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MARY RUTH HUGHES and KEVIN SHENKMAN
10 and the certified Class (including Subclass 1 and Subclass 2 thereof)

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF LOS ANGELES**
13 **CENTRAL DISTRICT**

14 MARY RUTH HUGHES, etc., et al.,)	Case No. BC631080
15 Plaintiffs,)	Assigned for all purposes to:
16 vs.)	Hon. Maren E. Nelson
17 AUTOZONE PARTS, INC., etc., et al.,)	[Dept. 17]
18 Defendants.)	NOTICE OF RULING GRANTING
19)	PRELIMINARY APPROVAL OF
)	CLASS ACTION SETTLEMENT ON
)	CONDITIONS

20
21 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

22 **PLEASE TAKE NOTICE** that, on October 16, 2019, Plaintiffs Mary Ruth Hughes
23 and Kevin Shenkman's ("Plaintiffs") Motion for Preliminary Approval of Class Action
24 Settlement (the "Motion") came on for hearing pursuant to regular notice in the above-
25 captioned action, at 8:30 a.m. in Department "17" of the above-entitled court, the Hon.
26 Maren E. Nelson, presiding. Seth Yohalem and Daniel Robert Johnson of Waskowski
27 Johnson Yohalem LLP and Todd W. Bonder of Rosenfeld, Meyer & Susman LLP
28

1 appeared on behalf of Plaintiffs. Peter E. Masaitis of Alston & Bird LLP appeared on
2 behalf of defendants AutoZone Parts, Inc., AutoZone, Inc. and AutoZone.com, Inc.
3 (“Defendants”). Plaintiff Kevin Shenkman also appeared before the Court. No other
4 appearances were made.

5 Having considered the papers submitted on behalf of Plaintiffs and Defendants in
6 support of or otherwise in connection with the Motion and after hearing the arguments of
7 appearing counsel, the Court **GRANTED** Plaintiff’s Motion as more particularly set forth
8 in that certain Order Granting Preliminary Approval of Class Action Settlement On
9 Conditions, a true and correct copy of which is attached hereto as Exhibit “A” and
10 incorporated herein by this reference as though set forth in full hereat.

11
12 DATED: October 16, 2019

ROSENFELD, MEYER & SUSMAN LLP
TODD W. BONDER

13
14
15 By: 

Todd W. Bonder

16 Attorneys for Plaintiffs MARY RUTH
17 HUGHES and KEVIN SHENKMAN and
18 the certified Class (including Subclass 1
19 and Subclass 2 thereof)

EXHIBIT A

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

OCT 16 2019

Sherri R. Carter, Executive Officer/Clerk
By: Nancy Navarro, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

MARY HUGHES, an individual and
KEVIN SHENKMAN, an individual, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

vs.

AUTOZONE PARTS, INC., a Nevada
Corporation, AUTOZONE, INC., a Nevada
Corporation, AUTOZONE.COM, INC., a
Corporate entity of unknown origin; and
DOES I through 100,

Defendants.

Case No.: BC631080

~~(Proposed)~~ ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT
ON CONDITIONS

Date: October 16, 2019

Time: 9:00 a.m.

Dept.: SSC-17

1 **I. BACKGROUND**

2 This is a consumer class action lawsuit concerning a loyalty rewards program.
3 Defendant AutoZone¹ offered a reward program under which customers could earn \$20
4 Rewards (money that may be spent in store) after making five purchases of \$20 or more
5 each; a Credit was earned with each \$20 purchase. Initially there were no time limits for
6 accumulating the five Credits required to earn a Reward and no time limit by which
7 Rewards had to be used. AutoZone termed this the “5/20/20 plan.”
8

9 After married couple Mary Hughes (Hughes) and Kevin Shenkman (Shenkman)
10 (jointly, Plaintiffs) signed up for and began using Defendant’s reward program,
11 Defendant eliminated the 5/20/20 plan when it converted all reward plans to a
12 nationwide plan. Customers then had 12 months in which to accumulate five Credits and
13 three months to use a Reward. This plan is referred to as the “5 in 12/20/20/3 plan.”
14

15 As a consequence of the conversion, some of the Credits Plaintiffs had
16 accumulated became valueless. AutoZone contends that it retained the right to change
17 the terms and conditions of the reward program at any time without notice, but that it
18 also provided notice to all reward program members. Plaintiffs disagree, alleging that a
19 term allowing for unilateral change of terms without notice is unconscionable and that,
20 in any event, no notice was provided.
21

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24
25 ¹ Defendants AutoZone Parts, Inc., AutoZone, Inc., and AutoZone.com, Inc. are jointly referred
to in the singular here, as either Defendant or Autozone.

1 Plaintiffs allege claims for Breach of Contract, Breach of the Implied Covenant of
2 Good Faith and Fair Dealing, Violation of the Consumer Legal Remedies Act, Violation
3 of the False Advertising Act, and Violation of the Unfair Competition Law. In July
4 2018, this Court granted class certification on the Breach of Contract/Implied Covenant,
5 and Unfair Competition claims as to the following subclasses:

6 **Subclass 1** All persons who: (1) were enrolled in a 5/20/20 plan through an
7 AutoZone store (and not online) in California at the time of the National Plan
8 Conversion; (2) made purchase(s) of over \$20 from AutoZone in California using
9 their Rewards account on or before July 31, 2014; and (3) whose Reward(s)
10 and/or Reward Credit(s) earned through the purchase(s) on or before July 31,
11 2014 were deemed expired and never reinstated by AutoZone.
12

13
14 **Subclass 2** All persons who: (1) were enrolled in a 5/20/20 plan through an
15 AutoZone store (and not online) in California at the time of the National Plan
16 Conversion; (2) made purchase(s) of over \$20 from AutoZone in California using
17 their Rewards account after July 31, 2014; and (3) whose \$20 Reward(s) and/or
18 Reward Credit(s) earned through the purchase(s) after July 31, 2014 were deemed
19 expired and never reinstated by AutoZone. Subclass 2 was not certified as to
20 Breach of Contract but solely as to Breach of the Implied Covenant and Unfair
21 Competition.
22
23

24 The distinction between class members who made purchases before and after July
25 31, 2014, was meant to account for potential differences among class members regarding

1 notice of conversion to the national plan, which AutoZone began notifying Rewards
2 Members about in August 2014. In November 2018, the Court approved the summary
3 and long form notices and notice plan. Notice was thereafter provided to the class.

4 In January 2019, AutoZone filed a motion for summary adjudication on the three
5 claims on which certification had been granted. The matter was fully briefed. At the
6 April 17, 2019 hearing, the Court heard oral argument and highlighted certain areas for
7 further briefing. The hearing was continued and additional briefing was filed, after
8 which the matter was taken under submission. Shortly thereafter the parties requested
9 that the Court not issue an order as they had scheduled a mediation. Following some
10 additional discovery and an extension of the time by which the Court would issue an
11 order on the pending motion for summary adjudication, the parties were able to finalize a
12 settlement. AutoZone withdrew its pending summary judgment motion, without
13 prejudice to being reinstated if the settlement was not concluded. A copy of the signed
14 Settlement Agreement is attached to the Declaration of Seth Yohalem as Exhibit 1.
15
16

17 **II. DISCUSSION**

18 **A. TERMS OF THE SETTLEMENT**

19 **1. SETTLEMENT CLASS DEFINITION**

20 The Settlement Agreement contains the following defined terms:

- 21 • “Class Members” means any member of either subclass, as certified by the
22 Court on July 20, 2018 (and as set for the above). Settlement Agreement ¶II.F
23
- 24 • The class size is estimated to be in the millions. Certification Order at 9:11.
25

1 **B. TERMS OF SETTLEMENT AGREEMENT**

2 The essential terms are as follows:

- 3 • The following relief will be provided within 30 days of the Effective Date:
- 4 ○ All of the Class Members' expired \$20 Rewards will be reinstated –
- 5 which AutoZone represents will result in reinstating 918,788 \$20
- 6 Rewards;
- 7 ○ All of the Class Members' expired Credits will be converted to
- 8 Rewards, using the following formula:
- 9 ▪ Class Members with one or two Credits which expired will
- 10 receive one \$5 Reward, which AutoZone represents will result in
- 11 AutoZone issuing 3,136,952 \$5 Rewards;
- 12 ▪ Class Members with three or four Credits which expired will
- 13 receive one \$15 Reward, which AutoZone represents will result
- 14 in AutoZone issuing 1,271,858 \$10 Rewards; and
- 15 ▪ Class Members with 5 or more Credits which expired will
- 16 receive one \$15 Reward, which AutoZone represents will result
- 17 in AutoZone issuing 142,576 \$15 Rewards.

18 Settlement Agreement, ¶III.a.b.

- 19 • There is no claims requirement. The reinstated \$20 Rewards and the Credits
- 20 that are converted into Rewards will automatically be put into members'
- 21 Rewards accounts without members having to submit a claim. *Id.* at ¶III.c.
- 22 • The Rewards will be valid for one year. *Id.* at ¶III.d.
- 23
- 24
- 25

1 • The Awards are not transferable and may not be used for gift cards, loan-a-tool
2 products, or products ordered on-line for pick-up in stores.

3 • AutoZone will pay for all costs of notice and settlement administration,
4 (estimated to be \$192,597, as set forth in Ex. 10 to Yahoo!em Dec.) AutoZone
5 will also pay for a reasonable incentive award to Plaintiffs and reasonable
6 attorney's fees and costs to Class Counsel based on the lodestar methodology.

7
8 The parties agreed not to negotiate the amount of fees, expenses, and awards
9 until after all other terms were agreed to and memorialized. The Parties agree
10 that the Court shall decide the amounts of these payments in the event the
11 parties cannot reach an agreement. Class Counsel will submit a fee petition
12 which AutoZone reserves the right to oppose. *Id.* at ¶IV.

13
14 • Within 10 days after the Effective Date, AutoZone will pay the fees, expenses,
15 and awards as directed by the Court. *Id.* at ¶IV.

16 • The proposed Class Notice contains caps on the costs and incentive awards that
17 the parties have agreed to and indicates the amount of costs and fees that will
18 be sought (\$125,000 for costs and \$6,625,000 for fees). Stipulation to Long
19 Form Notice, filed 10/09/19.

20
21 • The settlement administrator is Postlethwaite & Netterville (P&N), the same
22 administrator that provided the class with notice of certification. *Id.* at ¶II.D

23 **C. SETTLEMENT STANDARDS AND PROCEDURE**

24 California Rules of Court, rule 3.769(a) provides: "A settlement or compromise
25 of an entire class action, or of a cause of action in a class action, or as to a party, requires

1 the approval of the court after hearing.” “Any party to a settlement agreement may serve
2 and file a written notice of motion for preliminary approval of the settlement. The
3 settlement agreement and proposed notice to class members must be filed with the
4 motion, and the proposed order must be lodged with the motion.” (See Cal. Rules of
5 Court, rule 3.769(c).)

6
7 “In a class action lawsuit, the court undertakes the responsibility to assess fairness
8 in order to prevent fraud, collusion or unfairness to the class, the settlement or dismissal
9 of a class action. The purpose of the requirement [of court review] is the protection of
10 those class members, including the named plaintiffs, whose rights may not have been
11 given due regard by the negotiating parties.” (*Consumer Advocacy Group, Inc. v.*
12 *Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal quotation
13 marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245
14 (“*Wershba*”), disapproved of on other grounds by *Hernandez v. Restoration Hardware,*
15 *Inc.* (2018) 4 Cal.5th 260, 269 [Court needs to “scrutinize the proposed settlement
16 agreement to the extent necessary to reach a reasoned judgment that the agreement is
17 not the product of fraud or overreaching by, or collusion between, the negotiating
18 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
19 concerned.”] [internal quotation marks omitted].)

20
21
22 “The burden is on the proponent of the settlement to show that it is fair and
23 reasonable. However, “a presumption of fairness exists where: (1) the settlement is
24 reached through arm's-length bargaining; (2) investigation and discovery are sufficient to
25 allow counsel and the court to act intelligently; (3) counsel is experienced in similar

1 litigation; and (4) the percentage of objectors is small.” (*Wershba* at 245 [citing *Dunk*
2 *v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802].) Notwithstanding an initial
3 presumption of fairness, “the court should not give rubber-stamp approval.” (*Kullar v.*
4 *Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130 (“*Kullar*”).) “Rather, to
5 protect the interests of absent class members, the court must independently and
6 objectively analyze the evidence and circumstances before it in order to determine
7 whether the settlement is in the best interests of those whose claims will be
8 extinguished.” (*Ibid.*) In that determination, the court should consider factors such as
9 “the strength of plaintiffs' case, the risk, expense, complexity and likely duration of
10 further litigation, the risk of maintaining class action status through trial, the amount
11 offered in settlement, the extent of discovery completed and stage of the proceedings, the
12 experience and views of counsel, the presence of a governmental participant, and the
13 reaction of the class members to the proposed settlement.” (*Id.* at 128.) “Th[is] list of
14 factors is not exclusive, and the court is free to engage in a balancing and weighing of
15 factors depending on the circumstances of each case.” (*Wershba, supra* at 245.)

18 “A settlement need not obtain 100 percent of the damages sought in order to be
19 fair and reasonable. Compromise is inherent and necessary in the settlement process.
20 Thus, even if ‘the relief afforded by the proposed settlement is substantially narrower
21 than it would be if the suits were to be successfully litigated,’ this is no bar to a class
22 settlement because ‘the public interest may indeed be served by a voluntary settlement in
23 which each side gives ground in the interest of avoiding litigation.’” (*Id.* at 250.)
24
25

1 **D. ANALYSIS OF SETTLEMENT AGREEMENT**

2 **1. Does a presumption of fairness exist?**

3 a. Was the settlement reached through arm's-length bargaining?

4 This settlement is the result of nearly three years of litigation and motion practice
5 followed by a day of mediation before Hon. Leo S. Papas (Ret.), and continued
6 negotiations thereafter to finalize terms. Yohalem Declaration, ¶18-39. The
7 settlement preliminarily appears to have been negotiated on an "arm's length"
8 basis.
9

10 b. Were investigation and discovery sufficient to allow counsel and the court to act
11 intelligently? Yes, the parties have conducted sufficient discovery have a
12 command of the facts of this litigation as well as the strengths and weaknesses of
13 Plaintiffs' claims. *Id.* at ¶¶ 18, 19, 20, 24, 25-26, 35.
14

15 c. Is counsel experienced in similar litigation? Yes. *Id.* at ¶¶13-17.

16 d. What percentage of the class has objected? This cannot be determined until the
17 fairness hearing. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before
18 Trial (The Rutter Group 2014) ¶ 14:139.18 ["Should the court receive objections
19 to the proposed settlement, it will consider and either sustain or overrule them at
20 the fairness hearing."].)
21

22 CONCLUSION: The settlement is preliminarily entitled to a presumption of
23 fairness.

24 //

25 //

1 **2. Is the settlement fair, adequate, and reasonable?**

2 a. Strength of Plaintiffs' case. "The most important factor is the strength of
3 the case for plaintiffs on the merits, balanced against the amount offered in
4 settlement." (*Kullar, supra* at 130.)

5 The parties have differing views as to the strengths and weakness of the
6 case. Plaintiffs contends that by causing Credits and Rewards to expire
7 without notice to Rewards Members there is a basis for their contract and
8 unfair competition claims. Defendant strongly disagrees, arguing that the
9 terms and conditions of the reward program allow it to alter the terms at any
10 time without notice, but that in any event it did provide notice of the
11 upcoming change to a national reward plan months before the transition.
12 While Plaintiffs believe in the strength of their claims and their ability to
13 prevail at trial, they indicate, through counsel, they understand that there are
14 risks of proceeding. Yohalem Dec. ¶¶ 20-30.

15 b. Risk, expense, complexity and likely duration of further litigation. In
16 deciding to settle this action Plaintiffs were required to weigh what he
17 believed to be a strong chance of prevailing against the possibility that the
18 Class would be deprived of any recovery if the Court granted AutoZone's
19 motion for summary adjudication. Motion at 13:21-26. In this regard the
20 Court notes that the case presented several complex legal issues, as
21 discussed in the Yohalem Dec. at ¶¶ 26-29. Appellate proceedings could
22 have taken place.
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c. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (*Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226 [“Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.”].)

d. Amount offered in settlement. This settlement provides benefit to Class Members in that it restores to them a significant portion of the face value of what they lost when Credits and Rewards expired, although it also requires them to use the reinstated Rewards within a fixed period of time (one year) and limits some of the products that can be paid for by the use of Rewards.

e. Extent of discovery completed and stage of the proceedings. As discussed above, at the time of the settlement, Class Counsel had conducted discovery sufficient to value the case.

f. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, are experienced in class action litigation. Based upon their investigation and analysis, the attorneys representing Plaintiffs and the class are of the opinion that this settlement is fair, reasonable, and adequate.

g. Presence of a governmental participant. This factor is not applicable here.

1 h. Reaction of the class members to the proposed settlement. The class
2 members' reactions will not be known until they receive notice and are
3 afforded an opportunity to opt out or object. This factor becomes relevant
4 during the fairness hearing.

5 CONCLUSION: The settlement can be preliminarily deemed "fair, adequate, and
6 reasonable."

7
8 **3. Scope of release**

9 Upon the Effective Date (defined in ¶III.H to be the first business day after the
10 judgment as become final which, if there are no objectors, will be the time of entry of
11 judgment), each Class Member releases Defendants and all their present and former
12 parent companies, subsidiaries, shareholders, officers, directors, employees, agents,
13 servants, registered representatives, attorneys, insurers, affiliates, and successors,
14 personal representatives, heirs and assigns, retailers, suppliers, distributors, endorsers,
15 consultants, and any and all other entities or persons upstream and downstream in the
16 production/distribution channels (together, "Released Parties") from all claims,
17 demands, actions, and causes of action of any kind or nature whatsoever, whether at law
18 or equity, known or unknown, direct, indirect, or consequential, liquidated or
19 unliquidated, foreseen or unforeseen, developed or undeveloped, arising under common
20 law, regulatory law, statutory law, or otherwise, whether based on federal state or local
21 law, statute, ordinance, regulation, code, contract, common law, or any other source,
22 against the Released Parties in any other court, tribunal, arbitration panel, commission,
23 agency, or before any governmental or administrative body, or any other adjudicatory
24
25

1 body seeking relief based on the Certified Claims (defined in ¶II.C as the claims certified
2 for class treatment in the Court's Order dated July 20, 2018). Settlement Agreement,
3 ¶V.A. No other claims will be released.

4 Plaintiffs have agreed to a general release of all claims and a CC §1542 waiver as
5 to the Released Parties. *Id.* at ¶V.B – V.D.

6 The release appears to be proper. The class release is appropriately tethered to the
7 Certified Claims. Plaintiffs' broader release is acceptable as they were represented by
8 counsel when these terms were negotiated.
9

10 **4. May conditional class certification be granted?**

11 As noted, a class was certified in July 2018.

12 **5. Is the notice proper?**

13 a. Method of class notice.

14 The parties propose the Court adopt the Notice Plan attached as Exhibit A
15 to the Settlement Agreement. No later than 30 days after preliminary
16 approval or the date set by the Court, whichever is earlier, Defendants will
17 provide to the class administrator all material necessary to begin the Class
18 Notice Process. The notice includes all of the following:

19 P&N will create and maintain a website that includes the long form notice
20 (along with a Spanish translation), links to key pleadings, a list of all
21 AutoZone stores in California in which there was a 5/20/20 plan in place,
22 and an interactive interface where Reward Members may use their
23 AutoZone Rewards member information to learn what, if any, Reward they
24 will receive. The website will be maintained for 12 months following the
25 Effective Date.

1 P&N will run newspaper ads consisting of the summary notice *The Los*
2 *Angeles Times, The San Francisco Chronicle, The San Diego Union*
3 *Tribune, The Orange County Register, The Sacramento Bee, The Redding*
4 *Record Searchlight, and The Press-Enterprise.* The ads will be run in the
5 Sunday edition of the newspapers for four consecutive weeks.

6 P&N will issue a press release consisting of the summary notice through
7 PR Newswire.

8 Store Signage will prominently display the summary notice in every
9 California store that had a 5/20/20 plan in place. The Notice Plan does not
10 indicate for what period the summary notice will be displayed or what
11 constitutes "prominent display."

12 Email Notice will be sent (summary notice) to each class member for
13 whom AutoZone has an email address and who has not opted out of
14 receiving emails.

15 For class members who did not provide a valid email or mailing address
16 but who did provide a valid phone number, P&N will use a third party
17 database to attempt to locate valid mailing addresses by reverse address
18 lookups. This is expected to yield mailing addresses for 45-65% of the
19 class for whom AutoZone does not already have a valid address.

20 P&N will use the mailing addresses to identify email addresses using third
21 party databases. This process of email "appends" is expected to yield valid
22 email addresses for 45-65% of the class for whom AutoZone does not
23 already have a valid email. In addition to emailing summary notice to all
24 class members for whom AutoZone has a valid email address, P&N will
25

1 send an additional email notice to all class members whose email address
2 is generated in this search.

3 AutoZone will post the summary notice on the AutoZone website. The
4 time period for this is not specified.

5
6 b. Content of class notice.

7 The proposed long and short forms of the proposed notice are attached as Exhibits
8 1 and 2 to the Settlement Agreement. Parties will ensure the long and short form notices
9 conform to the outcome of any negotiation as to fees, expenses, and incentive awards.

10 ¶VI.A.

11 On October 9, 2019, the parties submitted a revised long form notice to which
12 they had stipulated. The long form notice contains all the required information, including
13 a summary of the litigation, the nature of the settlement, the procedure for objecting, and
14 the date, time and place for final approval. In §14 it provides the names and contact
15 information for Class Counsel and in §15 it informs class members that AutoZone will
16 pay Class Counsel reasonable litigation costs and reasonable attorney's fees separately
17 and that this will not reduce their benefits. The notice informs class members that the
18 parties have not agreed upon the amounts AutoZone will pay to Class Counsel but that
19 Class Counsel will seek no more than \$125,000 for costs and \$6,625,000 for fees, and
20 that any such award must be approved by the Court.

21 Section 17 of the notice informs class members that incentive awards will be paid
22 in the Court's discretion and that AutoZone has agreed to pay a reasonable incentive
23 award. It further states that the class representatives are married and have signed
24 declarations promising to donate any amounts paid to them to a 501(c)(3) charity but
25

1 wish to have their work compensated. Finally, the notice says that they may seek
2 incentive awards totaling \$60,000 and that AutoZone may object to this.

3 In general, the method of distribution appears to be the best available to provide
4 notice. However, certain clarifications and modifications are needed:

- 5
- 6 • The parties shall agree on how long AutoZone will post the in-store and
7 on-line notice and where the in-store notice will be placed;

8 The long-form notice requires revisions:

- 9
- 10 • Section 3 says the Court found there are more than 100 people who are
11 members of each Subclass. The certification order finding was that the
12 population of the subclasses was in the millions. This should be reflected.
 - 13 • As there is no difference in recovery between the two subclasses, does §6
14 serve any purpose? Consider identifying in §2 or §3 the claims that were
15 certified.
 - 16 • In ¶15 add language indicating that AutoZone may object to the fees and
17 costs Class Counsel requests.
 - 18 • Move bolded language in §19 (regarding waiver of right to object) from
19 directly under address for administrator to directly after the subsequent
20 paragraph that starts, “You may also appear at the Final Approval Hearing
21 ...” While there is a deadline for written objections (Settlement
22 Agreement, ¶VII.A), Class Members are rightly provided with the
23 opportunity to appear at the fairness hearing to orally object (¶VII.B).
 - 24 • Correct last sentence of §19 (“The Notice to Appear ...”) to say “Notice of
25 Intent to Appear.”
 - In §21, add language indicating that if the Court approves the settlement
judgment will be entered and class members will be provided with notice

1 of entry of judgment. Indicate the manner in which notice of entry of
2 judgment will be provided to the class, e.g. posted on administrator's
3 website. Cal. Rule of Court 3.771 (b).

4 c. Cost of class notice.

5 Estimated cost is \$192,597. This amount needs to be inserted in summary
6 and long forms of the class notice.

7 **6. Attorney fees and costs**

8 California Rule of Court, rule 3.769(b) states: "Any agreement, express or
9 implied, that has been entered into with respect to the payment of attorney fees or the
10 submission of an application for the approval of attorney fees must be set forth in full in
11 any application for approval of the dismissal or settlement of an action that has been
12 certified as a class action."

13 Ultimately, the award of attorney fees is made by the court at the fairness hearing,
14 using the lodestar method with a multiplier, if appropriate. (*PLCM Group, Inc. v.*
15 *Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*
16 (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122,
17 1132-1136.) Despite any agreement by the parties to the contrary, "the court ha[s] an
18 independent right and responsibility to review the attorney fee provision of the
19 settlement agreement and award only so much as it determined reasonable."
20 (*Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4th 123,
21 128.)

22 The question of Class Counsel's entitlement to and amount of attorney fees will
23 be addressed at the fairness hearing when Class Counsel brings a noticed motion for
24 attorney fees. Class Counsel must provide the court with billing information so that it
25 can properly apply the lodestar method and must indicate what multiplier is being

1 sought. If the two firms representing Plaintiffs and the class will be splitting fees, a
2 writing evidencing Plaintiffs' written approval must also be presented. *Mark v. Spencer*
3 (2008) 166 Cal.App.4th 219; Cal. Rules of Professional Conduct, Rule 1.5.1; Cal. Rules
4 of Court, rule 3.769.

5 Class counsel should also be prepared to justify the costs sought by detailing how
6 they were incurred.

7 **7. Enhancement Award to Class Representative**

8 The Settlement Agreement provides for enhancement awards to the class
9 representatives. Trial courts should not sanction enhancement awards of thousands of
10 dollars with "nothing more than *pro forma* claims as to 'countless' hours expended,
11 'potential stigma' and 'potential risk.' Significantly more specificity, in the form of
12 quantification of time and effort expended on the litigation, and in the form of reasoned
13 explanation of financial or other risks incurred by the named plaintiffs, is required in
14 order for the trial court to conclude that an enhancement was 'necessary to induce [the
15 named plaintiff] to participate in the suit'" (*Clark v. American Residential Services*
16 *LLC* (2009) 175 Cal.App.4th 785, 806 [italics and ellipsis in original].)

17 Plaintiffs have filed Declarations and indicated that they will request \$30,000
18 each and that they intend to donate any incentive awards they receive to charity. The
19 Court will decide the issue of enhancement awards at the time of final approval.

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21 **III. CONCLUSION AND ORDER**

22 Conditioned upon filing with the Court modifications to the class notice plan and
23 long form notice outlined above, the Court:

- 24 (1) Grants preliminary approval of the settlement as fair, adequate, and
25 reasonable;

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- (2) Appoints N&P as Settlement Administrator;
- (3) Approves the proposed notice plan; and
- (4) Approves the proposed schedule of settlement proceedings, as follows:

- Preliminary approval hearing: October 16, 2019;
- Deadline for Defendant to provide information to Settlement Administrator: November 30, 2019; *mm*
- Deadline for settlement administrator to mail notices and provide for published notice: ^{e-} 12/11; *mm*
- Deadline for class members to mail objections to Settlement Administrator: [29 days before fairness hearing 1/23, 2020;
- Deadline for class counsel to file motion for final approval: 1/28, 2020 (16 court days prior to final fairness hearing)
- Final fairness hearing: 2/21, 2020, at 9:00 a.m.

Dated: 10/16/19

Maren E Nelson

MAREN E. NELSON

Judge of the Superior Court

Counsel to submit revised final notice and order by 10/22/19. mm

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 232 North Canon Drive, Beverly Hills, California 90210-5302.

On October 17, 2019, I served on interested parties in said action the within:

NOTICE OF RULING GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT ON CONDITIONS

Roger A. Cerda, Esq.
Peter E. Masaitis, Esq.
ALSTON & BIRD LLP
333 South Hope Street
Sixteenth Floor
Los Angeles, California 90071

[X] BY ELECTRONIC MAIL VIA CASE ANYWHERE: In accordance with the Court's Order Authorizing Electronic Service dated March 10, 2017, I served the above document(s) via electronic transmission to CASE ANYWHERE.

Executed on October 17, 2019, at Beverly Hills, California.

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

DEBRA KNIGHTEN

(Type or print name)



(Signature)

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FILED
Superior Court of California
County of Los Angeles

OCT 21 2019

Sherri R. Carter, Executive Officer/Clerk
By Isabel Arellanes, Deputy
Isabel Arellanes

SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

MARY HUGHES, an individual and
KEVIN SHENKMAN, an individual, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

vs.

AUTOZONE PARTS, INC., a Nevada
Corporation, AUTOZONE, INC., a Nevada
Corporation, AUTOZONE.COM, INC., a
Corporate entity of unknown origin; and
DOES I through 100,

Defendants.

Case No.: BC631080

NOTICE OF ERRATA RE ORDER
GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

Hearing Date: October 16, 2019

Time: 9:00 a.m.

Dept.: SSC-17

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2 On October 16, 2019, this Court heard and granted the parties' motion for
3 preliminary approval of their class action settlement. The order issued that date contains
4 three errors, corrected here:

5 On page 3, lines 21-23, the sentence, "Subclass 2 was not certified as to Breach of
6 Contract but solely as to Breach of the Implied Covenant and Unfair Competition," is
7 corrected to read, "Subclass 2 was not certified as to Breach of Contract or Breach of the
8 Implied Covenant, but solely as to Unfair Competition."

9 On page 5, line 15, "\$15 Reward" is corrected to "\$10 Reward."

10 On page 19, line 1, "P&N" is correct to "N&P."

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12 It is so ordered.

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15 Dated: 10/21/19



16 MAREN E. NELSON

17 Judge of the Superior Court
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