relief, declaratory relief, attorneys’ fees, claims for contribution or indemnification, or the like, whether ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, both known and unknown, in law or equity, that any Releasing Party ever had against the Released Parties, now has or could have been asserted in any court, tribunal or proceeding, or hereafter can, shall, or may have, related to or arising from: (i) the specific factual allegations that were made in the Lawsuit; (ii) any conduct or failure to act of any Released Party alleged and causes of action asserted in the Lawsuit, or that could have been alleged or asserted in the Lawsuit and that relate to the redemption of ARCO Pump Pass gift cards for cash value; and/or (iii) any act, representation, or omission of any Released Party concerning the redemption of ARCO Pump Pass gift cards for cash value. No other claims are meant to be released by this Settlement Agreement.

17. For the avoidance of doubt, the types of claims released in the preceding paragraph are released regardless of the type of cause of action, common law principle, or statute under which they are asserted; for example, and without limitation, such claims are released whether asserted under any federal, state, or local unfair competition, unfair practices, deceptive practices, common law breach of contract, or similar law or regulation of any jurisdiction within the United States.

18. The Releasing Parties hereby covenant and agree that they shall not, hereafter, seek to establish liability against any of the Released Parties based, in whole or in part, upon any of the released claims.

19. Each Releasing Party further expressly and irrevocably waives and fully, finally, and forever settles and releases, upon the Court’s final approval of this Settlement Agreement, any and all defenses, rights, and benefits that the Releasing Party may have or that may be derived from the provisions of applicable law which, absent such waiver, may limit the extent or effect of the release contained in paragraphs 14-18. Without limiting the generality of the foregoing, each Releasing Party expressly and irrevocably waives and releases any and all defenses, rights, and benefits that the Releasing

Party might otherwise have in relation to the release by virtue of the provisions of California Civil Code § 1542 or similar laws of any other state or jurisdiction. Section 1542 provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

The Parties acknowledge that the effect and import of the provisions of California Civil Code section 1542 have been explained to them by their own counsel. The Parties further acknowledge and agree that these waivers of rights under California Civil Code section 1542 have been separately bargained for and are essential and material terms of this Settlement Agreement and, without such waivers, they would not have entered into this Settlement Agreement.

### **PRELIMINARY COURT APPROVAL**

20. Upon execution of this Settlement Agreement and until the Court rules upon a motion for final approval, Plaintiff agrees to stay the Lawsuit and not to initiate or continue any proceedings or requests for relief relating to the events underlying the Lawsuit or relating to the Lawsuit, other than proceedings incident to the settlement and those actions necessary to obtain a stay of the relevant proceedings.

21. The Parties shall recommend approval of this Settlement Agreement by the Court and all reviewing courts. The Parties shall use their best efforts to effectuate this Settlement Agreement, and obtaining judicial approval for the establishment of procedures to secure the prompt, complete, and final dismissals with prejudice of the Lawsuit.

22. Plaintiff will seek, and Defendant will not oppose, the Court's appointment of Class Counsel as counsel for the Settlement Class, and the appointment of the Class Representative as representative of the Settlement Class.

23. Within 14 days of full execution of this Settlement Agreement, Class Counsel shall submit to the Court a Motion for Preliminary Approval of this Settlement Agreement, which will recommend approval of this Settlement Agreement by the Court as being fair, reasonable and adequate, as well as request a preliminary approval hearing as soon as reasonably possible. As part of that filing, or contemporaneously therewith, Plaintiff shall seek, and Defendant will not oppose, the Court's entry of an order(s) (the "Preliminary Approval Order"), to:

- (a) Preliminarily approve this Settlement Agreement.
- (b) Approve the provisional certification of the Settlement Class for settlement purposes only, and declare that in the event of termination of this Settlement Agreement as provided below, certification of the Settlement Class shall automatically be vacated and Defendant may fully contest certification of any class as if no Settlement Class had been certified.
- (c) Appoint Class Counsel.

(d) Appoint ILYM Group, Inc. (“Settlement Administrator”) to assist the Parties in effectuating the exclusion and objection process defined in this Settlement Agreement and perform such related duties as may necessary.

(e) Determine that notice should be provided to members of the Settlement Class.

(f) Approve the method of notice to be provided to the Settlement Class as further discussed in Paragraphs 25-27, and find that it complies with the requirements of the California Rules of Civil Procedure.

(g) Approve the procedures described below for members of the Settlement Class to opt out and exclude themselves from the Class, the Lawsuit, and this Settlement Agreement, or to object to this Settlement Agreement.

(h) Stay all proceedings in the Lawsuit, except those related to effectuating and complying with the Settlement Agreement, pending the Court’s determination of whether the Settlement Agreement should be finally approved.

(i) Set a fairness hearing for final approval to be set approximately 30 days after the period to opt out or object has ended.

#### **NOTICE, EXCLUSION AND CLAIMS PROCEDURES**

24. Upon preliminary approval of the settlement, as the Court may direct, BPPNA shall disseminate, as outlined below, notice to the Settlement Class of the Settlement Agreement, the rights that will be extinguished under the Settlement Agreement, and the rights and the processes by which Settlement Class members may comment on, object to, or exclude themselves from the settlement.

25. Within 30 days of the Court’s Preliminary Approval Order, an abbreviated notice shall be provided by BPPNA to every ARCO-branded station in the Relevant California Counties by distributing two copies of a conspicuous sign no smaller than 8 ½ x 11 for posting (1) one under the canopy near fuel pumps; and (2) one at the cash register counter. Further, a more detailed notice shall be posted on the Settlement Administrator’s website and on Class Counsel’s website. The notice will be posted physically and online for a period of sixty (60) days.

26. The motion for preliminary approval will request that the Settlement Class have 45 days from distribution of notice to opt-out or object.

(a) During that 45-day period, members of the Settlement Class may opt-out of the settlement class by timely submitting a written or online exclusion to the Settlement Administrator.

(b) During the same 45-day period, members of the Settlement Class who do not submit a request for exclusion may object to the settlement by timely submitting a written objection verifying they are a member of the Settlement Class and the basis for the objection. Any objection must be submitted in a writing to the Court, the Settlement Administrator, and all attorneys of record in the Lawsuit within the timeframe indicated in the notice.

27. The Parties attach as **Exhibit B** the proposed content of the detailed notice for online display and **Exhibit C** the proposed content of the abbreviated notice for posting at the sites. If there are any disagreements about the content of the notice, they will be resolved by the Court.

28. Within ten (10) days after the conclusion of the period for exclusions and objections, the Settlement Administrator shall provide counsel for the Parties with a list of each member of the Settlement Class that (1) sought to opt out and be excluded from this Settlement Agreement or (2) object, stating whether the request for exclusion or objection was properly and timely made, and attaching a copy of all documentation, if any, concerning each submitted.

29. In no event shall Defendant or any of the Released Parties have any obligation, responsibility, or liability with respect to the Settlement Administrator, the exclusion or objection procedures, including with respect to the costs, administration expenses, or any other charges for any exclusion procedures, except as provided in Paragraph 7 of this Settlement Agreement.

### **FINAL COURT APPROVAL**

30. As soon as practicable after expiration of the period to opt out or object, Class Counsel will make a motion for the Court to enter an order (the "Order Granting Final Approval") and a judgment ("Judgment") which will:

(a) Determine that the Court has personal jurisdiction over Defendant and all members of the Settlement Class, and jurisdiction to finally approve this Settlement Agreement.

(b) Resolve any objections to this Settlement Agreement or any request by Class Counsel for fees, costs or expenses.

(c) Finally approve this Settlement Agreement as being fair, reasonable, and adequate for the members of the Settlement Class within the meaning of California Rules of Civil Procedure and any other applicable rules, and direct its consummation according to its terms.

(d) Enter an injunction in the form described in Paragraph 5, declare that any of Defendant's dealers or operators that are alleged to have violated the injunctions are responsible for any such non-compliance, and declare that in the event of termination of this Settlement Agreement, the injunction order shall automatically be vacated.

(e) Approve the releases set forth in Paragraphs 14-19 of this Settlement Agreement, and enjoin the members of the Settlement Class and anyone acting on their behalf from asserting any of the released claims.

(f) Approve the notice provided to the Settlement Class as due, adequate, and sufficient, as the best practicable notice under the circumstances, and as fully satisfying the requirements of due process, the California Rules of Civil Procedure, and any other applicable laws or rules.

(g) Enter Judgment as provided for in this Settlement Agreement, with each side to bear their respective attorneys' fees and costs other than those allowed by the Court as set out in Paragraphs 6-7 of this Settlement Agreement.

(h) Provide that the Court shall retain jurisdiction pursuant to California Civil Code Section 664.6 to implement, administer, consummate, and enforce this Settlement Agreement and the Judgment and the Order Granting Final Approval.

(i) Determine that there is no just reason for delay and direct that the judgment of dismissal with prejudice as to Defendant shall be final and appealable.

### **REPRESENTATIONS AND WARRANTIES**

31. The Parties each represent and warrant to one another that they have full authority to enter into this Settlement Agreement. Furthermore, the Parties each represent and warrant that they are authorized to execute this Settlement Agreement and such releases on behalf of the Parties.

32. The Parties each represent and warrant to one another that they have had an opportunity to thoroughly discuss all aspects of this Settlement Agreement with their respective attorneys, they have carefully read and fully understand all of the provisions of this Settlement Agreement, and they have agreed to execute and deliver this Settlement Agreement voluntarily as their own free act and deed without duress.

### **TERMINATION**

33. Plaintiff and Defendant each may terminate this Settlement Agreement by providing written notice to counsel for the other parties and the Court within ten business days after any of the following occurrences:

(a) The Court does not enter a Preliminary Approval Order containing the provisions set forth in Paragraph 23 of this Settlement Agreement, or subsequently seeks to significantly modify any of its terms.

(b) The Court does not enter a Judgment and an Order Granting Final Approval containing the provisions set forth in Paragraph 30 of this Settlement Agreement, or subsequently seeks to significantly modify any of its terms. For the avoidance of doubt, any order of the Court that purports to impose additional financial obligations or other material obligations on Defendant, or any order on review or appeal that would have the foregoing effect, constitutes a basis for termination of this Settlement Agreement.

(c) The Court does not provisionally or finally certify for settlement purposes only the Settlement Class as defined in Paragraph 2, or significantly limits or changes the composition of the Class.

(d) Any terms of this Settlement Agreement, the Court's Preliminary Approval Order, the Court's Judgment, or the Court's Order Granting Final Approval are not substantially affirmed or are significantly modified on any appeal or otherwise. A modification or reversal on appeal of any amount of attorneys' fees and expenses awarded by the Court shall not be deemed a basis for termination of this Settlement Agreement.

(e) Any court issues an order affecting in whole or in part the Settlement Class definition in Paragraph 2, the settlement consideration in Paragraphs 5-7, the release of claims in Paragraphs 14-19, or other material terms or conditions of this Settlement Agreement.



34. In the event that the number of members of the Settlement Class who timely and validly request exclusion exceeds 100 class members, Defendant may terminate this Settlement Agreement by providing written notice to Class Counsel and the Court within ten business days after Class Counsel provides to counsel for Defendant the list of requests for exclusion described in Paragraph 28 of this Settlement Agreement.

35. In the event of an occurrence giving rise to a basis for termination of this Settlement Agreement, Plaintiff and Defendant agree to negotiate reasonably and in good faith within thirty (30) days of any termination or disapproval by the Court, in whole or in part, to negotiate an appropriate amended Settlement Agreement.

36. In the event of termination of this Settlement Agreement:

(a) This Settlement Agreement shall be null and void, and of no force and effect, except as provided in subparagraphs (b)-(e) below.

(b) Defendant shall not be required to make any further payments and all sums that Defendant paid that were paid shall be immediately paid to an account designated by Defendant, except that any costs paid to the Settlement Administrator which had been incurred by the Settlement Administrator will still be paid and may be retained by the Settlement Administrator.

(c) Any certification of the Settlement Class by the Court, made pursuant to this Settlement Agreement, will automatically be vacated. Defendant will retain all defenses to certification and their non-opposition to the Settlement Class for settlement purposes only shall not be used as evidence, and shall not be admissible as such, in support of class certification in the Lawsuit, or any other civil action or proceeding.

(d) Plaintiff and Defendant shall revert to their positions prior to the execution of this Settlement Agreement, including with respect to the appropriateness of class certification, as if the Settlement Agreement had not been reached or executed.

(e) The terms and conditions of this Settlement Agreement, the facts and circumstances surrounding this settlement, any publicly disseminated information regarding the Settlement Agreement, and any orders or motion filings or objections concerning the Settlement Agreement (including without limitation the Court's Preliminary Approval Order, the Order Granting Final Approval, the Judgment, and all motion papers concerning those Orders), may not thereafter be used as evidence, and shall not be admissible as such, in the Lawsuit, or any other civil action or proceeding.

#### **COMMUNICATIONS**

37. Except for the website notice provided in Paragraph 25, Plaintiff, Defendant, and their respective counsel, including Class Counsel, shall not engage in any conduct or make any statements, directly or indirectly, to encourage, promote, or solicit members of the Settlement Class or their counsel to request exclusion from the Settlement Class or to object to this Settlement Agreement, or to facilitate, induce, or cause the non-fulfillment of a condition or the occurrence of an event giving rise to a right to terminate this Settlement Agreement.

38. Each Party, their respective counsel, or anyone else acting on behalf of them, shall use reasonable efforts to ensure that any public statement made in connection with the Settlement is

consistent with and fair comment on the contents of the Notice and confirmation that the Parties entered this Settlement Agreement. No party, or their respective counsel, or anyone else acting on behalf of them, may issue any press release, with the exception of the agreed-upon notice.

### **ADDITIONAL TERMS AND CONDITIONS**

39. Plaintiff, on behalf of the Settlement Class, and Defendant, as well their respective counsel, shall execute all documents and perform any additional acts reasonably necessary and proper to effectuate the terms of this Settlement Agreement and to obtain the benefit of this Settlement Agreement for Plaintiff, the Settlement Class, and Defendant.

40. Defendant specifically denies any and all liability in the Lawsuit. By entering into this Settlement, it is expressly understood and agreed that Defendant is not admitting any liability or wrongdoing whatsoever to Plaintiff, any member of the Settlement Class, or any other person or entity, and is not admitting the truth of any allegations or circumstances, nor is Defendant waiving any defense or affirmative defense.

41. This Settlement Agreement, and all negotiations, documents, and discussions associated with it, shall not be construed as, or deemed to be, evidence of any admission of any liability or wrongdoing on the part of Defendant or any of the Released Parties, or of the truth or merit of any allegations or claims in the Lawsuit, or evidence of any admission on the part of Plaintiff and the Settlement Class that their potential claims lack merit, or the propriety of the certification of a damages or liability class in the Lawsuit; and shall not be offered or accepted as evidence of such in any litigation, arbitration, or other proceeding between or among Plaintiff or members of the Settlement Class and Defendant or any Released Party, and shall have no precedential value; provided, however, that nothing contained herein shall preclude use of this Settlement Agreement in any proceeding to enforce the Settlement Agreement. This paragraph shall survive any termination or rescission of the Settlement Agreement.

42. This Settlement Agreement constitutes the entire, complete, and integrated agreement between and among Plaintiff, on behalf of themselves and the Settlement Class, and Defendant with respect to the settlement of the Lawsuit, and is not subject to any condition not provided for in this Settlement Agreement. This Settlement Agreement supersedes all prior and contemporaneous negotiations and agreements and may not be modified or amended except by a writing signed by Plaintiff and Defendant or their respective counsel.

43. This Settlement Agreement shall not be construed more strictly against any party to it merely because it may have been prepared by counsel for one of them, it being recognized that because of the arm's-length negotiations resulting in this Settlement Agreement, all parties to this Settlement Agreement have contributed substantially and materially to the preparation of it. All headings used in this Settlement Agreement are for reference and convenience only and shall not affect the meaning or interpretation of this Settlement Agreement.

44. The waiver by Plaintiff, the Settlement Class, or Defendant of any breach of this Settlement Agreement shall not be deemed or construed as a waiver of any other breach of this Settlement Agreement, whether prior, subsequent, or contemporaneous.

45. This Settlement Agreement shall be construed, enforced, and administered in accordance with the substantive laws of the State of California without reference to its conflict of laws principles.

46. This Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Plaintiff and the Released Parties. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by Plaintiff shall be binding upon all members of the Settlement Class and the Releasing Parties.

47. Any notice or materials to be provided to Plaintiffs or the Settlement Class pursuant to this Settlement Agreement shall be sent by email or U.S. Mail to:

Todd M. Friedman  
Law Offices of Todd M. Friedman, P.C.  
21550 Oxnard St., Ste. 780  
Woodland Hills, CA 91367

or such other persons or addresses as Class Counsel may designate by giving notice to the other Parties.

48. Any notice or materials to be provided to Defendant pursuant to this Settlement Agreement shall be sent by email or U.S. Mail to:

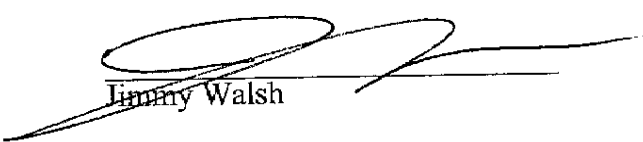
Sharon Mayo  
Arnold & Porter  
Three Embarcadero Center, 10th Floor  
San Francisco, CA 94111-4024  
sharon.mayo@arnoldporter.com

or such other persons or addresses as Defendant may designate by giving notice to the other Parties.

49. In entering into and executing this Settlement Agreement, Plaintiff and Defendant warrant that they are acting upon their respective independent judgments and upon the advice of their respective counsel, and not in reliance upon any warranty or representation, express or implied, of any nature or kind by any other person or entity, other than the warranties and representations expressly made in this Settlement Agreement.

50. This Settlement Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument. A signature by facsimile, email, or in PDF format will constitute sufficient execution of this Settlement Agreement.

IN WITNESS WHEREOF, the signatories have read and understood this Settlement Agreement, have executed it, represent that the undersigned are authorized to execute this Settlement Agreement on behalf of their respectively represented parties, have agreed to be bound by its terms, and have duly executed this Settlement Agreement.

  
Jimmy Walsh

Plaintiff



---

By: Humberto Marroquin\_

Its:VP Mobility & Convenience

West Coast

BP Products North America Inc.

Law Office of Todd M. Freidman, P.C.

By: \_\_\_\_\_  
Adrian Bacon  
Attorneys for Plaintiff

ARNOLD & PORTER KAYE SCHOLER LLP



By: \_\_\_\_\_  
Sharon D. Mayo  
Attorneys for BP Products North America Inc.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT A

1 Sharon D. Mayo (SBN 150469)  
sharon.mayo@arnoldporter.com  
2 ARNOLD & PORTER KAYE SCHOLER LLP  
Three Embarcadero Center, 10th Floor  
3 San Francisco, California 94111  
Telephone: (415) 471-3100  
4 Facsimile: (415) 471-3400

5 *Counsel for Defendant BP Products*  
*North America Inc.*  
6  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF CONTRA COSTA

10  
11 JIMMY WALSH, individually, and on behalf of  
12 others similarly situated,

13 *Plaintiff,*

14 vs.

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

16 *Defendants.*  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No. CIVMSC21-00119

**DECLARATION OF HUMBERTO S.  
MARROQUIN**

**REGARDING MOTION FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT**

Department: 39  
Judge: Hon. Edward G. Weil

Complaint Filed: January 22, 2021  
Discovery Cut-Off: None Set  
Trial Date: None Set

1 I, Humberto S. Marroquin, declare and state:

2 1. I am the Vice President Mobility and Convenience West Coast for Defendant BP  
3 Products North America Inc. (“BPPNA”). I make this declaration based on my own personal  
4 knowledge. If called upon to testify to the truth of the matters set forth herein, I could, and would,  
5 competently testify to these matters.

6 2. BPPNA does not operate any ARCO-branded motor fuel stations in California. In the  
7 mid-2000s, BPPNA publicly announced its strategy to divest its company-owned and operated retail  
8 sites to new and existing franchisees and dealers.

9 3. Thereafter, in 2013, Tesoro Refining & Marketing Company LLC purchased the  
10 ARCO trademark along with the supply rights to ARCO-branded motor fuel stations in Southern  
11 California and other assets from BP West Coast Products LLC and Atlantic Richfield Company. As  
12 the owner of the brand, Tesoro controls the brand website, gift cards, and other trademarked items.

13 4. There are hundreds of ARCO-branded motor fuel stations located in Northern  
14 California that are independently owned and/or operated by business owners who are supplied motor  
15 fuel by BPPNA.

16 5. Specifically, BPPNA supplies motor fuel to ARCO-branded stations in the following  
17 California counties: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte,  
18 El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mariposa, Mendocino, Merced, Modoc, Mono,  
19 Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San  
20 Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter,  
21 Tehama, Trinity, Tuolumne, Yolo, Yuba.

22 6. Because BPPNA does not operate any ARCO-branded motor fuel stations in  
23 California, it does not redeem, or refuse to redeem, gift cards in California. The dealers, operators,  
24 and franchisees are responsible for complying with California law regarding gift card redemption.

25 7. As a result, BPPNA prepared a demurrer in response to Plaintiff’s Complaint on the  
26 grounds that it fails to state a claim upon which relief can be granted because it is devoid of any  
27



1 allegation or theory of liability that would hold BPPNA liable for the conduct of the ARCO-branded  
2 stations at issue.

3 8. Although BPPNA does not operate the stations at issue, BPPNA is electing as the  
4 motor fuel supplier and franchisor to agree to a global settlement to avoid the disruption to the overall  
5 Northern California business operations that would come with piecemeal litigation against various  
6 ARCO-branded stations.

7 9. Further, BPPNA wishes to avoid the burden, expense, risk, and uncertainty of  
8 continuing to litigate this lawsuit, and for the purpose of putting to rest all controversies engendered  
9 by this lawsuit, and without any admission of liability or wrongdoing whatsoever, desires to settle all  
10 claims asserted in or subsumed by this lawsuit.

11 10. Accordingly, as part of the settlement, BPPNA will agree to Plaintiff's requested  
12 injunctive relief to provide written notice of California Civil Code Section § 1749.5 to the dealers,  
13 operators, and franchisees of the ARCO-branded motor fuel stations in Northern California that  
14 BPPNA supplies motor fuel.

15  
16 I declare under penalty of perjury under the laws of the State of California that the foregoing is  
17 true and correct.

18  
19 Executed on July 15, 2021 in La Palma, California.

20  
21  
22 

23  
24 Humberto S Marroquin

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT B**

# **IF YOU HAVE A GIFT CARD WITH A VALUE OF LESS THAN \$10, YOU MAY REDEEM IT FOR CASH UNDER CALIFORNIA LAW**

## **NOTICE OF GIFT CARD CLASS ACTION AND PROPOSED SETTLEMENT**

A settlement was given preliminary court approval in a class action lawsuit pending in the Superior Court of California, County of Contra Costa (the “Court”), entitled *Jimmy Walsh v. BP Products North America Inc. et al.*, Case No. C21-00119 (the “Action”) involving BP Products North America Inc. (“BP”). The Court authorized this notice.

### **WHAT IS THIS ABOUT?**

The settlement will resolve a lawsuit on behalf of a Class in which the Plaintiff alleges that Arco-branded stations in certain California counties failed to redeem ARCO Pump Pass gift cards that have a balance of less than \$10 for cash upon request by Class Members.

### **WHO IS INCLUDED IN THE CLASS?**

The Class consists of all persons, if any, who, between January 22, 2017 and [REDACTED], 2021, presented an ARCO Pump Pass gift card with an amount of less than \$10 for redemption of its cash value at an ARCO-branded station in the Relevant California Counties and that request was rejected. The Relevant California Counties are: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, Yuba. Employees of BP and others affiliated with BP are not included in the Class.

### **WHAT BENEFITS DOES THE SETTLEMENT PROVIDE TO THE CLASS?**

Once the settlement is approved by the Court, BP has agreed to provide written notice annually to its ARCO-branded dealers and operators of stations in the Relevant California Counties of the requirement set forth in California Civil Code Section § 1749.5 that “any gift certificate with a cash value of less than ten dollars (\$10) is redeemable in cash for its cash value” through 2023. . Anyone who has been denied the ability to redeem an ARCO Pump Pass gift card with a balance of less than \$10 in value is entitled to redeem it for cash.

### **RELEASE OF ALL CLAIMS**

Class Members who have not excluded themselves will release BP from all claims, known or unknown, which they have or may have arising out of or relating to any claims that were brought in the Action or claims related to the redemption for cash of any ARCO Pump Pass gift card in the Relevant California Counties.

### **WHAT DO I HAVE TO DO TO RECEIVE THE BENEFITS OF THE SETTLEMENT?**

If you are a member of the Class, you do not have to do anything to receive the settlement benefits described above. You may exclude yourself from the settlement or object to it, as described below.

### **HOW DO I EXCLUDE MYSELF FROM THE SETTLEMENT?**

If you a member of the Class but want to exclude yourself from the Class and from being bound by the settlement, you must follow the directions found below. .

### **HOW DO YOU OBJECT TO THE SETTLEMENT?**

You may also object to the proposed settlement in writing and appear at the Final Approval Hearing, either in person or through an attorney. Specific directions on properly objecting are found below. . If you exclude yourself from the settlement, you cannot object to the settlement.

### **WHEN IS THE FINAL APPROVAL HEARING?**

The Court will have a Final Approval Hearing to decide whether to finally approve the settlement on [REDACTED] at [REDACTED], before Judge Edward G. Weil in Dept. 39 of the Court, located at 725 Court Street, Martinez, California 94553.

#### **MORE INFORMATION**

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you are referred to the detailed settlement agreement, which is available on this website and is on file with the Clerk of the Court, 725 Court Street, Martinez, California 94553. The pleadings and other records in this litigation may also be examined with the Clerk of the Court. The complaint and the settlement agreement are available on this webpage.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT C

## **CLASS ACTION SETTLEMENT NOTICE**

**IF YOU HAVE A GIFT CARD WITH A VALUE OF LESS THAN \$10, YOU MAY REDEEM IT FOR CASH UNDER CALIFORNIA LAW**

**If you presented an ARCO Pump Pass gift card with an amount of less than \$10 for redemption of its cash value at an ARCO-branded station and that request was rejected, you may be part of a class action settlement.**

To Exclude Yourself or Object to the Settlement, you must act by [redacted], 2021.

1-888-[phone number]

[www.\[website\].com](http://www.[website].com)

A Settlement has been proposed in a class action lawsuit against BP Products North America Inc. regarding the redemption of ARCO Pump Pass gift cards for cash value at certain ARCO-branded stations in the following California counties: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tuolumne, Yolo, Yuba.

**Who is included?** The Settlement includes all persons who between January 22, 2017 and [redacted], 2021, presented an ARCO Pump Pass gift card with an amount of less than \$10 for redemption of its cash value at an ARCO-branded station in the Relevant California Counties and that request was rejected.

### **What are my options?**

- If you do not want to be legally bound by the Settlement, you must exclude yourself by [redacted], 2021. Unless you exclude yourself from the Settlement, you will not be able to sue BP Products North America Inc. or related parties for any claim released.
- If you do not exclude yourself from the Settlement, you may object by [redacted], 2021. The Contra Costa County Superior Court in Martinez, California will hold a hearing via Zoom in this case on [redacted], 2021 at [redacted]:00 a.m. to decide whether to approve: (1) the Settlement including injunctive relief; and (2) Class Counsel's request for up to \$67,000 in attorneys' fees and costs and a \$5,000 incentive award payment to the Class Representative. You may appear at the hearing, but do not have to.
- For more detailed information and a copy of the Settlement Agreement, visit [redacted].

Any questions, please contact [add phone number/website]