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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

VITOL INC.; SK ENERGY AMERICAS, INC.; SK TRADING INTERNATIONAL CO. LTD.; AND DOES 1- 30, INCLUSIVE,

Defendants.

CASE NO. CGC-20-584456

COMPLAINT FOR VIOLATIONS OF THE CARTWRIGHT ACT AND UNFAIR COMPETITION LAW FOR DAMAGES, INJUNCTIVE RELIEF, CIVIL PENALTIES, AND OTHER EQUITABLE RELIEF

INTRODUCTION

1. In February 2015, an explosion rocked a large gasoline refinery complex located in Torrance, California. A key part of the refinery complex was badly damaged and needed extensive repairs. This accident caused an unexpected undersupply of refined gasoline in California, because the refinery supplied about ten percent of all the gasoline in the state.

2. Prices for gasoline contracts went up almost immediately on the California spot markets. Soon thereafter, prices at the pump soared as well. Despite rapidly rising prices, California's motorists still needed gasoline. Starting in February 2015, California consumers saw increases in gasoline prices that were unprecedented.

3. California's supply disruption created an opportunity for gasoline trading firms with a global reach, such as Defendants Vitol Inc. ("Vitol"), SK Energy Americas, Inc. ("SKEA"), and SK Trading International Co., Ltd. ("SKTI") (collectively, "SK").

4. Defendants Vitol and SK acted quickly, negotiating large contracts to supply much-needed gasoline and gasoline blending components for delivery in California. The largest of these contracts exceeded more than ten million gallons.

5. Unfortunately for California consumers, Defendants Vitol and SK participated in a scheme to drive up and manipulate the spot market price for gasoline so that they could realize windfall profits on these large contracts to deliver gasoline and gasoline blending components.

6. Defendants Vitol and SK had already started working together covertly prior to the explosion. In the aftermath of the explosion, the lead traders for both Vitol and SK, who were friends and former colleagues, reached agreements with each other and with third parties as part of a scheme to manipulate, raise, fix, and tamper with the spot market price of gasoline in California using various tactics. They also entered into agreements with each other to share the profits and disguise or hide the nature of the scheme.

7. During the relevant period (beginning at least as early as February 2015 and continuing into late 2016), Vitol and SK reached agreements with each other and with third parties in violation of California's Cartwright Act, California Business and Professions Code section 16720 et seq., and engaged in unlawful, unfair, or fraudulent practices in violation of

California's Unfair Competition Law, California Business and Professions Code section 17200 et seq.

8. Defendants Vitol and SK may not have created the supply disruption that impacted California starting in February 2015, but they exacerbated the effects of that disruption to illegally enrich themselves at great cost to California consumers.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over all causes of action alleged in this Complaint pursuant to the California Constitution, article VI, section 10, and is a Court of competent jurisdiction to grant the relief requested. The People's claims for violation of Business and Professions Code sections 16720 et seq. and 17200 et seq., arise under the laws of the State of California, are not preempted by federal law, do not challenge conduct within any federal agency's exclusive domain, and are not statutorily assigned to any other trial court.

10. At all relevant times alleged in this Complaint, Defendants did or continue to do substantial business in or affecting the State of California, rendering this Court's exercise of jurisdiction over them proper. Defendants are registered with the California Secretary of State to conduct business in California.

11. Venue is proper in this Court pursuant to California Code of Civil Procedure sections 395 and 395.5, and California Business and Professions Code sections 16750 and 16754.

12. Enforcement actions initiated by the Attorney General for violations of the Cartwright Act may be brought in the superior court in and for any county where the offense or any part thereof is committed or where any of the offenders reside or where any corporate defendant does business. (Bus. & Prof. Code, § 16754.) Defendants are registered with the California Secretary of State to conduct business in the State of California. The injuries that have been sustained as a result of Defendants' illegal conduct occurred in part in the City and County of San Francisco.

PARTIES

I. PLAINTIFF

13. Attorney General Xavier Becerra is the chief law enforcement officer of the State of California. (Cal. Const., art. V, § 13). He brings this action on behalf of the People of the State of California.

14. The Attorney General is charged with enforcing California's antitrust laws, including the Cartwright Act. (Bus. & Prof. Code, §§ 16700-16770.) He is authorized to "bring a civil action in the name of the people of the State of California, as *parens patriae* on behalf of natural persons residing in the state . . . to secure monetary relief as provided in this section for injury sustained by those natural persons to their property by reason of any violation of this chapter." (Bus. & Prof. Code, § 16760.)

15. The Attorney General is also authorized under the Unfair Competition Law to prosecute any unlawful, unfair, or fraudulent business act or practice. (Bus. & Prof. Code, §§ 17200, 17204.) For any such violation, he is also authorized to seek injunctive relief, civil penalties, and any orders or judgments, including the appointment of receivers, as may be necessary to prevent the use or employment by any person of any unlawful, unfair, or fraudulent business act or practice. (Bus. & Prof. Code, §§ 17203, 17204, 17206.)

II. DEFENDANTS

A. Vitol

16. Defendant Vitol Inc., ("Vitol") a Delaware corporation, is a multi-billion dollar privately-held energy company with its principal place of business in Houston, Texas. Vitol Holdings B.V., founded in the Netherlands, is the world's largest independent oil trading house and is the ultimate parent entity of Vitol. Vitol is registered with the California Secretary of State to conduct business in California.

B. The SK Defendants

17. Defendant SK Energy Americas, Inc., ("SKEA") is a California corporation with its head office at 11700 Katy Freeway, Suite 900, Houston, Texas. SKEA is a wholly-owned subsidiary of SK Energy International ("SKEI"). SKEI is a Singaporean corporation with its head

office at 9 Straits View, #12-07/12 Marina One West Tower, Singapore. SKEI is the parent entity of Defendant SKEA and is itself a wholly-owned subsidiary of Defendant SK Trading International Co., Ltd.

18. Defendant SK Trading International Co., Ltd. ("SKTI") is a South Korean corporation with its head office at 26 Jongno, Jongno-gu, Seoul, South Korea. Defendant SKTI is the grandparent entity of Defendant SKEA and the parent entity of SKEI. Defendant SKTI is a sister entity to SK Energy, also located in South Korea, which operates one of the largest oil refineries in the world.

19. The ultimate parent entity for the SK Defendants, and for SK Energy, is SK Innovation Co., Ltd., a publicly-traded South Korean company.

20. At all times relevant to this Complaint, Defendant SKEA was an agent and alter ego of Defendant SKTI, due to the nature and extent of control that SKTI exercised over SKEA.

21. At all times relevant to this Complaint, there existed a unity of interest and ownership between SK Defendants such that any separateness between them had ceased to exist and SKTI controlled, dominated, managed, and operated SKEA to suit its convenience. Specifically, SKTI controlled the business and affairs of SKEA such that the distinction between the companies were mere technicalities.

22. Additionally, at all times relevant to the Complaint, SKEA was acting within the course and scope of its agency with the knowledge, consent, permission, authorization, and ratification, either express or implied, of SKTI in performing the acts alleged in this Complaint.

C. The Doe Defendants

23. The Attorney General is not aware of the true names and capacities of defendants, whether individual, corporate, affiliate, or otherwise, sued herein under the fictitious names DOES 1 through 30, inclusive, and therefore sues those defendants by fictitious names. Each fictitiously named defendant is responsible in some manner for the violations of law alleged. The Attorney General will amend this Complaint to add the true names of the fictitiously named defendants once they are discovered, as well as the manner in which each fictitious defendant is responsible for the violations of law herein alleged, when these facts are ascertained.

BACKGROUND

I. CALIFORNIA'S FINISHED GASOLINE MARKET

24. The California finished gasoline market is like an island. California and the U.S. West Coast are geographically isolated from refining hubs in the rest of the United States. There are no pipelines that ship finished gasoline products into California. While there are pipelines that connect California and other adjacent states, these pipelines only ship gasoline products out of California. Therefore, when local supplies are insufficient to meet demand in California, additional finished gasoline and gasoline blending components are typically brought into the state on marine vessels.

25. California has vehicle emissions standards that are more stringent than the rest of the country. Gasoline produced pursuant to these standards is called California Reformulated Gasoline Blendstock for Oxygenate Blending ("CARBOB"). The CARBOB specifications are unique to California; therefore, gasoline used in neighboring states generally does not meet CARBOB specification and cannot be used as a substitute source of supply. Non-CARBOB gasoline such as Reformulated Gasoline Blendstock for Oxygenate Blending ("RBOB") is generally less expensive to produce than CARBOB.

26. Most of the CARBOB consumed in California is produced locally by refineries located in clusters near metropolitan centers in Northern California and Southern California. Absent supply disruptions, California refineries have production capacities that meet or exceed statewide demand.

27. One of the largest refineries in Southern California is located in Torrance, California (the "Torrance Refinery"). The Torrance Refinery produces approximately twenty percent of all of the gasoline sold in Southern California (and ten percent of the statewide supply). The Torrance Refinery also has the capacity to produce significant quantities of alkylate, a high-quality gasoline blending component. In 2015, the Torrance Refinery was owned by ExxonMobil Corp. ("ExxonMobil").

28. Gasoline refineries are complex operations that require extensive maintenance on pre-planned or scheduled time intervals to assure operating reliability and meet operating permit

requirements. For scheduled maintenance, a gasoline refinery or parts of the refinery are shut down for what are referred to as "planned turnarounds." Planned turnarounds usually have little impact on the price of gasoline, as refineries build up inventories or arrange for alternate supply in advance of a planned turnaround to offset the reduced production during the shutdown period.

29. "Unplanned outages," conversely, are when unexpected problems occur during refinery operations. During an unplanned outage, a gasoline refinery or parts of the refinery are shut down with little or no advance notice. As a result, during an unplanned outage, there is an unanticipated reduction in the production of that refinery without an offsetting buildup of supply. Consequently, an unplanned outage can lead to an unexpected supply shortage and a resulting increase in the price of gasoline.

30. When unexpected supply disruptions occur, it can be difficult to find immediate alternative sources of supply due to California's stringent CARBOB specifications and relative geographic isolation. Market participants frequently turn to imports brought in by ship to make up for shortfalls that occur during a supply disruption, but there can be a significant time lag due to transit time. For example, ships carrying CARBOB or other blendstocks from refineries in Asia can take several weeks or more to arrive in California.

II. GASOLINE SPOT MARKET TRADING IN CALIFORNIA

31. Market participants buy and sell gasoline for physical delivery within a short time frame on "spot markets." There are various spot markets in the United States where gasoline and other fuels are traded. Two of the spot markets are in California: one is in San Francisco for delivery in Northern California; the other is in Los Angeles for delivery in Southern California.

32. Spot markets are referred to as "physical" markets because market participants use them to obtain supplies of actual product. As a result, physical markets are located at or near refinery hubs and the trades consummated on the spot market designate a delivery location and delivery timeframe. Spot market transactions that provide for nearly immediate delivery after the execution of the trade are called "prompt" trades.

33. The prices on the two California spot markets are greatly influenced by the prices on the New York Mercantile Exchange ("NYMEX"). The NYMEX is a futures market for

delivery of gasoline to New York Harbor. It is sometimes called a "paper market" rather than a physical market, because market participants close most futures transactions before making or taking physical delivery. Prices on the NYMEX are determined in a centralized market: there are typically thousands of gasoline trades on the NYMEX amounting to billions of gallons on every trading day. Further, all transactions on the NYMEX are publicly reported, so pricing is transparent to market participants.

34. NYMEX prices are for RBOB, not CARBOB, so the California spot market price is usually, but not always, higher than the NYMEX. That difference in prices between CARBOB and RBOB, whether positive or negative, is expressed in cents per gallon. This difference is referred to as a "spread," the "basis," or the "differential." The NYMEX prices generally reflect large-scale national and international factors, while the California spot markets react to the NYMEX price as well as regional and local supply and demand conditions. In many California spot market transactions, the buyer and the seller negotiate only the basis, and the final price is determined by adding the basis to the NYMEX price.

35. Spot market deals in California generally range between 420,000 gallons (10,000 barrels) to 2.1 million gallons (50,000 barrels). The spot market price is the largest component of the price on the wholesale "rack market," which is typically sold in gasoline truck volumes of about 8,000 gallons (approximately 190 barrels). The price at the rack market is typically reflected in the retail price within a couple of days.

36. There are two common grades of CARBOB that are consumed in California and traded on the spot market. Regular CARBOB ("Regular") is the most commonly traded grade of gasoline. Premium CARBOB ("Premium") is traded with far less frequency than Regular. Premium trades at a higher price than Regular. Alkylate is a high-quality gasoline blending component that can be combined with other blendstocks to create Regular and, more often, Premium.

III. Spot Market Price Reporting in California

37. Unlike the NYMEX, spot market trades in California for both Regular and Premium are traded through non-public transactions, sometimes called over-the-counter ("OTC")

trades. These OTC transactions do not occur on a centralized open exchange like the NYMEX, so prices on the California spot markets are not immediately public. Instead, market participants rely on price-reporting services that report spot market prices from sources that participate in the market, such as traders, refiners, and brokers.

38. The Oil Price Information Service, LLC ("OPIS") is the most widely used reporting service in California. OPIS is a subscription service that publishes a daily OPIS West Coast Spot Market Report (the "Spot Market Report"), which is the industry pricing benchmark used by both buyers and sellers in California. Subscribers to OPIS get the Spot Market Report and can also receive market updates from OPIS throughout the day that include reported deals and other industry news.

39. Price reporting by OPIS plays a crucial role in certain types of gasoline contracts which use a "floating price" that is determined at a future date as indicated in the contract. The parties agree on a differential above or below the spot price or prices published by OPIS. These floating price contracts can be tied to the future price of Regular or Premium as reported by OPIS in the Spot Market Report.

40. The future dates on which the floating price in the contract is set are often referred to as "pricing windows." The pricing window can be an agreed-upon date or a date range. Pricing windows can also be tied to the dates of delivery or other conditions as indicated in the contract.

41. Market participants voluntarily submit information on their trades to OPIS. OPIS calculates a daily spot price by, among other things, aggregating the trades that are reported to OPIS by market participants on a voluntary basis. Therefore, the reporting of trades is a critical component of how OPIS calculates the daily spot prices.

42. The Spot Market Report includes, among other gasoline products, the prices for Regular and Premium gasoline contracts for prompt (i.e., near term) delivery in Southern California and in Northern California. The Spot Market Report also contains forward prices for Regular and Premium delivery in upcoming future months.

43. On a daily basis, there are usually many more Regular trades than Premium trades listed in the Spot Market Report. For example, there could be five, ten, fifteen, or more Regular trades reported on one day compared to one or no Premium trades. Because trading in Premium is less common than Regular, a single Premium trade that is reported to OPIS tends to have a bigger impact on the spot market price than a single trade of Regular.

IV. Rules Governing Spot Market Trading in California

44. In California, fraudulent gasoline spot market trading is covered by California's commodities fraud statute. (Corp. Code, § 29504 (defining "commodities")). Under the commodities fraud statute, when buying or selling commodity contracts, it is unlawful to engage in certain fraudulent acts. (See Corp. Code, § 29536, subds. (a), (b), (c), (d).

45. Specifically, under section 29536(c), it is unlawful to "[t]o willfully engage in any transaction, act, practice, or course of business which operates or would operate as a fraud or deceit upon any persons." (Corp. Code § 29536, subd. (c).)

46. In addition to the California commodities fraud statute, the federal Commodity Exchange Act makes unlawful certain types of "[p]rohibited transactions." (7 U.S.C. § 6c.) More specifically, the Commodity Exchange Act prohibits a transaction that "is, of the character of, or commonly known to the trade as, a 'wash sale' or 'accommodation trade.'" (7 U.S.C. § 6c(a)(2)(A)(i).)

47. The Commodity Exchange Act also prohibits a transaction that "is used to cause any price to be reported, registered, or recorded that is not a true and bona fide price." (7 U.S.C. § 6c(a)(2)(B).

V. The Defendants' Participation in the California Spot Market

A. Vitol's U.S. West Coast Trading Operation

48. During the relevant period, Vitol was an active participant in trading gasoline in California. Vitol bought and sold spot market contracts for various types of fuel products, including Regular and Premium.

49. Vitol imported gasoline and gasoline blending components (such as alkylate) into California. Vitol had substantial storage capacity in California at large tanks that Vitol leased at the Kinder Morgan gasoline storage terminal in Southern California.

50. Vitol employee Brad Lucas ("Lucas") held the title "USWC Trader." Lucas was the primary trader at Vitol with responsibility for trading gasoline and gasoline blending components that were delivered via pipeline within California.

51. Lucas reported to John Addison ("Addison"), a Vitol executive who in turn reported to the President of Vitol Americas. In addition to supervising Lucas, Addison also had trading responsibility that included trading gasoline and gasoline blending components that were primarily delivered via marine vessels to locations in the U.S. West Coast, including California.

52. Vitol employees were issued a "Trading Compliance Manual For Vitol Group Employees Located or Operating in The United States," including one that was dated January 2015 (the "Vitol Compliance Manual"). All Vitol employees were required to read and familiarize themselves with the Vitol Compliance Manual. Section IV of the Vitol Compliance Manual discussed various types of "expressly prohibited" conduct.

53. Section IV of the Vitol Compliance Manual listed "Leveraged/Loss-Leader Trading" as prohibited conduct:

> Uneconomic trading (*i.e.*, trades that, when viewed in isolation, appear to lack economic sense) is a red flag for regulators and may be alleged to evidence an intent to manipulate prices in order to reap more substantial profits on other market positions. Again, "uneconomic trading" is often described as a willingness to take losses on a transaction in one product or market in order to benefit a transaction or position in another product or market.

54. The prohibited conduct in Section IV of the Vitol Compliance Manual also included "Prearranged or Wash Trading." The Vitol Compliance Manual described this conduct further: "Generally, a wash trade is a prearranged, round-turn transaction executed to avoid taking a bona fide position in the market and/or the risk of price competition."

B. SK's U.S. West Coast Trading Operation

55. During the relevant period, SK was an active participant in trading gasoline in California. SK bought and sold spot market contracts for various types of fuel products, including Regular and Premium.

56. SK imported gasoline and gasoline blending components (such as alkylate) into California. SK leased a significant amount of storage capacity at the Kinder Morgan gasoline storage terminal in Southern California.

57. SKEA employee David Niemann ("Niemann") was the senior trader responsible for executing trades on the U.S. West Coast, including California. Another SKEA employee, Shelly Mohammed ("Mohammed"), held the role of gasoline scheduler and was Niemann's subordinate.

58. SKEA functioned as the California trading arm of SKTI. While Niemann and Mohammed were nominally employees of Defendant SKEA, SK's U.S. West Coast Trading Operation was conducted within the continuous and pervasive control and supervision of SKTI, acting for itself and through its wholly-owned subsidiary, SKEI.

59. SKTI was directly involved in nearly every aspect of Niemann's employment with SK. From the outset, SKTI approved the decision to hire both Niemann and Mohammed. During his employment, Niemann's reporting chain of command included Namho Kim ("Kim"), SKTI's Distillate Book Leader who oversaw global trading. As just one example, Kim personally negotiated Niemann's bonus directly with Niemann.

60. SKEA's trades were governed by SKTI's Trading Risk Management Policy. SKEA could only trade within parameters that were reviewed and approved by SKTI. SKTI reviewed and approved business plans submitted by SKEA, which detailed trade items, counterparties, and strategies. SKTI also determined SKEA's position and loss limits, and verified trade entries made by SKEA traders.

61. SKTI sent its executives on trips to directly supervise SKEA's operations, as well as to meet with SKEA's local business partners or competitors to discuss ongoing business and/or

attempt to generate business. In one specific example, in April 2015, Kim traveled to the United States and joined Niemann in a meeting with Vitol in Houston, Texas.

62. As discussed in more detail below, SKTI also specifically reviewed and approved key decisions to coordinate certain trading activities with Vitol.

FACTUAL ALLEGATIONS

I. VITOL AND SK BEGIN COORDINATING

63. SK hired Niemann in August 2014 and Niemann immediately began trading gasoline contracts on the California spot market. Before being hired by SK, Niemann held a similar role at Vitol for approximately ten years. Niemann and Lucas overlapped at Vitol, and even after leaving Vitol, Niemann maintained connections with Lucas and others at Vitol.

64. Starting in or around late October 2014 or early November 2014, Vitol and SK reached an agreement to coordinate or cooperate in regards to certain trading activities in the United States West Coast, including California.

65. In October 2014, a Vitol executive in Asia wrote an email to Vitol executives in the United States, including Addison and Lucas, with a "wish list" of items that included "looking to work on Carbob with SK (Nemo) [Niemann] to USWC [U.S. West Coast] in 2015." This item included the instruction to keep the information "super" private and confidential.

66. In November 2014, an SK executive wrote a status report to another SK executive outlining the existence of a "JV" with Vitol and explaining that Vitol wanted to cooperate with SK in the California market. Initially, these joint efforts appear to have only involved Regular, as SK was not yet trading Premium or alkylate in California.

67. Within SK, this arrangement was sometimes referred to as an "alliance" or a "joint venture," but the agreements were not typical for a commercial setting. The so-called "joint venture" was not reduced to writing between the companies and it does not appear that legal counsel for both companies was involved in approving the terms of the initial arrangement. In fact, Vitol and SK took steps not to reveal the nature of these agreements to other market participants.

68. When Vitol and SK started cooperating in late 2014, there was ample supply in the California market and spot market prices for Regular were at or below the NYMEX price for RBOB for much of November and December 2014.

69. In December 2014, however, there were indications that a significant unplanned refinery outage might occur. In mid-December 2014, Lucas sent an instant message to Niemann reporting "XOM [ExxonMobil] shuts hydrocracker for leak." The hydrocracker is a part of a refinery that plays an important role in refining heavier oils into fuels.

70. This was apparently good news for the traders, as it implied a gasoline supply disruption that could increase prices. "Hopefully for a month or two..." Lucas added.

71. Niemann responded: "or it falls into the FCC and kills both units."

72. "FCC" is shorthand for a "fluid catalytic cracking," which is a key part of a refinery complex that produces gasoline and related high-value products like alkylate. The Torrance Refinery's FCC unit was particularly important because it produced a significant portion of all the high-octane alkylate produced in California. The alkylate produced at the Torrance Refinery was a key gasoline blending component for Premium produced in California.

73. Lucas agreed: "[t]hat would be ideal. Probably too much to wish for." Niemann responded: "it's a start at least."

74. At some point in February 2015, Lucas and Niemann expanded the coordination to include Premium. Coordinating sales in Premium was a significant change for SK, because prior to this agreement with Lucas, Niemann had not participated in trading Premium in California.

75. By February 2015, Niemann was the senior trader for SK with responsibility for California trading, Lucas had the same role with Vitol, and their respective firms were competitors in the California gasoline market.

II. THE EXPLOSION AT THE TORRANCE REFINERY IN FEBRUARY 2015

76. During the morning hours of February 18, 2015, there was a large explosion at the Torrance Refinery. The blast occurred in a part of the FCC unit. It caused significant damage to the refinery and was felt in the surrounding community.

77. The Torrance Refinery immediately shut down the FCC and reduced production of gasoline products, including alkylate, as repair efforts and a federal investigation into the explosion commenced. As a result of this unplanned outage at the Torrance Refinery, ExxonMobil needed to replace a significant amount of lost gasoline and alkylate production in Southern California to fulfill ExxonMobil's supply needs.

78. In the days immediately following the explosion, ExxonMobil turned to gasoline trading firms like Vitol and SK to negotiate the purchase of large quantities of Regular. ExxonMobil entered into large gasoline contracts for Regular, first from Vitol, then from SK. These large gasoline contracts, the largest of which exceeded more than ten million gallons of Regular, were floating price contracts tied to the OPIS-reported price for Regular.

79. Around the same time, ExxonMobil also negotiated contracts to purchase large quantities of alkylate (a key blending component for Premium), first from Vitol, then later in 2015 from SK. These large alkylate contracts, which could also exceed more than ten million gallons of alkylate, were floating price contracts that were usually tied to the OPIS-reported prices for Premium.

III. The Scheme to Fix and Manipulate the California Spot Market Price

80. Beginning at least as early as late February 2015, Vitol and SK reached agreements with each other and with third parties as part of a scheme to raise, fix, and tamper with the price of finished gasoline in California by using various tactics. A core element of the scheme was manipulating the OPIS-reported price during pricing windows for large contracts. The goal of the scheme was simple: to drive up or stabilize the OPIS-reported price during pricing windows and to realize supra-competitive profits while limiting bona fide market risk.

81. While tactics employed by Vitol and SK during the scheme varied and were often complex, there were two primary components: (1) engage in trades that were reported to OPIS for the purpose of inflating the OPIS-published price in the Spot Market Report, and (2) execute facilitating trades to hide or disguise the nature of the scheme, to limit or eliminate bona fide market risk on the reported trades, and to share profits with each other. As part of the scheme,

Vitol and SK engaged in the following conduct as part of transactions between themselves, as well as transactions involving a third party or third parties.

A. OPIS-reported trades

82. As a core component in the scheme, Vitol and SK engaged in trades to move up or inflate the OPIS-reported price during the pricing windows for large contracts. During these key date ranges, Vitol and SK engaged in selectively reported transactions and loss-leader transactions that were reported to OPIS to drive up, stabilize, or arrest the decline of the OPIS-reported price. Sometimes they used the services of an intermediary broker, and sometimes they transacted directly. Vitol and SK also, at times, made strategic bids to buy and offers to sell at prices calculated to impact the OPIS price assessment.

83. Many of the loss-leader transactions were "leveraged" because they involved taking losses on the purchase of smaller quantities of gasoline to increase the profits on the sale of larger quantities of gasoline or alkylate by artificially increasing the OPIS-reported price. While the individual market-moving transactions were often uneconomic, Vitol and/or SK realized a price increase on the larger floating price contracts (the leveraged side) that more than made up for any losses on the smaller loss-leader transactions. These leveraged/loss-leader transactions could take different forms.

84. One tactic used by Vitol and SK when trading Regular was to transact the high deal of the day when the deal was reported to OPIS. This tactic had the effect of bidding up the OPIS-reported price, as OPIS reported purchases at increasingly higher prices. Sometimes, this deal was the absolute highest deal of the day; other times, subsequent deals pushed the price even higher.

85. By transacting the high deals, SK and Vitol moved up the average of the OPIS Spot Market Report and created the impression to other market participants that there was strong demand, including demand at higher than prevailing market prices.

86. A similar tactic when trading Regular was to transact the first deal of the day at an inflated price during key pricing windows. This involved completing an initial transaction during the early trading hours so that OPIS would report an inflated purchase price to other market

participants. An early purchase at an inflated price would signal artificially high demand, thereby discouraging would-be sellers from submitting offers to sell below that price.

87. Another tactic was to execute a market-spiking trade for Premium that was reported to OPIS. Compared to Regular, there is far less trading of Premium. On a single day there could be several OPIS-reported transactions for Regular, but there were many days when OPIS reported no Premium deals at all. Therefore, individual Premium trades reported to OPIS could have a significant impact on the spot market price.

88. Furthermore, Premium trading was so uncommon for SK that SK did not trade Premium at all in California in 2014 and only started trading in Premium in 2015 as part of the coordination with Vitol. As part of the scheme, however, Vitol and SK engaged in unusual market-spiking trades for Premium with each other and with third parties. These individual trades, while generally uneconomic, could spike the market price of Premium by ten cents or more on a single day.

89. Vitol and SK engaged in market-spiking trades for Premium to increase the OPIS-reported price for Premium during the pricing windows for large sales of alkylate. While alkylate is a key blending component for Premium, alkylate is not a separately reported commodity on California's spot markets.

90. Consequently, large floating price contracts for alkylate were most commonly tied, with a small differential, to the OPIS-reported price for Premium during the associated pricing window. Therefore, to realize supra-competitive profits on alkylate contracts, Vitol and SK worked together to inflate the price of Premium during key pricing periods. There were also scenarios, however, where Vitol and SK worked to inflate the price of Regular to advantage floating-price contracts for alkylate because those contracts were directly tied to the price of Regular or as part of a strategy to increase prices of both Regular and Premium, which often rise in tandem.

B. Facilitating Trades

91. As another component of the scheme, Vitol and SK executed facilitating trades that were related to the OPIS-reported transactions referenced above. These facilitating trades

were executed for various purposes, including to hide or disguise the nature of the scheme, to limit or eliminate bona fide market risk on the reported trades, and to share profits with each other. Facilitating trades could be executed at the same time, before, or after the OPIS-reported trades. Vitol and SK executed these facilitating trades with each other and with third parties.

92. For example, Vitol and SK conducted a second trade that was in the opposite direction of the OPIS-reported trade. This type of round-trip or round-turn facilitating trade, sometimes called a "wash" trade, effectively negated the volume of gasoline purportedly exchanged in the OPIS-reported trade.

93. The facilitating trade was often not reported to OPIS as a means of hiding the manipulative nature of the reported trade from OPIS and the wider market. The second trade ensured that no gasoline would actually change hands as a result of the OPIS-reported trade that inflated the price reported in the Spot Market Report.

94. By moving in the opposite direction of the reported trade, the facilitating transaction ensured that there was little or no market risk associated with the reported transaction. Many of the facilitating trades – sometimes called "accommodation" or "prearranged" trades – appear to have been preplanned. The facilitating trade often had the effect of locking in a loss but also limiting the total exposure that Vitol or SK faced as result of the reported transactions.

95. The facilitating trades could occur before or after the reported trade. For example, prior to a pricing window, Vitol and/or SK took preplanned "short" positions, ensuring that they would need to buy during the pricing window. Therefore, when Vitol and SK went on buying sprees that pushed up the OPIS-reported prices during the pricing windows, it would appear to other participants that there was an increase in demand, but in fact the demand was preplanned and artificial.

96. Another facilitating tactic was to engage in unreported trades as a means of sharing profits from the scheme. In this way, Vitol and SK entered into prearranged buy and sell contracts with each other as a means of transferring money rather than actual gasoline. These contracts often deviated from the prevailing market price and, therefore, were uneconomic.

97. As a means of sharing profits and aligning incentives to artificially increase the market price, Vitol and SK also entered into contracts with each other designed to share in the supra-competitive profits earned from manipulating the floating price contracts. In one example, Vitol entered into a contract with SK to share the profits derived from its floating price contract with ExxonMobil, and a few days later, SK did the same with Vitol.

C. The Vitol and SK Agreements

98. As alleged earlier, while engaging in this scheme, Vitol and SK also entered into covert agreements to share profits. Within SK, these agreements were sometimes referred to as an "alliance" or "joint ventures." Vitol and SK took steps not to reveal the nature of these agreements to other market participants.

99. The coordination between Vitol and SK began with Regular in late 2014 and then expanded to include Premium in February 2015. In April 2015, Vitol and SK held an in-person meeting in Houston, Texas. Lucas was among the attendees for Vitol and Kim and Niemann were among the attendees for SK.

100. At some point in mid- to late-2015, Vitol and SK expanded their so-called "JVs" to include alkylate cargoes. Under this arrangement, Vitol or SK would import a cargo, but Vitol and SK would work together to boost the profits from selling the alkylate while seeking to conceal the cooperation. The agreement was apparently at the outset a verbal agreement only, as in September 2015, Lucas sent an email seeking confirmation of the agreement. "Yes agreed never sent anything before as didn't think you wanted me to do that" replied Niemann.

101. The agreement to share the profits of the alkylate cargoes was a crucial component of the scheme. As discussed above, Vitol and SK engaged in market-spiking trades during the pricing windows for large sales of alkylate. Therefore, when Vitol and SK shared the profits from the alkylate cargoes, it aligned their incentives to inflate the OPIS-reported prices during the pricing window for that alkylate.

102. In June 2016, this coordination was ongoing, as were the efforts to keep it covert. In an internal email that Addison sent to other Vitol executives, including Lucas, Addison wrote

regarding an alkylate cargo with SK: "we JV the back side no one knows this so P&C [private & confidential]…."

103. While the so-called "joint venture" agreements were being reached, SK and Vitol engaged in the trading manipulation described above to benefit their common interest. Therefore, while it may have appeared to market participants that Vitol and SK were competitors, in fact the two companies were working together. Despite the terminology used, the "joint ventures" were effectively a sham or pretext for coöperation and were a method of engaging in prearranged transactions and avoiding competition.

104. Furthermore, the agreements to coordinate Regular and Premium trading and to share the profits of alkylate cargoes also reduced and eliminated competition between Vitol and SK for those products. As part of the coordination, Vitol and SK entered into a large number of preplanned trades that diverged from prevailing market prices.

105. For the duration of the scheme, Lucas of Vitol and Niemann of SK had the opportunity to coordinate with each other and reach agreements through multiple means of communications, including instant messaging, emails, and telephone calls, as well as in-person meetings, dinners, and drinks.

V. The Illicit Scheme Harmed California Consumers

106. By objective measures, Vitol and SK were effective in carrying out the scheme. During key pricing windows, Vitol and SK were able to artificially move and inflate the price of Regular and Premium.

107. In the most egregious examples, Vitol and SK were able to manipulate Regular and Premium prices so effectively that those prices moved higher or stayed higher to a degree that is nearly inexplicable when compared to the supply and demand fundamentals prevailing at the time of the pricing windows.

108. Furthermore, Vitol and SK both reaped extraordinary and supra-competitive profits, as California trading generated millions of dollars of profits per month.

109. Lucas of Vitol and Niemann of SK personally shared in this windfall in the form of seven-figure bonuses that were orders of magnitude greater than previous bonuses.

110. Vitol and SK's gains came at the expense of consumers across California. To effectuate the scheme, Vitol and SK were manipulating the spot market prices for all of California. The impact of inflated spot market prices was not limited to floating price contracts.

111. The spot market price translates to the "rack" market prices, which are the wholesale prices that are paid when a gasoline tanker truck is filled up. Inflated rack market prices then directly translate into inflated prices in the retail market and ultimately what is paid at the pump.

112. While Vitol and SK engaged in the scheme to target certain contracts, the impact of the scheme on the wider gasoline market was foreseeable to Vitol and SK.

113. Furthermore, the harm to consumers was not limited to the pricing windows. The repeated exercise of inflating the spot market price over time had residual impacts on the spot market prices even outside of the pricing windows specified in the contracts.

114. In this case, the illicit agreements and spot market manipulation rippled throughout the California gasoline market such that consumers paid more than they should have at retail gas stations.

115. While the precise end date of the scheme is not yet known, the illicit conduct continued into 2016. The scheme likely terminated at or around the time that Niemann left SK in late 2016.

TOLLING OF THE STATUTES OF LIMITATIONS

116. The statute of limitations applicable to the People's Cartwright Act claim is four years. The statute of limitations applicable to the People's Unfair Competition Law claim is also four years.

117. The People, by and through Attorney General Xavier Becerra, entered into agreements with SK and Vitol tolling the statutes of limitations applicable to the People's claims. These tolling agreements have effective dates of August 3, 2018, and March 8, 2019, respectively. The parties subsequently executed additional tolling agreements to extend the termination dates of the tolling periods specified in the original agreements. These termination dates have not passed prior to the filing of this Complaint.

118. To the extent any of the People's causes of action would have accrued before the effective dates of these tolling agreements, the People invoke the doctrine of fraudulent concealment.

FRAUDULENT CONCEALMENT

119. Throughout the relevant period, Defendants affirmatively and fraudulently concealed their unlawful conduct.

120. The People had neither actual nor constructive knowledge of the facts supporting claims for relief despite diligence in trying to discover the pertinent facts. The People did not discover, and could not have discovered through the exercise of reasonable diligence, the existence of the scheme alleged herein, or any facts that might have led to the discovery of the scheme, any earlier than June 7, 2018.

121. The People could not have discovered these violations earlier in time because Defendants conducted their scheme in secret, concealed the nature of their unlawful conduct and acts in furtherance thereof, and fraudulently concealed their activities through various other means and methods designed to avoid detection.

122. Defendants engaged in a coordinated and unlawful market manipulation scheme, which they affirmatively concealed by, among other things, engaging in trades that were reported to OPIS to artificially inflate the OPIS-reported benchmark price (published in OPIS's Spot Market Report) without revealing that the Defendants were parties to the trade, and then executing related trades that were not reported to OPIS to disguise the nature of their scheme, to limit potential losses on reported trades, and to share profits with one another. This scheme was, by its very nature, self-concealing. As a result of the fraudulent concealment of the scheme, the People assert the tolling of the statute of limitations otherwise applicable to the People's claims.

FIRST CAUSE OF ACTION

Violation of the Cartwright Act

(California Business and Professions Code section 16720 et seq.)

123. The People incorporate by reference and reallege the preceding allegations in paragraphs 1 – 122 as though fully set forth herein. The People bring this claim against all Defendants, including both named and Doe Defendants.

124. Beginning at a time presently unknown to the People, but at least in or around February 2015 and continuing at least through late 2016, Defendants entered into and engaged in an unlawful trust in restraint of trade and commerce, as described above, in violation of California Business and Professions Code section 16720 et seq. (hereafter "Section 16720").

125. This scheme consisted, without limitation, of a continuing agreement, understanding, or concert of action among Defendants, the substantial terms of which were to fix, maintain, control, increase, inflate, tamper with, or otherwise manipulate and make artificial the benchmark prices of Regular and Premium that OPIS published in its Spot Market Report to market participants. At all relevant times, Defendants were competitors in this market.

126. For the purpose of forming and effectuating the unlawful trust, Defendants:

- Engaged in trades with each other and with third parties that were reported to OPIS for the purpose of fixing, maintaining, controlling, increasing, inflating, tampering with, or otherwise manipulating and making artificial, the benchmark prices of Regular and Premium published in OPIS's Spot Market Report in order to profit on other OPIS-based positions Defendants maintained;
- Executed facilitating trades to hide or disguise the nature of their market manipulation scheme, to limit or eliminate bona fide market risk on the reported trades, and to share ill-gotten profits amongst themselves; and
- Entered into anticompetitive agreements with each other.

127. The scheme has had, among other things, the following effects:

- Affected the value of contracts for Regular, Premium, and alkylate that were based on artificially inflated benchmark prices;
- Suppressed competition among the Defendants for the purchase and sale of Regular, Premium, and alkylate; and
- Affected the wholesale and retail market prices for Regular and Premium in California, which are based on and affected by California spot market prices

128. Defendants' scheme constitutes a per se violation of Section 16720.

129. Defendants' scheme was carried out and effectuated within the State of California, and the resulting impact on California's spot, wholesale, and retail markets for finished gasoline, caused by Defendants' unlawful conduct, injured natural persons in this state.

130. As a result of Defendants' violations of Section 16720, natural persons residing in the State of California were injured in their business and property in that they paid more for finished gasoline in California than they would have in the absence of Defendants' unlawful conduct.

131. Accordingly, the Attorney General brings this action pursuant to California Business and Professions Code section 16760 and seeks, on behalf of the People, treble damages and the costs of suit, including reasonable attorneys' fees. The Attorney General also seeks injunctive relief pursuant to California Business and Professions Code section 16754.5.

SECOND CAUSE OF ACTION

Violation of the Unfair Competition Law

(California Business and Professions Code section 17200 et seq.)

132. The People incorporate by reference and reallege the preceding allegations in paragraphs 1 – 131 as though fully set forth herein. The People bring this claim against all Defendants, including both named and Doe Defendants.

133. Beginning at a time presently unknown to the People, but at least in or around February 2015 and continuing through 2016, Defendants committed acts of unfair competition, as

described above, in violation of California Business and Professions Code section 17200 (hereafter "Section 17200").

134. Defendants' unlawful, unfair, or fraudulent business acts or practices, as described above, constitute unfair competition within the meaning of Section 17200, and include, without limitation, the following:

- Violating Section 16720, as set forth above;
- Engaging in, whether in concert or not, wash sales, accommodation trades, prearranged trades, and transactions made for the purpose of manipulating the benchmark prices reported on the California gasoline spot market, all in violation of California's commodities fraud statute (Corp. Code, §§ 29535, 29536, 29537, 29538);
- Engaging in, whether in concert or not, wash sales, accommodation trades, prearranged trades, and transactions made for the purpose of manipulating the benchmark prices reported on the California gasoline spot market, all in violation of the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

135. As a result of Defendants' violations of Section 17200, California consumers were injured in their business and property in that they paid more for finished gasoline in California than they would have in the absence of Defendants' unlawful, unfair, or fraudulent conduct.

136. Accordingly, the Attorney General brings this action pursuant to California Business and Professions Code section 17200 and seeks injunctive relief, restitution, and civil penalties pursuant to California Business and Professions Code sections 17203 and 17206.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the People of the State of California, pray for relief as follows:

137. That judgment be entered in favor of the People and against Defendants;

138. That the Court adjudge and decree that Defendants' contracts, agreements, or combination constitutes an illegal restraint of trade in violation of the Cartwright Act, section 16720 et seq. of the Business and Professions Code;

139. That the Court adjudge and decree that Defendants' acts violate the Unfair Competition Law, section 17200 et seq. of the Business and Professions Code;

140. That the People be awarded their damages, trebled, in an amount according to proof;

141. That the People be awarded restitution for their loss as a result of Defendants' acts in violation of state antitrust or consumer protection statutes and laws, including section 17200 of the Business and Professions Code;

142. That the People and natural persons be awarded pre- and post-judgment interest, and that the interest be awarded at the highest legal rate from and after the date of service of the initial complaint in this action;

143. Pursuant to Business and Professions Code section 16754.5, that the Court enter all orders necessary to prevent Defendants, as well as Defendants' successors, agents, representatives, employees, and all persons who act in concert with Defendants from engaging in any act or practice that constitutes a violation of the Cartwright Act, section 16720 et seq. of the Business and Professions Code, including such mandatory injunctions as may be reasonably necessary to restore and preserve fair competition;

144. Pursuant to Business and Professions Code section 17203, that the Court enter all orders necessary to prevent Defendants, as well as Defendants' successors, agents, representatives, employees, and all persons who act in concert with Defendants from engaging in any act or practice that constitutes unfair competition in violation of Business and Professions Code section 17200;

145. Pursuant to Business and Professions Code section 17203, that the Court enter all orders or judgments as may be necessary to restore to any person in interest any money or other property that Defendants may have acquired by violations of Business and Professions Code section 17200, as proved at trial;

146. Pursuant to Business and Professions Code section 17206, that the Court assess a civil penalty of two thousand five hundred dollars ($2,500) against Defendants for each violation of Business and Professions Code section 17200, as proved at trial;

147. That the People recover their costs and reasonable attorneys' fees; and

148. That the Court grant other legal and equitable relief as it may deem just and proper, including such other relief as the Court may deem proper to redress, and prevent recurrence of, the alleged violation in order to dissipate the anticompetitive effects of Defendants' violations, and to restore competition.

JURY TRIAL DEMAND

The People hereby demand a trial by jury for all causes of action, claims, or issues in this action that are so triable.

Dated: May 4, 2020

Respectfully Submitted,

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