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8 Attorneys for Plaintiffs

9 UNITED STATES DISTRICT COURT
 10 SOUTHERN DISTRICT OF CALIFORNIA

11 DAVID RINALDI, JOSHUA)	Case No. <u>'18CV1377 BEN JLB</u>
EBRIGHT, and PAUL LEE, on)	
12 Behalf of Themselves and All Others)	<u>CLASS ACTION</u>
13 Similarly Situated,)	
)	COMPLAINT FOR VIOLATIONS OF
14 Plaintiffs,)	CALIFORNIA'S CARTWRIGHT ACT
)	AND UNFAIR COMPETITION LAW
15 v.)	
)	
16 BP WEST COAST PRODUCTS)	
17 LLC; CHEVRON U.S.A. INC.,)	
TESORO REFINING &)	
18 MARKETING COMPANY LLC,)	
EQUILON ENTERPRISES LLC,)	
19 EXXON MOBIL CORPORATION,)	
20 VALERO MARKETING AND)	
SUPPLY COMPANY,)	
21 CONOCOPHILLIPS, ALON USA)	
ENERGY, INC., and DOES 1-25,)	
22 Inclusive,)	
)	
23 Defendants.)	
24)	<u>DEMAND FOR JURY TRIAL</u>

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1 Plaintiffs David Rinaldi, Joshua Ebright, and Paul Lee ("Plaintiffs") hereby
2 bring this action for damages and other relief against defendants BP West Coast
3 Products LLC ("BP West"), Chevron U.S.A. Inc. ("Chevron"), Tesoro Refining &
4 Marketing Company LLC ("Tesoro"), Equilon Enterprises LLC (d/b/a Shell Oil
5 Products US) ("Shell"), Exxon Mobil Corporation ("ExxonMobil"), Valero
6 Marketing and Supply Company ("Valero"); ConocoPhillips ("Phillips"), and Alon
7 USA Energy, Inc. ("Alon") (collectively, "Defendants"), for violations of
8 California's Cartwright Act (California Business & Professions Code §16700, *et*
9 *seq.*) and California Unfair Competition Law ("UCL") (Cal. Bus. & Prof. Code
10 §17200, *et seq.*). Plaintiffs make all allegations upon information and belief
11 except as to those paragraphs that are based on their own personal knowledge.

12 INTRODUCTION

13 1. This action concerns Defendants' illegal conspiracy to manipulate and
14 maintain the prices of gasoline in California at supracompetitive prices. In
15 particular, Defendants, gasoline refiners, have used their market leverage to keep
16 gasoline prices in California well above the U.S. average, reaching a peak of \$1.50
17 per gallon above the national average in Southern California in 2015. Californians
18 consume forty million gallons of gas a day. According to some reports, as a result,
19 Californians paid more than \$10 billion extra at the pump compared to other drivers
20 in the United States. At the same time, Defendants' profits from their California
21 refineries reached obscene levels.

22 2. The oil industry blamed the 2015 jump in oil price on an explosion that
23 occurred in February 2015, at a refinery in Torrance, California. However, even
24 after the Torrance refinery came back online, Californians have continued to pay an
25 unexplained surcharge for their gasoline (even after taking into account California's
26 taxes and other unique aspects). In fact, while fuel prices fluctuate, Californians
27 have, on average, paid a premium at the pump in every month since the Torrance
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1 refinery explosion over three years ago.

2 3. The 2015 spike was not the first time that California's gasoline prices
3 moved drastically out of line with the national average. In early 2012, the crude
4 oil markets experienced a combination of rising production, falling demand, and
5 increasing inventories. Despite these market forces which would suggest the
6 opposite, California gas prices increased substantially. In particular, in May and
7 October of 2012, California saw two massive gasoline price spikes, resulting in
8 California consumers paying more than \$4 a gallon—and in some areas more than
9 \$5 a gallon. These spikes occurred while the rest of the country experienced a
10 decline in gas prices.

11 4. The refineries blamed the increased prices on decreased supply because
12 of a fire at a Washington state BP West refinery and other maintenance shutdowns in
13 California. The evidence, however, did not to support that theory.

14 5. Because the market is so concentrated, the West Coast is highly
15 sensitive to fluctuations in supply, and primed for manipulation. As a June 5, 2012
16 report by McCullough Research explained, in such a highly concentrated industry,
17 "a single actor or a very few actors acting together can set the price in the market."
18 After the fire at the Washington plant, the degree of market concentration increased
19 significantly. With the market so concentrated, the timing of the various
20 unscheduled maintenance shutdowns in the California refineries in early 2012
21 became suspect. "In a competitive market, maintenance would have been delayed to
22 take advantage of the rising West Coast prices."

23 6. Another report issued on November 15, 2012 by McCullough Research
24 (the "McCullough Report"), concluded that during the May and October spikes there
25 were market anomalies present, and that during those two periods, gas refiners in
26 California were seeing an "enormous windfall profit." Further, the McCullough
27 Report determined that in both the May and October spikes, "the underlying data
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1 now available contradicts the industry explanations."

2 7. Data from the U.S. Energy Information Administration ("EIA") during
3 that time showed that the refineries serving West Coast states had the capacity on
4 hand to meet significant shortfalls, such as one caused by a fire or a shutdown
5 because of unscheduled maintenance.

6 8. In addition, Defendants had access to addition fuel reserves through, for
7 example, fuel tanker capacity. Rather than provide California with this supposedly
8 much needed gasoline, Defendants shipped gasoline *out of California* and allowed
9 other tankers to idle unused.

10 9. The reason for the spikes in gasoline prices is now evident. The fire
11 and shutdowns were cover for the refiners' scheme to create a false impression of a
12 shortage in order to force prices up and reap windfall profits. Accordingly, Plaintiffs
13 now bring this action on behalf of the retail purchasers of gasoline in California,
14 those that were most hurt by Defendants' illegal actions.

15 THE CONSPIRACY

16 10. For years Californians have seen spikes in gasoline prices, seemingly
17 untethered to normal market forces of supply and demand, and an average price per
18 gallon substantially above the national average. An analysis of the now available
19 data shows that this increased gas prices were not the result of California's market
20 structure, but instead are the result of Defendants' anticompetitive conduct.

21 **The May and October 2012 Price Spikes**

22 11. In May 2012, California, Oregon, and Washington were hit with
23 significant spikes in the price of gasoline. Refiners blamed the May spike on the
24 February 18, 2012 fire at the Cherry Point refinery in Washington state. This
25 excuse made little sense due to the length of time between the fire and the price
26 spike.

1 12. Refiners also claimed that maintenance shutdowns caused the decrease
2 in supply and increase in price. These shutdowns, however, were particularly
3 suspicious. In fact, in a short window of less than four weeks between April 20 and
4 May 15, defendants Alon, Shell, Tesoro, Chevron, and BP West each scheduled a
5 shutdown of their refineries for maintenance. As detailed below, however,
6 emissions data showed that certain of these refineries appeared to continue to
7 operate.

8 13. Then, in August 2012, gasoline prices spiked again. This time, refiners
9 blamed the spike on an August 6, 2012 fire at Chevron's Richmond, California,
10 refinery. Again, the excuse made no sense in light of the fact that inventories
11 actually increased up to and during the price spikes. In a trust competitive market
12 governed by supply and demand, an increase in supplies would drive down prices.¹

13 14. Chevron later agreed to pay \$2 million in fines and restitution, and
14 pleaded no contest to charges filed by the Attorney General and District Attorney in
15 connection with the fire. The charges included failing to correct deficiencies in
16 equipment and failing to require the use of certain equipment to protect employees
17 from potential harm. This was a first of a series of fines against Defendants over
18 readily noticeable defects that led to refinery shutdowns.

19 15. In October 2012, the price of gas again spiked on rumors of a gasoline
20 shortage. The California Energy Commission later claimed that a minor plant
21 problem at ExxonMobil's Torrance refinery was to blame for the increase in
22 wholesale prices. Again, the facts belie this explanation. In particular, the
23 wholesale price began spiking before the Torrance refinery's issues were publicly
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25 ¹ The November 15, 2012 McCullough Report noted that "[t]he argument that the
26 price spikes on the West Coast are caused by supply shortages is contradicted by the
27 increasing gasoline inventories during the period of extraordinary prices."
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1 announced and jumped \$0.35 per gallon within forty-five minutes of the first
2 substantive coverage by the media. In contrast, the twenty-seven other similar
3 events in 2012 that occurred at the Torrance facility did not create increases
4 anywhere near those that occurred in October 2012. Further, Southern California
5 Edison said there was barely any change in the electrical flow on October 1, 2012.

6 16. The evidence also indicates that the major oil companies likely had
7 advance notice that ExxonMobil would report problems with its Torrance refinery in
8 October 2012. According to the McCullough Research's July 2013 report (the "2013
9 McCullough Report"), after the Torrance facility "flare" on October 1, 2012, "all the
10 majors came out and bought." The major oil companies would not have bought in
11 the open market based on the information available at the time in the marketplace,
12 which indicated only a minor problem at the plant. Instead, this run up would have
13 happened only if ExxonMobil informed its competitors of operating problems, prior
14 to informing the regulators and media. Additionally, the nitrogen oxide ("NOx")
15 emissions data does not support evidence of a full plant closure, and press releases
16 by the company overstating the problem.

17 17. Consumer Watchdog said that the report raises the specter of
18 "criminal conduct" "reminiscent of the Enron-like manipulation of the California
19 energy market." Ronald D. White, *Consumer advocates say refineries may have*
20 *falsified information*, L.A. Times (Nov. 16, 2012), *available at la-fi-mo-call-for-*
21 *investigation-20121116*.

22 18. The following table details the suspicious plant closings in 2012, while
23 the price of gasoline spiked, and maintained high levels compared to the rest of the
24 country:
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Date	Company	Refinery	Amount of Statewide Capacity	Type of Outage	Claimed Reason	Industry Sources
2/17/12	BP	Cherry Point, WA	20%	Unplanned	Fire	The May price spike was blamed on the outage at Cherry Point, the third largest refinery on the West Coast. The early May restart encountered problems and was halted. Ultimately, this refinery reopened on May 31 after repairs and maintenance were completed.
4/20/12	Alon	Bakersfield	3.2%	Planned	Hydrocracker restarted.	No information
4/27/12	Shell	Martinez	7.62%	Planned	Maintenance	Shell claimed that the refinery was shut down until May 16, 2012, yet NOx emissions data show that the refinery in fact started operating again sometime between May 6 and May 11, 2012.
5/2/12	Tesoro	Martinez	8.70%	Planned	Hydrocracker restarted.	No information
5/12/12	Chevron	Richmond	12.90%	Planned	Seasonal maintenance	Blamed for May price spike along with BP's Cherry Point refinery outage in February. Chevron announced that it would be taken offline from May 12 to May 26, but the NOx emissions data show otherwise during that period.
5/15/12	BP	Carson	12.96%	Planned	Planned Flaring	BP reported in a filing with state pollution regulators on May 15 a planned flaring scheduled to take place from May 15-21.

1	8/6/12	Chevron	Richmond	12.90%	Unplanned	Fire	After a fire, Chevron shut down its Richmond refinery, the largest refinery in the state. The refinery remained offline for several months, operating at 60% capacity. A Chevron spokesperson said the fire was one factor that caused the price increase in August among others, including the price of crude oil. However, data collected by the California Energy Commission showed that increased production at other refineries more than made up for the Richmond loss. Chevron agreed to pay \$2 million in fines and restitution and pleaded no contest to six charges in connection with the fire.
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16	10/1/12	ExxonMobil	Torrance	7.8%	Unplanned	Power failure	This outage was blamed for the October price spike, yet the price began spiking prior to its public release, indicating that other oil companies had advance, secret notice. The shutdown lasted four days. Although Exxon claimed there was a disruption in power, Southern California Edison said there was barely a blip in the electrical flow that day.
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25 19. The refineries' explanation for the price spikes is not consistent with
26 the principles of supply and demand, and is inconsistent with the structure of the
27 industry. The California refinery system as a whole had plenty of stock and
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1 capacity to manage several plant shutdowns. Refineries' production schedules
2 are not perfectly matched to changes in seasonal demand—gas sales peak in the
3 summer months, while gas production is relatively flat over the year, with a dip in
4 February. Typically, the market has adjusted smoothly to the seasonal factors and
5 gas prices remain stable (tracking the cost of crude and other inputs) even when
6 sales exceed production, with the price spikes in 2012 being exceptions.

7 20. Analysts have been skeptical of the industry's justifications for the
8 radical price increases, with some speculating that the companies are artificially
9 increasing pump prices. See Joseph Rose, *Oregon, Washington Gas Prices Face*
10 *'Prolonged Period' of Increases After Chevron Refinery Fire*, *The Oregonian*
11 (Aug. 21, 2012), available at [http://blog.oregonlive.com/commuting/2012/08/
12 Oregon_washington_gas_prices_f.html](http://blog.oregonlive.com/commuting/2012/08/Oregon_washington_gas_prices_f.html).

13 21. Despite widespread public calls for an explanation for the spikes, no
14 economically sensible explanation has yet been given

15 22. Irregularities in Defendants' record keeping bring into doubt the
16 accuracy and reliability of the maintenance and outage reports provided by the
17 refineries to California. Take for example the Richmond refinery. Data tracking
18 the Richmond refinery's FCC and TKC (measurable components of the gas oil
19 processing at the refinery) demonstrate that the Richmond refinery was in fact
20 still emitting mono-NO_x during this period of "closure."² These inconsistencies
21 bring into doubt the accuracy and reliability of the maintenance and outage reports
22 provided by the refineries to California. Similarly, Shell's Martinez, California,

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24 ² During other cases of market manipulation in California, announcements by power
25 producers about plant outages "have been discovered to be intentionally unreliable."
26 See *United States v. Reliant Energy Servs., Inc.*, No. 04-cr-125, Indictment (N.D.
27 Cal. Apr. 8, 2004) (Dkt. No. 1) at 5 (where Reliant was charged with disseminating
28 false and misleading rumors and information about the availability and maintenance
status of the defendant's power plants).

1 refinery reported a shutdown from April 27 to May 16, 2012, but the emissions data
2 indicates that the refinery started operating sometime between May 6 and May 11,
3 2012.

4 23. In October 2012, prices were \$0.66 per gallon higher than they would
5 be normally, given the historical patterns of oil prices and gas inventories. The past
6 sales for the month of October have averaged more than one billion gallons per
7 month. If the historical averages held, and the numbers were adjusted for variations
8 in the market for fixed costs, this would mean that Defendants received windfall
9 profits of about \$25 million a day from the Class (as defined herein). Using the
10 same overcharge calculation, the members of the Class paid approximately \$1.3
11 billion more at the pump during the May 2012 price spike, than they should have
12 absent the Defendants' conduct.

13 24. This windfall is supported by historical data. *See* Jamie Court &
14 Liza Tucker, *New Report: Oil Refiners' Profits Spike With Gasoline Price Spikes*,
15 Consumer Watchdog (May 5, 2015), *available at* [http://www.consumerwatchdog.
16 org/newsrelease/new-report-oil-refiners%E2%80%99-profits-spike-gasoline-price-
17 spike](http://www.consumerwatchdog.org/newsrelease/new-report-oil-refiners%E2%80%99-profits-spike-gasoline-price-spike) (finding that profits for Tesoro and Valero were "twice as high as the
18 refiners' average quarterly profit in quarters where gasoline prices spiked"); *id.*
19 (quoting a Chevron General Manager, who stated: "Margins increased earnings by
20 \$435 million driven by unplanned industry downtime and tight product supply on
21 the US West Coast.").

22 25. Below is a chart from the McCullough Report comparing actual retail
23 gas prices to forecasted retail prices:

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11 26. Not surprisingly, the Western States Petroleum Association
12 ("WSPA"), an industry group made up of the Defendants, among others, issued
13 a critique of the McCullough Report. In response, McCullough Research issued
14 a rebuttal (the "McCullough Rebuttal"), noting that the WSPA's report "does not
15 offer an explanation for the price spikes, nor does it perform any analyses that
16 would justify its opinions." Further, the McCullough Rebuttal noted that
17 "WSPA's response provides no explanation, additional data, or statistical
18 analyses for the price spikes in May and October 2012. Its proposed variable
19 changes are neither substantive nor explanatory." Moreover, McCullough
20 Research noted that based on its "experience with Enron, we suggest that
21 erroneous information in the media can be a form of market manipulation....
22 Since little information is available on refinery operations, an erroneous press
23 release may have significant impacts on market prices... [T]here is evidence that
24 this was a factor in both May and October 2012."

25 **Details of the 2015 Price Spikes**

26 27. Like the 2012 spikes, a series of suspicious refinery closures and
27 slowdowns preceded the 2015 spikes in California gas prices, defying input costs.

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1 On February 2, 2015, Tesoro shut down its Martinez refinery in the face of a
2 steelworkers' strike, citing "safety" reasons, rather than allowing it to run at less than
3 full capacity during planned maintenance.

4 28. Defendants told the investors a much different story than the general
5 public in California. Despite the strike, Tesoro Chief Executive Officer ("CEO")
6 Geoff Goff told investors that the company could continue to operate refineries
7 indefinitely, with reduced staffing levels. Tesoro's CEO stated, "And we feel very
8 comfortable that we can continue on running with the staffing levels we have, the
9 trained and experience people have operating the refineries for – and it's a very long
10 period of time."

11 29. The use of refinery outages to drive price spikes continued throughout
12 2015. As the *Los Angeles Times* reported on December 21, 2015:

13 While motorists nationwide are enjoying gas at \$1.99, the L.A.
14 average climbed to \$2.87 and could continue rising as delays plague
15 repairs at Exxon Mobil's Torrance plant, which has been operating at
16 less than 20% capacity since a February explosion. The statewide
average was \$2.72.

17 The plant was expected to return to full service by mid-February. But
18 now the latest projections are that repairs will not be completed until
as late as April 1.

19 In addition, Tesoro's Carson refinery and Chevron's El Segundo site
20 reported unplanned outages, as well as maintenance downtime, within
21 the last month. Compounding the problem is an unplanned outage at
22 Chevron's Richmond plant in Northern California and a storm-
damaged Tesoro plant in Anacortes, Wash.

23 Gordon Schremp, a senior fuels analyst for the California Energy
24 Commission, said in all, about 30% of the state's refining capacity is
25 offline.

26 "In a phrase," Schremp said, "chronic refinery problems continue,
27 unfortunately."
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1 30. Then, on February 18, 2015, ExxonMobil shut down its Torrance
2 refinery after a supposed explosion. This Torrance refinery supplies approximately
3 10% of California's gasoline.

4 31. The shutdown at ExxonMobil's only California refinery in February
5 2015 reduced gas supply in Southern California and depleted the state's already-
6 short reserves. Further, according to industry insiders, refinery maintenance
7 schedules were inexplicably moved forward despite an apparent lack of supply.

8 32. The Torrance fire is particularly suspicious. After investigating the
9 Torrance refinery in the wake of its closure, the Division of Occupational Safety and
10 Health (DOSH) (hereafter, "Cal/OSHA") fined ExxonMobil \$566,600 for nineteen
11 workplace health and safety violations, six of which were determined to be willful.
12 On August 13, 2015, Cal/OSHA issued a press release stating that, "Six of these
13 serious violations were also classified as willful because Cal/OSHA found that
14 Exxon did not take action to eliminate known hazardous conditions at the refinery
15 and intentionally failed to comply with state safety standards."

16 33. An August 13, 2015 article in the *DailyBreeze* described the egregious
17 and willful lapses at the Torrance refinery and the results of the Cal/OSHA
18 investigation as follows:

19 Officials with the state Department of Industrial Relations said the
20 "investigation revealed severe lapses in Exxon's safety protocols."
21 "It's pretty rare for a compliance officer to issue one willful citation,
22 let alone six willful citations," said Clyde Trombetta, who heads up
23 the department's process safety management unit, which is responsible
for inspecting chemical plants and refineries in California.

24 "An employer has to be pretty egregious for us to do something like
25 that," he added. "It's trying to send a message that we need to take
26 these things seriously."

27 Indeed, the unusual number of serious citations appears to have
28 prompted the county District's Attorney's Office to request copies of

1 the citations for possible criminal prosecution, Trombettas said.

2 A spokeswoman for the district attorney noted that the agency does
3 not usually confirm the initiation of criminal investigations; she then
4 declined comment.

5 But the CAL/OSHA announcement revealed stunning and deliberate
6 lapses in fixing potentially dangerous conditions. CAL/OSHA said
7 Thursday the blast was due to a release of hydrocarbons from the
refinery's fluid catalytic cracker unit into its electrostatic precipitator.

8 The hydrocarbons ignited and caused the explosion that injured four
9 workers and hurled debris and contamination over a wide area of
10 Torrance.

11 34. As to refinery shutdowns and capacity reductions, memos from West
12 Coast oil refiners from the 1990s and released in 2011 by Senator Ron Wyden
13 (D. Or.), suggest that the practice of reducing capacity is a deliberate business
14 strategy that has been employed by the refineries for a number of years. An internal
15 Chevron memo, for example, stated: "A senior energy analyst at the recent API
16 [American Petroleum Institute] convention warned that if the U.S. petroleum
17 industry doesn't reduce its refining capacity, it will never see any substantial increase
18 in refinery margins."

19 35. A May 21, 2015 letter from Jamie Court, Liza Tucker, and Cody
20 Rosenfield, to a number of western state attorneys general noted:

21 Since the beginning of February, California's fourteen oil refineries
22 have suffered ten serious slowdowns or shutdowns, many due to
23 questionable causes or timing. The timing of these overlapping
24 outages raises questions about their true necessity, and about whether
25 some refinery capacity may have been taken off line in order to drive
26 up prices and profits for oil refiners at [a] time when some of their
27 crude operations have been yielding less profits.
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36. The following table details the recent suspicious plant closings:

Date	Company	Refinery	Amount of Statewid	Type of Outage	Claimed Reason	Industry Sources
2/2/2015	Tesoro	Martinez	8.70%	Unplanned	Tesoro said it would close its Martinez refinery in the face of a steelworkers' strike for "safety" reasons.	Refineries can run without a full staff once operations are well under way. Weeks later Tesoro's CEO, Geoff Goff, told investors that the company could continue to operate its refineries indefinitely with reduced staffing levels despite the strike. Steelworkers complained that management increasingly used contract workers to run refineries. They would have also been available to run the Martinez facility, raising questions about the "safety" reason for full closure of Martinez.

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2/18/2015	ExxonMobil	Torrance	7.80%	Unplanned	An "incident" on the Torrance refinery's premises.	Major explosion and fire blew off sections of a 12-story electrostatic precipitator that cuts pollution. Industry sources said the refinery had made operating errors that led to the accident and that the refinery will not come back on line again until July or August. Company reputedly may not bring facility back on line at all, or close it down completely. That would further reduce the state's refining capacity.
4/17/2015	Tesoro	Martinez	8.70%	Unplanned	Never publicly disclosed.	A fire prompted a shutdown of a gas oil hydrotreater for several days.
4/21/2015	Chevron	Richmond	12.90%	Unplanned	Chevron notifies local officials of the shutdown of an unspecified unit and said flaring was part of "normal refinery	No information.
4/21/2015	Tesoro	Martinez	8.70%	Unplanned	Never disclosed.	Offline temporarily due to "operational glitches."

1	4/23/2015	Chevron	El Segundo	14.50%	Planned	Company would not comment	Chevron reportedly had an "unplanned" problem with one reformer unit and moved up planned maintenance schedule. The outage will last until at least mid-June and could include an unknown number of other units. The necessity of the maintenance and how much capacity is or will be affected is unclear.
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9	5/9/2015	Tesoro	Martinez	8/70%	Unplanned	Never disclosed	Two compressors out on May 9 and 10
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11	5/13/2015	Phillips	Wilmington	7/30%	Planned	None; would not identify units.	Work may focus on hydrocracker used for diesel production, which was scheduled to have maintenance in June. Unclear if related to the failure of a nearby hydrogen plant that supplies this blending component. No information about effect on production output.
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18	5/18/2015	Phillips	San Francisco	4.10%	Unplanned	Phillips 66 does not reveal reasons, but states operations continue	Flaring triggered by unplanned breakdown. Effect on production output unknown.
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22	5/19/2015	Tesoro	Martinez	8.70%	Unplanned	Declined to identify unit involved, said only that plant operations continue	No information
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1 2 3 4 5	5/19/2015	Tesoro	Carson	12.60%	Planned	Never disclosed	Due to planned maintenance on a hydrotreater. Company set to perform work on hydrocracker in July. No information on effect on production output.
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6 37. ExxonMobil could have made up the Torrance deficit by using its
7 tanker to transport fuel from out-of-state or international refineries to California.
8 But rather than bring badly-needed imports to the market during the height of
9 Southern California's gasoline price spike and summer driving season, ExxonMobil
10 kept its vessel, the S/R American Progress, in the U.S. Gulf Coast for four months
11 before idling it in Singapore for seventy days. By making its tanker unavailable at a
12 critical time, ExxonMobil ensured that California gasoline supplies were kept short,
13 driving up prices and ExxonMobil's profits.

14 38. In particular, on May 15, 2015, during the middle of the gas shortage
15 and major price spike in Southern California, the S/R American Progress arrived
16 empty in Los Angeles, California, from the U.S. Gulf.

17 39. The S/R American Progress is a Jones Act vessel, which makes it one
18 of a select few ships allowed under federal regulations to carry petroleum products
19 between U.S. ports.

20 40. Such tankers very rarely go to foreign ports, as these trips are a waste of
21 these rare ships' limited resources. Yet on June 20, 2015, ExxonMobil sent the
22 tanker from Los Angeles all the way to Singapore, where the S/R American Progress
23 idled and roamed aimlessly until August 31, 2015.

24 41. Singapore is a major international gas hub, where ExxonMobil owns
25 one of the largest refineries in the world—a refinery that produces more than twice
26 as many barrels per day as the largest refinery in California. Moreover, the gasoline
27 ExxonMobil's Singapore refinery produces can be used in California. Yet,
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1 ExxonMobil did not use the S/R American Progress to relieve the Californian
2 gasoline crises.

3 42. Although the S/R American Progress eventually returned to Los
4 Angeles with a full tank of product, it did not unload its cargo. Instead, the tanker
5 left Los Angles without unloading and delivered its gas shipment to Florida.

6 43. ExxonMobil only imported gasoline when it could no longer buy
7 gasoline from third parties and was at risk of failing its contractual obligations.
8 Using a ship called the FPMC 21, ExxonMobil brought gasoline from Singapore to
9 Los Angeles on August 2, 2015, showing that the company was readily able to
10 resupply the Southern California market during the period its Torrance refinery was
11 down. Yet ExxonMobil made no effort to import gasoline to make up for lost
12 production.

13 44. During the time its Torrance refinery was shut down, ExxonMobil
14 imported just twelve million gallons of gasoline, an amount equivalent to only three
15 days of production at the Torrance facility.

16 45. By contrast, the lost production that resulted from the Torrance
17 shutdown during this period was over 800 million gallons, or 20% of Southern
18 California's refining capacity.

19 46. As data from the California State Lands Commission show,
20 ExxonMobil purchased gasoline from other California refiners until it was forced to
21 import gasoline to meet contractual obligations, rather than import to resupply the
22 market, as confirmed by the industry news service, *Platts*.

23 47. Only three of the thirty-two confirmed gasoline shipments to California
24 during the Torrance shutdown were shipments for ExxonMobil: one shipment in
25 March, one in April, and one in August 2015.

26 48. During this time ExxonMobil did, however, continue to import other
27 products that it relies on, such as Alkylate. ExxonMobil purchased the gasoline it
28

1 mixes with Alkylate to provide premium gasoline to the Southern California market
2 from other companies instead of importing it. As the industry news service *Platts*
3 observed, "ExxonMobil has been buying barrels from other refiners and trade houses
4 to meet its commitments."

5 49. ExxonMobil's failure to resupply the California market, when it easily
6 could have, occurred while other companies like Chevron were exporting gasoline
7 from California to further diminish supply, suggesting a collusive effort to
8 manipulate the gasoline market and drive up profits. During the first three quarters
9 of 2015, for example, Chevron exported six days' worth of California gasoline
10 supply. Although Chevron controls only 28% of the market's refining capacity, it
11 was responsible for 66% of all gasoline and additive exports from California during
12 this period.

13 50. Similarly, pursuant to the alleged agreement to decrease supplies,
14 refiners in California continued exporting gas products out of the state. As reported
15 by the *Daily News* on July 27, 2015:

16 On June 25, just one week before many California motorists began
17 paying upwards of \$4.30 per gallon for gasoline, the Bahamian-
18 flagged tanker *Teesta Spirit* left Los Angeles headed for ports on the
19 west coast of Mexico carrying more 300,000 barrels of gasoline
20 refined in California. The *Teesta Spirit* was just one of nine large
21 tankers that left California ports carrying gasoline to places like
22 Mexico and Chile between June 25 and July 23, at a time when oil
23 companies were raising prices by as much as \$1 per gallon in some
24 regions. Altogether, oil companies like Chevron and Phillips 66
25 shipped about 100 million gallons (42 gallons per barrel) of gasoline
26 out of California during that time span. The industry explained its
27 huge price increases, levied this time primarily in Southern California,
28 by citing a shortage caused partly by a February explosion that
disabled a pollution monitoring unit at Exxon Mobil's refinery in
Torrance. No one explained why it should take more than five months
to fix that machinery. Executives of the industry's Western States
Petroleum Association did not respond to repeated telephone attempts
to get their explanations for this and for the gasoline exports, which

1 amounted to sending away almost three full days' statewide supply of
2 gasoline. As the oil companies were shipping out that fuel, they
3 reaped unprecedented profits reportedly approaching \$1.50 for every
gallon of gasoline they sold at the higher prices.

4 Prices, said WSPA President Catherine Reheis-Boyd in a letter
5 responding to a previous column that alleged gasoline price gouging,
are a result of supply and demand.

6 This may be true, but there's ample evidence the oil firms she
7 represents create some of the shortages they cite as a cause of pricing
8 volatility. It's not just the continued exports and any problems at
9 Exxon Mobil in Torrance. They ascribed another price spike earlier
10 this year to shutdowns at refineries in the Martinez/Benicia area
11 northeast of San Francisco. Labor issues, they said, forced those
12 shutdowns. But former employees of one of those plants reported
they've been kept open during previous, similar labor disputes and
could have stayed open this year, too.

13 Said Reheis-Boyd, "All of the many government investigations ... in
14 recent years have concluded that supply and demand are the primary
reason (sic) gas prices go up and down."

15 Shipping information makes it clear any recent shortage was created
16 at least in part by the companies themselves. Here are some examples:
17 The Atlantic Queen left Long Beach headed for Mexico on June 25
18 with a capacity of over 398,000 barrels of gas. The Iver Exact, only
19 slightly smaller, left San Francisco Bay heading for Mexico on June
20 28. The larger Pudu left Long Beach for South and Central America
21 on July 7. Several other tanker departures from both Northern and
22 Southern California ports were scheduled through the first week of
August. How can the industry claim it has short supplies while it's
shipping gas to foreign countries?

23 Why should California residents suffer the pollution produced by
24 gasoline refineries if the owners of those plants manipulate prices by
sending gasoline to foreign users?

25 Said Jamie Court, president of the Consumer Watchdog advocacy
26 group, "Oil refiners have kept the state running on empty and now
27 they are sending fuel refined in California abroad just as the specter of
28 low inventories drives huge price increases.

1 51. Chevron's actions further suggests a pattern by oil refiners to artificially
2 constrain gas supplies to California's market and thereby raise prices, as shown by
3 Consumer Watchdog. Based on documents it obtained pursuant to public records
4 requests from the California State Lands Commission's shipping records, Consumer
5 Watchdog found that Chevron exported 250 million gallons of gas, while gas prices
6 reached \$4.20 per gallon in Southern California in the summer of 2015. Consumer
7 Watchdog's Jaime Court said, "Chevron, during the period we charted last year,
8 brought only three ships in to make up for about three days of lost capacity at that
9 one refinery and it's been out 360 days right now. So when you don't make the
10 gasoline you promise and you don't bring ships in to backfill it, it's going to run the
11 inventory levels way down."

12 52. Consumer Watchdog also reviewed export data and found that between
13 August and September 2015, California's refiners exported over eighty million
14 gallons of refined petroleum products. In a September 3, 2015 press release,
15 Consumer Watchdog stated:

16 Consumer Watchdog's review of industry data also shows that during
17 the last week six tankers are or have loaded up to 2 days of
18 Californians' petroleum supplies at California refineries for foreign
19 export. The capacity of the ships, which are carrying California
20 refined products as opposed to crude oil, totals over 80 million
gallons, which is two days of the state's fragile gasoline supply.

21 Below are the ships that have left California with refined products
22 over the last two weeks.

23 53. In December 2014, refineries exported the most gasoline in history.
24 For the month of December 2014, West Coast refiners exported 2.7 million barrels,
25 or 113 million gallons of gasoline. The exports also constituted the most exports in
26 a quarter ever.

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1 54. June 2015 data showed another record export month. Californians paid
2 \$3.6 billion more for their gasoline than the average U.S. motorist, based on the
3 added pump price from February through May of 2015. "Oil companies created a
4 shortage by selling abroad, and then shutting down refineries, and have made
5 billions at the expense of Californians who are paying a huge premium due to the
6 state's low inventories," Consumer Watchdog's Cody Rosenfield said.

7 55. Further indications of an agreement between Defendants are based on
8 the simultaneous increase of gas prices in February of 2016. "Oil refiners made
9 billions extra last year because of our pain at the pump and after a short respite the
10 pain is going to continue. What's remarkable is that the four major oil refiners all
11 raised the prices to their branded stations, 75% of the Southern California market, in
12 unison and by nearly the same amount. When four refiners control nearly 80% of
13 the gasoline production" and "75% of the stations in the area this market is rigged
14 for refiners' profit and drivers' pain," Rosenfield stated.

15 56. In short, during this time period, imports of gasoline to California came
16 to an abrupt halt, while California inventory was declining toward its lowest point,
17 and exports increased, all in a coordinated fashion.

18 **Defendants Reap Outsized Profits**

19 57. As succinctly stated by Jamie Court, president of Consumer Watchdog,
20 "California's oil refiners are the only industry in America that make a fortune when
21 their factories break down.... The oil companies are acknowledging to investors
22 that that they have been getting fat off the shutdowns in their own refineries even
23 as they refuse to appear before legislators in Sacramento."

24 58. Unsurprisingly, the first quarter of 2015 was one of the most profitable
25 for California refiners in recent history. "Despite refiners' claims that their costs
26 were rising, profits per barrel of gasoline in California actually increased by a
27 staggering amount - disputing industry assertions that higher costs were merely
28

1 being passed to consumers," a June 30, 2015 consumer watchdog publication stated.

2 59. In 2015, average refiner margins in California were nearly \$1 per gallon
3 more than double their sixteen-year average margins of \$0.48 per gallon. During the
4 week of July 13, 2015, oil refiners made a record \$1.61 per gallon. Although the
5 price of crude oil in 2015 dropped to more than half of what it was for much of
6 2014, refiners increased their profit margins, rather than passing on the savings to
7 consumers.

8 60. Tesoro, California's second biggest refiner, shut down its Martinez
9 refinery in early February and had to buy gasoline on the spot market to fulfill
10 contracts, yet it still made a first quarter 2015 profit of \$119 million. Tesoro's
11 CEO Greg Goff trumpeted this news to investors in a May 8, 2015 conference call:
12 "In California, crack spreads [difference between crude oil costs and wholesale
13 prices] have improved related to the unplanned and planned refinery maintenance
14 activities." He also noted: "There's no question that during the first quarter with
15 what happened to Tesoro as a result of the disruption at the Martinez refinery
16 because of the labor disruption and then with other operating and planned
17 maintenance things across the whole system, it was very supportive to the margin
18 environment there."

19 61. Jeff Gustavson, a Chevron general manager made similar comments on
20 May 21, 2015, during an investor call. "Margins increased earnings by \$435 million
21 driven by unplanned industry downtime and tight product supply on the US West
22 Coast."

23 62. For the entire year, Tesoro made \$1.9 billion on California refining, its
24 best year ever by over \$1 billion. Valero tripled its average profits over the previous
25 five years with its \$852 million in California profits in 2015.

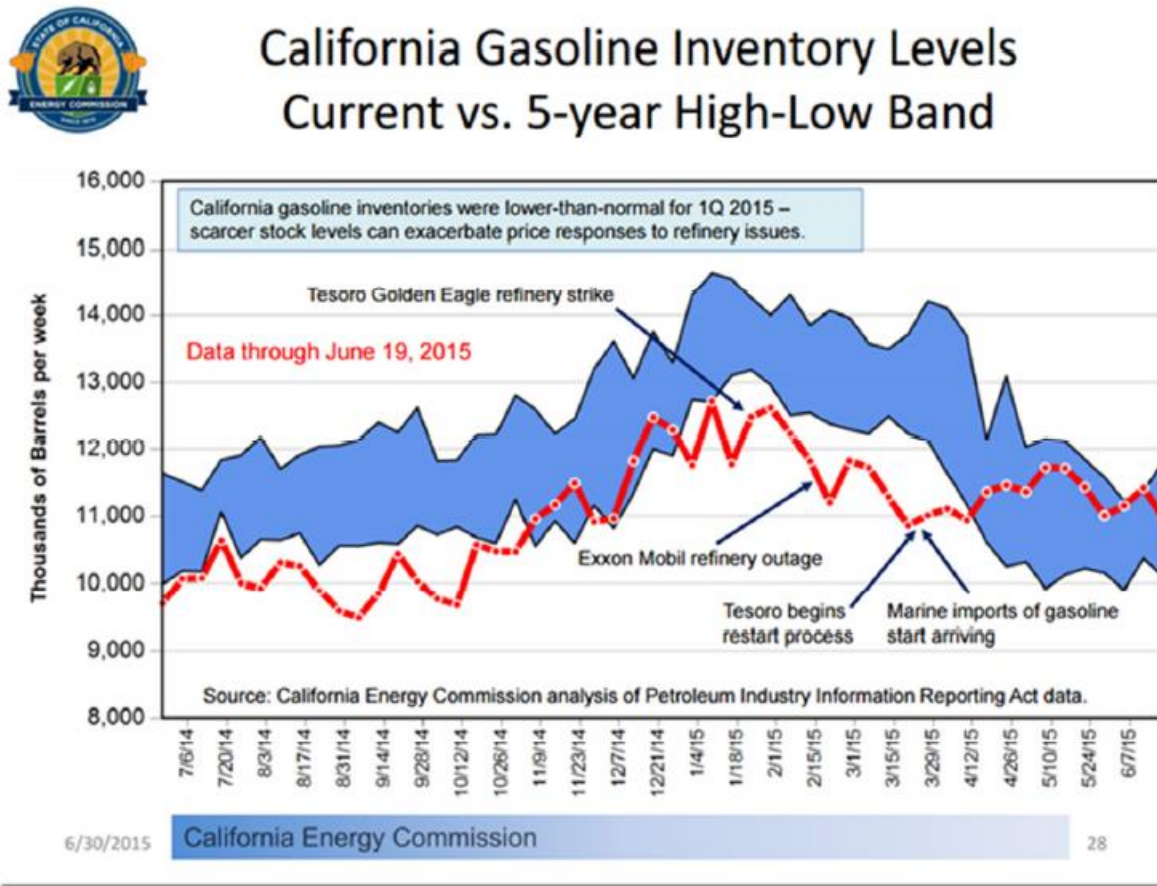
26 63. ExxonMobil, despite having shut down its Torrance refinery for the
27 better part of the 2015 year, nonetheless increased its sales of gasoline in California
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1 by nearly 4% compared with 2014. It did so through exchange agreements with its
2 competitors to use their refineries, including Tesoro, that signaled to the other
3 refiners that Torrance would not be online for a long period of time. The market,
4 however, was left in the dark, as ExxonMobil provided misinformation that the
5 refinery would come back online at various points in the year.

6 64. Materials presented on June 30, 2015 by the California Energy
7 Commission, support the fact that "[r]efinery problems have been significant and
8 sustained during 2015," and that "[t]hese issues have occurred with a backdrop of
9 lower-than normal inventory levels." The Commission also noted: "Strong price
10 spikes at refinery wholesale level quickly transferred through to distribution
11 terminals and retail."

12 65. The following chart shows the low gasoline inventory levels, which
13 can "exacerbate price responses to refinery issues." Further aggravating the issue,
14 refineries know that running on short supply of California's special California Air
15 Resources Board ("CARB")-complaint gasoline (gasoline with 5.7% ethanol as an
16 oxygenate), which is not generally imported into the state, creates a situation
17 where a substitute is not generally available. Therefore, when a refinery goes
18 down, gas prices go up and the refineries profit.

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66. In 2016, refiners continued to reap outlandish profits in the California market.

67. In August 2016, though the price of gas on California's wholesale market was the lowest in the United States, the state had the highest gasoline prices. The discrepancy between wholesale and retail prices is the second highest in history following the Great Recession's spread in October 2008:

"If we have the lowest wholesale price for gasoline we should also have the lowest retail price for gasoline," said Jaime Court, founder of Consumer Watchdog. "The fact that we have the lowest wholesale price for gasoline and the highest retail price for gasoline means that oil refiners are ripping us off."

1 Except in October 2008, when the nation was struggling with the great
2 recession, the gap between wholesale and retail market prices is the
widest it has been.

3 "Usually, it's about 80 cents difference between the wholesale and the
4 street price," said Cody Rosenfeld, a researcher for Consumer
5 Watchdog. "But right now in California, we're charging \$1.60 more
6 per gallon of gasoline than the wholesale price. It's really unheard of.
It's 70 cents more than the usual difference."

7 68. Consumer Watchdog attributed the gap to the unprecedented profits
8 California refineries are reaping in an August 4, 2016 press release:

9 Today oil refiner Tesoro reported \$332 million in profits from
10 California oil refining during the second quarter. Valero had reported
11 \$141 million in state oil refining profits during the second quarter,
12 nearly triple its average quarterly profit of \$57 million. These are the
only two refiners that report California-only oil refining profits.

13 Consumer Watchdog said the high profits from the state refiners that
14 report them helps to explain the odd, extreme current gap between
15 retail and wholesale gasoline prices in the state.

16 Currently, California's wholesale market for gasoline, where oil
17 refiners trade gas, is the cheapest in the country, but California drivers
18 have been paying the highest price in the nation for a gallon of
gasoline on the street

19 The price of gas at the pump in California usually costs 88 cents more
20 than the price on the wholesale market. Today, drivers are paying
21 \$1.58 more than the wholesale market, a windfall for refiners, who are
pocketing most of that extra cost.

22 "With all of California's refineries back online, drivers should be
23 paying 70 cents less at the pump," said Consumer Watchdog
24 researcher Cody Rosenfeld. "There's no shortage. There are no
25 refinery problems. Where are the savings for consumers?" On the
26 California wholesale "spot" market where refiners trade large amounts
27 of gasoline, a gallon costs \$1.17, the lowest in the country, and 18
28 cents less than in Chicago, due to an overabundance of supply.
Despite that, street prices in California are 45 cents more per gallon
than in Chicago.

1 **The Historical Disconnect Between California and the Rest of the Country's**
2 **Gas Prices**

3 69. An August 19, 2015 article in the *Sacramento Bee* noted, "California's
4 current average gasoline price is 98 cents more per gallon than the U.S. average, and
5 was as much as \$1.30 more this year. This gap is unprecedented. Over the 15 years
6 that data have been collected, the price gap has averaged 28 cents."

7 70. The *Los Angeles Times'* Ivan Penn detailed the record sustained
8 discrepancy between California's prices and the prices of gasoline outside the state
9 throughout the U.S., in a June 30, 2016 article:

10 Gas prices in California typically run higher than the rest of the
11 country due to higher-than-average taxes and fees, requirements to
12 produce special low-pollution blends and the relatively small number
13 of refineries in the state.

14 But last summer the gap between the Los Angeles area prices and the
15 rest of the country set records.

16 For instance, California refineries reaped an average of 49.3 cents on
17 a gallon of gasoline from 1999 to 2014, according to the California
18 Energy Commission. But in summer 2015, the average ballooned to
19 88.8 cents, triggered when the refinery troubles in February of that
20 year disabled 7% of the state's capacity at a time of low inventories.

21 Gas prices remain higher than expected, about 68 cents higher in the
22 L.A. area than the rest of the nation.

23 71. The discrepancy continues to this day. Calling it "California's mystery
24 gasoline surcharge," the *San Diego Union Tribune* in an April 8, 2018 article
25 explained that "Even after taking into account state gas taxes, blending requirements
26 aimed at reducing air pollution and other environmental and climate fees attached to
27 each gallon of fuel, it appears drivers in the Golden State pay a lot more than they
28 should." Quoting UC Berkeley professor Severin Borenstein, the article explains
that the current unexplained surcharge is costing California motorists \$12 million a

1 day.

2 **Gas Market in California Is Vulnerable to Manipulation Because of Its**
3 **Structure and Characteristics**

4 72. In addition to the factual data detailed above, which details
5 production coordination between some refineries as well as the windfall profits
6 achieved during the spikes, other characteristics of the market make collusion
7 particularly attractive in this market. Specifically, the market: (i) has high barriers
8 to entry; (ii) has inelasticity of demand; and (iii) is highly concentrated. In
9 addition, the lack of available information and transparency makes it particularly
10 easy for market participants to collude.

11 **High Barriers to Entry**

12 73. A collusive arrangement that raises product prices above competitive
13 levels would, under basic economic principles, attract new entrants seeking to
14 benefit from the supracompetitive pricing. Where there are significant barriers to
15 entry, however, new entrants are less likely to enter the market. Thus, barriers to
16 entry help to facilitate the formation and maintenance of a cartel.

17 74. There are substantial barriers that preclude, reduce, or make entry more
18 difficult into the gasoline market. A new entrant into the business would face costly
19 and lengthy start-up costs, including multimillion-dollar costs associated with
20 research and development, manufacturing plants and equipment, energy,
21 transportation, distribution, infrastructure, skilled labor and long-standing customer
22 relationships.

23 75. In addition to the costs of building a new refinery, given the nature of
24 the product and California's unusual position in the market, any new entrant would
25 have to comply with the various and complex regulations, including environmental
26 regulations, imposed by state and federal agencies. Compliance with the
27 regulations would require extensive testing and the receipt of government
28

1 approvals, all of which would take years.

2 76. Barriers to entry have only grown in the years since the U.S. Senate
3 Majority staff of the Permanent Subcommittee on Investigations issued its report in
4 2002 (the "Senate Report").

5 **The Demand for Gasoline in California Is Inelastic**

6 77. "Elasticity" is a term used to describe the sensitivity of supply and
7 demand to changes in one or the other. For example, demand is said to be
8 "elastic," if an increase in the price of a product results in diminished revenues,
9 with declines in the quantity sold of that product outweighing the effects of higher
10 prices. For products with a highly elastic demand, customers have many feasible
11 alternatives for cheaper products of similar quality, and cut purchases sharply in
12 the face of even small price increases.

13 78. For a 'cartel' to profit from raising prices above competitive levels,
14 market demand must be relatively less elastic at competitive prices, where an
15 increase in price would result in a net increase in profit. A less elastic demand is a
16 market characteristic that facilitates collusion, by allowing producers to raise their
17 prices without triggering customer substitution and sufficient lost sales revenues in
18 order: to offset the beneficial effect of higher prices on profits for products, they
19 still continue to sell.

20 79. Gasoline sales are highly inelastic. People and businesses tend to have
21 set driving patterns, and purchase a similar amount of gasoline no matter what the
22 price is. The Senate Report noted that "demand for gasoline in California is
23 inelastic."

24 80. Small reductions in the supply of gasoline can create sharp increases in
25 the price per gallon. Information about current or future inventory will have a near
26 immediate effect on price.

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1 **The Market for Gasoline in California Is Highly Concentrated**

2 81. The West Coast is an "island" within the North American gasoline
3 market, because there are no gas pipelines across the Rockies. California itself is a
4 smaller island within the West Coast because California law mandates a specific
5 formulation for gas during spring and summer months. There are nineteen refineries
6 on the West Coast, but ownership is concentrated with major oil companies owning
7 two or three refineries each. The top two refiners control nearly half of California
8 capacity, the top four nearly 80%, and Defendants as a whole control over 90%.
9 This is exactly the type of environment where market power is likely to exist,
10 according to the Western States Petroleum Association.



1 82. The Senate Report further noted that California is the second largest
2 gasoline market in the world, following only the United States as a whole. As
3 opposed to other markets, the Senate Report noted "[a] small decrease in supply
4 will produce a large increase in price." Further, the report noted that the
5 California refining industry is an oligopoly, where the top two refiners control
6 nearly half the state's capacity, the top four "refiners owned nearly 80 percent of
7 California capacity," and the top seven players (all of which are defendants
8 herein) account for more than 92% of the market. The Senate Report cites a
9 number of documents from a lawsuit brought against the refiners in 1996, alleging
10 an anticompetitive scheme by the refiners in retaliation to gasoline meeting the
11 stringent specifications of the CARB. The Senate Report concluded that the
12 evidence produced in the case showed recognition by a number of the refiners and
13 petroleum industry consultants that the small numbers of large refiners in California
14 possess a significant degree of market power.

15 83. A document generated by Chevron in 1993 as part of a strategic
16 study, which was produced during discovery in the matter of *Aguilar v. Atlantic*
17 *Richfield Co.*, No. 700810 (Cal. Super. Ct., San Diego Cnty.), and referred to in
18 the Senate Report, also states that a few large refiners dominate the West Coast,
19 and have a significant effect on the market. The Chevron document contrasts
20 the high returns of the refiners in the West Coast market, with the lower returns of
21 refiners in the Gulf Coast, and attributes the difference, in part, to the concentrated
22 nature of the West Coast market: "USWC market appears to allow better average
23 returns than USGC [Gulf Coast]. The better performers generate [returns on
24 capital employed] greater than 12%.... ***Market is dominated by a limited***
25 ***number of large, committed refiner/marketers whose individual actions can***
26 ***have significant market impact.***"

27

28

1 84. Another document relied upon by the Senate in its report was an
2 "Energy Briefing Note" that was generated in 1996 by the PIRA Energy Group, a
3 petroleum industry consulting organization, and presented to all of its "retainer
4 clients," including ExxonMobil, regarding the impact of the introduction of CARB-
5 compliant gasoline on refining margins. The Briefing Note reported that the
6 supply/demand balance in California was likely to be "tight," and would remain so,
7 partially as a result of the market structure in which a few refiners in the state had
8 sufficient market power and motivation to maintain prices above marginal costs:

9 The CARB 2 balance appears to be tight in California. Add in the
10 remoteness of the California market, the unique characteristics of
11 CARB 2, the requirement for domestic shippers to use higher cost
12 Jones Act shipping, *and the small number of companies involved,*
13 *all of whom share a motivation to recoup costs and not*
14 *undermine the market. The implication is that prices on average*
15 *will do quite a bit more than cover marginal costs,* which will mainly
16 comprise the incremental oxygenate cost, although not during the
17 extended phase-in period.

18 85. As the Senate Report found, "this PIRA memo presents a classic
19 description of a market failure. In a purely competitive market, prices do not rise
20 above marginal costs, which are the costs of producing an additional unit of the
21 product."

22 86. The Senate Report, in looking at California, found "the high degree of
23 vertical integration between the refining and marketing sectors raises prices
24 within the state and raises the barriers for others to enter into the market or import
25 gasoline, thus helping to keep the supply/demand balance tight and to sustain
26 higher prices."

27 **Opportunity to Collude—Trade Associations**

28 87. Defendants BP West, Chevron, Tesoro, Shell, ExxonMobil, Valero,
Phillips, and Alon, and various subsidiaries and defendant-affiliated entities, are all

1 members of an interconnected group of trade associations and organizations
2 engaged in extensive lobbying and other activities related to the gas market. These
3 associations, which hold regular meetings, provide numerous opportunities for the
4 defendants to conspire.

5 88. Since the early 1900s, oil and gas companies such as Alon, Chevron,
6 Phillips, ExxonMobil, Shell, Tesoro, and Valero have been members of industry
7 trade associations such as the WSPA; American Petroleum Institute ("API");
8 American Fuel & Petrochemical Manufacturers ("AFPM"); Society of Independent
9 Gasoline Marketers of America ("SIGMA"); and Petroleum Marketers Association
10 of America ("PMAA"). These trade associations are dominated and controlled by
11 the Defendants, as their representatives, predecessors, and affiliates, and actively
12 participated in the trade associations' management and oversight. Further, most of
13 the revenue earned by the trade associations comes from membership fees and
14 other payments from Defendants related to research, lobbying, trade shows, and
15 conferences. While the stated purpose of these trade associations is to ensure that
16 consumers continue to have reliable access to petroleum and petroleum products,
17 Plaintiffs allege certain members of these trade organizations have conspired
18 amongst themselves to use these trade organizations to engage in anticompetitive
19 discussions involving pricing, supply, and production levels.

20 89. The trade associations provided a mechanism and venue through
21 which the conspiracy was facilitated, implemented, and monitored. Defendants
22 met regularly prior to, and following the price spikes in May and October 2012, as
23 well as in 2014 through 2016, attending sponsored meetings, conventions, and
24 conferences hosted by these associations.

25 90. For example, Chevron, Phillips, ExxonMobil, Shell, Tesoro, and
26 Valero are all members of WSPA. The dates that WSPA held meetings and
27 conferences include, but are not limited to: January 13-14, 2010; October 6, 2010;
28

1 February 1-3, 2011; October 4-6, 2011; October 2-3, 2012; October 1-2, 2013, and
2 February 12-13, 2015.

3 91. Chevron, Phillips (board member), ExxonMobil (board member), and
4 Shell are all members of APL. The dates that API held meetings and conferences
5 include, but are not limited to: April 26-28, 2010; November 15-17, 2010; May 16-
6 18, 2011; November 14-16, 2011; March 19-23, 2012; November 12-16, 2012;
7 November 11-13, 2013; April 22-26, 2013; January 9, 2015; February 12, 2015;
8 March 12, 2015; April 9, 2015; May 19, 2015; June 16, 2015; July 21, 2015;
9 August 18, 2015; September 15, 2015; October 20, 2015; January 19, 2016;
10 February 16, 2016; March 15, 2016; April 19, 2016; May 17, 2016; June 21, 2016;
11 July 19, 2016; and August 16, 2016.

12 92. Alon, Chevron, Shell, Tesoro, Phillips, ExxonMobil, and Valero
13 (board member) are all members of AFPM. The dates that AFPM held meetings
14 and conferences include, but are not limited to: March 28-30, 2010; March 27-29,
15 2011; April 2-3, 2012; March 11-13, 2012; March 24-26, 2013; March 17-19,
16 2013; March 23-25, 2014; March 22-24, 2015; and March 13-15, 2016.

17 93. Alon, Chevron, Shell, Valero, ExxonMobil, and Tesoro are all
18 members of SIGMA. The dates that SIGMA held meetings and conferences
19 include, but are not limited to: April 29-May 2, 2010; July 19-21, 2010; November
20 12-14, 2010; November 3-6, 2011. In 2014, SIGMA held an Executive Leadership
21 Conference on January 26-29, 2014, along with other conferences throughout the
22 year. In 2015, SIGMA held their Executive Leadership Conference on February 8-
23 11, 2015. SIGMA also advertised their Masters Programs and Field Trips as "One
24 to two day intensive training programs for fuel marketing leaders and executives."
25 Similarly, they described their Share Groups as "One and a half-day subject-focused
26 training, information sharing, and networking programs for employees of fuel
27 marketing businesses."
28

1 94. ExxonMobil, Shell, Chevron, and Valero are all members of PMAA.
2 The dates that PMAA had meetings and conferences include, but are not limited to:
3 October 4-5, 2010; September 30-October 1, 2011; February 22-24, 2011; February
4 21-23, 2012; April 15-16, 2014; May 13-15, 2014; July 29-31, 2014; August 6-8,
5 2014; September 23-24, 2014; October 6, 7, 7-10, 15, 28-29, 2014; December 5-8,
6 9-10, 2014; August 5-7, 20-23, 31, 2015; September 8-10, 11-12, 13-16, 15, 16, 20-
7 22, 21-23, 21-23, 22-23, 28-30, 2015; and October 10-11, 11-14, 21, 27-28, 2015.

8 95. Not surprisingly, through various organizations, such as WSPA and
9 API, Defendants are also active in lobbying efforts related to the gas industry.
10 WSPA and API members recognized their common interests in promoting the
11 interests of the industry as a whole, and collaborated in lobbying regulatory
12 agencies to further such interests. Because members have a convenient forum to
13 consult each other regarding policy positions, they can ensure that they maintain a
14 united stance.

15 96. For example, the Center for Responsive Politics reported that from
16 2010 through 2013, Phillips spent \$48,289,514 for lobbying efforts; Valero spent
17 \$2,903,000; Tesoro spent \$4,547,287; and ExxonMobil spent \$51,570,000.
18 Likewise, API also spent \$32,550,000 lobbying the oil and gas industry for the same
19 period.

20 **Opportunity to Collude—Information Sharing Services**

21 97. The Defendants have also had ample opportunity to share pricing
22 information with each other. One manner in which Defendants do this is through
23 OPIS, a market price information service whose client list includes most, if not all,
24 of the Defendants, the top 200 oil companies, thousands of distributors, traders,
25 government and commercial buyers and sellers of petroleum products worldwide.
26 OPIS provides real-time and historical spot, wholesale/rack and retail fuel prices for
27 the refined products, renewable fuels, and natural gas and gas liquids (LPG)
28

1 industries. In addition, OPIS delivers exclusive news and insightful analysis on the
2 upstream, midstream, and downstream oil markets. OPIS maintains the world's most
3 comprehensive database of U.S. wholesale petroleum prices, publishing more than
4 30,000 rack prices each day at over 1,500 terminals, in nearly 400 market locations.
5 Through OPIS, Defendants are able to share and access real time information about
6 spot fuel gasoline prices, wholesale rack fuel prices, and retail fuel prices.

7 98. Another opportunity Defendants have to collude is through Platts,
8 another market intelligence company available to all Defendants. Like OPIS, Platts
9 has a wealth of information about gasoline prices in all steps of the supply chain.
10 More concerning is the "Platts eWindow," which brings an immediacy to Platts price
11 discovery process which cannot be experienced anywhere else. Its real-time trading
12 grid layout provides an enhanced, at-a-glance view of all named bids, offers, and
13 transaction data shared during the Platts Market on Close (MOC) price assessment
14 process. According to Platts, this system allows Defendants to "monitor market
15 activity – know who is participating and use the information to analyze [their]
16 performance against specific participants or the rest of the market. The data is
17 available in near real time, allowing you to see developments as they happen" and
18 "gain new levels of market transparency – see all trade data and every unmatched
19 bid and offer."

20 99. Both Platts and OPIS provide Defendants with sophisticated platforms
21 which enable the Defendants to both share gasoline pricing information, and give the
22 Defendants the ability monitor the market to ensure that the market is not flooded
23 with excess gasoline which might drive down prices.

24 **Defendants Have Provided Pretextual Explanations for Their Anticompetitive** 25 **Conduct**

26 100. Throughout the Class Period (as defined herein), the Defendants have
27 provided multiple, pretextual explanations related to their conduct. As detailed
28

1 above, a fire at the Cherry Point refinery was blamed for the May 2012 price spike,
2 even though the length of delay between the decline in product levels and the price
3 increase was far outside of historical norms. Similarly, when there was a fire at the
4 Richmond refinery, it was blamed for a spike in August 2012. But supply was not
5 affected, as the lost production was more than made up by increased production at
6 other refineries, thus calling into question the purported cause. The public was also
7 provided with pretextual explanations of supply shortages being the cause of the
8 October 2012 spikes, but this explanation is also contradicted by the data, because
9 inventories actually *increased* up to, and during the price spikes in 2012. In a
10 competitive market, this should have brought the prices down.

11 **Defendants Have Acted Against Their Independent Self-Interest**

12 101. Indicative of Defendants' conspiratorial conduct are various actions
13 taken against each individual defendant's economic self-interest. Defendants have
14 acted against their independent economic interest in numerous ways, including by
15 exporting gas out of California including during periods where California's gasoline
16 prices were the highest in the nation. Jones Act vessels have come to California
17 without gasoline or refused to unload their cargo in California, despite the fact that
18 stocks were running low. Furthermore, Defendants have decreased production, i.e.,
19 supply, by going forward with unnecessary maintenance procedures when other
20 refineries were inoperable due to purportedly unplanned outages. Indeed, the CEO
21 of the company that acquired ExxonMobil's Torrance refinery stated that he
22 "personally believe[d]" that "Exxon probably had made a decision that they were not
23 going to run a single refinery operation in the state of California." Furthermore, a
24 number of refineries permitted dangerous conditions at refineries to fester, which
25 predictably materialized into shutdowns resulting in costly supply decreases.

26

27

28

1 **Lack of Transparency**

2 102. Analysts have been hamstrung from assessing additional super-
3 competitive price spikes in the California gasoline market by the lack of public
4 disclosure of data, including outages and maintenance schedules, among other
5 matters.

6 103. The lack of transparency also facilitates collusion, as Consumer
7 Watchdog explained:

8 Though the industry is far more consolidated than it was 15 years ago,
9 another complicating factor is the total lack of industry transparency.
10 Refineries keep tight control over data concerning their industry and
11 operations. The California Energy Commission, which is the state's
12 primary energy policy and planning agency, does not release any
13 public estimates of days of supply. Indeed, it is not even clear that the
14 agency has the data necessary to make this calculation with 100
15 percent accuracy.

16 This information would be critical to know in case of a statewide or
17 national disaster. No real time collection of data exists. The EIA's
18 inventory data is three months behind, and this federal agency does
19 not keep track of current days of supply. No federal or state agency
20 maintains centralized information on current or historical refinery
21 status whether a refinery is closed, for how long, whether the refinery
22 had an accident, how much of its capacity the refinery is utilizing, and
23 how big its gas reserves are on hand. Thus the public remains in the
24 dark on refinery operations, and traders can run up the price of gas
25 more easily on mere speculation.

26 104. At the same time, refineries keep tight control over data concerning
27 their industry and operations. The California Energy Commission, which is the
28 state's primary energy policy and planning agency, does not release any public
estimates of days of supply. No real-time collection of data exists. The EIA's
inventory data is three months behind, and this federal agency does not keep track of
current days of supply. No federal or state agency maintains centralized information
on current or historical refinery status, whether a refinery is closed, for how long, if

1 they had an accident, how much capacity is being utilized, and how big gas reserves
2 are. Thus, the public remains in the dark on refinery operations. Defendants are
3 able to take advantage of the dearth of information on refinery operations, thus
4 allowing prices to be run up on mere speculation and misinformation. By contrast,
5 refiners are well aware of this information through exchange agreements, which are
6 agreements that allow refiners to exchange petroleum products with other refiners at
7 an agreed rate of exchange. Through such agreements, refiners acquire refined
8 products to supplement supply to their customers when they are short on supply.
9 The exchange agreements signal to the other refiners the amount of time a refinery
10 will be offline. This type of signaling is a recognized plus factor.

11 105. Bob van der Valk, senior editor of the *Bakken Oil Business Journal*,
12 reached a similar conclusion, "[w]e have an ill-equipped market, so it is prime to be
13 manipulated and it is being manipulated."

14 **Investigations**

15 106. Senators and representatives have urged the government to delve into
16 the price spikes over the years. For example,

17 107. Senator Dianne Feinstein also wrote to the Federal Trade Commission
18 ("FTC") requesting an investigation. Senator Feinstein expressed concern that the
19 FTC had failed "to take action to protect California consumers from malicious
20 trading schemes in the California gasoline market." She requested that the FTC
21 "open an immediate investigation into price spikes in California, to begin collecting
22 relevant data on California's gasoline markets, and to establish a permanent market
23 monitoring team." She also requested that the "FTC immediately seek data sharing
24 agreements that will allow it to monitor gasoline and oil markets actively and
25 effectively. Data on prices, trading activity, refinery output, demand, stocks, and
26 other information are vital to determine if trading activities reflect fraud,
27 manipulation, or other malicious trading practices."
28

1 108. Senator Feinstein closed her letter with a call for serious and aggressive
2 enforcement: "California's consumers are all too familiar with energy price spikes
3 which cannot be explained by market fundamentals, and which turn out years later
4 to have been the result of malicious and manipulative trading activity.... I call on
5 the FTC to act immediately and aggressively to protect California's consumers."
6 To date, while it is believed investigations are ongoing, no action has been taken
7 regarding the May and October 2012 spikes, despite significant evidence that the
8 price spikes were the result of manipulative and collusive conduct by Defendants.

9 109. Then, following the issuance of the McCullough Report, Congressman
10 Peter DeFazio of (D. Or.) on November 19, 2012, wrote to then Attorney General
11 Eric Holder, calling the lack of progress on an investigation into high West Coast
12 gas prices "intolerable." Congressman Defazio noted in the letter that he had written
13 "to the so-called Gas Price Fraud Working Group calling for an investigation.
14 Nothing happened. I wrote to the president and raised the issue of market
15 manipulation by California refineries. Nothing. It's time for the Department of
16 Justice to step up and do what they are supposed to do: crack down on, or at least
17 investigate, illegal energy market activity."

18 110. Congressman DeFazio continued: "Basically, this independent research
19 shows that California refineries were misleading the public. Refinery outages and
20 maintenance shutdowns just provided a convenient excuse and explanation for
21 'declining' gas production so they could jack up the price of refined gasoline....
22 Hugely profitable oil companies who continue to look for every opportunity to rip
23 off American drivers need to be held accountable for their blatant market
24 manipulation. Enough is enough. Serious action is needed now."

25 111. Congressman DeFazio's letter further claimed "these devastatingly
26 high gas prices on the West Coast appear to be a result of market abuses by a
27 handful of California refineries – not the 'dynamics of supply and demand' as the
28

1 oil and gas industry has facetiously claimed for decades while laughing all the way
2 to the bank." The Congressman further noted: "The behavior of California
3 refineries over the last six months has been suspicious at best and malicious at
4 worst."

5 112. In April 2011, then Attorney General Holder announced the creation of
6 the Oil and Gas Price Fraud Working Group ("Working Group") "to help identify
7 civil or criminal violations in the oil and gasoline markets, and to ensure that
8 American consumers are not harmed by unlawful conduct."

9 113. The Working Group was cochaired by the Commodities Futures
10 Trading Commission, Federal Trade Commission, and the National Association of
11 Attorney Generals. Other Working Group members include the Department of the
12 Treasury, the Federal Reserve Board, the Securities and Exchange Commission, the
13 Department of Justice's Criminal Division, Civil Division, and Antitrust Division,
14 the Federal Bureau of Investigations, the United States Attorney's Office for the
15 Western District of New York, the Executive Office for United States Attorneys, as
16 well as the Departments of Agriculture and Energy.

17 114. When the Working Group was formed, the intention was to explore
18 whether there was any evidence of manipulation of oil and gas prices, collusion,
19 fraud, or misrepresentations at the retail or wholesale levels that would violate state
20 or federal laws. The working group also explored whether consumers or the federal
21 government as a purchaser of oil and gas were harmed, and to evaluate
22 developments in commodities markets, including an examination of investor
23 practices, supply and demand factors, and the role of speculators and index traders in
24 oil futures markets.

25 115. To date, the Working Group has issued no reports regarding the May
26 and October 2015 price spikes, although it is believed that based on calls to action
27 by members of Congress, an investigation is ongoing.

28

1 **California's Rules Regarding Gasoline Formation Is Not Responsible for the**
2 **Sustained Supracompetitive Pricing**

3 116. On August 16, 2016, Edie Chang, Deputy Executive Officer of the
4 CARB, detailed the following reasons why California's reformulated gasoline
5 requirements do not explain the price spikes in 2015:

6 CARB does not believe the California Reformulated Gasoline
7 (CaRFG) rule was a significant factor in the recent gasoline price
8 spike:

- 9 • CaRFG regulations have remained unchanged since 2012;
- 10 • Prior supply disruptions and associated price increases (under the
11 same CaRFG rules) have been much shorter in duration;
- 12 • There is significant global refining capacity that can make
13 California Reformulated Gasoline Blendstock for Oxygenate
14 Blending (CARBOB);
- 15 • California refiners routinely assert that the State's refineries have
16 excess gasoline production capacity and that the industry is highly
17 exposed to import competition if compliance costs under AB 32
18 become too great; and
- 19 • Like the PMAC we are concerned with the length and magnitude
20 of the California vs. national gasoline price differentials that have
21 occurred since early 2015, but we have yet to see convincing
22 evidence that the proposed mechanism is an appropriate way to
23 address price differentials.

24 **JURISDICTION AND VENUE**

25 117. This Court has both personal and subject matter jurisdiction over this
26 case, pursuant to 28 U.S.C. §1332(d) and the Class Action Fairness Act of 2005
27 ("CAFA"), 28 U.S.C. §1711, *et seq.*, which vests original jurisdiction in the district
28 courts of the United States for any class action where the aggregate amount in
controversy exceeds \$5 million and where the citizenship of any member of the class
of plaintiffs is different from that of any defendant. The \$5 million amount in

1 controversy and diverse-citizenship requirements of CAFA are satisfied in this case.

2 118. Venue is proper in this District because a substantial part of the events
3 giving rise to Plaintiffs' claims occurred in this District, a substantial portion of the
4 affected trade and commerce discussed below has been carried out in this District,
5 and one or more of the Defendants resides in, is licensed to do business in, is doing
6 business in, had agents in, or is found or transacts business in, this District.

7 119. This Court has personal jurisdiction over each of the Defendants
8 because, *inter alia*, each of the Defendants: (i) transacted business in this District;
9 (ii) provided services in this District; (iii) had substantial contacts with this District;
10 and/or (iv) was engaged in an illegal conspiracy that was directed at, and had the
11 intended effect of causing injury to persons residing in, located in, or doing business
12 in this District.

13 120. The anticompetitive conduct, and its effects on California commerce
14 described herein, proximately caused antitrust injury to Plaintiffs and members of
15 the Class.

16 121. By reason of the unlawful activities alleged herein, Defendants
17 substantially affected commerce in California, causing injury to Plaintiffs and
18 members of the Class.

19 122. Defendants' conspiracy and wrongdoing described herein adversely
20 affected persons in California, including Plaintiffs and members of the Class.

21 123. Many of the unlawful acts occurred in California and, more
22 particularly, in San Diego County. Plaintiffs are all residents of San Diego. In
23 addition, all Defendants do business in San Diego County, and venue is therefore
24 proper in the Southern District of California.

25 **PARTIES**

26 124. Plaintiff David Rinaldi is a San Diego, California, resident and drives
27 for both Lyft and Uber. Plaintiff Rinaldi has driven tens of thousands, if not
28

1 hundreds of thousands, of miles in the course of driving for Lyft and Uber. During
2 the Class Period, Plaintiff Rinaldi purchased gasoline in San Diego that was
3 processed by one or more of the Defendants' refineries. Plaintiff Rinaldi paid more
4 than he would have, absent Defendants' illegal actions.

5 125. Plaintiff Joshua Ebright is Colorado citizen. Plaintiff Ebright is a
6 member of the United States Navy that is currently stationed and living in San
7 Diego, California. During the Class Period, Plaintiff Ebright purchased gasoline in
8 San Diego that was processed by one or more of the Defendants' refineries. Plaintiff
9 Ebright paid more than he would have, absent Defendants' illegal actions.

10 126. Plaintiff Paul Lee is a San Diego, California, resident. During the Class
11 Period, Plaintiff Lee purchased gasoline in San Diego that was processed by one or
12 more of the Defendants' refineries. Plaintiff Lee paid more than he would have,
13 absent Defendants' illegal actions.

14 127. Defendant BP West is a Delaware limited liability company with
15 principal executive offices located at 4519 Grandview Road, Blaine, Washington.
16 Defendant BP West owns and operates a network of gas and fueling stations in
17 California, Oregon, Washington, Nevada, and Arizona. During the Class Period,
18 defendant BP West operated a 650 acre refinery in Carson, California, with a crude
19 oil distillation capacity of 266,000 barrels per day. Defendant BP West operates as a
20 subsidiary of BP p.l.c.

21 128. Defendant Chevron is a Pennsylvania corporation with principal
22 executive offices located at 6001 Bollinger Canyon Road, San Ramon, California.
23 Defendant Chevron explores, extracts, and produces crude oil, natural gas, and
24 natural gas liquids. Defendant Chevron also refines, markets, and distributes
25 products derived from petroleum other than natural gas liquids. Defendant Chevron
26 was formerly known as Gulf Oil Corporation. Defendant Chevron operates as a
27 subsidiary of Chevron Corporation. Defendant Chevron operates refineries in
28

1 Richmond and El Segundo, California. According to defendant Chevron, its
2 Richmond refinery processes approximately 250,000 barrels of crude oil per day and
3 produces gasoline that fuels roughly 20% of the cars driven on Northern California
4 roads, and its El Segundo refinery typically processes 235,000 barrels of crude oil
5 per day and has 20% of the gasoline market share in Southern California.

6 129. Defendant Tesoro is a Delaware limited liability company with
7 principal executive offices located at 19100 Ridgewood Parkway, San Antonio,
8 Texas. Defendant Tesoro offers refining and marketing of motor fuels and
9 petroleum products. Defendant Tesoro was formerly known as Tesoro West Coast
10 Company, LLC and changed its name to Tesoro Refining & Marketing Company
11 LLC in January 2002. Defendant Tesoro, incorporated in 1996, operates as a
12 subsidiary of Andeavor (f/k/a Tesoro Corporation). Defendant Tesoro operates
13 refineries in Los Angeles and Martinez, California. According to Tesoro, its Los
14 Angeles refinery is the largest refinery on the West Coast of the United States.

15 130. Defendant Shell is a Delaware limited liability company with principal
16 executive offices located at 150 N. Dairy Ashford, Houston, Texas. Defendant Shell
17 operates refineries and crude oil pipelines in the western United States. Defendant
18 Shell also operates a network of gasoline stations in the United States. Defendant
19 Shell's Martinez refinery has been in operation since 1915. Defendant Shell is a
20 wholly-owned subsidiary of Royal Dutch Shell plc.

21 131. Defendant ExxonMobil is a New Jersey corporation with principal
22 executive offices located at 5959 Las Colinas Boulevard, Irving, Texas. Defendant
23 ExxonMobil operates as a subsidiary of ExxonMobil Corporation. Defendant
24 ExxonMobil's Torrance refinery covers 750 acres, employs approximately 650
25 employees and 550 contractors, processes an average of 155,000 barrels of crude oil
26 per day, and produces 1.8 billion gallons of gasoline per year. During the Class
27 Period, the Torrance facility regularly provided 10% of California's gasoline
28

1 capacity and 20% of the capacity in Southern California.

2 132. Defendant Valero is a Delaware corporation with principal executive
3 offices located at One Valero Way, San Antonio, Texas. Defendant Valero refines
4 and markets crude oil in the United States and internationally. Defendant Valero's
5 activities include refining operations, wholesale marketing, product supply and
6 distribution, and transportation operations primarily in the Gulf Coast, Mid-
7 Continent, West Coast, and northeast regions.

8 133. Defendant Phillips is a Delaware corporation with principal executive
9 offices located at 600 N. Dairy Ashford, Houston, Texas. During the Class Period,
10 defendant Phillips operated a San Francisco refinery that was comprised of two
11 facilities linked by a 200-mile pipeline: the Santa Maria facility, located in Arroyo
12 Grande, California, and the Rodeo facility, located in the San Francisco Bay Area.

13 134. Defendant Alon is a Delaware corporation with principal executive
14 offices located at 12700 Park Central Drive, Dallas, Texas. Defendant Alon is
15 refiner and marketer of petroleum products, operating primarily in the South Central,
16 Southwestern, and Western regions of the United States. Alon's Bakersfield refinery
17 has a capacity of 70,000 barrels a day and comprises over 600 acres of land. In July
18 2017, defendant Alon was acquired by Delek US Holdings, Inc. ("Delek") and is
19 now Delek's wholly-owned subsidiary.

20 135. Each of the Defendants is a participant in the California gasoline
21 refinery market.

22 136. The true names and capacities of defendants sued herein under
23 California Code of Civil Procedure section 474 as Does 1 through 25, inclusive, are
24 presently not known to Plaintiffs, who therefore sue these defendants by such
25 fictitious names. Plaintiffs will seek to amend this Complaint and include these Doe
26 defendants' true names and capacities when they are ascertained. Each of the
27 fictitiously named defendants is responsible in some manner for the conduct alleged
28

1 herein and for the injuries suffered by the Class.

2 **CLASS ALLEGATIONS**

3 137. Plaintiffs bring this action as a class action pursuant to Rules 23(a),
4 (b)(2), and b(3) of the Federal Rules of Civil Procedure on behalf of all Class Members.

5 The Class is defined as:

6 All persons or entities that purchased or paid the retail price for gasoline
7 for consumption by themselves, their families, or their members,
8 employees, or insured in California that was refined or produced by a
9 defendant during the Class Period (February 1, 2012 to present) and
10 were damaged thereby. Excluded from the Class are defendants, their
11 parent companies, subsidiaries, and affiliates, any coconspirators,
governmental entities, and instrumentalities of the government, states,
and their subdivisions, agencies, and instrumentalities.

12 138. The Class is ascertainable and is one for which records should readily
13 exist.

14 139. Plaintiffs do not know the exact size of the Class, but because the nature
15 of the trade and commerce involved, Plaintiffs believe that there are millions of Class
16 members as above described, the exact number and their identities is not presently
17 known, but can be determined through appropriate discovery.

18 140. There is a well-defined community of interest among Plaintiffs and the
19 members of the Class. Because Defendants have acted in a manner generally
20 applicable to the Class, questions of law and fact common to members of the Class
21 predominate over questions, if any, that may affect only individual members of the
22 Class. Such generally applicable conduct is inherent in Defendants' wrongful and
23 anticompetitive conduct.

24 141. There are questions of law and fact common to the Class, including:

25 (a) whether Defendants and their coconspirators engaged in an
26 agreement, combination, or conspiracy to fix, raise, elevate, maintain, or stabilize
27 prices of gasoline in California;

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- 1 (b) the identity of the participants of the alleged conspiracy;
- 2 (c) the duration of the conspiracy alleged herein and the acts
- 3 performed by Defendants and their coconspirators in furtherance of the conspiracy;
- 4 (d) whether Defendants violated the Cartwright Act;
- 5 (e) whether Defendants violated the UCL;
- 6 (f) whether the conduct of Defendants and their coconspirators, as
- 7 alleged in this Complaint, caused injury to the business or property of Plaintiffs and
- 8 the other members of the Class;
- 9 (g) the effect of Defendants' alleged conspiracy on the prices of
- 10 gasoline in California during the Class Period;
- 11 (h) the appropriate Class-wide measure of damages; and
- 12 (i) the appropriate nature of Class-wide injunctive or other
- 13 equitable relief.

14 142. There are no defenses of a unique nature that may be asserted against any
15 Plaintiff individually, as distinguished from the other members of the Class, and the
16 relief sought is common to the Class.

17 143. Plaintiffs are members of the Class and their claims are typical of the
18 claims of the other members of the Class. Plaintiffs were damaged by the same
19 wrongful conduct of Defendants.

20 144. Plaintiffs will fairly and adequately protect the interests of other Class
21 members because they have no interests that are antagonistic to, or that conflict with,
22 those of any other Class member. Rather, Plaintiffs' interests are coincident with those
23 of the other members of the Class.

24 145. Plaintiffs are committed to the vigorous prosecution of this action and
25 have retained competent counsel, experienced in litigation of this nature, to represent
26 them and the other members of the Class.

27 146. A class action is the superior method for the fair and efficient adjudication
28

1 of this controversy. Class treatment will enable a large number of similarly situated
2 parties to prosecute their claims in a single forum simultaneously, efficiently, and
3 without the unnecessary duplication of evidence, effort, and expense that would result if
4 individual actions were pursued.

5 147. This case is also manageable as a class action. Plaintiffs know of no
6 difficulty to be encountered in the prosecution of this action that would preclude its
7 maintenance as a class action.

8 148. Defendants' unlawful acts alleged in this Complaint had a substantial
9 effect on commerce and caused antitrust injury to Plaintiffs and the Class.

10 149. Defendants' unlawful acts had the purpose and effect of manipulating the
11 price of gasoline sold in California.

12 150. As a direct result of Defendants' violations, Plaintiffs and the members of
13 the Class have been damaged in their property or business.

14 151. As a direct and foreseeable result of Defendants' unlawful anticompetitive
15 acts, the price of gasoline sold in California was manipulated and inflated.

16 **ANTICOMPETITIVE CONDUCT BY THE DEFENDANTS**

17 152. Defendants are horizontal competitors.

18 153. The conspiracy consisted of a continuing agreement, understanding, or
19 concerted action between and among Defendants and their coconspirators in
20 furtherance of which Defendants fixed, maintained, or made artificial prices for
21 gasoline sold in California during the Class Period. Defendants' conspiracy
22 constitutes a *per se* violation of the Cartwright Act and is an unreasonable and
23 unlawful restraint of trade and an unlawful, unfair, or fraudulent practice under the
24 UCL.

25 154. At all relevant times, other corporations, individuals, and entities
26 willingly conspired with Defendants in their unlawful and illegal conduct.
27 Numerous individuals and entities participated actively during the course of and in
28

1 furtherance of the scheme described herein. The individuals and entities acted in
2 concert by joint ventures and by acting as agents for principals, in order to advance
3 the objectives of the scheme to benefit Defendants and themselves through the
4 manipulation of gasoline prices in California.

5 **PLAINTIFFS' CLAIMS ARE TIMELY**

6 155. Plaintiffs bring their claims within the statute of limitations.

7 156. Even though Plaintiffs' claims are timely, facts indicating Defendants
8 were engaging in misconduct that caused gasoline prices in California to be
9 artificially manipulated were actively concealed by Defendants.

10 **PLAINTIFFS AND THE CLASS SUFFERED ANTITRUST INJURY**

11 157. Plaintiffs have suffered significant injury as a result of Defendants'
12 gasoline price manipulation conspiracy.

13 158. Defendants' price-fixing conspiracy had the following effects, among
14 others: (i) price competition has been restrained or eliminated with respect to gasoline
15 sold in California; (ii) the price of gasoline sold in California has been fixed, raised,
16 maintained, or stabilized at artificially inflated levels; and (iii) purchasers of gasoline
17 sold in California have been deprived of free and open competition. During the Class
18 Period, Plaintiffs and the members of the Class paid supracompetitive prices for
19 gasoline sold in California.

20 159. By reason of the alleged violations of California laws, Plaintiffs and the
21 members of the Class have sustained injury to their businesses or property, having paid
22 higher prices for gasoline sold in California than they would have paid in the absence of
23 Defendants' illegal contract, combination, or conspiracy, and, as a result, have suffered
24 damages in an amount presently undetermined. This is an antitrust injury of the type
25 that the antitrust laws were meant to punish and prevent.

26 160. In formulating and effectuating the contract, combination, or conspiracy,
27 Defendants and their coconspirators engaged in anticompetitive activities, the purpose
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1 and effect of which were to fix, maintain, suppress, inflate, and otherwise make
2 artificial the price of gasoline sold in California.

3 161. Plaintiffs suffered antitrust injury in that they paid more for gasoline than
4 they would have paid had the manipulation not occurred.

5 162. Injury to Plaintiffs and the Class also resulted from Defendants'
6 deprivation of the benefits of free and open competition in the market for gasoline sales.

7 163. Plaintiffs suffered antitrust injury as a result of Defendants' actions.

8 **COUNT I**

9 **Violations of the Cartwright Act**

10 164. Plaintiffs incorporate by reference and reallege each and every
11 allegation contained above, as though fully set forth herein.

12 165. The acts and practices detailed above violate the Cartwright Act, Cal. Bus.
13 & Prof. Code §16700, *et seq.*

14 166. It is appropriate to bring this action under the Cartwright Act because
15 many of the illegal agreements were made in California, the purchasers reside in
16 California, the refineries at issue are in the state and because other overt acts in
17 furtherance of the conspiracy and overcharges flowing from those acts occurred in
18 California, and the Class purchased gasoline in California.

19 167. As detailed above, the anticompetitive conduct described constitutes a *per*
20 *se* violation of California's antitrust laws and is an unreasonable and unlawful restraint
21 of trade. The anticompetitive effects of Defendants' conduct far outweigh any
22 purported nonpretextual, procompetitive justification.

23 168. As a proximate result of Defendants' unlawful conduct, Plaintiffs and the
24 members of the Class they seek to represent have been injured in their business or
25 property in violation of the Cartwright Act, Cal. Bus. & Prof. Code §16700, *et seq.*, by
26 paying supracompetitive prices for gasoline during the Class Period. Such overcharges
27 are the type of injury the antitrust laws were designed to prevent and flow directly from
28

1 Defendants' unlawful conduct. Plaintiffs and members of the Class are proper entities
2 to bring a case concerning this conduct.

3 169. Plaintiffs and members of the Class have standing to and hereby seek
4 monetary relief, including treble damages, together with other relief, as well as
5 attorneys' fees and costs, as redress for Defendants' Cartwright Act violations.

6 **COUNT II**

7 **Violations of the Unfair Competition Law**

8 170. Plaintiffs incorporate by reference and reallege each and every
9 allegation contained above, as though fully set forth herein.

10 171. Plaintiffs bring this claim under sections 17203 and 17204 of the Cal. Bus.
11 & Prof. Code to enjoin, and obtain restitution and disgorgement of all monetary gains
12 that resulted from acts that violated section 17200 of the Cal. Bus. & Prof. Code,
13 commonly known as the UCL.

14 172. Plaintiffs and the members of the Class have standing to bring this action
15 under the UCL because they have been harmed and have suffered injury by being
16 forced to pay inflated, supracompetitive prices for gasoline sold in California during the
17 Class Period.

18 173. In formulating and carrying out the alleged agreement, understanding, and
19 conspiracy, Defendants and their coconspirators did those things that they combined
20 and conspired to do, including, but not limited to, the acts, practices, and course of
21 conduct set forth herein, and these acts constitute unfair competition in violation of the
22 UCL.

23 174. Defendants' conspiracy had the following effects, among others: (i) price
24 competition in the market for gasoline sold in California during the Class Period was
25 restrained, suppressed, and/or eliminated; (ii) prices for gasoline sold in California
26 during the Class Period sold by Defendants and their coconspirators have been fixed,
27 raised, maintained, and stabilized at artificially high, noncompetitive levels; and (iii)

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1 Plaintiffs and members of the Class who purchased gasoline sold in California during
2 the Class Period directly from Defendants have been deprived of the benefits of free
3 and open competition.

4 175. As a direct and proximate result of Defendants' anticompetitive conduct,
5 Plaintiff and members of the Class have been injured in their business or property by
6 paying more for gasoline sold in California during the Class Period purchased directly
7 from Defendants than they would have paid the absence of the conspiracy.

8 176. The anticompetitive behavior, as described above, is unfair,
9 unconscionable, unlawful, and fraudulent, and in any event it is a violation of the policy
10 or spirit of the UCL.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs, on behalf of themselves and the Class, pray that the
13 Court:

14 A. Determine that this action may be maintained as a class action pursuant
15 to Fed. R. Civ. P. 23(a), (b)(2), and (b)(3), and direct that reasonable notice of this
16 action, as provided by Fed. R. Civ. P. 23(c)(2) be given to the Class, and declare
17 that the Plaintiffs are representative of the Class;

18 B. Enter joint and several judgments against Defendants and in favor of
19 Plaintiffs and the Class, awarding them damages as a result of Defendants' unlawful
20 conduct alleged in this Complaint, plus treble damages and all other available
21 damages, including any statutory or liquidated damages or otherwise;

22 C. Award to Plaintiffs and the Class their costs of suit, including
23 reasonable attorneys' and experts' fees and expenses;

24 D. Order that Defendants, their directors, officers, employees, agents,
25 successors, members, and all persons in active concert and participation with them
26 be enjoined and restrained from, in any manner, directly or indirectly, committing
27 any additional violations of the law as alleged herein; and
28

1 E. Award any other and further relief as the Court may deem just and
2 proper.

3 **JURY DEMAND**

4 Plaintiffs respectfully demand a trial by jury on all issues so triable.

5 Dated: June 21, 2018

ROBBINS ARROYO LLP
BRIAN J. ROBBINS
GEORGE AGUILAR
MICHAEL NICOUD

8 */s/Brian J. Robbins*

9 **BRIAN J. ROBBINS**

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14 Attorneys for Plaintiffs

26 1275522

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

David Rinaldi, Joshua Ebright, and Paul Lee

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Brian J. Robbins, Robbins Arroyo LLP
600 B Street, Suite 1900, San Diego, CA 92101
Tele: (619) 525-3990

DEFENDANTS

BP West Coast Products LLC, Chevron U.S.A. Inc., Tesoro Refining & Marketing Company LLC, Equilon Enterprises LLC, et. Al.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'18CV1377 BEN JLB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

LRC

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation - Transfer
- 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §11332(d), and 28 U.S.C. §1711, et seq **28:1715, Class Action Fairness Act of 2005 - LRC**
 Brief description of cause:
Class action for for violations of California's Cartwright Act and Unfair Competition law

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____
 CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Hon. James Lorenz DOCKET NUMBER 3:15-cv-01749-L-AGS

DATE 06/21/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ Brian J. Robbins

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; NOTE: federal question actions take precedence over diversity cases.)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Antitrust Class Action Claims Gas Companies Conspired to Fix Prices in California](#)
