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Amalia Rodriguez-Mendoza
District Clerk
Travis District
D-1-GV-11-001368

NO. _____

STATE OF TEXAS,	§	**IN THE DISTRICT COURT OF**
Plaintiff,	§	
	§	
v.	§	
	§	
SUN DEVELOPMENT, L.P.; SD GP, L.L.C.; PETROLEUM WHOLESALE, L.P.; PWI GP, L.L.C.; JC CAPITAL, LP; JOHN W. COOK; MARC COOK; and MARC BUMBERA,	§	**OF TRAVIS COUNTY, TEXAS**
Defendants.	§	**_____ JUDICIAL DISTRICT**
	§	

STATE'S ORIGINAL PETITION AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION

TO THE HONORABLE DISTRICT JUDGE:

Is "premium" gas always 93 octane?[1] When Texas drivers purchase premium gas, are they always getting what they pay for? Unfortunately, due to Defendants' practice of "cross-dumping" – pouring regular fuel into premium and mid-grade underground storage tanks – the answer to both of these questions is "no." By this suit, Texas seeks to end these deceptive practices and Defendants' misrepresentations to Texas consumers.

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[1] "An octane number or octane rating of a gasoline is a measure of the anti-knock quality of a gasoline or its ability to resist knock during combustion in an engine . . . . The sole function of octane is to control knock . . . . Use of a gasoline with an anti-knock quality exceeding the requirements of a particular engine is non-advantageous. . . ." *In re Sun Oil Co.*, 84 F.T.C. 247, findings of fact (FF) 54, 55 (Federal Trade Comm'n 1974) (references omitted).

In Texas, the most common levels of octane grade are 87 (regular), 89 (mid-grade) and 93 (premium). The octane number of the gasolines offered for sale are set by gasoline refiners and marketers based on their perception of the technical and competitive needs in the market. See American Petroleum Institute, GASOLINE – IS IT ALL THE SAME? WHAT ABOUT OCTANE? www.api.org, (December 10, 2008) (the API represents approximately 300 companies involved in all aspect of the oil and gas industry).

The STATE OF TEXAS, acting by and through The Attorney General of Texas, GREG ABBOTT, complains that Defendants SUN DEVELOPMENT, L.P.; SD GP, L.L.C.; PETROLEUM WHOLESALE, L.P.; PWI GP, L.L.C.; JC CAPITAL, LP; JOHN W. COOK; MARC W. COOK; and MARC BUMBERA have violated the DTPA, as described below:

I. DISCOVERY CONTROL PLAN

1.1 The State requests that discovery be conducted under a LEVEL 2 discovery control plan pursuant to Texas Rule of Civil Procedure 190.3.

II. PLAINTIFF

2.1 This suit is brought in the name of the State of Texas by its Attorney General and his Consumer Protection and Public Health Division, in the public interest, and under the authority granted to him by the Deceptive Trade Practices – Consumer Protection Act (Tex. Bus. & Com. Code Ann. §§ 17.41 – .63 (Vernon 2002 & Supp. 2011)) ("DTPA").

2.2. The State brings this suit for Defendants' false, deceptive, and misleading acts and practices in the course of trade and commerce, as defined in, and declared unlawful by, DTPA sections 17.46(a) and 17.46(b).

III. DEFENDANTS

3.1. SUN DEVELOPMENT, L.P. is a Texas limited partnership, located at **8550 Technology Forest Place, The Woodlands, Montgomery County, Texas 77381**. Service of process may be effectuated at this address.

3.2. SD GP, LLC is a Texas limited liability company, and it is the General

Partner for Defendant SUN DEVELOPMENT, L.P. Defendant SD GP, L.L.C. is located at **8550 Technology Forest Place, The Woodlands, Montgomery County, Texas 77381**. Service of process may be effectuated at this address.

3.3 PETROLEUM WHOLESALE, L.P. d/b/a SUNMART ("PWI" or "Sunmart") is a Texas limited partnership, located at **8550 Technology Forest Place, The Woodlands, Montgomery County, Texas 77381**. Service of process may be effectuated at this address.

3.4. PWI GP, L.L.C., is a Texas limited liability company, and it is the General Partner for Defendant PETROLEUM WHOLESALE, L.P. Defendant PWI GP, L.L.C. is located at **8550 Technology Forest Place, The Woodlands, Montgomery County, Texas 77381**. Service of process may be effectuated at this address.

3.5 JC CAPITAL, LP is a Texas limited partnership, and Defendant John Cook is its registered agent. JC CAPITAL, LP is located at **2204 Timberlock Place, Suite 270, Spring, Texas 77380-1116**. Service of process may be effectuated at this address.

3.6. JOHN W. COOK is an individual, residing in Texas at 43 Silver Iris Way, Spring, Montgomery County, Texas 77382. Prior to converting to a limited partnership, JOHN W. COOK was President, CEO and Director of Petroleum Wholesale, Inc. JOHN W. COOK is currently the President and CEO of Defendants PETROLEUM WHOLESALE, L.P. and SUN DEVELOPMENT, L.P., and he is Manager of Defendants PWI GP, L.L.C. and SD GP, L.L.C. JOHN W. COOK is the registered agent for Defendant JC Capital, LP. **Defendant JOHN W. COOK may be served at 43 Silver**

Iris Way, Spring, Texas 77382.

3.7. MARC W. COOK is an individual, residing at 7 Rhapsody Bend Drive, Spring, Texas 77382. MARC COOK is employed by Defendant PETROLEUM WHOLESALE, and he is Defendant JOHN W. COOK'S son. MARC W. COOK also has a financial interest in Defendant SUN DEVELOPMENT. **Defendant MARC W. COOK may be served at 7 Rhapsody Bend Drive, Spring, Texas 77382.**

3.8 MARC BUMBERA is an individual, residing at **16814 Rockstone, Houston, Texas 77084-1218** . MARC BUMBERA is employed by Defendant PETROLEUM WHOLESALE. **Defendant MARC BUMBERA may be served at 16814 Rockstone, Houston, Texas 77084-1218.**

IV. VENUE

4.1. Venue is proper in Travis County, Texas, as Defendants have done business in Travis County, Texas. See Tex. Bus & Com. Code § 17.47(b). Because the claims in this petition arise from the same transactions, occurrences, or series of transactions, venue is proper for all defendants when it is proper for any one defendant. See Tex. Civ. Prac. & Rem. Code § 15.005.

4.2 Defendants have actual prior notice of the claims made herein, more than seven days before the filing of this action. See **Exhibit 1** (hearing transcript) (attached).

V. PUBLIC INTEREST

5.1. Defendants have caused injury, loss, and damage to the State of Texas and have caused adverse effects to legitimate business enterprises, which lawfully conduct

trade and commerce in this State. Accordingly, the State of Texas is of the opinion that these proceedings are in the public interest.

VI. TRADE AND COMMERCE

6.1. At all times described below, Defendants have engaged in conduct which constitutes "trade" and "commerce," as those terms are defined by DTPA section 17.45(6).

VII. ACTS OF AGENTS

7.1. Whenever in this Petition it is alleged that Defendants did any act, it is meant that:

A. Defendants performed or participated in the act; or

B. Defendants' officers, agents, or employees performed or participated in the act on behalf of, and under the authority of, the Defendants.

C. Further, under the DTPA, liability is imposed if Defendants had a right to control the activity in question but failed to do so.

VIII. CONSPIRACY

8.1 The State alleges that Defendants engaged in a civil conspiracy to violate the DTPA as described in this petition.

IX. STATEMENT OF FACTS

9.1. Defendant PETROLEUM WHOLESALE, L.P. is a "full service petroleum company offering retail convenience-store products, branded and wholesale gasoline, on and off-road diesel, lubricants and common carrier transportation services." Petroleum

Wholesale services more than 350 retail locations throughout ten states, including Texas. SUNMART Travel Centers & Convenience Stores sell retail convenience-store products, branded, un-branded, conventional, reformulated, and wholesale gasoline and diesel, among other items. PETROLEUM WHOLESALE, L.P. operated approximately eighty (80) stations licensed to sell gasoline and diesel in Texas, under branding agreements with Chevron-Texaco, Exxon-Mobil and Conoco-Phillips as well as under its own name, SUNMART. These stations are located in approximately twenty counties throughout the State. Defendants supplied fuel to another approximately sixty (60) stations selling gasoline and diesel in Texas. See **Exhibit 2** (spreadsheet of station locations) (attached).

9.2. Defendant PWI GP, L.L.C. is the General Partner in the limited partnership. Defendant JOHN W. COOK is the Manager of PWI GP, L.L.C. Defendant SUN DEVELOPMENT, L.P. owns the majority of stations which it leases to Petroleum Wholesale, L.P. in Texas. SD GP, L.L.C. is the General Partner of Sun Development, L.P., and Defendant JOHN W. COOK is the Manager of SD GP, L.L.C. JC CAPITAL, LP owns several stations in the State. Collectively in Texas, Defendants own, operate, and control stations with hundreds of fuel pumps and underground fuel-storage tanks.

9.3. Defendants offer for sale to the public various grades and types of gasoline and diesel (collectively referred to as "fuel"). The fuel prices and octane ratings/content are displayed on both the pumps themselves and on signs posted at the stations. Defendants market, sell and price their fuel by grade, blend and type. All types of fuel sold by Defendants are represented to have a specific octane rating/content, and the price

of Defendants' fuel increases as the represented octane rating/content of the fuel increases. Defendants operate and maintain hundreds of pump devices located in approximately 80 stations in Texas, as well as supplying fuel to an additional approximately 60 stations in Texas. Each pump device generally dispenses several grades of gasoline (such as, Premium or Super, Mid-Grade or Plus and Regular) or diesel. Defendants use these pump devices to sell tens of millions of gallons of fuel in Texas every year. Primarily from the sale of fuel, Defendants generate hundreds of millions of dollars in annual revenues.

9.4. Refiners, importers, and producers of automotive fuel determine the octane rating/content of the fuel before it is transferred to Defendants. Therefore, Defendants are provided with the octane rating/content of the fuel when they load the fuel at "the rack" before delivering it to the respective gas stations.

9.5. Defendants represent to consumers that their fuel has a specific octane rating/content that can be purchased at a represented price, i.e. when a consumer purchases Premium/Super fuel with an octane rating/content of 93, Defendants represent that the consumer will actually receive fuel with an octane rating/content of 93. In fact, Defendants' pumps often deliver less octane than represented on their pumps and signage, despite the fact that consumers pay Defendants more money for fuel with a higher octane rating/content. Defendants often dilute the octane of their Mid-Grade/Plus (89 octane) and Premium/Super (93 octane) fuel by mixing them with Regular (87 octane) fuel. Less frequently, they dilute the octane of their Super/Premium by mixing it with Mid-

Grade/Plus. Defendants often "cross-dump" hundreds of thousands of gallons of Regular fuel into their Premium/Super and Mid-Grade/Plus underground fuel-storage tanks, thereby lowering the octane rating/content of the Premium/Super and Mid-Grade/Plus fuel while charging consumers a "premium" for the purported higher-octane fuels. Defendants' pumps are maintained consistently to short-change and cheat consumers on their fuel purchases by (1) delivering less octane than represented; (2) selling un-branded fuel as branded fuel; (3) selling conventional fuel in densely populated areas where re-formulated fuel is required to be sold, and (4) selling diesel fuel which has been contaminated by cross-dumping unleaded fuel (and *vice-versa*) into Defendants' underground fuel-storage tanks.

9.6. This deceitful conduct constitutes "business as usual" for Defendants. In prior litigation brought by the State, a jury found that Defendants Petroleum Wholesale, L.P. and PWI GP, LLC routinely calibrated their gas pumps to short consumers by delivering less than a full gallon of fuel. See **Exhibit 3** (jury verdict) (attached).

9.7. On over 1,000 occasions, Defendants instructed or encouraged their fuel-delivery drivers to dump over half a million gallons of Regular fuel into Premium/Super or Mid-Grade/Plus underground fuel-storage tanks (and less frequently Mid-Grade/Plus into Premium/Super underground fuel-storage tanks). See **Exhibit 2** (station location spreadsheet) (attached).

9.8. Despite entering into written branding agreements with global fuel companies (Chevron-Texaco, Exxon-Mobil and Conoco-Phillips) obligating Defendants to notify the

fuel companies when a cross-dump or other contamination occurs in any underground fuel-storage tanks (so remedial steps can be taken), Defendants never did so – not once.

X. FALSE, MISLEADING OR DECEPTIVE ACTS

10.1. In the course and conduct of trade and commerce, Defendants have directly and indirectly engaged in false, misleading and deceptive acts and practices declared to be unlawful by the DTPA section 17.46(a) and 17.46(b), by engaging in the following conduct:

A. Causing confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods or services, in violation of **DTPA section 17.46(b)(2);**

B. Causing confusion or misunderstanding as to affiliation, connection, or association with, or certification by, another, in violation of **DTPA section 17.46(b)(3);**

C. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have, or that a person has a sponsorship, approval, status, affiliation, or connection which he does not have, in violation of **DTPA section 17.46(b)(5);**

D. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another, in violation of **DTPA section 17.46(b)(7);**

E. Advertising goods or services with intent not to sell them as advertised, in violation of **DTPA section 17.46(b)(9)**;

F. Failing to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction which the consumer would not have entered had the information been disclosed, in violation of **DTPA section 17.46(b)(24)**; and

G. Engaging in false, misleading and deceptive acts and practices in the course of trade and commerce, in violation of **DTPA section 17.46(a)**.

XI. DISGORGEMENT

11.1. Defendants' assets are subject to the equitable remedy of disgorgement – the forced relinquishment of all benefits that would be unjust for Defendants to retain, including all ill-gotten gains and benefits or profits that result from Defendants' acts or omissions. Defendants should be ordered to disgorge all monies fraudulently taken from individuals and businesses together with all of the proceeds, interest, income, and related profits. Such disgorgement should be ordered for the benefit of victimized consumers and the State of Texas.

XII. CONDITIONS PRECEDENT

12.1. All conditions precedent to the State's right to recover and Defendants' liability have occurred or have been waived.

XIII. INJURY TO CONSUMERS

13.1. Because Defendants have engaged in the unlawful acts and practices described above, they have violated the law and injured consumers and legitimate businesses as alleged in this petition.

XIV. TRIAL BY JURY

14.1. The State requests a trial by jury. See Tex. R. Civ. P. 216; Tex. Gov't Code § 51.604.

XV. APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION

15.1. Because Defendants have engaged in the unlawful acts and practices described above, Defendants have violated and may continue to violate the law as alleged in this Petition. Unless enjoined by this Court, Defendants may continue to violate the laws of the State of Texas and cause injury, loss and damage to the State of Texas and to the general public. Therefore, the State requests a Temporary Injunction and Permanent Injunction.

XVI. NO FEDERAL CLAIMS

16.1. In this Petition, the State has alleged violations of the Texas DTPA and no others laws or statutes. Specifically, no allegations have been made, or relief sought, under the authority of any federal statutes or the U.S. Constitution. Therefore, any attempt to remove this action from State court to Federal court asserting diversity or federal-question grounds would be frivolous and warrant a request for the imposition of sanctions against Defendants.

16.2. More specifically, the State is not seeking any relief afforded by the Petroleum Marketing Practices Act, 15 U.S.C. §§ 2801 - 2841 ("PMPA") and regulations under the PMPA, 16 CFR §§ 306.0 - 306.11 ("Automotive Fuel Ratings, Certification and Posting"). The PMPA does not preempt state DTPA claims.[2] *VP Racing Fuels, Inc. v. General Petroleum Corp.*, 673 F.Supp.2d 1073, 1081-82 (E.D. Cal. 2009).

16.3. Further, with respect to the State's allegations concerning the sale of conventional fuel in densely populated areas where re-formulated fuel is required to be sold, the State is not asserting any claims under, or seeking relief pursuant to, the Clean Air Act, 42 U.S.C. §§ 7401 - 7671 ("CAA"). The CAA does not preempt state action unrelated to emissions control and likewise provides no basis for removal. *In re MTBE Prods. Liab. Litig.*, 488 F.3d 112, 135 (2nd Cir. 2007).

XVII. PRAYER

17.1 The State prays that Defendants be cited according to law to appear and answer herein; that after due notice and hearing a **TEMPORARY INJUNCTION** be issued; and upon final hearing a **PERMANENT INJUNCTION** be issued, restraining and enjoining Defendants, their successors, assigns, officers, agents, servants, employees, attorneys, and any other persons in active concert or participation with Defendants from

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[2] Congress amended Title II of the PMPA to give States the specific authority to enforce octane disclosure requirements. See 15 U.S.C. § 2824(b) (emphasis added) ("A State or political subdivision thereof may provide for ***any*** investigative or enforcement action, remedy, or penalty (including procedural actions necessary to carry out such investigative or enforcement actions, remedies, or penalties) with respect to any provision of law or regulation permitted by subsection (a) of this section").

engaging in the following acts or practices:

A. Except in response to further orders or subpoenas in this cause, transferring, concealing, destroying, or removing from the Court's jurisdiction any books, records, documents, or other written or computer-generated materials or data relating to the business of Defendants currently or hereafter in Defendants' possession, custody, or control;

B. Dispensing or delivering fuel with a lower octane rating/content than represented in any of Defendants' advertising, including advertising placed on-or-at any pump device or advertising on any signs posted at Defendants' stations or stores;

C. Charging consumers for any fuel with a lower octane rating/content than represented;

D. Charging consumers more money for Premium/Super or Mid-Grade/Plus fuel when, in fact, consumers are not receiving unadulterated Premium/Super or Mid-Grade fuel;

D. Expressly or by implication, representing that fuel with a specific octane rating/content is being dispensed or delivered to a consumer when, in fact, fuel with a lower octane rating/content is being delivered or dispensed;

E. Cross-dumping Regular fuel into any Super, Premium, Mid-Grade, or Plus underground storage tanks or diesel-fuel underground storage tanks;

F. Selling or offering for sale any fuel which has a lower octane

rating/content than represented or advertised;

H. Selling or offering for sale un-branded fuel at locations where branded fuel is represented or advertised as being offered for sale;

I. Selling or offering for sale conventional fuel when re-formulated fuel is represented, required or advertised as being offered for sale, and

J. Hindering State inspectors from inspecting any fuel device by changing, altering, or modifying any portion or part of a fuel device (including the fuel itself), or any records related thereto, which may affect any State inspection.

17.2 The State further prays that Defendants be cited according to law to appear and answer herein; that after due notice and hearing a **TEMPORARY INJUNCTION** be issued; and upon final hearing a **PERMANENT INJUNCTION** be issued, mandating that Defendants, their successors, assigns, officers, agents, servants, employees, attorneys, and any other persons in active concert or participation with Defendants perform the following acts or practices:

A. Regarding fuel brand, type, and octane rating/content, Defendants shall maintain all fuel-pump devices and underground tanks so that they properly dispense fuel as represented and advertised, and

B. Whenever a cross-dump occurs (whether relating to octane, branding, reformulated/conventional, or diesel/unleaded), Defendants shall drain the underground fuel-storage tank dry and not sell or offer to sell the

contaminated fuel to the public.

17.3 The State further prays that this Court order Defendants to:

A. Restore all money or other property taken from identifiable persons by means of unlawful acts or practices, or, in the alternative, to pay damages in an amount within the jurisdictional limits of this Court to compensate for such losses;

B. Pay civil penalties in an amount up to $250,000 as provided by DTPA section 17.47(c)(2), for all of Defendants' acts and practices calculated to acquire or deprive money or other property from consumers who were 65 years of age or older when the act or practice occurred;

C. Pay civil penalties in an amount up to $20,000 per violation as provided by DTPA section 17.47(c)(1);

D. Pay the State's attorney fees and costs of court under the authority of Texas Government Code Section 402.006(c); and

E. Disgorge all sums taken from consumers by means of the acts and practices detailed in this petition, together with all proceeds, interest, income, and related profits.

17.4 The State finally prays that this Court grant all other relief, at law or in equity, to which the State may be justly entitled.

XVIII. RULE 194 REQUESTS FOR DISCLOSURE

18.1 Pursuant to Texas Rule of Civil Procedure 194, the State requests that

Defendants disclose, within 50 days of service of this petition/request, the information or material described in Rule 194.2

Respectfully submitted,

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Attorney General of Texas

DANIEL T. HODGE
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ATTORNEYS FOR THE STATE OF TEXAS

EXHIBIT 1

1 REPORTER'S RECORD
VOLUME 1 OF 1 VOLUMES
2 TRIAL COURT CAUSE NO. 2008-45087 (Consolidated)
3 ALLISON SNODDY, ET AL) IN THE DISTRICT COURT
)
4 VS.)
)
5 PETROLEUM WHOLESALE, INC.,)
ET AL)
6)
AND) HARRIS COUNTY, TEXAS
7)
STATE OF TEXAS)
8)
VS.)
9)
PETROLEUM WHOLESALE, L.P.) 334TH JUDICIAL DISTRICT
10
11
12 _____
13 MOTION HEARING
_____
14
15
16 On the 8th day of April, 2010, the following
17 proceedings came on to be held in the above-titled
18 and numbered cause before the Honorable Sharon
19 McCally, Judge Presiding, held in Houston, Harris
20 County, Texas.
21 Proceedings reported by computerized stenotype
22 machine.
23
24
25

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1 discover in discovery.
2 MS. TULINSKI: Can I raise one other
3 practical issue, Your Honor?
4 THE COURT: Yeah.
5 MS. TULINSKI: Under the penalties
6 provision of the other acts of wrong that come
7 in, and there's a good chance that
8 cross-dumping, while we may not get a jury
9 question on it, it may not be an element of our
10 case, it may be as an evidentiary matter
11 brought into this case --
12 MR. OWENS: 4.04B.
13 MS. TULINSKI: -- another reason why it
14 makes sense to prove it all together. But, at
15 the same time, I understand the Court's
16 concerns on limitations don't apply to us. We
17 can file another lawsuit, but we just think
18 that for judicial economy and since the
19 evidence is likely to come in in some fashion
20 anyway, that we think it is fair.
21 And let me also, please, just correct one
22 statement that was said earlier. This whole
23 notion that somehow we are abandoning the
24 miscalibration of the pumps so we are going
25 down this rabbit trail, I can't more strongly

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1 deny that claim.
2 THE COURT: Yeah, okay, and I do want to
3 hear from y'all on that. Let me start by
4 saying, don't think because I am asking you to
5 respond that I agree that the evidence is
6 coming in, that I agree that they could
7 continue to do this, but let's just take what
8 they have said about how this all could unfold
9 and tell me what your position is on whether or
10 not it is a better idea for us to put in this
11 case or a better idea for us to close the door
12 on this case and make them do whatever they
13 need to do.
14 MS. FRIEDMAN: May I, Judge?
15 THE COURT: Yes.
16 MS. FRIEDMAN: That made the statement
17 that have to play by the rules too and this is
18 not their personal little playground to bring
19 all of these arguments into this case. This
20 case is about calibration, about Operation
21 Spotlight and it is about allegations regarding
22 quantity, period, plain and simple. That
23 section of their petition that you looked at
24 and that they read from talks about quantities,
25 period. You cannot take one word --

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1 maintained -- out of the context in which it is
2 written to say that they have broadly covered
3 something else. And even if they want to go
4 there, the case law says that you can't do that
5 anyway.
6 And in the motion for production I filed,
7 I cited cases -- Crebalm (phonetic) as one of
8 the cases that I cited -- that said that when
9 you file something specifically, when you plead
10 specific allegations, you cannot rely on
11 anything general, period. That means their
12 petition is specific. They have got three
13 pages worth of facts and the facts are wholly,
14 entirely related to quantity. They have
15 nothing to do with quality. They have nothing
16 to do with cross-dumping, octane levels, truck
17 driver issues, Sun Development, things going on
18 outside the State of issue or any of those
19 other issues. We are entitled to fair notice
20 of what their claims are. Your Honor addressed
21 that and that is a huge issue. We are entitled
22 to fair notice. Fair notice means what does a
23 reasonable reader take from the petition and
24 can that reasonable reader assess what the
25 issues are and what testimony and evidence is

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1 going to be necessary to prepare a defense in
2 line with those allegations.
3 THE COURT: Yeah, I am comfortable with
4 this part of it. What I am not comfortable
5 with is the practical idea of why it is a
6 better idea for me to do what I have said I am
7 going to do so far because, you know, a Rule 11
8 is a Rule 11. If there's a mistake in it,
9 that's not something I deal with. Why is it a
10 better idea for me to force the State to file a
11 separate lawsuit? Why is it a better idea for
12 me to have evidence of these things that are
13 not part of the pleadings be offered and
14 allegations of 4.04B evidence? Why is it a
15 better idea for me to be collaterally trying,
16 you know, the character of the company through
17 all of these other allegations than it would be
18 to just cut to the chase, let's just get it in
19 here, and let's find out from one jury whether
20 or not y'all have done what they are saying you
21 did?
22 MS. FRIEDMAN: Because that's not what
23 this case is about. This case is about
24 calibrations and quantities and what they
25 want --

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1 THE COURT: I mean, is there a practical
2 answer? Maybe there's not one.
3 MS. FRIEDMAN: What they want to do,
4 Judge, is just pull in all of these other
5 extraneous issues --
6 THE COURT: Yes, yes.
7 MS. FRIEDMAN: -- and try to use that as a
8 whole to make us look like we are bad guys.
9 THE COURT: No, they want to sue you for
10 it. They don't want to do it as character
11 evidence. They want me to give them a blank.
12 They want to sue you for it.
13 MR. OWENS: And we want an injunction.
14 THE COURT: And so I am trying to figure
15 out why it is better for me to say, you know --
16 there's plenty of cases where we say, okay, if
17 you tried this lawsuit, you're going to be
18 barred from bringing some other case, but they
19 are probably not. They are probably not. And
20 so are we going to make them sue you again and
21 again and again as they discover things? Is
22 that practical? You get to pick.
23 MR. FAIRLESS: We think it has to be the
24 practical solution, Judge, because otherwise
25 they have no bounds and they can just try to

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1 lump everything in this lawsuit. We are not so
2 convinced that these two right here get to make
3 all the decisions for the Attorney General's
4 office with regard to what lawsuits get brought
5 and what lawsuits don't get brought. Pat
6 Tulinski and John Owens may think it's a pretty
7 good idea to continue pounding on PWI, where
8 somebody above them -- assuming there is
9 somebody above them watching over them saying,
10 you know what? You guys had your chance. You
11 had this so-called cheating scandal. You had
12 all your ducks in a row and you had all the
13 time in the world, you had all the State's
14 money to play with, and you couldn't prove
15 that. So, why in the world -- help us
16 understand why in the world we're going to give
17 you a second bite at the apple so that you can
18 reload to continue trying to exercise this
19 personal animosity you have towards PWI. We
20 think cooler heads will prevail. And when they
21 lose this first lawsuit, they're not going to
22 get a second bite at the apple. Nobody's going
23 to give them the green light to waste more of
24 the taxpayer money to go after a company that
25 doesn't need to be sued because they didn't do

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1 anything wrong.
2 THE COURT: Okay. That's the practical
3 that I expected, is that there's no guarantee
4 that they will and we think once we go through
5 a trial with them and they see it for what it
6 is, they're not going to pursue any further
7 action.
8 MR. FAIRLESS: That's what we think.
9 THE COURT: Is there more to it?
10 MR. MORRIS: Yes, there is more, Judge.
11 We were brought in on the eve of deadline to
12 bring in third parties, and we came down here
13 and in addition to asking that the March trial
14 setting be put off, we filed a motion to abate.
15 Part of the burden that the State has is to
16 give notice to the people they are going to sue
17 what the violation is, and the State responded
18 to that motion to abate and specifically said,
19 we are suing you, John Cook, and your son, Marc
20 Cook, because you directed people to
21 miscalibrate the pumps to cheat the consumer.
22 Now, they said that once, they said that twice.
23 The Court denied the motion to abate because
24 practically we had our answer.
25 Mr. Owens stood up and told you,

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1 furthermore, we went to a mediation and I stood
2 up and told John Cook why I was going to sue
3 you and your son and threatened to do it and I
4 have done it now. And in that pleading, he
5 specifically set out his factual allegations
6 and that is, directing someone to miscalibrate
7 the pump, not cross-dumping, not re-formulated
8 gas, not branded gas, none of that. He filed
9 responses to requests for disclosures. He gave
10 his factual theories and his legal theories.
11 They all pertained to calibration. We had
12 specific deadlines to designate experts. We
13 all designated experts on calibration. No one
14 designated experts on cross-dumping and whether
15 you are simply whizzing in the ocean and it
16 doesn't really make any difference. That's a
17 whole science that is not before you in this
18 case.
19 They filed this suit in July of 2008. We
20 have a setting in September. They have taken
21 29 depositions. Millions of documents have
22 been exchanged. It is time for them to come to
23 the lick log and prove the case they have pled,
24 they have discovered, and all of this
25 collateral discovery like whether, Mr. Cortez,

1 STATE OF TEXAS
2 COUNTY OF HARRIS
3 I, Susan Leediker, Official Court Reporter in
4 and for the 334th District Court of Harris, State of
5 Texas, do hereby certify that the above and
6 foregoing contains a true and correct transcription
7 of all portions of evidence and other proceedings
8 requested in writing by counsel for the parties to
9 be included in this volume of the Reporter's Record
10 in the above-styled and numbered cause, all of which
11 occurred in open court or in chambers and were
12 reported by me.
13 I further certify that the total cost for the
14 preparation of this Reporter's Record is $
15 and will be paid by .
16
17
Susan Leediker, CSR
18 Texas CSR 703
Official Court Reporter
19 334th District Court
Harris County, Texas
20 201 Caroline, 14th Floor
Houston, Texas 77002
21 Telephone: (713) 368-6493
Expiration: 12/31/10
22
23
24
25

EXHIBIT 2

TEXAS STATIONS

Station	Facility Name	Physical Address	City	ST	Zip	County
105	SUNMART #105	803 MAIN ST	HOOKS	TX	75561	BOWIE
106	SUNMART #106	926 E IH 30	ROYSE CITY	TX	75189	ROCKWALL
109	SUNMART #109	10400 IH 20 W	MIDLAND	TX	79706	MIDLAND
110	SUNMART #110	14834 N FRWY	HOUSTON	TX	77073	HARRIS
111	SUNMART #111	45950 IH 10	WINNIE	TX	77665	CHAMBERS
112	SUNMART #112	IH 20 AND HWY 1219	WICKETT	TX	79788	WARD
115	SUNMART #115	2431 COMMERCE W	BUFFALO	TX	75831	LEON
116	SUNMART #116	24627 IH 45	WOODLANDS	TX	77380	MONTGOMERY
117	SUNMART #117	3411 FM 1960 E	HUMBLE	TX	77338	HARRIS
119	SUNMART #119	7102 NORTH FWY	HOUSTON	TX	77076	HARRIS
121	SUNMART #121	5168 NE IH 10 FRONTAGE RD	SEALY	TX	77474	AUSTIN
123	SUNMART #123	2100 HWY 36 S	SEALY	TX	77474	AUSTIN
124	SUNMART #124	1000 FM 1764 @ IH 45	LA MARQUE	TX	77568	GALVESTON
125	SUNMART #125	28111 SW FWY	ROSENBERG	TX	77471	FORT BEND
128	SUNMART #128	15411 WALLISVILLE RD	HOUSTON	TX	77049	HARRIS
129	SUNMART #129	9404 NORTH FWY	HOUSTON	TX	77088	HARRIS
131	SUNMART #131	24985 KATY FRWY	KATY	TX	77494	FORT BEND
132	SUNMART #132	1110 N SAM HOUSTON PKWY W	HOUSTON	TX	77038	HARRIS
133	SUNMART #133	9004 NORTH FWY	HOUSTON	TX	77037	HARRIS
134	SUNMART #134	9161 WALLISVILLE RD	HOUSTON	TX	77029	HARRIS
136	SUNMART #136	1001 IH 10 E	HIGHLANDS	TX	77562	HARRIS
138	SUNMART #138	10611 IH 10 E	HOUSTON	TX	77029	HARRIS
139	SUNMART #139	3200 HOLCOMBE BLVD	HOUSTON	TX	77021	HARRIS
141	SUNMART #141	14711 S MAIN @ FONDREN	HOUSTON	TX	77035	HARRIS
144	SUNMART #144	28677 IH 45 N	SPRING	TX	77381	MONTGOMERY
146	SUNMART #146	10755 VETERANS MEMORIAL DR	HOUSTON	TX	77038	HARRIS
147	SUNMART #147	8201 NORTH FWY	HOUSTON	TX	77037	HARRIS
148	SUNMART #148	435 NORTH LOOP W	HOUSTON	TX	77008	HARRIS

Station	Facility Name	Physical Address	City	ST	Zip	County
149	SUNMART #149	14502 EAST FWY	HOUSTON	TX	77015	HARRIS
150	SUNMART #150	1731 FEDERAL RD	HOUSTON	TX	77015	HARRIS
151	SUNMART #151	6333 MLK BLVD	HOUSTON	TX	77021	HARRIS
152	SUNMART #152	12600 S GESSNER @ W BELTWAY	HOUSTON	TX	77071	HARRIS
153	SUNMART #153	4605 W TIDWELL RD	HOUSTON	TX	77092	HARRIS
154	SUNMART #154	4350 AIRLINE DR	HOUSTON	TX	77022	HARRIS
155	SUNMART #155	5797 N BELT	HOUSTON	TX	77032	HARRIS
156	SUNMART #156	4615 N SHEPHERD DR	HOUSTON	TX	77018	HARRIS
157	SUNMART #157	3 GREENS RD	HOUSTON	TX	77060	HARRIS
158	SUNMART #158	3003 SPEARS ROAD	HOUSTON	TX	77067	HARRIS
159	SUNMART #159	6900 N LOOP E	HOUSTON	TX	77028	HARRIS
165	SUNMART #165	411 RICHMOND AVE	HOUSTON	TX	77002	HARRIS
167	SUNMART #167	6150 W IH 10	SEGUIN	TX	78155	GUADALUPE
168	SUNMART #168	3800 N IH 35	GEORGETOWN	TX	78626	WILLIAMSON
169	SUNMART #169	IH 35 AND FM 1304	ABBOTT	TX	76621	HILL
170	SUNMART #170	5800 IH 45 SOUTH AT SR 75	PALMER	TX	75152	ELLIS
171	SUNMART #171	5122 N MCCARTY ST	HOUSTON	TX	77013	HARRIS
172	SUNMART #172	6201 S IH 45 AND PARKER HILL	PALMER	TX	75152	ELLIS
173	SUNMART #173	2003 HWY 44	AGUA DULCE	TX	78330	NUECES
179	MOBIL #179	15920 STUEBNER AIRLINE	SPRING	TX	77379	HARRIS
183	BROADWAY MOBIL	2227 BROADWAY	GALVESTON	TX	77550	GALVESTON
190	SUNMART #190	702 RANKIN RD	HOUSTON	TX	77073	HARRIS
192	SUNMART #192	4902 W MAIN ST	LEAGUE CITY	TX	77573	GALVESTON
193	TRIPLE STAR MOBIL	2255 W PARKWOOD	FRIENDSWOOD	TX	77546	GALVESTON
194	SUNMART #194	660 SAWDUST RD	THE WOODLANDS	TX	77380	MONTGOMERY
195	SUNMART #195	110 ELLA ST	TOMBALL	TX	77375	HARRIS
196	SUNMART #196	1520 BARKER CYPRESS RD	HOUSTON	TX	77084	HARRIS
197	AMINDUS SERVICE	1818 FRY RD	HOUSTON	TX	77084	HARRIS
198	DAIRY ASHFORD MOBIL	3151 S DAIRY ASHFORD	HOUSTON	TX	77082	HARRIS
201	SUNMART #201	8110 N SAM HOUSTON PKWY W	HOUSTON	TX	77064	HARRIS

Station	Facility Name	Physical Address	City	ST	Zip	County
218	SUNMART #218	1217 UVALDE RD	HOUSTON	TX	77015	HARRIS
231	SUNMART #231	5716 NORTH FWY	HOUSTON	TX	77076	HARRIS
264	PLANTATION #19	1801 W MAIN ST	LEAGUE CITY	TX	77573	GALVESTON
282	7-WEEK DAY	2302 CEDAR DR	LA MARQUE	TX	77568	GALVESTON
288	SUNMART #288	2715 STRAWBERRY RD	PASADENA	TX	77502	HARRIS
290	SUNMART #290	6802 CULLEN BLVD	HOUSTON	TX	77021	HARRIS
291	SUNMART #291	8210 CULLEN BLVD	HOUSTON	TX	77051	HARRIS
292	SUNMART #292	6402 MYKAWA RD	HOUSTON	TX	77033	HARRIS
293	SUNMART #293	3810 LIBERTY RD	HOUSTON	TX	77026	HARRIS
295	SUNMART #295	6420 GULF FWY	HOUSTON	TX	77023	HARRIS
302	SUNMART #302	2002 DOWLING ST	HOUSTON	TX	77025	HARRIS
303	TRI'S #303	8902 AIRPORT BLVD	HOUSTON	TX	77061	HARRIS
304	SUNMART #304	10910 AIRLINE DR	HOUSTON	TX	77037	HARRIS
305	610 MOBIL #305	4423 SAN FELIPE @ LOOP 610	HOUSTON	TX	77027	HARRIS
308	SUNMART #308	4727 HWY 59	LIVINGSTON	TX	77351	POLK
311	JEFFY'S MOBIL	8015 EAST FWY @ McCARTY	HOUSTON	TX	77029	HARRIS
312	SUNMART #312	14222 HEMPSTEAD RD	HOUSTON	TX	77040	HARRIS
314	SUNMART #314	7614 LYONS AVE	HOUSTON	TX	77020	HARRIS
317	SUNMART #317	3033 ELGIN ST	HOUSTON	TX	77004	HARRIS
318	SUNMART #318	3305 DOWLING ST	HOUSTON	TX	77045	HARRIS
321	J & C MOBIL	502 FM 1092	STAFFORD	TX	77477	FORT BEND
322	SUNMART #322	901 11TH ST	HUNTSVILLE	TX	77340	WALKER
323	SPENCER MOBIL	601 SPENCER HWY	SOUTH HOUSTON	TX	77587	HARRIS
325	SUNMART #325	8506 MESA DR	HOUSTON	TX	77028	HARRIS
328	VILLAGE MOBIL	8819 KATY FWY	HEDWIG VILLAGE	TX	77024	HARRIS
330	RATAN STORES INC	1240 N LOOP 336 WEST	CONROE	TX	77301	MONTGOMERY
331	SUNMART #331	604 SE FIRST ST	MINERAL WELLS	TX	76067	PALO PINTO
333	DOWNTOWN MOBIL	1818 HAMILTON	HOUSTON	TX	77003	HARRIS
336	CULLEN MOBIL	9421 CULLEN	HOUSTON	TX	77051	HARRIS
345	WINFIELD TRAVEL CENTER	101 EAST 7TH STREET	WINFIELD	TX	75493	TITUS

Station	Facility Name	Physical Address	City	ST	Zip	County
349	STEVE'S MOBIL	5216 RICHMOND	HOUSTON	TX	77056	HARRIS
352	YELLOWSTONE MOBIL	3300 YELLOWSTONE BLVD	HOUSTON	TX	77021	HARRIS
353	FONDREN MOBIL	5725 FONDREN	HOUSTON	TX	77036	HARRIS
354	HUGHES RD MOBIL	10840 HUGHES ROAD	HOUSTON	TX	77089	HARRIS
356	STEPHEN'S FOOD STORE	14607 HILLCROFT ST	MISSOURI CITY	TX	77489	FORT BEND
357	LUCKY STOP & SAVE	8795 ANTOINE DR #101	HOUSTON	TX	77088	HARRIS
359	JEFFY'S MOBIL	3506 ELGIN	HOUSTON	TX	77004	HARRIS
360	J&L DRIVE INN GROCERY	560 STOWALL ST	ANAHUAC	TX	77514	CHAMBERS
361	SUNMART #361	9199 NORTH LOOP E	HOUSTON	TX	77029	HARRIS
363	SUNMART #363	333 LUTCHER DR	ORANGE	TX	77630	ORANGE
365	ARCOLA FOOD MART	13218 HWY 6	ARCOLA	TX	77583	FORT BEND
367	SUNMART #367	13603 BELLAIRE BLVD	HOUSTON	TX	77083	HARRIS
370	CHIMNEY ROCK @ SW FWY	5601 SW FREEWAY	HOUSTON	TX	77057	HARRIS
372	STELLA LINK MOBIL	9403 STELLA LINK @ LOOP 610	HOUSTON	TX	77025	HARRIS
374	SUNMART #374	12315 FM 1960 E	HUFFMAN	TX	77336	HARRIS
377	FOREST WEST MOBIL	5805 PINEMONT	HOUSTON	TX	77092	HARRIS
379	HILLCROFT MOBIL	7802 HILLCROFT	HOUSTON	TX	77081	HARRIS
380	LAMARQUE FOOD	720 HIGHWAY 3	LAMARQUE	TX	77568	GALVESTON
382	ROBERTS MOBIL CAR	3802 WESTHEIMER @ WESLAYAN	HOUSTON	TX	77027	HARRIS
385	MED CENTER MOBIL	2424 OLD SPANISH TRAIL	HOUSTON	TX	77054	HARRIS
389	CHAWLA'S MOBIL	3501 EASTEX FRWY	HOUSTON	TX	77026	HARRIS
390	SUNMART #390	9105 TELEPHONE RD	HOUSTON	TX	77075	HARRIS
394	OAK FOREST MOBIL	1201 W 43RD ST @ ELLA	HOUSTON	TX	77018	HARRIS
395	CT MOBIL #395	8435 TIDWELL RD	HOUSTON	TX	77028	HARRIS
396	CHOI'S MOBIL	3000 DECKER DRIVE	BAYTOWN	TX	77520	HARRIS
400	SUNMART #400	10330 IH 10 E	BAYTOWN	TX	77520	CHAMBERS
402	KHALIL'S MOBIL	2310 ALEXANDER	BAYTOWN	TX	77520	HARRIS
403	MEGA EXPRESS	4031 FM 2920	SPRING	TX	77373	HARRIS
404	HOSPETI MOBIL	6901 SPENCER HWY	PASADENA	TX	77505	HARRIS
405	BISSONNET MOBIL	12697 BISSONET	HOUSTON	TX	77099	HARRIS

Station	Facility Name	Physical Address	City	ST	Zip	County
408	HEIGHTS MOBIL	1622 W 18TH STREET	HOUSTON	TX	77008	HARRIS
410	SUNMART #410	5946 E MOUNT HOUSTON RD	HOUSTON	TX	77050	HARRIS
416	SUNMART #416	5051 YALE ST	HOUSTON	TX	77013	HARRIS
417	KINGWOOD MOBIL	1090 KINGWOOD DRIVE	KINGWOOD	TX	77339	HARRIS
419	SUNMART #419	50 TRAM RD HWY 2090	SPLENDORA	TX	77372	MONTGOMERY
421	SUNMART #421	2405 KELLEY ST	HOUSTON	TX	77026	HARRIS
422	SUNMART #422	5709 LYONS AVE	HOUSTON	TX	77020	HARRIS
424	SUNMART #424	9140 EASTEX FWY	HOUSTON	TX	77093	HARRIS
436	SUNMART #436	8559 HWY 6 SOUTH	HOUSTON	TX	77083	HARRIS
438	SUNMART #438	306 STATE HWY 71 WEST	BASTROP	TX	78602	BASTROP
440	SUNMART #440	3 EVANSTON ST	HOUSTON	TX	77015	HARRIS
442	SUNMART #442	5623 ALDINE BENDER RD	HOUSTON	TX	77032	HARRIS
443	SUNMART #443	10841 BISSONNET ST	HOUSTON	TX	77099	HARRIS
445	SUNMART #445	3716 GREENHOUSE RD	HOUSTON	TX	77084	HARRIS
447	SUNMART #447	1130 FREEPORT ST	HOUSTON	TX	77015	HARRIS
451	SUNMART #451	2221 ELLA BLVD	HOUSTON	TX	77008	HARRIS
457	SUNMART #457	14049 EASTEX FWY	HOUSTON	TX	77032	HARRIS
459	SUNMART #459	6839 NAVIGATION BLVD	HOUSTON	TX	77011	HARRIS
467	HILLTOP DRIVE IN	705 HWY 377	COLLINSVILLE	TX	76233	GRAYSON
469	IZ, INC	699 WEST RENNER ROAD	RICHARDSON	TX	75080	COLLIN
476	SUNMART #476	1214 N BELT E	HOUSTON	TX	77032	HARRIS
478	ALL IN ONE FOOD STORE	3606 IRVINGTON	HOUSTON	TX	77009	HARRIS
479	STOP N SAVE #3	3301 WHITE SETTLEMENT	FT WORTH	TX	76107	TARRANT
480	SUNMART #480	102 S WASHINGTON	CLEVELAND	TX	77327	LIBERTY
481	PUMP N GO	9401 S HWY 6	HOUSTON	TX	77083	FORT BEND
482	CHAMPIONS CAR CARE	4450 FM 1960 WEST	HOUSTON	TX	77068	HARRIS
484	HANNA FOOD STORE	27455 HANNA ROAD	OAK RIDGE N	TX	77386	MONTGOMERY
487	EXPRESS FOOD	16811 THEISS MAIL RD	SPRING	TX	77379	HARRIS
490	THE STORE	16237 E HWY 175	KEMP	TX	75143	KAUFMAN
492	LONESOME PRAIRIE M X	10901 FM 1902	CROWLEY	TX	76036	JOHNSON

EXHIBIT 3

ORIGINAL

18

CAUSE NO. 2008-45087

STATE OF TEXAS,	'	**IN THE DISTRICT COURT**
Plaintiff,	'	
v.	'	
	'	**HARRIS COUNTY, TEXAS**
PETROLEUM WHOLESALE, L.P., d/b/a SUNMART; PWI GP, LLC,	'	
Defendants.	'	**334TH JUDICIAL DISTRICT**

CHARGE OF THE COURT

LADIES AND GENTLEMEN OF THE JURY:

This case is submitted to you by asking questions about the facts, that you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly follow during your deliberations.

1. Do not let bias, prejudice or sympathy play any part in your deliberations.

2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the court, that is, what you have seen and heard in this courtroom, together with the law as given you by the court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.

3. Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.

4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answers.

FILED
Loren Jackson
District Clerk
NOV 08 2010
Time: _____
By _____
Harris County, Texas
Deputy

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5. You will not decide the answer to a question by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should not agree to answer a certain question one way if others will agree to answer another question another way.

6. Unless otherwise instructed, you may render your verdict upon the vote of eleven (11) or more members of the jury. If you answer more than one question upon the vote of eleven (11) or more jurors, the same group of at least eleven (11) of you must agree upon the answers to each of those questions.

These instructions are given you because your conduct is subject to review the same as that of the witnesses, parties, attorneys and the judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

The presiding juror or any other who observes a violation of the court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

When words are used in this charge in a sense that varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other meaning.

Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence unless you are otherwise instructed. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." The phrase "preponderance of the evidence" means the greater weight and degree of credible evidence admitted in this case. A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true. Whenever a question requires an answer other than Yes" or "No," your answer must be based on a preponderance of the evidence unless you are otherwise instructed.

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The following additional definitions and instructions shall apply to the Jury Questions you will be asked to answer.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

"Trade or commerce" means the advertising, offering for sale, sale, lease or distribution of any good or service, of any property, tangible or intangible, real, personal, or mixed, and any other article, commodity or thing of value, wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of the State of Texas.

"Intent" means actual awareness of the falsity, deception, or unfairness of the conduct in question. Intent may be inferred from facts showing that the information withheld is material, the information was known by the Defendants, their agents or employees, and the Defendants did not disclose it.

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QUESTION NO. 1

In the conduct of trade or commerce, did the following entities, acting through their authorized agents, servants, and employees, engage in a false, misleading, or deceptive act or practice?

"False, misleading, or deceptive act or practice means any conduct that is either false or has the capacity or tendency to mislead or deceive the ignorant, the unthinking and the unsophisticated.

You are instructed that the State is not required to show actual deception. A practice is false, misleading, or deceptive if it has a capacity to deceive or is likely to deceive.

Please answer "Yes" or "No" for each.

Petroleum Wholesale, L.P.: Yes.

PWI GP, LLC: Yes.

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QUESTION NO. 2

In the conduct of trade or commerce, did the following entities, acting through their authorized agents, servants, and employees, cause confusion or misunderstanding regarding the source, sponsorship or certification of goods or services?

Please answer "Yes" or "No" for each.

Petroleum Wholesale, L.P.: Yes.

PWI GP, LLC: Yes.

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QUESTION NO. 3

In the conduct of trade or commerce, did the following entities, acting through their authorized agents, servants, and employees, cause confusion or misunderstanding regarding certification by another?

Please answer "Yes" or "No" for each.

Petroleum Wholesale, L.P.: Yes.

PWI GP, LLC: Yes.

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QUESTION NO. 4

In the conduct of trade or commerce, did the following entities, acting through their authorized agents, servants, and employees, represent that goods or services have approval, benefits, or quantities which they do not have?

Please answer "Yes" or "No" for each.

Petroleum Wholesale, L.P.: YES.

PWI GP, LLC: YES.

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QUESTION NO. 5

In the conduct of trade or commerce, did the following entities, acting through their authorized agents, servants, and employees, represent that goods or services are of a particular standard, quality, or grade if they are of another?

Please answer "Yes" or "No" for each.

Petroleum Wholesale, L.P.: NO.

PWI GP, LLC: NO.

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QUESTION NO. 6

In the conduct of trade or commerce, did the following entities, acting through their authorized agents, servants, and employees, advertise goods or services with the intent not to sell them as advertised?

Please answer "Yes" or "No" for each.

Petroleum Wholesale, L.P.: YES.

PWI GP, LLC: YES.

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QUESTION NO. 7

In the conduct of trade or commerce, did the following entities, acting through their authorized agents, servants, and employees, fail to disclose information concerning goods or services which was known at the time of the transaction if such failure to disclose such information was intended to induce the consumer into a transaction which the consumer would not have entered had the information been disclosed?

Please answer "Yes" or "No" for each.

Petroleum Wholesale, L.P.: Yes.

PWI GP, LLC: Yes.

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If you answered "Yes" to any part of Questions One through Seven, then answer the following question. Otherwise, do not answer this question. Further, if you answered "No" to each and every Question (Numbers One through Seven) for a particular entity, then do not answer this question for that particular entity.

QUESTION NO. 8

What sum of money, if any, was acquired by the following entities, by means of any unlawful acts or practices referred to in previous questions?

Please answer in dollars and cents, but do not add any amount for interest:

Petroleum Wholesale, L.P.: $ 18,765,411

PWI GP, LLC: $ 18,765,411.

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If you answered "Yes" to any part of Questions One through Seven, then answer the following question. Otherwise, do not answer this question. Further, if you answered "No" to each and every Question (Numbers One through Seven) for a particular entity, then do not answer this question for that particular entity.

QUESTION NO. 9

What was the amount of profit, if any, that the following entities obtained by means of any unlawful acts or practices referred to in previous questions?

Please answer in dollars and cents, but do not add any amount for interest:

Petroleum Wholesale, L.P.: $ 69,432.

PWI GP, LLC: $ 69,432.

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If you answered "Yes" to any part of Questions One through Seven, then answer the following question. Otherwise, do not answer this question. Further, if you answered "No" to each and every Question (Numbers One through Seven) for a particular entity, then do not answer this question for that particular entity.

QUESTION NO. 10

On how many occasions do you find that each defendant named below engaged in the false, misleading, or deceptive acts or practices upon which you based your answers to Questions One through Seven?

Answer separately in the blank, with a whole number, for each defendant named below for each "false, misleading, or deceptive act or practice":

Petroleum Wholesale, L.P.: 679,537.

PWI GP, LLC: 679,537.

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If you answered "Yes" to any part of Questions One through Seven, then answer the following question. Otherwise, do not answer this question. Further, if you answered "No" to each and every Question (Numbers One through Seven) for a particular entity, then do not answer this question for that particular entity.

QUESTION NO. 11

What sum of money, if any, should be assessed against the following entity or entities, as a civil penalty for each of their unlawful acts or practices referred to in previous questions?

"Civil penalty" means an amount that you may, in your discretion, award as punishment of the wrongdoer(s) and as a warning and example to the wrongdoer(s) and others to deter the same or similar conduct in the future. In determining the amount of civil penalty, you may consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act or practice;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) the economic effect on the person or entity against whom the penalty is to be assessed;

(5) knowledge of the illegality of the act or practice; and

(6) any other matter that justice may require.

Please answer in dollars and cents but do not add any amount for interest:

Petroleum Wholesale, L.P.: $ 8,494,212.

PWI GP, LLC: $ 8,494,212.

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If you answered "Yes" to any part of Questions One through Seven, then answer the following question. Otherwise, do not answer this question. Further, if you answered "No" to each and every Question (Numbers One through Seven) for a particular entity, then do not answer this question for that particular entity.

QUESTION NO. 12

What is a reasonable fee for the necessary services of the Consumer Protection Division attorneys in this case, stated in dollars and cents?

Factors to consider in determining the reasonableness of an attorney's fee include:

a. the time and labor involved, the novelty and difficulty of the questions involved, and the skill required to perform the legal services properly;

b. the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;

c. the fee customarily charged in the locality for similar legal services;

d. the amount involved and the results obtained;

e. the time limitations imposed by the client or the circumstances;

f. the nature and length of the professional relationship with the client;

g. the experience, reputation, and ability of the lawyer or lawyers performing the services; and

h. whether the fee is fixed or contingent on the results obtained or uncertainty of collection before the legal services have been rendered.

You are further instructed that the amount of attorney fees to be paid to the State of Texas for the Texas Attorney General's attorneys, paralegals, and staff members' time shall be determined by applying the reasonable market-value of attorney and staff fees applicable to private-sector (or non-government) attorneys with similar experience and qualifications.

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Please answer with an amount for each of the following:

a. For preparation of this case and the trial of this case: $ 2,696,827.

b. For an appeal to the Court of Appeals: $ 134,000.

c. For an appeal to the Texas Supreme Court $ 36,600.

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After you retire to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is to have this complete charge read aloud and then you will deliberate upon your answers to the questions asked.

It is the duty of the presiding juror:

1. to preside during your deliberations,

2. to see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this charge,

3. to write out and hand to the bailiff any communications concerning the case that you desire to have delivered to the judge,

4. to vote on the questions,

5. to write your answers to the questions in the spaces provided, and

6. to certify to your verdict in the space provided for the presiding juror's signature or to obtain the signatures of all the jurors who agree with the verdict if your verdict is less than unanimous.

You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform the judge of this fact.

When you have answered all the questions you are required to answer under the instructions of the judge and your presiding juror has placed your answers in the spaces provided and signed the verdict as presiding juror or obtained the signatures, you will inform the bailiff at the door of the jury room that you have reached a verdict, and then you will return into court with your verdict.

DISTRICT JUDGE SHARON McCALLY

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CERTIFICATE

We, the jury, have answered the above and foregoing questions as indicated and return this to the Court as our verdict.

(To be signed by the presiding juror if the jury is unanimous.)

_____
PRESIDING JUROR

_____
Printed Name of Presiding Juror

(To be signed by those rendering the verdict if the jury is not unanimous.)

Signatures:	Printed Names:
[illegible]	Tanya Turner
[illegible] True	Amanda B. True.
Sheryl Carnes	Sheryl Carnes
Daniel W. Scurlock	DANIEL W, SCURLOCK.
[illegible]	JEAN M WALLENBERG
Shirley Christenson	Shirley Christenson
Elizabeth M. Geiser	Elizabeth M. Geiser
Liz Gillespie	Liz Gillespie
Joyce Lowe	Joyce Lowe
Rheem Hafez	Rheem Hafez
Raymond C. Barker	Raymond C. Barker

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I, Loren Jackson, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date
Witness my official hand and seal of office
this November 9, 2010

Certified Document Number: 46895057 Total Pages: 18

LOREN JACKSON, DISTRICT CLERK
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail support@hcdistrictclerk.com