

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

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

Plaintiff,

vs.

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

Defendant.

Case No. 1112-17046

AMENDED GENERAL JUDGMENT

THIS MATTER was tried before a jury from January 14, 2014, through February 4, 2014. The case was tried by David Sugerman, Tim Quenelle and Amy Johnson ("class counsel") on behalf of Plaintiff Steven Scharfstein, individually and representing a class, and by David Harris, Abby Risner, Brad Daniels, Doug Berry and Lois Rosenbaum on behalf of Defendant BP West Coast Products LLC ("defendant" or "BPWCP"). Scott Shorr and Josh Ross also appeared on behalf of the class. William F. Gary, Sharon A. Rudnick and Susan D. Marmaduke also appeared on behalf of defendant.

The class is defined as Plaintiff Steven Scharfstein ("plaintiff" or "Scharfstein") and all consumers who, between January 1, 2011, and August 30, 2013, bought BP-branded gasoline, including gasoline plus additional items, at Oregon ARCO stations or Oregon *am/pm* minimarkets, who paid with a debit card and who were charged with a debit card fee (the "class"). Excluded from the class are 2,441 former class members who filed valid opt-out forms and are specifically identified in Exhibit A to this judgment, which is incorporated herein by reference. ORCP 32 O. These 2,441 excluded class

1 members are not bound by this judgment. *Id.* Also excluded from the class are attorneys
2 for the class, persons serving as jurors and judges who sit on the case, any person who
3 previously settled or had a court, arbitrator, or other legal authority decide a claim
4 involving a dispute over debit card fees charged by BP West Coast Products, LLC, on or
5 after January 1, 2011; and certain key supervisory employees of Kinsella Media and
6 Epiq Systems, Inc. ("Epiq").

7 On January 31, 2014, the jury returned a verdict in favor of plaintiff and the class
8 on liability, which (omitting caption, instructions, and signature line) found as follows:

- 9 1. Is defendant a "retailer"? Yes
- 10 2A. Did defendant violate the Unlawful Trade Practices Act by failing to
11 disclose a condition on street signs or gas pumps? Yes
- 12 2B. Did defendant violate the Unlawful Trade Practices Act by charging
13 plaintiff and the class more than the total amount registered on the gas
14 pump at the selected unit price? Yes
- 15 3. Did defendant's violation of the Unlawful Trade Practices Act cause
16 plaintiff and the class members an ascertainable loss? Yes
- 17 4. Did defendant knowingly or recklessly violate the Unlawful Trade
18 Practices Act? Yes

19 On February 4, 2014, the jury returned a verdict in favor of defendant on punitive
20 damages in answer to special interrogatories, which (omitting caption, instructions, and
21 signature line) found as follows:

- 22 1. Have the plaintiff and the class proven the elements necessary to recover
23 punitive damages? No

24 The verdicts were in proper form and were received by the Court.

25 On July 15, 2014, the Court issued an Order, which is incorporated herein by
26 reference, enjoining defendant as follows:

1 BPWCP is permanently enjoined from charging a \$0.35 debit card fee at its
2 Oregon ARCO and *ampm* stations in addition to its price for gasoline, unless that
3 condition is clearly and conspicuously advertised on its street signs and pumps in
compliance with OAR 137-020-0150(3)(d).

4 BPWCP is permanently enjoined from charging more than the total amount
5 registered on the gasoline pump at the selected unit price for the gasoline sold at its
ARCO and ARCO *ampm* stations in Oregon.

6 On March 11, 2015, the Court issued an Opinion and Order (Awarding Attorney
7 Fees, Litigation Expenses and Costs), incorporated herein by reference; Findings of Fact,
8 Conclusions of Law and an Order Approving Partial Attorney Fee Settlement,
9 incorporated herein by reference; and Findings of Fact, Conclusions of Law and an Order
10 on Attorney Fee Award from Common Fund, also incorporated herein by reference. In
11 those documents, the Court ordered that the class members pay to class counsel attorney
12 fees in the amount of \$60,277,860 from a Common Fund established by this litigation
13 (expressly defined below). The Court also approved the settlement reached by the parties
14 regarding plaintiff's claim for attorney fees from defendant under ORS 646.638(3)
15 ("attorney fee settlement"). Under the attorney fee settlement, defendant agreed to pay
16 plaintiff and the class a total of \$8,000,000 for attorney fees and costs incurred in the trial
17 court, contingent upon and due following the affirmance of this General Judgment after
18 the exhaustion of all available appeals. The Court directed defendant to disburse the
19 \$8,000,000 as follows: payment to class counsel of \$1,585,600 for attorney fees and
20 \$292,892 for costs incurred in the trial court; and \$6,121,508 to the class to be applied to
21 the Common Fund fee award owed by the class to class counsel.

22 In its Order Denying Defendant BP West Coast Products, LLC's Motion for a
23 Hearing Re: Class Size Determination, signed September 22, 2015, and incorporated
24 herein by reference, the Court determined that there were 2,048,941 members of the class
25 (before any class members' opt out claims were filed).

26 In its Findings of Fact, Conclusions of Law Regarding Supplemental Notice and
Claims Process, signed October 26, 2015, and incorporated herein by reference, the Court

1 found that there are 2,441 now former members of the class who filed valid opt out
2 claims and, thus, opted out of the class. Thus, the final size of the class entitled to
3 damages is 2,046,500 (the total class members less valid opt out claims) and, thus, the
4 total class damages are \$409,300,000 (total class members less valid opt out claims
5 multiplied by \$200 each).

6 Also in its Findings of Fact, Conclusions of Law Regarding Supplemental Notice
7 and Claims Process, signed October 26, 2015, the Court concluded that following the
8 claims process, there are 1,716,229 class members who, consistent with the Court's prior
9 Orders either affirmatively made valid claims or are deemed to have made valid claims,
10 for a monetary recovery of \$200 each, less attorney fees. Thus, the total amount of
11 damages to be distributed to members of the class who filed valid claims or are deemed
12 to have filed claims is \$343,245,800 ("Common Fund"). As stated in the Court's March
13 11, 2015, Opinion and Order (Awarding Attorney Fees, Litigation Expenses and Costs),
14 the Common Fund recovery shall be reduced by attorney fees of \$60,277,860 payable to
15 Class Counsel. Additionally, the Common Fund recovery shall be enhanced by
16 \$6,121,508, that amount remaining after defendant has paid costs and statutory attorney
17 fees from the \$8,000,000 attorney fee settlement.

18 In its Findings of Fact, Conclusions of Law Regarding Supplemental Notice and
19 Claims Process signed October 26, 2015, the Court also concluded that there is a
20 remainder of \$66,054,200 in damages that were not claimed by eligible class members
21 after a supplemental class notice program that provided the best notice practicable and
22 that complied with ORCP 32 and due process.

23 In its May 11, 2016 Order Granting Plaintiff's Fourth Amended Motion to Adopt
24 Proposed Plan of Allocation of Unclaimed Proceeds (ORCP 32 O) incorporated herein
25 by reference, the Court concluded pursuant to ORCP 32 O that after the class claims and
26 notice process, not all of the total class damages were claimed. As a result, the Court
concluded that the remaining \$66,054,200 in unclaimed damages should be awarded

1 pursuant to ORCP 32 O. The Court ordered payment of \$33,027,100 of the unclaimed
2 damages to "the Oregon State Bar for the funding of legal services provided through the
3 Legal Services Program established under ORS 9.572." ORCP 32 O. The Court also
4 awarded \$33,027,100 of the remaining unclaimed damages to the Oregon Community
5 Foundation for the purposes set forth in the May 11, 2016 Order Granting Plaintiff's
6 Fourth Amended Motion to Adopt Proposed Plan of Allocation of Unclaimed Proceeds
7 (ORCP 32O). Epiq, as Class Administrator, is authorized to act as the agent of plaintiff
8 individually and on behalf of the class for purposes of receiving and distributing the
9 portion of the proceeds of this General Judgment payable to plaintiff, the class, and to
10 class counsel. Post-judgment interest will cease to accrue on the amounts owed under
11 this General Judgment to plaintiff or the class upon the payment of those amounts to
12 Epiq.

13
14 On April 24, 2012, the Court entered a Limited Judgment dismissing
15 plaintiff's claims against the following defendants: John Charles Wilson Inc.;
16 Zghoul Inc and Zghoul Stations; R&G Love Investments Cascade D; Kahn Oil
17 (Clackamas); Templeton Enterprises Inc.; Mt. Hood Gas Station Inc.; Canyon
18 River LLC; N&S Oil LLC; Mkt Hillsboro II LLC; Bob Sauers Auto Service Inc.;
19 Kong Marketing LLC; Stations West LLC; Nicks ARCO; Sharma and Sharma
20 LLC; Khan F&S LLC; Sour Ly LLC; Stein Enterprises Inc.; Connor Inc.;
21 Youssef, Inc. FTC Corp.; Nore 99 LLC; Tore 93 LLC; LB Group LLC; H Mart
22 Inc.; Michelle and Company; Temen Incorporated; Canyonville 76/Robert D.
23 Dirk; NW Ventures Grants Pass LLC; MJB & Co; Ashland Fuel Inc.; and Thabet
24 Management. On June 8, 2012, the Court entered a Limited Judgment dismissing
25 plaintiff's claims against the following defendants: BP Products North America
26
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1 Inc.; Belmont Auto Service Inc.; BP American Production Company; TP Liberty
2 LLC; and SKR Inc. As a result of a clerical error, the Limited Judgments did not
3 dismiss the claims against Defendant Jamal M H Al-Soudani Inc. The Court
4 intends this General Judgment to dismiss all of the claims against all of the
5 defendants except Defendant BPWCP.
6

7 Based upon the foregoing,
8

9 IT IS HEREBY ORDERED AND ADJUDGED as follows:

10 1. Defendant is permanently enjoined from charging a \$0.35 debit card fee at
11 its Oregon ARCO and *ampm* stations in addition to its price for gasoline, unless that
12 condition is clearly and conspicuously advertised on its street signs and pumps in
13 compliance with OAR 137-020-0150(3)(d).

14 2. Defendant is permanently enjoined from charging more than the total
15 amount registered on the gasoline pump at the selected unit price for the gasoline sold at
16 its ARCO and ARCO *ampm* stations in Oregon.

17 3. Subject to Paragraphs 5 and 6 below, Plaintiff Steven Scharfstein and the
18 class members are entitled to an award of \$200 each as statutory damages under ORS
19 646.608(u), ORS 646.638(1), and ORS 646.638(8)(a).

20 4. Subject to Paragraphs 5 and 6 below, Plaintiff Steven Scharfstein and the
21 class members shall have, take and recover judgment against defendant in the aggregate
22 amount of \$343,245,800.

23 5. Upon the affirmance of this General Judgment after the exhaustion of all
24 available appeals, Plaintiff Steven Scharfstein and the class members who filed claims
25 shall have, take and recover from defendant \$8,000,000, payable as follows: the amount
26 of \$1,585,600 in attorney fees and \$292,892 in costs payable to class counsel pursuant to
ORS 646.638(3); and the amount of \$6,121,508 payable to the class as partial payment of

1 the Common Fund attorney fee judgment in Paragraph 6 below. Pursuant to ORS
2 82.010(2)(a) and ORS 18.042(2)(f), interest on the portion of the judgment described in
3 this paragraph 5 shall not begin to run until 14 days after the appellate judgment issues
4 from the appellate court of last resort.

5 6. Plaintiff Scharfstein shall have, take and recover judgment payable from
6 the Common Fund for attorney fees in the aggregate amount of \$60,277,860 for the
7 benefit of and payable to Class Counsel. The final attorney fee amount will be allocated
8 pro rata to the claim of each class member that either filed a claim or is deemed to have
9 filed a claim.

10 7. Pursuant to ORCP 32 D, the Oregon State Bar shall have, take and recover
11 judgment against defendant in the amount of \$33,027,100 for the funding of legal
12 services provided through the Legal Services Program established under ORS 9.572.

13 8. Pursuant to ORCP 32 D, the Oregon Community Foundation shall have,
14 take and recover judgment against defendant in the amount of \$33,027,100 for the
15 purposes stated in the May 11, 2016 Order Granting Plaintiff's Fourth Amended Motion
16 to Adopt Proposed Plan of Allocation of Unclaimed Proceeds (ORCP 32 C).

17 9. The claims against Defendant Jamal M H Al Soudani Inc. are hereby
18 dismissed.

19 MONEY AWARD I

20 1. Judgment Creditors: Steven Scharfstein and the class defined
21 above. (Excluded from the class and this
22 judgment are those former class
23 members who filed valid opt out claims
24 and are listed in Exhibit A to this
25 Judgment)

26 Steven Scharfstein
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