

FILED

2009 MAY 12 AM 11:25

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY ML

1 Michael Louis Kelly - State Bar No. 82063
mlk@kirtlandpackard.com
2 Behram V. Parekh - State Bar No. 180361
bvp@kirtlandpackard.com
3 Heather M. Peterson - State Bar No. 261303
hmp@kirtlandpackard.com
4 KIRTLAND & PACKARD LLP
2361 Rosecrans Avenue
5 Fourth Floor
El Segundo, California 90245
6 Telephone: (310) 536-1000
Facsimile: (310) 536-1001

7 *Counsel for Plaintiffs*
8 *and all others similarly situated*

9
10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13 JONATHAN ALVAREZ, EMANUEL
14 JIMINEZ, SHAUN MCCrackEN,
HOUSAM MOUMNE, MOHAMMAD
15 MOUMNE and KENT COCHRAN, on
behalf of themselves and all others
16 similarly situated,

17 Plaintiffs,

18 v.

19 CHEVRON CORPORATION,
CHEVRON USA, INC., EXXON-
20 MOBIL CORPORATION,
CONOCOPHILLIPS, BP PLC, BP
CORPORATION NORTH AMERICA,
21 INC., BP NORTH AMERICA
PETROLEUM, INC., BP PRODUCTS
22 NORTH AMERICAS INC., BP WEST
COAST PRODUCTS, LLC, ROYAL
23 DUTCH SHELL PLC, SHELL OIL
COMPANY, SHELL OIL PRODUCTS
24 COMPANY LLC, VALERO ENERGY
CORPORATION, VALERO
25 CALIFORNIA RETAIL COMPANY,
and DOE DEFENDANTS 1-10

26 Defendants.
27
28

Case No. **CV09-3343** RGK
CLASS ACTION (CWx)

COMPLAINT FOR:

- 1. Breach of Contract
- 2. Breach of the Duties of Good Faith and Fair Dealing
- 3. Breach of Express and Implied Warranties
- 4. California Consumer Legal Remedies Act, California Civil Code § 1770 et seq.
- 5. California Unfair Competition Law, California Business & Professions Code § 17200 et seq.
- 6. California False Advertising Law, California Business & Professions Code § 17500 et seq.

LAW OFFICES
KIRTLAND & PACKARD LLP

H/S
20

1 Plaintiffs, on behalf of themselves and all others similarly situated, allege as
2 follows. Plaintiffs' allegations are based on the investigation of counsel, and thus
3 on information and belief, except as to the individual actions of Plaintiffs, as to
4 which Plaintiffs have personal knowledge.

5 **JURISDICTION AND VENUE**

6 1. This Court has diversity jurisdiction over this class action pursuant to
7 28 U.S.C. § 1332 as amended by the Class Action Fairness Act of 2005 because the
8 matter in controversy exceeds \$5,000,000, exclusive of interest and costs, and is a
9 class action in which some members of the class are citizens of different states than
10 some of the Defendants. *See* 28 U.S.C. § 1332(d)(2)(A).

11 2. This Court also has personal jurisdiction over Defendants because
12 Defendants are authorized to do business, and currently do conduct business, in this
13 state.

14 3. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391
15 because Defendants have conducted business in this District, are subject to personal
16 jurisdiction, and a substantial portion of the conduct complained of herein occurred
17 in this District.

18 **PARTIES**

19 4. Plaintiff Jonathan Alvarez, is and at all material times was a resident of
20 Los Angeles County, California. Plaintiff purchased motor fuel with an advertised
21 octane rating of 91 or higher, which was advertised, marketed, distributed, and/or
22 sold, by a Defendant named herein.

23 5. Plaintiff Emanuel Jiminez, is and at all material times was a resident of
24 Los Angeles County, California. Plaintiff purchased motor fuel with an advertised
25 octane rating of 91 or higher, which was advertised, marketed, distributed, and/or
26 sold, by a Defendant named herein.

27 6. Plaintiff Shaun McCracken, is and at all material times was a resident
28 of Los Angeles County, California. Plaintiff purchased motor fuel with an

1 advertised octane rating of 91 or higher, which was advertised, marketed,
2 distributed, and/or sold, by a Defendant named herein.

3 7. Plaintiff Housam Mounme, is and at all material times was a resident
4 of Los Angeles County, California. Plaintiff purchased motor fuel with an
5 advertised octane rating of 91 or higher, which was advertised, marketed,
6 distributed, and/or sold, by a Defendant named herein.

7 8. Plaintiff Mohammad Mounme, is and at all material times was a
8 resident of Los Angeles County, California. Plaintiff purchased motor fuel with an
9 advertised octane rating of 91 or higher, which was advertised, marketed,
10 distributed, and/or sold, by a Defendant named herein.

11 9. Plaintiff Kent Cochran, is and at all material times was a resident of
12 Texas. Plaintiff purchased motor fuel with an advertised octane rating of 91 or
13 higher, which was advertised, marketed, distributed, and/or sold, by a Defendant
14 named herein.

15 10. Plaintiffs Alvarez, Jiminez, McCracken, H. Mounme, M. Mounme,
16 and Cochran are collectively referred to as "Plaintiffs" for purposes of the
17 Complaint.

18 11. In bringing this action, as to the individual and class claims, Plaintiffs
19 either directly or indirectly relied upon, *inter alia*, the representations, advertising
20 and other promotional materials which were prepared and approved by Defendants
21 and their agents and disseminated on the face of the fuel dispensers for Defendants'
22 products, billboards, signage, and/or through local and national advertising media,
23 containing the misrepresentations and/or omissions alleged hereafter.

24 12. Defendant Chevron Corporation is a Delaware corporation and
25 Defendant Chevron USA, Inc. is a Pennsylvania corporation, both headquartered in
26 San Ramon, California, (collectively, "Chevron"). Chevron is licensed to do, and is
27 doing, business in California and throughout the United States. Chevron's motor
28 fuel is sold through stations which include, but are not limited to, the brands

1 Chevron, Standard Oil, Texaco, Caltex, Gulf, and Unocal. Chevron transacts
2 business in Los Angeles County, California and at all relevant times designed,
3 manufactured, promoted, marketed, distributed, and/or sold the products that are the
4 subject of this Complaint, throughout the United States and California. Chevron
5 also has significant contacts with Los Angeles County, California, and the activities
6 complained of herein occurred, at least in part, in Los Angeles County.

7 13. Defendant Exxon-Mobil Corporation (“Exxon”) is a New Jersey
8 corporation headquartered in Irving, Texas, which is licensed to do, and is doing,
9 business in California and throughout the United States. Exxon’s motor fuel is sold
10 through stations which include, but are not limited to, the brands ExxonMobil,
11 Exxon, Esso and Mobil. Exxon transacts business in Los Angeles County,
12 California and at all relevant times designed, manufactured, promoted, marketed,
13 distributed, and/or sold the products that are the subject of this Complaint,
14 throughout the United States and California. Exxon also has significant contacts
15 with Los Angeles County, California, and the activities complained of herein
16 occurred, at least in part, in Los Angeles County.

17 14. Defendant ConocoPhillips (“Conoco”) is a Delaware corporation
18 headquartered in Houston, Texas, which is licensed to do, and is doing, business in
19 California and throughout the United States. Conoco’s motor fuel is sold through
20 stations which include, but are not limited to, the brands 76, Conoco, Flying J and
21 Phillips 66. Conoco transacts business in Los Angeles County, California and at all
22 relevant times designed, manufactured, promoted, marketed, distributed, and/or sold
23 the products that are the subject of this complaint, throughout the United States and
24 California. Conoco also has significant contacts with Los Angeles County,
25 California, and the activities complained of herein occurred, at least in part, in Los
26 Angeles County.

27 15. Defendant BP Plc is a British corporation headquartered in London,
28 England. Defendants BP Corporation North America, Inc., BP North America

1 Petroleum, Inc., BP Products North Americas Inc., and BP West Coast Products,
2 LLC are subsidiaries of BP Plc (collectively "BP") which are licensed to do, and are
3 doing, business in California and throughout the United States as themselves or
4 through various subsidiaries. BP's motor fuel is sold through stations which
5 include, but are not limited to, the brands BP, Arco, and Amoco. BP transacts
6 business in Los Angeles County, California and at all relevant times designed,
7 manufactured, promoted, marketed, distributed, and/or sold the products that are the
8 subject of this Complaint, throughout the United States and California. BP also has
9 significant contacts with Los Angeles County, California, and the activities
10 complained of herein occurred, at least in part, in Los Angeles County.

11 16. Defendant Royal Dutch Shell Plc ("Shell") is a Dutch corporation
12 headquartered in The Hague, Netherlands. Defendants Shell Oil Company and
13 Shell Oil Products Company LLC are subsidiaries of Royal Dutch Shell Plc
14 (collectively "Shell") which are licensed to do, and are doing, business in California
15 and throughout the United States as themselves or through various subsidiaries.
16 Shell's motor fuel is sold through stations which include, but are not limited to, the
17 brand Shell. Shell transacts business in Los Angeles County, California and at all
18 relevant times designed, manufactured, promoted, marketed, distributed, and/or sold
19 the products that are the subject of this Complaint, throughout the United States and
20 California. Shell also has significant contacts with Los Angeles County, California,
21 and the activities complained of herein occurred, at least in part, in Los Angeles
22 County.

23 17. Defendant Valero Energy Corporation and Valero California Retail
24 Company (collectively "Valero") are Delaware corporations headquartered in San
25 Antonio, Texas. Valero is licensed to do, and is doing, business in California and
26 throughout the United States. Valero's motor fuel is sold through stations which
27 include, but are not limited to, the brands Valero, Beacon, Diamond, Shamrock, and
28 Ultramar. Valero transacts business in Los Angeles County, California and at all

1 relevant times designed, manufactured, promoted, marketed, distributed, and/or sold
2 the products that are the subject of this complaint, throughout the United States and
3 California. Valero also has significant contacts with Los Angeles County,
4 California, and the activities complained of herein occurred, at least in part, in Los
5 Angeles County.

6 18. The true names and capacities of defendants sued in this Complaint as
7 Does 1-10, inclusive, are currently unknown to Plaintiffs, who therefore sue such
8 defendants by these fictitious names. Each of the defendants designated herein as a
9 Doe is legally responsible in some manner for the unlawful acts referred to herein.
10 Plaintiffs will seek leave of the Court to amend this complaint to reflect the true
11 names and capacities of the defendants designated herein as Does 1 through 10
12 when such identities become known.

13 19. Chevron, Exxon, Conoco, BP, Shell, Valero and Does 1-10 are
14 collectively referred to as "Defendants" for purposes of the Complaint.

15 FACTUAL ALLEGATIONS

16 20. Through the years, gas stations have carried various "grades" of
17 gasoline. These grades have generally ranged from "regular" to "premium" with
18 different fuel stations and companies having different labels for these grades.

19 21. These grades of gasoline are categorized according to their octane
20 rating. In the United States, octane rating is calculated by averaging the Research
21 Octane Number ("R") and the Motor Octane Number ("M"). This average number
22 is generally displayed on fuel pumps with the designation "(R+M)/2" or "AKI"
23 (Anti-Knock Index).

24 22. The octane rating of a spark ignition engine fuel is the detonation
25 resistance (anti-knock rating) compared to a mixture of iso-octane
26 (2,2,4-trimethylpentane, an isomer of octane) and n-heptane. By definition,
27 iso-octane is assigned an octane rating of 100 and heptane is assigned an octane
28 rating of zero. An 87-octane gasoline, for example, possesses the same anti-knock

1 rating of a mixture of 87% (by volume) iso-octane and 13% (by volume) n-heptane.
2 This does not mean, however, that the gasoline actually contains these
3 hydrocarbons in these proportions. It simply means that it has the same detonation
4 resistance as the described mixture.

5 23. A fuel with a higher octane rating can be run in an engine with a higher
6 compression ratio without detonating (or "knocking"). Thus, the use of higher
7 octane fuel allows engine designers to build engines that have higher compression
8 ratios, which generally translates to more power for a given engine size and fuel
9 efficiency.

10 24. In practice, consumers generally purchase the grade of gasoline
11 recommended by their vehicle manufacturer. Although running a vehicle with a
12 higher grade of gasoline than recommended has no ill-effect, and usually no benefit,
13 running a vehicle with a lower grade of gas than recommended can lead to a loss of
14 power, engine knocking, extra stress and wear on the engine, and, over time,
15 potential engine damage.

16 25. In general, the three grades of gasoline sold in the United States have
17 octane ratings of 87, 89, and 91. The general price difference between these grades
18 is usually ten to twenty cents, with the mid-range costing ten to twenty cents more
19 than regular, and premium costing twenty to forty cents more than regular.

20 26. Each fuel dispensing unit in the United States is required, as a matter
21 of law, to clearly list the specific grades of gasoline being dispensed in units of
22 (M+R)/2 and the price per gallon of such grades of gasoline.

23 27. Up until relatively recently, gasoline dispensers had three separate
24 nozzles, one for each grade of gasoline. Each nozzle was connected, through the
25 dispenser, to a separate underground tank, each of which held a different grade of
26 gasoline.

27 28. In order to reduce costs and improve margins, multi-nozzle gasoline
28 dispensers have become single-nozzle dispensers. These dispensers are not only

1 cheaper to install and maintain, but also, in most cases, allow the elimination of a
2 separate tank for mid-range gasoline, and instead, blend such mid-range from the
3 regular and premium fuel in the dispenser, reducing costs further.

4 29. The problem with these dispensers, however, is that the vast majority
5 of them leave a residual amount of gasoline, between 0.2 - 0.3 gallon, of the grade
6 selected by the prior consumer, in the pipeline, which then becomes the initial 0.2 -
7 0.3 gallon received by the next consumer.

8 30. Technology exists which allows gasoline dispensers to vacuum back
9 the residual gasoline, thus ensuring that each consumer gets the grade of gasoline
10 they have paid for, but such technology is not widely implemented.

11 31. Consumers who purchases premium fuel, or mid-range fuel, when the
12 prior consumer purchased regular fuel, are receiving an initial 0.2 - 0.3 gallon of
13 regular fuel first, although still paying for that fuel at a premium price.

14 32. Millions of Americans purchase premium and mid-range fuel every
15 day, and are being made to pay premium pricing while receiving a lower grade of
16 fuel.

17 33. Defendants do not disclose to consumers that the initial 0.2 - 0.3 gallon
18 of premium fuel that they are receiving may not be premium fuel at all.

19 34. Further, when acting as retail sellers of fuel, the Defendants have failed
20 to install technology that would correct such practice, and when acting as
21 franchisors, the Defendants control the specifications of the fuel dispensers at their
22 franchisees' retail locations, and again, fail to install technology that would correct
23 such practice.

24 35. Defendants have benefitted from costs savings and margin
25 improvements due to the installation of single-nozzle pumps, while failing to
26 implement technology that would ensure that consumers receive the gasoline grade
27 they have paid for.

28

1 **CLASS ACTION ALLEGATIONS**

2 36. Plaintiffs bring this action on behalf of themselves and all others
3 similarly situated, as a member of the proposed nationwide plaintiff class, a
4 California class, and a Texas class (collectively hereafter the "Class") defined as
5 follows:

6 Nationwide class: All individuals and entities who purchased mid-range or
7 premium motor fuel from any of the Defendants using a single-nozzle dispenser
8 which allowed for residual fuel from the prior purchaser to remain in the dispensing
9 system, where the prior purchaser had purchased a lower grade of motor fuel, and
10 who received such residual fuel.

11 California class: All individuals and entities who are California residents,
12 who purchased fuel in California, or who purchased fuel from a Defendant which is
13 incorporated in California or maintains its principal place of business in California,
14 who purchased mid-range or premium motor fuel from any of the Defendants using
15 a single-nozzle dispenser which allowed for residual fuel from the prior purchaser
16 to remain in the dispensing system, where the prior purchaser had purchased a
17 lower grade of motor fuel, and who received such residual fuel.

18 Texas class: All individuals and entities who are Texas residents, who
19 purchased fuel in Texas, or who purchased fuel from a Defendant which is
20 incorporated in Texas or maintains its principal place of business in Texas, who
21 purchased mid-range or premium motor fuel from any of the Defendants using a
22 single-nozzle dispenser which allowed for residual fuel from the prior purchaser to
23 remain in the dispensing system, where the prior purchaser had purchased a lower
24 grade of motor fuel, and who received such residual fuel.

25 37. Specifically excluded from the proposed classes are Defendants, any
26 entities in which any of the Defendants have a controlling interest, and the officers,
27 directors, affiliates, legal representatives, successors, subsidiaries and/or assigns of
28 Defendants. Also specifically excluded from the proposed classes are any judges or

1 other court personnel who have presided over or are currently presiding over this
2 case or any related case.

3 38. This action is brought and may be properly maintained as a class action
4 pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4) and
5 23(b)(1)-(3). This action satisfies the numerosity, typicality, adequacy,
6 predominance and superiority requirements of those provisions.

7 39. [Fed. R. Civ. P. 23(a)(1)] The Class is so numerous that the individual
8 joinder of all of its members is impractical. While the exact number and identities
9 of Class members are unknown to Plaintiffs at this time and can only be ascertained
10 through appropriate discovery, Plaintiffs are informed and believe the Class
11 includes millions of members.

12 40. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to
13 all members of the Class which predominate over any questions affecting only
14 individual members of the Class. These common legal and factual questions, which
15 do not vary from class member to class member, and which may be determined
16 without reference to the individual circumstances of any class member, include, but
17 are not limited to, the following:

- 18 a. Whether single-nozzle fuel dispensers used by Defendants deliver, as
19 the initial 0.2 - 0.3 gallons of fuel, residual fuel dispensed by the prior
20 consumer;
- 21 b. Whether Defendants are aware that the single-nozzle fuel dispensers
22 used by them deliver, as the initial 0.2 -0.3 gallons of fuel, residual fuel
23 dispensed by the prior consumer;
- 24 c. Whether technology exists which would allow single-nozzle fuel
25 dispensers to deliver 100 percent of the grade of fuel selected by a
26 consumer;
- 27 d. Whether Defendants' practice of using single-nozzle fuel dispensers
28 which deliver, as the initial 0.2 - 0.3 gallons of fuel, residual fuel

- 1 dispensed by the prior consumer is an unfair, fraudulent, deceptive,
2 unlawful or unconscionable practice;
- 3 e. Whether Defendants' practice of using single-nozzle fuel dispensers
4 which deliver, as the initial 0.2 - 0.3 gallons of fuel, residual fuel
5 dispensed by the prior consumer has harmed Plaintiffs and putative
6 class members;
- 7 f. Whether Defendants have been unjustly enriched through the use of
8 single-nozzle fuel dispensers which deliver, as the initial 0.2 - 0.3
9 gallons of fuel, residual fuel dispensed by the prior consumer;
- 10 g. Whether Defendants have breached the sales contracts and agreements
11 with Plaintiffs and putative class members regarding motor fuel
12 transactions;
- 13 h. Whether Defendants have breached the duty of good faith and fair
14 dealing in the motor fuel sales to Plaintiffs and putative class members;
- 15 i. Whether Defendants have breached the implied and express warranties
16 in the motor fuel sales to Plaintiffs and putative class members;
- 17 j. Whether Defendants have made misrepresentations regarding the
18 motor fuel sales to Plaintiffs and putative class members;
- 19 k. Whether Defendants practice of using single-nozzle fuel dispensers
20 which deliver, as the initial 0.2 - 0.3 gallons of fuel, residual fuel
21 dispensed by the prior consumer should be enjoined;
- 22 l. Whether Defendants should be required to make Plaintiffs and putative
23 class members whole for any harm caused by Defendants' practice of
24 using single-nozzle fuel dispensers which deliver, as the initial 0.2 -
25 0.3 gallons of fuel, residual fuel dispensed by the prior consumer; and
- 26 m. The nature and extent of any other damages and other remedies to
27 which the conduct of Defendants entitles Plaintiffs and the putative
28 class members.

1 41. [Fed. R. Civ. P. 23(a)(3)] Plaintiffs' claims are typical of the claims of
2 the members of the Class. Plaintiffs and all members of the Class have sustained
3 injury and are facing irreparable harm arising out of Defendants' common course of
4 conduct as complained of herein. The losses of each member of the Class were
5 caused directly by Defendants' wrongful conduct as alleged herein.

6 42. [Fed. R. Civ. P. 23(a)(4)] Plaintiffs will fairly and adequately protect
7 the interests of the members of the Class. Plaintiffs have retained attorneys
8 experienced in the prosecution of class actions, including complex consumer and
9 mass tort litigation.

10 43. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available
11 methods of fair and efficient adjudication of this controversy, since individual
12 litigation of the claims of all Class members is impracticable. Even if every Class
13 member could afford individual litigation, the court system could not. It would be
14 unduly burdensome to the courts in which individual litigation of numerous issues
15 would proceed. Individualized litigation would also present the potential for
16 varying, inconsistent, or contradictory judgments and would magnify the delay and
17 expense to all parties and to the court system resulting from multiple trials of the
18 same complex factual issues. By contrast, the conduct of this action as a class
19 action, with respect to some or all of the issues presented herein, presents fewer
20 management difficulties, conserves the resources of the parties and of the court
21 system, and protects the rights of each Class member.

22 44. [Fed. R. Civ. P. 23(b)(1)(A)] The prosecution of separate actions by
23 millions of individual Class members would create the risk of inconsistent or
24 varying adjudications with respect to, among other things, the need for and the
25 nature of proper notice which Defendants must provide to all Class members.

26 45. [Fed. R. Civ. P. 23(b)(1)(B)] The prosecution of separate actions by
27 individual class members would create a risk of adjudications with respect to them
28 that would, as a practical matter, be dispositive of the interests of the other Class

1 members not parties to such adjudications or that would substantially impair or
2 impede the ability of such non-party Class members to protect their interests.

3 46. [Fed. R. Civ. P. 23(b)(2)] Defendants have acted or refused to act in
4 respects generally applicable to the Class, thereby making appropriate final and
5 injunctive relief with regard to the members of the Class as a whole.

6 **CAUSES OF ACTION**

7 **Count I**

8 **(Breach of Contract)**

9 47. To the extent they are not inconsistent, Plaintiffs incorporate by
10 reference the allegations set forth in the foregoing paragraphs of this complaint as if
11 fully set forth herein.

12 48. Many commodities are sold in varying grades.

13 49. When commodities are sold in varying grades, they are typically
14 categorized by a common, accepted, and objective standard of grading.

15 50. By trading commodities of a specific minimum objective grade,
16 purchasers and sellers can be assured of consistent, predictable and uniform
17 transactions in such commodity.

18 51. The price of a commodity that varies in grade is set by the market.

19 52. Each grade is sold at a specific price, and both buyers and sellers
20 warrant, unless specifically disclaimed, that the entire quantity of any commodity
21 being sold at a specific price meets the minimum objective grade agreed upon.

22 53. This practice allows buyers to make an apples-to-apples comparison of
23 the price quoted by various sellers and to gage from transaction to transaction
24 whether they are paying more, less, or the same, for a specific commodity.

25 54. For these reasons, the expression of a sale of a commodity in terms of a
26 specific number of units of a specific grade has come to mean or imply that such
27 units are fungible, or in other words, freely interchangeable.
28

1 55. Motor fuel is a fungible commodity sold in various specific, objective,
2 grades.

3 56. At the retail level, Defendants advertise and sell motor fuel grades
4 based upon their octane rating, expressed in standard units of (M+R)/2.

5 57. Plaintiffs and members of the Class purchased motor fuel from
6 Defendants at their retail outlets.

7 58. Each time a Plaintiff or Class member and one of the Defendants
8 agreed to a sale of motor fuel, they mutually agreed that the Plaintiff or Class
9 member would pay a specific price per gallon for a certain grade of motor fuel, and,
10 conversely, that Defendants would deliver 100 percent of the quantity of motor fuel
11 purchased of that certain grade.

12 59. None of the Plaintiffs' or Class members' agreements with any
13 Defendant for the purchase of motor fuel included any agreement to accept any
14 amount of motor fuel of a grade below that selected by them.

15 60. Each time Defendants delivered motor fuel to Plaintiffs or Class
16 members, however, where such delivery was through the use of a single-nozzle fuel
17 dispenser which allowed residual fuel to remain from the prior consumer, and
18 where such prior consumer had purchased a lower grade of gasoline than that
19 selected by the Plaintiff or Class member, Defendants failed to deliver 100 percent
20 of the fuel contracted for of the grade contracted for.

21 61. Consequently, each time Defendants delivered motor fuel to Plaintiffs
22 or Class members under these circumstances, Defendants breached their contracts
23 for sale of motor fuel with Class members.

24 62. Defendants' breach of contract proximately caused Class members to
25 sustain substantial losses in an amount to be proved at trial.

26 //
27 //
28 //

Count II

(Breach of the Duties of Good Faith and Fair Dealing)

63. To the extent they are not inconsistent, Plaintiffs incorporate by reference the allegations set forth in the foregoing paragraphs of this complaint as if fully set forth herein.

64. As set forth above, Plaintiffs and Class members have entered into individual sales transactions and agreements with Defendants for the purchase of motor fuel pursuant to which, Plaintiffs and Class members agreed to purchase, at the prevailing posted rate, motor fuel of a certain grade from Defendants.

65. Plaintiffs and Class members have fully performed their obligations with Defendants under such transactions and agreements.

66. At all times, Defendants owed Plaintiffs and Class members a duty to exercise and act in good faith and deal fairly with them in the performance of such sales transactions and agreements.

67. Defendants were obligated to observe reasonable commercial standards in the sale of motor fuel to Plaintiffs and Class members, including the sale of a uniform minimum grade of fuel.

68. Defendants have breached these duties and obligations in the manner and particulars set for above, including but not limited to, failing to sell 100 percent of the fuel contracted for at the grade contracted for by Plaintiffs and Class members.

69. As a direct and proximate result of Defendants' failure to abide and comply with their obligations and duties, Plaintiffs and Class members have suffered pecuniary damages in an amount that has not yet been determined.

//

//

//

Count III

(Breach of Express and Implied Warranties)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

70. To the extent they are not inconsistent, Plaintiffs incorporate by reference the allegations set forth in the foregoing paragraphs of this complaint as if fully set forth herein.

71. Gasoline is a "good," and as such, its sale is governed by the provisions of the Uniform Commercial Code.

72. As set forth above, Plaintiffs and Class members entered into individual sales transactions and agreements with Defendants for the purchase of motor fuel.

73. Pursuant to such sales transactions and agreements, Plaintiffs and Class members agreed to purchase from Defendants a certain quantity of motor fuel, of a certain minimum grade, at the prevailing posted rate, and Defendants agreed to sell such motor fuel of a certain minimum grade at the prevailing posted rate.

74. As merchants, Defendants impliedly warranted that the motor fuel was merchantable; would pass without objection under contract description; was of even kind, quality and quantity within each unit and among all units, and conformed to the promises, affirmations and descriptions at the dispensing site.

75. In addition, Defendants knew, or had reason to know, that at the time of such motor fuel purchases, Plaintiffs and Class members were relying on Defendants' skill, judgment, and/or superior knowledge to select or furnish suitable motor fuel that was sufficient for the intended use by Plaintiffs and Class members (i.e., as a fuel to power an internal combustion engine), and which met the minimum octane rating posted at the sale site.

76. Plaintiffs and Class members have fully performed their obligations with Defendants under such transactions and agreements.

77. Defendants have breached their duties under the Uniform Commercial Code, including but not limited to the express warranties of U.C.C. § 2-313 and the

LAW OFFICES
KIRTLAND & PACKARD LLP

1 implied warranties of U.C.C. § 2-314, in that the motor fuel sold by them to
2 Plaintiffs and the Class did not conform to the qualities, quantities and
3 characteristics warranted by Defendants.

4 78. As a direct and proximate result of Defendants' failure to comply with
5 their warranties, express and implied, Plaintiffs and Class members have suffered
6 pecuniary damages in an amount that has not yet been determined.

7 **Count IV**

8 **(Violation of the California Consumer Legal Remedies Act**
9 **California Civil Code § 1770 et seq.)**

10 79. To the extent they are not inconsistent, Plaintiffs incorporate by
11 reference the allegations set forth in the foregoing paragraphs of this complaint as if
12 fully set forth herein.

13 80. Plaintiffs bring this Count on behalf of themselves, and all consumers
14 who purchased mid-grade or premium motor fuel who are either (a) California
15 residents, (b) who purchased such fuel from any Defendant in the State of
16 California or (c) who purchased such fuel from a Defendant incorporated or which
17 maintains its headquarters in the State of California.

18 81. The Defendants' acts and omissions violated and continue to violate
19 the following portions of the California *Civil Code* § 1770, the Consumers Legal
20 Remedies Act ("CLRA"):

- 21 a. in violation of § 1770(a)(5), Defendants have represented that their
22 motor fuel has certain characteristics and/or benefits, when in fact it
23 does not;
- 24 b. in violation of § 1770(a)(7), Defendants have represented that their
25 motor fuel is of a particular standard when it actually is not;
- 26 c. in violation of § 1770(a)(9), Defendants have advertised their motor
27 fuel with the intent not to sell it as advertised;
28

- 1 d. in violation of § 1770(a)(14), Defendants have represented that a
2 transaction to purchase their motor fuel involves certain rights,
3 remedies, or obligations when in fact, it does not, or it is prohibited by
4 law; and
- 5 e. in violation of § 1770(a)(16), Defendants have represented that the
6 subject of a transaction to purchase motor fuel has been supplied in
7 accordance with a previous representation when it has not.

8 82. Plaintiffs and the members of the Class risk irreparable injury as a
9 result of Defendants' acts and omissions in violation of the CLRA and these
10 violations present a continuing risk to the class and members of the public. Due to
11 the mass nature of this violation, it is not clear that each such violation, especially
12 those paid for with cash, will be identifiable, and thus, amenable to a recovery of
13 damages.

14 83. Plaintiffs and Class members have been injured by Defendants' unfair
15 methods of competition and unfair or deceptive acts or practices because they have
16 received an inferior grade of motor fuel than they were entitled to receive and for
17 which they paid.

18 84. Defendants' conduct has further injured Plaintiffs and Class members
19 by impairing competition within the retail motor fuel markets and preventing
20 Plaintiffs and Class members from making fully informed decisions about the motor
21 fuel they purchase.

22 85. Pursuant to California *Civil Code* § 1780(a)(2), Plaintiffs respectfully
23 request that the Court enjoin Defendants from engaging in the unlawful conduct
24 alleged herein and require a) that Defendants immediately begin replacing their fuel
25 dispensing systems with ones that do not dispense any residual motor fuel of the
26 grade selected by the prior customer; b) that Defendants immediately correct their
27 billing systems so that consumers are accurately charged for the grade and quantity
28 of motor fuel actually received; and c) that during the conversion process,

1 Defendants' prominently disclose on all single-nozzle fuel dispensers not capable
2 of dispensing 100 percent of the fuel grade contracted for, a notice to that effect.

3 86. Unless Defendants are enjoined from violations of the CLRA alleged
4 herein, the members of the Class and the general public, who lack an adequate
5 remedy at law to deter Defendants' wrongful conduct, will be irreparably harmed.

6 87. Pursuant to California *Civil Code* §1780(a)(3), Plaintiffs and the
7 members of the proposed Class also seek restitution of monies wrongfully paid due
8 to Defendants' acts and practices.

9 88. Plaintiffs and the members of the Class further request that this Court
10 award them their costs and reasonable attorneys' fees, pursuant to California *Civil*
11 *Code* §1780(e).

12 89. As a direct and proximate result of the above-described deceptive
13 practices, Plaintiffs and members of the proposed Class sustained damages in an
14 amount to be determined. Pursuant to California *Civil Code* § 1782, a certified
15 letter, return receipt requested, addressed to each Defendant, is being sent as of the
16 date of filing of this Complaint. In such letter, Plaintiffs demand that within 30
17 days of the receipt of such letter, each Defendant correct or otherwise rectify the
18 deceptive practices complained of herein for the entire Class pursuant to California
19 *Civil Code* §1770 *et seq.* Failure to do so will result in Plaintiffs amending this
20 Complaint to seek damages and punitive damages for such deceptive practices
21 pursuant to California *Civil Code* §§1780 and 1782 as to each Defendant which
22 fails to make such correction.

23 **Count V**

24 **(Violation of the California Unfair Competition Law**
25 **California *Business and Professions Code* § 17200 *et seq.*)**

26 90. To the extent they are not inconsistent, Plaintiffs incorporate by
27 reference the allegations set forth in the foregoing paragraphs of this complaint as if
28 fully set forth herein.

1 91. Plaintiffs bring this Count on behalf of themselves, and all persons
2 who purchased mid-grade or premium motor fuel who are either (a) California
3 residents, (b) who purchased such fuel from any Defendant in the State of
4 California or (c) who purchased such fuel from a Defendant incorporated or which
5 maintains its headquarters in the State of California.

6 92. California *Business and Professions Code* § 17200 *et seq.*, also known
7 as the California Unfair Competition Law (“UCL”), prohibits acts of “unfair
8 competition,” including any unlawful, unfair, fraudulent or deceptive business act
9 or practice as well as “unfair, deceptive, untrue or misleading advertising.”

10 93. Defendants violated and continue to violate the UCL through one or
11 more of the following unfair, unlawful, or fraudulent practices:

- 12 a. Selling to Plaintiffs and Class members motor fuel of a lower grade
13 than advertised;
 - 14 b. Delivering to Plaintiffs and Class members motor fuel of a lower grade
15 than advertised;
 - 16 c. Representing to Plaintiffs and Class members that 100 percent of the
17 motor fuel being dispensed consisted of fuel with a minimum octane
18 rating as listed on the fuel dispenser, when it did not;
 - 19 d. Failing to disclose to Plaintiffs and Class members that the fuel being
20 dispensed to them included of fuel which did not meet the minimum
21 octane rating listed on the fuel dispenser;
 - 22 e. Violating Cal. Bus. & Prof. Code § 13413 by selling motor fuel to the
23 public with the foregoing misrepresentations and omissions;
 - 24 f. Violating California law through Breach of Contract for the reasons
25 described in Count I;
 - 26 g. Violating California law through a Breach of the Duty of Good Faith
27 and Fair Dealing for the reasons described in Count II;
- 28

CO.

- 1 h. Violating California law through the Breach of Express and Implied
- 2 Warranties for the reasons described in Count III;
- 3 i. Violating Cal. Civ. Code § 1770 *et seq.* for the reasons described in
- 4 Count IV; and
- 5 j. Violating Cal. Bus. & Prof. Code § 17500 for the reasons described in
- 6 Count VI.

7 94. As a direct and proximate result of Defendants' illegal business
 8 practices, Plaintiffs and the members of the Class have suffered injury and have lost
 9 money or property.

10 95. Defendants' conduct has further injured Plaintiffs and Class members
 11 by impairing competition within the retail motor fuel markets and prevent Plaintiffs
 12 and Class members from making fully informed decisions about the motor fuel they
 13 purchase.

14 96. Plaintiffs respectfully request that the Court enjoin Defendants from
 15 engaging in the unlawful conduct alleged herein and require a) that Defendants
 16 immediately begin replacing their fuel dispensing systems with ones that do not
 17 dispense any residual motor fuel of the grade selected by the prior customer; b) that
 18 Defendants immediately correct their billing systems so that consumers are
 19 accurately charged for the grade and quantity of motor fuel actually received; c) that
 20 during the conversion process, Defendants prominently disclose on all single-
 21 nozzle fuel dispensers that are not capable of dispensing 100 percent of the fuel
 22 grade contracted for, a notice to that effect; d) require Defendants to notify all
 23 affected persons of the Court's injunction; e) require Defendants to provide
 24 restitution to Plaintiffs and Class members; f) award Plaintiffs and/or Class
 25 members reasonable attorneys' fees and expenses, and g) award such other relief as
 26 the Court may deem just and proper.

27 97. The illegal business practices described herein present a continuing
 28 threat to Plaintiffs, members of the Class, and members of the general public in that

1 Defendants continue to engage in these practices, and will not cease doing so unless
2 and until forced to do so by this Court. Defendants' conduct will continue to cause
3 irreparable injury to Plaintiffs and the Class unless enjoined or restrained.

4 **Count VI**

5 **(Violation of the California False Advertising Law**
6 **California *Business and Professions Code* § 17500 *et seq.*)**

7 98. To the extent they are not inconsistent, Plaintiffs incorporate by
8 reference the allegations set forth in the foregoing paragraphs of this complaint as if
9 fully set forth herein.

10 99. Plaintiffs bring this Count on behalf of themselves, and all persons
11 who purchased mid-grade or premium motor fuel who are either (a) California
12 residents, (b) who purchased such fuel from any Defendant in the State of
13 California or (c) who purchased such fuel from a Defendant incorporated or which
14 maintains its headquarters in the State of California.

15 100. California *Business and Professions Code* § 17500 provides that “[i]t
16 is unlawful for any ... corporation ... with intent ... to dispose of ... personal property
17 ... to induce the public to enter into any obligation relating thereto, to make or
18 disseminate or cause to be made or disseminated ... from this state before the public
19 in any state, in any newspaper or other publication, or any advertising device, or by
20 public outcry or proclamation, or in any other manner or means whatever, ... any
21 statement ... which is untrue or misleading, and which is known, or which by the
22 exercise of reasonable care should be known, to be untrue or misleading...”

23 101. Defendants misled consumers by making untrue statements and failing
24 to disclose what is required as stated in the code section above. Namely,
25 Defendants advertised motor fuel for sale as having a minimum octane rating when,
26 in reality, the initial 0.2 - 0.3 gallons of such motor fuel sold had a lower octane
27 rating due to the residual fuel remaining in the fuel dispensing system from a prior
28 customer who had purchased a lower grade of motor fuel.

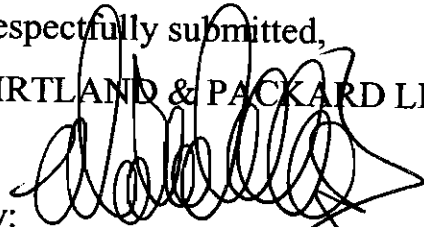
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. An award of statutory damages according to proof;
5. An award of general damages according to proof;
6. An award of special damages according to proof;
7. Attorneys' fees;
8. Costs of suit;
9. Prejudgment and post-judgment interest thereon; and
10. Such other and further relief as the Court deems just.

DATED: May 11, 2009

Respectfully submitted,
KIRTLAND & PACKARD LLP

By:



MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. PETERSON

*Counsel for Plaintiffs and all others
similarly situated.*

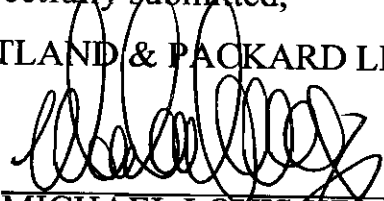
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury as to all claims so triable.

DATED: May 11, 2009

Respectfully submitted,
KIRTLAND & PACKARD LLP

By: 
MICHAEL LOUIS KELLY
BEHRAM V. PAREKH
HEATHER M. PETERSON

*Counsel for Plaintiffs and all others
similarly situated.*

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself)
Jonathan Alvarez, Emanuel Jiminez, Shaun McCracken, Housam Moumne, Mohammad Moumne and Kent Cochran, et al.

DEFENDANTS
CHEVRON CORPORATION, CHEVRON USA, INC., EXXON-MOBIL CORPORATION, CONOCOPHILLIPS, BP PLC, et al.

(b) County of Residence of First Listed Plaintiff (Except in U.S. Plaintiff Cases):

County of Residence of First Listed Defendant (In U.S. Plaintiff Cases Only):

(c) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Michael Louis Kelly
Kirtland & Packard, LLP
2361 Rosecrans Avenue

Attorneys (If Known)

El Segundo, CA 90245
310-536-1000

II. BASIS OF JURISDICTION (Place an X in one box only.)

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

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one 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. 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 Multi-District Litigation 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT: \$** _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

28 USC §1332 - Diversity, Cal. Bus. & Prof. Code §17520 - False Advertising, Cal. Civ. Code §1770 - Consumer Legal Remedies Act, Cal. Bus. & Prof. Code §17200 - Unfair Competition, Breach of Contract, Breach of Duties Good Faith & Fair Dealing, Breach of Express & Implied Warranties

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <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"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State 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 Loan (Excl. 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 REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	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 Fed. 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-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	PERSONAL PROPERTY <input checked="" 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 BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litig. <input type="checkbox"/> 791 Empl. Rel. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <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

VIII(a). IDENTICAL CASES: Has this action been previously filed and dismissed, remanded or closed? No Yes
If yes, list case number(s):

FOR OFFICE USE ONLY: Case Number: _____

CV09-3343

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT CALIFORNIA
CIVIL COVER SHEET**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(b). RELATED CASES: Have any cases been previously filed that are related to the present case? No Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: List the California County, or State if other than California, in which **EACH** named plaintiff resides (Use an additional sheet if necessary)

Check here if the U.S. government, its agencies or employees is a named plaintiff.

SEE ATTACHED

List the California County, or State if other than California, in which **EACH** named defendant resides. (Use an additional sheet if necessary).

Check here if the U.S. government, its agencies or employees is a named defendant.

SEE ATTACHED

List the California County, or State if other than California, in which **EACH** claim arose. (Use an additional sheet if necessary)

Note: In land condemnation cases, use the location of the tract of land involved.

SEE ATTACHED

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____

Date 5/11/09

Notice to Counsel/Parties: The CV-71 (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. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

IX. VENUE

<u>PARTY/CLAIM</u>	<u>COUNTY/STATE</u>
<u>PLAINTIFFS</u>	
Jonathan Alvarez	Los Angeles County
Emanuel Jiminez	Los Angeles County
Shaun Mccracken	Los Angeles County
Housam Moumne	Los Angeles County
Mohammad Moumne	Los Angeles County
Kent Cochran	Texas
<u>DEFENDANTS</u>	
Chevron Corporation	Contra Costa County
Chevron USA, Inc.	Contra Costa County
Exxon-Mobil Corporation	Texas
ConocoPhillips	Texas
BP Plc	United Kingdom
BP Corporation North America, Inc.	Illinois
BP North America Petroleum, Inc.	New York
BP Products North Americas Inc.	Illinois
BP West Coast Products, LLC	Orange County
Royal Dutch Shell Plc	Netherlands
Shell Oil Company	Texas

Shell Oil Products Company LLC	Texas
Valero Energy Corporation	Texas
Valero California Retail Company	Texas
<u>CLAIMS</u>	
Breach of Contract	Los Angeles County
Breach of the Duties of Good Faith and Fair Dealing	Los Angeles County
Breach of Express and Implied Warranties	Los Angeles County
California Consumer Legal Remedies Act, California <i>Civil Code</i> § 1770 <i>et seq.</i>	Los Angeles County
California Unfair Competition Law, California <i>Business & Professions Code</i> § 17200 <i>et seq.</i>	Los Angeles County
California False Advertising Law, California <i>Business & Professions Code</i> § 17500 <i>et seq.</i>	Los Angeles County