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

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

Plaintiffs,

vs.

BP WEST COAST PRODUCTS, LLC, a Delaware limited liability company; BP PRODUCTS NORTH AMERICA, INC., a Maryland corporation; BP AMERICAN PRODUCTION COMPANY, a Delaware corporation, TEMEN INCORPORATED, an Oregon corporation CANYONVILLE 76 / ROBERT D DIRKSEN, an Oregon Corporation, NW VENTURES GRANTS PASS LLC, an Oregon corporation, MJB & CO., an Oregon corporation, ASHLAND FUEL INC., an Oregon corporation, THABET MANAGEMENT, an Oregon corporation, JOHN CHARLES WILSON INC., an Oregon corporation, ZGHOUL INVESTMENT GROUP LLC, ZGHOUL, INC. and ZGHOUL STATIONS, INC., Oregon corporations, R&G LOVE INVESTMENTS CASCADE DIVERSIFIED SERVICES LLC, an Oregon corporation, KHAN OIL (CLACKAMAS) LLC, an Oregon Corporation, TEMPLETON ENTERPRISES, INC., an Oregon Corporation, MT HOOD GAS STATION INC., an Oregon

Case No. 1112-17046

COMPLAINT AND DEMAND FOR JURY TRIAL

CLASS ACTION

UNLAWFUL TRADE PRACTICES ACT (ORS 646.608)

CLAIMS NOT SUBJECT TO MANDATORY ARBITRATION

1 corporation, CANYON RIVER LLC, an Oregon  
2 corporation, N&S Oil LLC, an Oregon corporation,  
3 MKT HILLSBORO II LLC, an Oregon corporation  
4 BOB SAUER'S AUTO SERVICE INC, an Oregon  
5 corporation, KONG MARKETING LLC,  
6 STATIONS WEST LLC, an Oregon corporation,  
7 NICK'S ARCO, an Oregon corporation,  
8 BELMONT AUTO SERVICE, INC., an Oregon  
9 corporation,  
10 SHARMA AND SHARMA LLC, an Oregon  
11 corporation, KHAN F&S LLC Multnomah  
12 SUOR LY, LLC, an Oregon corporation, STEIN  
13 ENTERPRISES, INC., an Oregon corporation,  
14 CONNOR, INC., an Oregon corporation,  
15 YOUSSEF, INC., an Oregon corporation, FTC  
16 CORP., an Oregon corporation, NORE 99, LLC, an  
17 Oregon corporation, TORE 93, LLC, an Oregon  
18 corporation, TP LIBERTY, LLC, an Oregon  
19 corporation, LB GROUP, LLC, an Oregon  
20 corporation, SKR, INC., an Oregon corporation, H  
21 MART, INC., an Oregon corporation, MICHELLE  
22 AND COMPANY, an Oregon corporation, JAMAL  
23 M.H. AL-SOUDANI, INC., an Oregon corporation,

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Plaintiffs allege:

### PRELIMINARY STATEMENT

1.

This is an action for violation of the Unlawful Trade Practices Act, ORS 646.608 *et seq.* (“UTPA”) and for equitable relief brought by plaintiff individually and on behalf of all similarly-situated persons. Plaintiff alleges that defendants’ violated gasoline price disclosure rules and illegally collected ATM fees in violation of the billing practices violated the statute in one or more ways. After giving notice required by ORCP 32, plaintiff anticipates amending this complaint to seek damages for plaintiff and the class.

Page 2 - COMPLAINT AND DEMAND FOR JURY TRIAL

**PARTIES**

2.

1 Defendants BP WEST COAST PRODUCTS, LLC, BP PRODUCTS NORTH  
2  
3 AMERICA, INC., and BP AMERICAN PRODUCTION COMPANY (“BP Defendants”) are  
4  
5 foreign corporations licensed to do business and doing business in Oregon. The BP Defendants  
6  
7 distribute and sell ARCO gasoline through ARCO dealers and AM-PM Minimarkets. Based on  
8  
9 information and belief, the BP Defendants own and operate several ARCO or AM-PM  
10  
11 Minimarket stations that sell ARCO gasoline in Oregon. Based on information and belief, the BP  
12  
13 Defendants control the signage for ARCO stations in Oregon, including street signs and pump  
14  
15 displays. Based on information and belief, the BP Defendants set the policies and procedures for  
16  
17 payment for ARCO gasoline, including allowing use of debit cards and directing retail sellers of  
18  
19 ARCO gasoline to assess debit card fees. Based on information and belief, the BP defendants  
20  
21 collect transaction charges from each gasoline purchase made with a debit card.  
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3.

17 Defendants TEMEN INCORPORATED, CANYONVILLE 76 / ROBERT D DIRKSEN,  
18  
19 NW VENTURES GRANTS PASS LLC, MJB & CO., ASHLAND FUEL INC., THABET  
20  
21 MANAGEMENT, JOHN CHARLES WILSON INC., ZGHOUL INVESTMENT GROUP LLC,  
22  
23 ZGHOUL, INC. and ZGHOUL STATIONS, INC., R&G LOVE INVESTMENTS CASCADE  
24  
25 DIVERSIFIED SERVICES LLC, KHAN OIL (CLACKAMAS) LLC, TEMPLETON  
26  
27 ENTERPRISES, INC., MT HOOD GAS STATION INC., CANYON RIVER LLC, N&S Oil  
28  
29 LLC, MKT HILLSBORO II LLC, BOB SAUER’S AUTO SERVICE INC, KONG  
30  
31 MARKETING LLC, STATIONS WEST LLC, NICK’S ARCO, BELMONT AUTO SERVICE,  
32  
33 INC., SHARMA AND SHARMA LLC, KHAN F&S LLC, SUOR LY, LLC, STEIN

1 ENTERPRISES, INC., CONNOR, INC., YOUSSEF, INC., FTC CORP., NORE 99, LLC,  
2 TORE 93, LLC, TP LIBERTY, LLC, LB GROUP, LLC, SKR, INC., H MART, INC.,  
3 MICHELLE AND COMPANY, and JAMAL M.H. AL-SOUDANI, INC., (“Retailer  
4 Defendants”) are Oregon corporations registered to do business and doing business in Oregon.  
5 The Retailer Defendants sell ARCO brand gasoline at ARCO stations and AM-PM minimarkets.  
6 The Retailer Defendants assess debit card charges on gasoline purchases made at their stations  
7 when consumers pay with debit cards.  
8

9 4.

10 Plaintiff and similarly-situated individuals are consumers who paid for gas sold by  
11 defendants with a debit card within one year of the date of the filing of plaintiff’s Complaint and  
12 who were charged debit card fee for doing so.

#### 13 JURISDICTION AND VENUE

14 5.

15 All of the defendants conducted regular, sustained business in Oregon. In addition, the  
16 BP Defendants and defendants Kong Marketing, Nick’s Arco, Belmont Auto Service, Sharma  
17 and Sharma, Khan F&S, Suor Ly and Michelle and Co. conducted regular, sustained business in  
18 in Multnomah County, Oregon. As well, defendant Temen, Inc. maintains a registered agent for  
19 service of process in Multnomah County.  
20

#### 21 CLASS ALLEGATIONS

22 6.

23 The class consists of consumers who, within one year of the date of the filing of the  
24 complaint commencing this action used a debit card to purchase gas from defendants in Oregon,  
25 and who were assessed a debit card fee at the time of purchase. As to the class, the following are  
26

1 excluded: officers and directors of defendants, attorneys for the class, any judge who sits on this  
2 case, and any person who previously settled or adjudicated a claim involving a dispute over debit  
3 fees charged by defendants that arose within one year of the date of the filing of plaintiff's  
4 Complaint.

5  
6 7.

7 Based on information and belief, plaintiff estimates that there are well over 100,000 debit  
8 card transaction charges assessed within the class period. Members of the classes are so  
9 numerous that joinder of all or most of them is impracticable. The exact number of members of  
10 the class is unknown but can be determined from the transaction records maintained by  
11 defendants.

12  
13 8.

14 There are questions of fact and law common to the class, in that each member has  
15 suffered an ascertainable loss as a direct result of defendants' debit fee charges. Common  
16 questions of law and fact predominate over any questions affecting only individual class  
17 members. Common questions include:

- 18 A. Whether defendants failed to clearly and conspicuously display on all street signs,  
19 price signs and dispensing devices the debit fee charge in violation of OAR 137-  
20 020-0150 (3)(d)(A);
- 21 B. Whether defendants failed to ensure the disclosure of the debit fee on each  
22 distinct street sign in violation of OAR 137-020-0150 (3)(d)(B)(i)-(iii);
- 23 C. Whether defendants charged more to members of the class than the total amount  
24 registered on the dispensing device in violation of OAR 137-020-0150 (4)(e);  
25  
26

- 1 D. Whether defendants failed to ensure that the dispensing device clearly and  
2 conspicuously disclosed terms of the debit fee in violation of OAR 137-020-0150  
3 (4)(f)(A) and (B);
- 4 E. Whether defendants failed to ensure the disclosure of the debit fee on each price  
5 sign in violation of OAR 137-020-0150 (5)(d)(B);
- 6 G. Whether defendants failed to ensure the disclosure of the debit fee on each  
7 distinct street sign in violation of OAR 137-020-0150 (5)(e)(B);
- 8 H. Whether defendants failed to clearly and conspicuously disclose on each street  
9 sign the debit fee in violation of OAR 137-020-0150 (6)(a);
- 10 I. Whether defendants failed to clearly and conspicuously disclose the debit fee as  
11 an additional condition to the cash price in violation of OAR 137-020-0150  
12 (6)(c)(A)-(C);
- 13 J. Whether defendants' failure to comply with the various provisions of OAR 137-  
14 020-0150 gives rise to a claim under the Unlawful Trade Practices Act, ORS  
15 646.608(1)(u);
- 16 K. Whether plaintiff and the class members are entitled to equitable relief; and
- 17 L. Whether plaintiff and the class members are entitled to recovery attorney fees and  
18 costs for violation of the Unlawful Trade Practices Act, as set forth in ORS  
19 646.638(1);
- 20 M. Whether defendants acted recklessly or knowingly as set forth in ORS 646.638(1)  
21 and 646.638(8) (2009); and
- 22 N. Whether plaintiff and the members of the class are entitled to recover statutory  
23 damages of \$200 per class member.  
24  
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9.

The claims of the named plaintiff are typical of the claims of the class in that:

- A. All claims involve identical conduct in the assessment of a debit fee in violation of ORS 646.608(1)(u);
- B. Defendants' multiple failures to disclose the debit fee operates in a standardized manner with respect to assessment of the debit fee at issue in this case;
- C. The injuries suffered by the named plaintiff and the class members differ only in the amount of damage and number of transactions per member; and
- D. The named plaintiff's claims for relief are based upon the same legal theories as are the claims of the class members.

10.

The named plaintiff will fairly and adequately protect and represent the interests of the class in that:

- A. His claims are typical of the claims of the class members;
- B. He is represented by attorneys who are qualified and competent counsel who will vigorously prosecute this litigation; and
- C. His interests are not antagonistic to or in conflict with the interests of the class members.

11.

A class action is superior to other available methods for the fair and efficient adjudication of this case in that:

- A. Common questions of law and fact predominate over factors affecting only individual members;

- 1 B. As far as plaintiff knows, no class action that purports to include Oregon  
2 consumers suffering the same injury has been commenced, other than the prior  
3 case of *Dobson v. Atlantic Richfield Co., et al.*, State of Oregon, Multnomah  
4 County Circuit Court Case No. 00-05-04969. However, that class action did not  
5 include any transactions in the class period at issue in this case, as it was settled  
6 years before these claims accrued;
- 7  
8 C. Individual class members have little interest in controlling the litigation, due to  
9 the high cost of each individual action, the relatively small amount of damages  
10 suffered by any individual plaintiff, and because plaintiff and his attorneys will  
11 vigorously pursue the claims;
- 12 D. The forum is desirable as many of the defendants do business here;
- 13 E. A class action will be an efficient method of adjudicating the claims of the class  
14 members who have suffered relatively small monetary damages as a result of the  
15 same type of conduct by defendants;
- 16  
17 F. In the aggregate, class members have claims for relief that are significant in scope  
18 relative to the expense of the litigation;
- 19 G. Injunctive relief will prevent further ongoing harm to plaintiff and class members.

20 12.

21 This case was commenced with only a request for equitable relief. Along with service of  
22 the Complaint, plaintiff provided written notice in accordance with ORCP 32 H by delivering  
23 notice and demand on defendants in writing by certified mail, return receipt requested. After 30  
24 days, plaintiff intends to amend this complaint to seek money damages.  
25

26 **ALLEGATIONS COMMON TO ALL CLAIMS**



1 **ALLEGATIONS COMMON TO ALL CLAIMS**

2 13.

3 At all material times, defendants had in place a policy of charging debit fees that they did  
4 not disclose on street signs, dispensing devices or price signs. At all material times, defendants  
5 charged debit card customers an additional charge beyond the total amount registered on the  
6 dispensing device, at the applicable unit price. The lack of disclosures and overcharges violated  
7 Oregon laws in the following ways:

- 8
- 9 A. Defendants failed to clearly and conspicuously display on all street signs, price  
10 signs and dispensing devices the debit fee charge in violation of OAR 137-020-  
11 0150 (3)(d)(A);
  - 12 B. Defendants failed to ensure the disclosure of the debit fee on each distinct street  
13 sign in violation of OAR 137-020-0150 (3)(d)(B)(i)-(iii);
  - 14 C. Defendants charged more to class members than the total amount registered on  
15 the dispensing device in violation of OAR 137-020-0150 (4)(e);
  - 16 D. Defendants failed to ensure that the dispensing device clearly and conspicuously  
17 disclosed terms of the debit fee in violation of OAR 137-020-0150 (4)(f)(A) and  
18 (B);
  - 19 E. Defendants failed to ensure the disclosure of the debit fee on each price sign in  
20 violation of OAR 137-020-0150 (5)(d)(B);
  - 21 F. Defendants failed to ensure the disclosure of the debit fee on each distinct street  
22 sign in violation of OAR 137-020-0150 (5)(e)(B);
  - 23 G. Defendants failed to clearly and conspicuously disclose on each street sign the  
24 debit fee in violation of OAR 137-020-0150 (6)(a);  
25  
26

1 H. Defendants failed to clearly and conspicuously disclose the debit fee as an  
2 additional condition to the cash price in violation of OAR 137-020-0150  
3 (6)(c)(A)-(C);

4 14.

5 Based on information and belief, at all material times, the BP Defendants set the policies,  
6 procedures and practices for charging debit fees. Further, the BP defendants knew that their  
7 debit fees did not comply with ORS 646.608 because these defendants had previously been sued  
8 in a class action entitled *Dobson v. Atlantic Richfield Company and Temen Incorporated*,  
9 Multnomah County Case Number 00-05-04969.

11 15.

12 Defendants' conduct was willful, reckless, and/or knowing and was undertaken with the  
13 intent to obtain additional revenue from consumers.

14 **CLAIM FOR RELIEF—VIOLATION OF ORS 646.608**

15 **OREGON UNLAWFUL TRADE PRACTICES ACT**

16 **First Count-willful violation**

17 16.

18 Plaintiff reincorporates ¶¶ 1-15.

19 17.

20 Defendants willfully violated ORS 646.608(1)(u) in one or more of the following ways  
21 that caused injury to plaintiffs and class members:

22 A. Defendants failed to clearly and conspicuously display on all street signs, price  
23 signs and dispensing devices the debit fee charge in violation of OAR 137-020-  
24 0150 (3)(d)(A);  
25  
26

- 1 B. Defendants failed to ensure the disclosure of the debit fee on each distinct street  
2 sign in violation of OAR 137-020-0150 (3)(d)(B)(i)-(iii);
- 3 C. Defendants charged more to class members than the total amount registered on  
4 the dispensing device in violation of OAR 137-020-0150 (4)(e);
- 5 D. Defendants failed to ensure that the dispensing device clearly and conspicuously  
6 disclosed terms of the debit fee in violation of OAR 137-020-0150 (4)(f)(A) and  
7 (B);
- 8 E. Defendants failed to ensure the disclosure of the debit fee on each price sign in  
9 violation of OAR 137-020-0150 (5)(d)(B);
- 10 F. Defendants failed to ensure the disclosure of the debit fee on each distinct street  
11 sign in violation of OAR 137-020-0150 (5)(e)(B);
- 12 G. Defendants failed to clearly and conspicuously disclose on each street sign the  
13 debit fee in violation of OAR 137-020-0150 (6)(a);
- 14 H. Defendants failed to clearly and conspicuously disclose the debit fee as an  
15 additional condition to the cash price in violation of OAR 137-020-0150  
16 (6)(c)(A)-(C);

17  
18  
19 18.

20 As a result of defendants' willful violations of the UTPA, plaintiff and members of the  
21 class suffered ascertainable losses, in that they paid debit card fees that defendants were not  
22 legally entitled to collect.  
23  
24  
25  
26

19.

1  
2 Plaintiff and the class are entitled to equitable relief in the form of an accounting,  
3 restitution and an order to preserve documents and other important information related to the  
4 claims. ORS 646.638(1). Plaintiff and the class are also entitled to recover interest and  
5 attorneys' fees and costs. After expiration of the period set forth in ORCP 32H, plaintiff will  
6 amend the complaint to seek money damages on his own behalf and on behalf of the class.  
7

8 **Second Count-Reckless or knowing violation**

9 20.

10 Plaintiff incorporates ¶¶ 1-17; 19.

11 21.

12 Defendants assessed plaintiff and the class debit fees in reckless disregard of the  
13 requirements of ORS 646.608(1)(u) and/or with knowledge that their fee assessments violated  
14 ORS 646.608(1)(u) and as a result, plaintiff and members of the class suffered ascertainable  
15 losses, in that they paid late fees that defendants were not legally entitled to collect.  
16

17 WHEREFORE, plaintiff seeks judgment against defendants and the following relief:

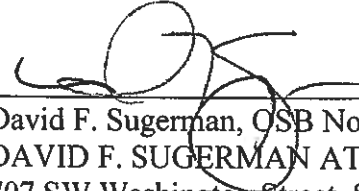
- 18 1. An order certifying this matter as a class action pursuant to ORCP 32;  
19 2. On plaintiffs' First Claim for Relief (UTPA), an injunction prohibiting defendants  
20 from continuing to charge their Oregon customers debit fees, unless defendants  
21 comply with the requirements of OAR 137-020-0150, and attorney fees and costs;  
22 3. Equitable relief in the form of an order requiring an accounting, restitution,  
23 interest, and attorney fees and costs;  
24 4. An order to preserve documents and other important information related to the  
25 claims, and;  
26

1 5. Such other relief as the Court may deem just.

2  
3 DATED this 29<sup>th</sup> day of December, 2011.

4  
5 Respectfully submitted,

6 DAVID F. SUGERMAN ATTORNEY, PC

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18 Of Attorneys for Plaintiffs

19  
20 PLAINTIFFS DEMAND A JURY TRIAL as to each issue on which they are entitled.

21 DATED this 29<sup>th</sup> day of December, 2011.

22 DAVID F. SUGERMAN ATTORNEY, PC

23 By:   
24 David F. Sugerman, OSB No. 86298  
25 Attorney for Plaintiffs and Trial Attorney

26 **Plaintiffs' Trial Attorneys:**

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