

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FILED
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MICHAEL J. ARNEY, CLERK OF COURT

SPECTRUM STORES, INC., MAJOR OIL CO.,
INC., W.C. RICE OIL CO., INC., and
ABSTON PETROLEUM, INC., individually,
and on behalf of all other similarly situated
persons and entities,

Plaintiffs,

v.

CITGO PETROLEUM CORPORATION,

Defendant.

H-06 -3569
Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs, SPECTRUM STORES, INC., MAJOR OIL CO., W.C. RICE OIL CO.,
INC., and ABSTON PETROLEUM, INC., individually and on behalf of all other
similarly situated persons and business entities, allege as follows:

NATURE OF THIS ACTION

1. This antitrust suit is brought under Section 1 of the Sherman Act, 15 U.S.C. §
1, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. § 15, 26. It arises out of the role of
Defendant, CITGO Petroleum Corporation ("CITGO"), in a conspiracy among the members
of the Organization of Petroleum Exporting Countries ("OPEC" and "the cartel"), an
admitted price-fixing cartel, to raise, fix, and stabilize the price of gasoline and other oil-
based products in the United States. The primary elements of OPEC's international

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conspiracy are agreed-upon limits on the production of oil by OPEC's eleven member nations, which together control most of the world's proven oil reserves. The avowed purpose and demonstrable effect of the cartel's production limits is to raise, fix, and stabilize world oil prices above competitive levels, thus increasing the prices of gasoline and other oil-based products throughout the United States.

2. Defendant CITGO is wholly owned and controlled by the Bolivarian Republic of Venezuela ("Venezuela"), through Petróleos de Venezuela, S.A. ("PDVSA"), Venezuela's national oil company, and its affiliates. CITGO plays a critical role in Venezuela's and OPEC's scheme of selling oil and oil-based products to Americans at anticompetitive prices. CITGO purchases huge quantities of Venezuelan oil – over half a million barrels a day. In turn, CITGO refines the Venezuelan oil into gasoline and other oil-based products, and sells these products directly to the Plaintiff class throughout the continental United States. CITGO has violated federal antitrust laws in at least three ways.

3. First, CITGO has itself joined with the members of OPEC as a willing participant in the price-fixing conspiracy. Specifically, CITGO has entered into an agreement with OPEC and its members to facilitate, enable, and provide direct assistance to the cartel's price-fixing scheme. Pursuant to this agreement, CITGO has directly and materially assisted the cartel in numerous ways, including providing analyses of American oil markets and other information important to the cartel's success, preparing OPEC's long-term strategy, organizing OPEC summits, and providing speakers at OPEC conferences.

4. Second, CITGO has entered into an anticompetitive agreement and conspiracy with Venezuela and PDVSA to assist and facilitate their sale of oil-based products to American customers at anticompetitive prices. For example, CITGO (a) has spent hundreds of millions of dollars on retrofitting its refineries to enable it to refine and process huge quantities of Venezuela's heavy and relatively impure crude oil; (b) has entered into one-sided contracts that benefit Venezuela by allowing shipments of crude to be curtailed whenever Venezuela and other OPEC members reduce output to increase prices; and (c) has allowed Venezuela and PDVSA to breach their contractual obligations to CITGO with impunity.

5. Third, CITGO has served as the subservient instrument by and through which Venezuela and the cartel have extended their anticompetitive predations directly onto United States sovereign territory. Venezuela and the OPEC conspiracy, using CITGO as an instrumentality of its unlawful scheme, have thus entered United States territory for the purpose and with the effect of bringing to fruition their unlawful scheme to sell oil-based products to American consumers at anticompetitive prices. CITGO is liable for the anticompetitive effects in the United States of Venezuela's and the cartel's unlawful price-fixing conspiracy.

6. Plaintiffs seek to vindicate the interests of a class of persons and business entities in the United States who have directly purchased oil-based products, including gasoline, lubricants, motor oil, and asphalt, from CITGO within the last four years. The purpose of this suit is to recover damages for the Plaintiffs and the class in the amount, trebled, of the overcharge collected by Defendant and its co-conspirators as a result of

OPEC's artificial price restraints, and to enjoin Defendant from facilitating, assisting, or implementing such anticompetitive conduct in the future.

JURISDICTION AND VENUE

7. This action arises under Section 1 of the Sherman Act, 15 U.S.C. § 1 ("Sherman Act"), and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 26 ("Clayton Act").

8. Jurisdiction is proper under 28 U.S.C. §§ 1331, 1337. Defendant and its co-conspirators have been engaged in an ongoing price-fixing conspiracy with the purpose and the effect of limiting output and raising prices, thereby causing injury to persons throughout the United States. Defendant CITGO does business throughout the continental United States, selling gasoline and other refined oil products directly to class members.

9. Venue is proper in this judicial district pursuant to 15 U.S.C. § 15, 22, 26 and 28 U.S.C. § 1391(b) and (c). During the time of the conspiracy, Defendant resided, transacted business, was found, or had agents in this district.

PARTIES

10. The named Plaintiffs have purchased gasoline and other oil-based products directly from CITGO during the last four years. Plaintiffs assert the claims alleged herein in their corporate names individually, and on behalf of a class of similarly situated persons and business entities in the United States that have been direct purchasers of gasoline and other oil-based products from CITGO. Excluded from the proposed class are Defendant, its employees, officers, directors, legal representatives, heirs, assigns, and wholly or partly owned subsidiaries or affiliated companies.

11. Major Oil Company, Inc. is an Alabama corporation with its principal place of business at 3241 Money Road, Montgomery, AL 36101-0011. In the past four years, it has directly purchased CITGO-branded gasoline and diesel fuel from CITGO.

12. Spectrum Stores, Inc. is a Georgia corporation with its principal place of business at 815 Third Ave., West Point, GA 31833-0272. In the past four years, it has directly purchased CITGO-branded gasoline and diesel fuel.

13. Abston Petroleum Inc. was incorporated in Alabama with a principal place of business in Gilbertown, Alabama. It directly purchased gasoline, diesel and lubricants from CITGO up and until July 2004. Owner Eddie Abston has his address at 1111 Clark Rd., Gilbertown, Alabama 36908.

14. W.C. Rice Oil Company, Inc. is an Alabama corporation with its principal place of business at 2511 28th Street, S.W., Birmingham, AL 35211-5246. During the past four years, W.C. Rice Oil has directly purchased lubricants as well as unbranded gasoline and diesel from CITGO.

15. Defendant CITGO is a Delaware corporation with its principal place of business in Houston, Texas. PDV America, Inc., acquired 100 percent of CITGO in 1990. PDV America, Inc., is a wholly owned subsidiary of PDV Holding, Inc., which, in turn, is a wholly owned subsidiary of PDVSA. CITGO owns and operates several oil refineries in the United States, capable of refining more than 650,000 barrels per day of crude oil. CITGO's refineries supply gasoline and other oil-based products to more than 13,500 CITGO-branded gasoline stations, and untold numbers of unbranded stations throughout the continental United States. CITGO also sells asphalt, lubricants, various

petrochemicals, motor oil, and other oil-based products throughout the continental United States.

UNNAMED CO-CONSPIRATORS

16. OPEC, its eleven member nations, and PDVSA and its subsidiaries, unnamed as parties to this case, are co-conspirators with CITGO in the unlawful price-fixing scheme. OPEC's members are Algeria, Indonesia, Iran, Iraq, Kuwait, Libya, Nigeria, Qatar, Saudi Arabia, United Arab Emirates, and Venezuela. OPEC's conspiracy also includes privately-owned oil companies that have coordinated production levels with the sovereign members of the conspiracy. These entities have adhered to, participated in, benefited from, communicated with others with respect to, and facilitated the price-fixing conspiracy. These entities have acted knowingly and willingly in furtherance of the price-fixing conspiracy. Both CITGO and the unnamed co-conspirators are "persons" within the meaning of the antitrust laws.

INTERSTATE TRADE AND COMMERCE

17. CITGO annually sells over \$25 billion worth of gasoline and other oil-based products directly to the Plaintiffs and members of the class throughout the United States.

18. Since 1986, there has been an intentional and continuous flow in interstate commerce of CITGO gasoline and other oil-based products from CITGO's petroleum refining facilities in the United States directly to Plaintiffs and the class. CITGO received payment for such products across state lines.

CITGO IS A MEMBER OF THE OPEC CONSPIRACY

19. CITGO is a member of the OPEC conspiracy. As a co-conspirator, CITGO has actively participated in OPEC's illegal price-fixing conspiracy, has provided assistance to its co-conspirators, and has implemented OPEC's price-fixing agreement. CITGO has agreed to provide material assistance to OPEC and has done so in numerous ways.

20. CITGO has agreed with OPEC to provide the cartel, directly and through member nation Venezuela, with technical services and with information, such as information on the United States market and demand for oil products, that greatly assist OPEC in its effort to fix the price of oil at anticompetitive levels.

21. Members of CITGO's board of directors have participated directly in the development of OPEC's long-term strategy. Specifically, during the last four years, current Director Bernard Mommer and former Director Luis Vierma participated extensively in the development and drafting of OPEC's Long-Term Strategy while sitting on the Board of Directors of CITGO. The purpose of the Long-Term Strategy document is to provide a "coherent and consistent vision" for OPEC's future until roughly the year 2020. The long-term strategy explicitly adopts as its objective the unlawful maintenance of oil prices by calling on OPEC members to take "proactive" measures to influence the "market" when prices become "too low." Mr. Mommer's participation in the development of OPEC's long-term strategy has been so extensive that OPEC issued a press release explicitly praising Mr. Mommer for the "outstanding work" he performed in helping to "draw[] up a comprehensive long-term strategy for the Organization."

22. Other CITGO executives participate in the organization and operation of OPEC. For example, Oswaldo Contreras, who was appointed Chairman of CITGO's board of directors in 2000 was instrumental in organizing OPEC's fortieth anniversary conference in Caracas, Venezuela, in that same year, and Fernando Garay, who served as CITGO's Corporate Secretary and is currently its Public Affairs Manager, served eight years at OPEC's Secretariat in Vienna. CITGO has employed and continues to employ former OPEC employees and consultants on a routine basis.

CITGO MATERIALLY ASSISTS VENEZUELA AND PDVSA IN SELLING OIL-BASED PRODUCTS TO AMERICANS AT ANTICOMPETITIVE PRICES.

23. CITGO materially assists PDVSA's and Venezuela's participation in the cartel in numerous ways. CITGO provides PDVSA and Venezuela with information, including data on the United States oil market, and technical services that greatly assist in the efforts of PDVSA and Venezuela to fix the price of oil at anticompetitive levels. For example, CITGO's former CEO Luis Marin acknowledged in 2003 that CITGO was "jointly analyzing" global oil markets to assist Venezuela in maximizing the price it receives for its oil. Mr. Marin explained, "We are working in a way we have never worked before, very integrated."

24. Venezuela's heavy crude oil has a high degree of impurities that make it difficult to refine. Prior to its purchase of CITGO, Venezuela often found it difficult to sell its heavy crude oil, especially in periods of falling demand. Refiners preferred to purchase other producers' oil that was "sweeter" and "lighter" and thus easier to refine. In order to overcome this significant obstacle to its participation in the OPEC conspiracy to sell oil and oil-based products at anticompetitive levels, Venezuela sought to acquire refineries in the United States, its most important market, so that it could ensure a stable

outlet for its heavy crude oil and thus effectively participate in OPEC. To that end, PDVSA acquired 50 percent of CITGO's equity in 1986. At the time of the acquisition, PDVSA's president hailed the purchase as a major step in Venezuela's efforts to secure "steady, long-term markets for its crude oil." As part of the acquisition deal, CITGO agreed to purchase crude oil from PDVSA and its subsidiaries and affiliates for the next 20 years. In 1990, PDVSA acquired the other 50 percent of CITGO's equity, thus giving PDVSA full control of the organization and operation of CITGO.

25. Since purchasing CITGO, PDVSA has sought to devote the bulk of CITGO's refining capacity to Venezuelan heavy crude. CITGO has spent hundreds of millions of dollars specially equipping its refineries to process Venezuela's heavy crude oil. Additionally, CITGO has acquired refineries that can process this oil and formed joint ventures with other such refineries.

26. Through these and other efforts, CITGO has fulfilled its pivotal role as a secure, reliable long-term purchaser of Venezuelan oil. CITGO is now the single largest purchaser of Venezuelan crude oil in the world. PDVSA, acting through affiliates, continues to have long-term contracts with CITGO and its affiliates for the supply of oil. Venezuela supplies more than 50 percent of CITGO's total refining capacity of more than 650,000 barrels per day.

27. By spending hundreds of millions of dollars to devote its capacity to refine Venezuelan oil and by buying other refineries that have such capacity, CITGO has materially assisted Venezuela by removing the threat of buyers exercising downward pressure on the price of Venezuelan oil. Venezuela was acutely threatened by the prospect of such concessions because few refineries are capable of refining its heavy

crude oil in a cost-effective manner. These refineries acting in concert or alone could have extracted significant price concessions from Venezuela. Venezuela eliminated that threat by taking steps to acquire reliable refining facilities in the United States. As one of the OPEC nations with the largest reserves, Venezuela's participation in the OPEC cartel is essential to its success.

28. CITGO has agreed to purchase huge quantities of Venezuelan oil pursuant to one-sided contracts that substantially assist Venezuela's participation in OPEC. Specifically, CITGO has agreed to buy Venezuela's crude oil whenever Venezuela wants to sell it to CITGO, but Venezuela is under no obligation to provide the crude if it decides to reduce its output for any reason, including an anticompetitive reason, and CITGO has no recourse if Venezuela decides to cut production. And when CITGO's contracts have been breached because it has not received the crude oil to which it is entitled, CITGO has failed to take any action for these breaches.

29. CITGO refines the Venezuelan crude oil into gasoline and other oil-based products and sells them to members of the Plaintiff class in a continuous flow of interstate commerce. CITGO charges anticompetitive prices directly resulting from OPEC's unlawful price-fixing conspiracy and transfers the anticompetitive profits derived therefrom to its corporate parents and, ultimately, to PDVSA and Venezuela.

DAMAGES FROM THE PRICE-FIXING CONSPIRACY

30. The prices of oil and refined oil products are determined by the forces of supply and demand. Production increases and decreases by oil producers cause and determine changes in the prices of oil and refined oil products in the United States, including gasoline sold at the pump.

31. OPEC's eleven member nations control more than three-quarters of the world's proven recoverable crude oil reserves and control more than 40 percent of the world's oil exports. The avowed purpose of OPEC is to fix, raise, and stabilize world oil prices above competitive levels. To that end, OPEC's members agree on production quotas that limit the amount of oil that each member may produce. Even during times when individual OPEC members exceed these production quotas, they produce far less oil than they would if they were operating in a competitive market. Indeed, even when OPEC's members are producing to the full extent of their current capacities, they produce far less oil than they would if they were operating in a competitive market because they have artificially restricted their production capacity as part of their price-fixing conspiracy. In the absence of this agreement, the conspirators would currently be producing more oil, and the price of oil would be lower than present levels. As a result of this agreement, the capacity of OPEC's members has remained virtually flat over the last 30 years, whereas the productive capacity of non-OPEC producers has increased by 65 percent, even though these non-OPEC producers confront much higher exploration and extraction costs. OPEC openly acknowledges that it sets its "spare" capacity by reference to its price-fixing production quotas.

32. OPEC has succeeded in driving and maintaining the global price of oil above competitive levels. As a result of OPEC's conspiracy in restraint of trade alleged herein, crude oil prices have increased from an average of less than \$10 per barrel in 1986 to a high of \$78.40 per barrel in July 2006.

33. In 1986, oil sold for under \$10 per barrel. To bolster the price of oil, OPEC in 1986 set a target price of \$18 a barrel. By late 1986 and early 1987 the cartel

had succeeded in pushing prices to around \$16 per barrel. In 1990, OPEC decided to push prices even higher and set an overall production ceiling of approximately 22.5 million barrels per day with a target of \$21 per barrel. This agreement was suspended in August 1990 as a result of the Iraqi invasion of Kuwait, and in 1992 a production ceiling of approximately 23 million barrels per day was agreed upon.

34. Spurred by a booming economy in the Asian Pacific region, the price of oil remained high from 1990 to 1997. Predicting further strong demand, OPEC instituted a ten percent production increase in 1998, raising the total production level to 27.5 million barrels per day. Following dramatic and unexpected declines in Asian economies, however, the price of oil declined rapidly and by 1998, oil sold again for as little as \$10 per barrel.

35. As the then-President of OPEC, Dr. Ali Rodriguez Araque, acknowledged in a speech on November 13, 2000, OPEC immediately “began reducing output in order to bolster prices” in March 1998. (Dr. Rodriguez is a former President of PDVSA). Production cuts undertaken pursuant to the OPEC agreement of March 1998 quickly raised prices. OPEC’s production quotas are among the primary driving forces behind the seven-fold increase in the price of oil since 1998. OPEC’s output restrictions have had a direct, foreseeable, and substantial effect on the price of oil and refined oil products, including gasoline, sold in the United States.

36. In 2000, OPEC’s members reaffirmed their explicit price-fixing agreement and announced their agreement to keep the price of oil within the range of \$22-\$28 per barrel for OPEC’s spot Reference Basket of different crude oils. OPEC members agreed further that when prices fall below this price band for 10 trading days, production would

be decreased by 500,000 barrels per day, and when prices exceed the price band for 20 trading days, production would be increased by 500,000 barrels per day.

37. Pursuant to this agreement, OPEC cut its production ceiling by 3.5 million barrels per day in 2001. Specifically, at the January 17, 2001, meeting of OPEC's members, it was observed that the price of oil was \$21.5 per barrel, down from \$31.5 per barrel at the November 2000 meeting. OPEC announced in a press release, "This turn of events has resulted in a broad consensus among our Member Countries on the need for a cutback in production." OPEC further announced that effective February 1, 2001, production levels were to be reduced by 1.5 million barrels per day. Additional cuts of 2 million barrels per day were announced later in the year. The avowed intent behind these production cuts was to "maintain crude oil prices at agreed levels." These agreed-upon production cuts were followed by a further cut of 1.5 million barrels per day in January 2002.

38. OPEC announced in a September 22, 2003, press release that "OPEC was successful last year in maintaining market stability and keeping prices within its preferred range of \$22-28 per barrel." The release continued, "In 2002, OPEC cut its production ceiling by 1.5 million barrels per day, which was on top of the 3.5 million barrels per day in cuts made in 2001. These reductions were essential to bringing oil prices back to fair and reasonable levels."

39. OPEC met on April 24, 2003, and agreed upon a cut in actual production of 2 million barrels per day effective June 1, 2003. OPEC also met on September 24, 2003, and agreed upon further production cuts of 0.9 million barrels per day, effective November 1, 2003, resulting in a new production quota of 23.5 million barrels per day.

40. OPEC met in Vienna on December 4, 2003. At that meeting, OPEC expressed its concern that projected excess supply was expected to exert considerable downward pressure on oil prices. In a press release, OPEC “reaffirmed its firm determination to take any measures, when deemed necessary, to maintain market stability and avoid price fluctuations.”

41. On February 10, 2004, OPEC met in Algiers, and agreed to cut production by one million barrels per day effective April 1, 2004. At a meeting in Vienna on March 31, 2004, OPEC again affirmed its intent to implement this reduction in production. According to an OPEC press release, the stated purpose of this reduction was “to keep the market well-supplied and prices stable within the agreed price band of US\$22-US\$28/[barrel] for the OPEC Reference Basket of crudes.”

42. As a result of this agreement, the production quotas for each OPEC member were changed as follows:

	Prior Production Quota	Production Quota as of April 1, 2004
Saudi Arabia	7.96	7.64
Iran	3.6	3.45
Nigeria	2.02	1.94
UAE	2.14	2.05
Kuwait	1.97	1.89
Venezuela	2.82	2.7
Libya	1.31	1.26
Algeria	0.78	0.75
Indonesia	1.27	1.22
Qatar	0.64	0.61
Total	24.5	23.5

43. Although the price band of \$22-28 per barrel remained the official policy of OPEC, a senior OPEC official acknowledged in March 2004 that OPEC has “an understanding that the bottom end of its preferred price range is now \$28 per barrel for its reference basket of crude oils, and not \$22 a barrel.” Indeed, Hugo Chavez, Venezuela’s President since 2000, has consistently exhorted OPEC to take action to keep the price of oil above \$30 a barrel.

44. In practice, the cartel has been so successful at raising prices above competitive levels that it has now abandoned efforts to enforce a ceiling on the price of oil at \$28 a barrel.

45. Despite skyrocketing oil prices in May and June 2004, OPEC left its earlier output restrictions in place. Finally, with oil prices at \$40/barrel, OPEC in July raised the production quotas by 2 million barrels a day, and in August, OPEC again increased production by half a million barrels a day. The resulting production quotas were as follows:

	Production Quota as of August 1, 2004
Algeria	830
Indonesia	1,347
Iran	3,817
Kuwait	2,087
Libya	1,392
Nigeria	2,142
Qatar	674
Saudi Arabia	8,450
UAE	2,269
Venezuela	2,992
Total	26,000

46. In September 2004, OPEC announced a further one million barrel per day production increase effective November 1. Despite high prices, OPEC maintained this production level until mid-March 2005, when a limited increase of 500,000 barrels a day was permitted. Another increase of 500,000 barrels per day was instituted in June 2005, effective July 1, bringing the total production limit to 28 million barrels a day. The resulting current production quotas are as follows:

	Current Production Quotas
Algeria	894
Indonesia	1,451
Iran	4,110
Kuwait	2,247
Libya	1,500
Nigeria	2,306
Qatar	726
Saudi Arabia	9,099
UAE	2,444
Venezuela	3,223
Total	28,000

47. In 2006, the price of oil rose to unprecedented levels, reaching over \$78 per barrel in July. In recent months the price of oil has declined, falling to below \$60 per barrel in October. OPEC members expressed the need to interfere with market forces in order to ensure that prices did not unduly decline. Edmund Daukoru, rotating president of OPEC and Nigeria's oil minister, stated, "I am very concerned about the drop in prices. We do not know how much further they can go and we need to review that in depth."

48. On September 29, 2006, to halt the decline in oil prices, Venezuela and Nigeria announced that they had agreed to decrease production by 170,000 barrels per

day effective immediately with Venezuela reducing production by approximately 50,000 barrels and Nigeria absorbing the remainder. At the same time it announced the reduction, Venezuela's oil ministry indicated publicly that it believed an "overproduction" existed in the market of more than 500,000 barrels per day.

49. On October 13, 2006, Venezuela's Minister of Energy and Petroleum, Rafael Ramirez, announced that OPEC members had reached a "consensus" to start cutting oil production by one million barrels a day as of December 1. Mr. Ramirez called the cuts a "healthy, necessary move."

50. On October 19, 2006 OPEC held an emergency meeting to address the recent decline in oil prices. At that meeting OPEC's member nations agreed to cut their actual oil production by 1.2 million barrels per day, from 27.5 million to 26.3 million barrels, for the express purpose of establishing a \$60 per barrel floor on the price of oil.

51. Concerted production increases and decreases by OPEC members, with the active assistance of CITGO, directly affect and determine changes in the prices of gasoline and other oil-based products in the United States. As a direct result of OPEC's production quotas, the price of oil on world markets has exceeded competitive levels. Concomitantly, the prices of oil and refined oil products in the United States, including gasoline and other oil-based products sold to Plaintiffs and members of the class, exceed the prices that would prevail in a competitive market, absent OPEC's artificially low production.

52. The foregoing agreements constitute *per se* violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 16 of the Clayton Act, 15 U.S.C. § 26.

COMMERCIAL NATURE OF THE CONSPIRACY

53. OPEC is a global commercial cartel, exploiting its market power to maximize its members' economic interests. The nature of the conspiracy is economic rather than political.

54. As Kuwait's oil minister, Sheikh Ahmad Fahad Al-Ahmad Al-Sabah, stated at the end of March 2004, "OPEC is still not a political organization."

55. OPEC's production restrictions are not driven by a desire to conserve natural resources for future generations. Instead, OPEC is driven, like any other price-fixing cartel, by its members' desire to optimize the revenue to be generated by the members' oil reserves. As Saudi Arabia's Minister of Petroleum & Mineral Resources, Ali Naimi, stated at the end of March 2004, "We're extremely committed to . . . stability of prices." OPEC has touted its ability to "keep[] prices within its preferred range."

56. The commercial nature of OPEC's price-fixing conduct is further confirmed by OPEC's course of dealing with oil corporations that are not owned by sovereigns and that are motivated solely by their desire to maximize profits. OPEC representatives have met with officers of these private corporations to discuss output restrictions to inflate the price of oil. As a result of these meetings, these foreign corporations and OPEC have agreed to limit production of oil and have thereby increased the price of oil over competitive levels. For example, in 2001, OPEC officials met with officers of Lukoil, a publicly traded Russian oil company with the second largest reserves of any privately owned oil company in the world, to discuss reduction in the production of oil. Lukoil agreed to OPEC's request to cut back on production in the fourth quarter of

2001 and first quarter of 2002. As a result of this agreement, oil prices rose even further above competitive levels.

57. The commercial nature of OPEC's members' course of conduct is also demonstrated by their acquisition of refineries and other important downstream oil businesses in key markets, including the United States and Europe. These acquisitions provide OPEC with the ability to control refining and distribution facilities in their most important markets. Additionally, ownership of such facilities allows OPEC's members to maintain their anticompetitive prices for oil by preventing large customers from exercising their buying power to secure price concessions.

58. Venezuela, PDVSA and CITGO have conspired to control production and fixed prices, and they have entered the private market place, sought customers, and made billions of dollars worth of sales to private customers in the United States. In doing so, and in engaging in the anti-competitive conduct at issue in this case, Venezuela, PDVSA and CITGO have not exercised powers peculiar to sovereigns. They have exercised powers and engaged in commercial conduct that also can be exercised like that of other private, non-governmental actors and conspirators. Private companies can engage in the same kind of commercial and conspiratorial misconduct in which Venezuela, PDVSA and CITGO have engaged here.

TERRITORIAL SCOPE OF THE CONSPIRACY

59. The United States is the largest consumer of oil in the world. As a result, the American market is a key target of OPEC generally and of Venezuela specifically. Venezuela exports well over half of its oil to the United States or to refineries that sell

directly to customers in the United States. OPEC's members have attempted and have succeeded in directly and substantially affecting the price of oil in the United States.

60. The acts complained of herein are not the unilateral, independent acts of sovereign nations taken and effectuated entirely within the confines of their own territorial boundaries. To the contrary, as a multinational cartel, OPEC and its member nations depend on the concerted, agreed-upon acts of all members to achieve the conspiracy's price-fixing purposes.

61. OPEC's activities therefore are not, and by definition cannot be, confined to the territories of its member nations. There are at least five different ways in which each OPEC member's activities extend beyond the boundaries of their individual territories. First, as a multinational cartel, OPEC's production quotas are negotiated and agreed upon by and among its member nations at regular meetings, usually held at OPEC's headquarters in Vienna. Meetings with privately owned oil companies to discuss restriction of output have also occurred on an extraterritorial basis. Second, the entire purpose of the cartel is to fix the price of oil in global markets, not just their local markets. Third, OPEC's conspiracy to charge anticompetitive prices comes to fruition only upon the sale of gasoline and other oil-based products to Plaintiffs and other purchasers in the United States and other non-OPEC countries. Fourth, OPEC's members have acquired oil fields outside of their territories. For example, Kuwait, acting through wholly owned subsidiaries, owns interests in oil fields located in Australia, Indonesia, and Tunisia. In fact, the stated mission of the Kuwait Foreign Petroleum Exploration Company, whose sole shareholder is the Kuwait government, is "[t]o increase the value of the Company to the State of Kuwait by profitably exploring for and

producing hydrocarbons internationally.” Likewise, at the direction of Venezuela, PDVSA is developing oil fields in Cuba.

62. Finally, OPEC’s members have also sought to effectuate their plan to sell oil at anticompetitive levels by acquiring refining and distribution facilities within the territory of the United States and other non-OPEC countries. Specifically, as outlined above, through PDVSA, Venezuela has acquired complete ownership and control over CITGO and its refineries that supply products to approximately 15,500 gasoline stations and many other customers in the United States. Venezuela’s corporate presence in the United States, through CITGO, plays a critical role in Venezuela’s ability to bring to fruition its scheme to sell oil-based products to American customers at anticompetitive prices.

63. On October 19, 2006, CITGO published a full page letter from its President and CEO Felix Rodriguez, on page A9 of the *Houston Chronicle*, on page A21 of *The New York Times*, and in several other newspapers in the United States. This letter from CITGO’s President and CEO is titled “CITGO Sets the Record Straight” and provides in part that:

We understand that, as a corporation, we cannot always control the environment in which we operate, but we feel compelled to set the record straight out of respect for our employees, business partners, customers and U.S. consumers. Our primary commitment to all of them remains unchanged: to responsibly provide the quality energy products the U.S. market needs.

This commitment – upheld by CITGO’s refining capacity of 861,000 barrels-per-day from five refineries – is in alignment with the global energy policy of our parent company, Petroleos de Venezuela, S.A. (PDVSA). Furthermore, when you add PDVSA’s share in another three refineries also dedicated to serving the needs of American consumers, PDVSA’s overall contribution to the U.S. energy market is 1.2 million barrels-per-day of refining capacity.

With the largest crude oil reserves in the Western Hemisphere, Venezuela has been a reliable supplier of crude oil and refined products to the U.S. market for decades. . . .

64. Venezuela has also acquired significant refining capacity in Europe and now has the ability to refine 2 million barrels per day outside Venezuela. Similarly, Kuwait has acquired major refineries in Europe and Asia that provide gasoline to thousands of gas stations. And other OPEC member nations have also acquired refining and distribution facilities outside of their territories

65. These extraterritorial purchases of refineries and distribution facilities represent an important component of OPEC's ability to maintain its control over the price of oil. Recognizing this, OPEC's Long-Term Strategy specifically anticipates investments in "refining capacity" by "OPEC National Oil Companies" in "consuming countries," such as the United States.

**CITGO IS LIABLE FOR THE ANTICOMPETITIVE EFFECTS IN THE
UNITED STATES OF OPEC'S PRICE-FIXING CONSPIRACY**

66. Under the indirect ownership of PDVSA, CITGO has become a commercial pawn of Venezuela. The Venezuelan government has appointed key officers and directors of CITGO, many of whom also serve as officers or directors of PDVSA and its subsidiaries and many of whom have close ties to OPEC, as detailed above. For example, in September 2000, President Chavez appointed a general in the Venezuelan military, Oswaldo Contreras, to be the Chairman of CITGO. CITGO is the commercial instrument by and through which Venezuela brings its anticompetitive scheme to fruition in the United States.

ANTITRUST INJURY

67. Members of the Plaintiff class purchase gasoline and other oil-based products directly from CITGO, a member of the OPEC price-fixing conspiracy. As direct purchasers, Plaintiffs are entitled to bring this action under the Sherman and Clayton Acts for money damages and injunctive relief.

68. CITGO's participation in this unlawful conspiracy, in concert with the unnamed co-conspirators, has had the following direct, foreseeable, and substantial effects, among others:

- (a) The production of crude oil in OPEC member countries has been artificially restricted;
- (b) The price of oil-based products, including gasoline and other refined oil products, has been fixed, raised, and stabilized throughout the United States at artificial and anticompetitive levels;
- (c) Plaintiffs and the class members, as direct purchasers of CITGO's gasoline and other oil-based products, have been deprived of the ability to purchase gasoline and other oil-based products at competitive prices;
- (d) Competition in the sale of oil-based products has been restrained; and
- (e) CITGO has sold gasoline and other oil-based products directly to Plaintiffs and the class members at prices substantially above the competitive levels that would prevail absent OPEC's unlawful price-fixing conspiracy.

69. By reason of the antitrust violations set forth herein, Plaintiffs and the class members purchasing gasoline and other refined oil products directly from CITGO

have paid more for gasoline and other refined oil products than they would have paid in the absence of the illegal combination and conspiracy.

CLASS ALLEGATIONS

70. Plaintiffs bring this action individually and on behalf of all others similarly situated as members of a proposed nationwide plaintiff class pursuant to Rule 23 of the Federal Rules of Civil Procedure. The class that Plaintiffs seek to represent consists of all persons and entities in the United States that have purchased gasoline and other oil-based products directly from CITGO during the last four years. Excluded from the class are Defendant, its employees, officers, directors, legal representatives, heirs, successors, and wholly or partly owned subsidiaries or affiliated companies.

71. This action may properly be maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

72. The members of the class are so numerous that joinder of their individual claims is impracticable. The precise number of class members and their addresses are presently unknown to Plaintiffs but can be obtained from CITGO's files and sales records. Class members can be notified of the pendency of this action by publication in newspapers, by mailed notice, and by other means.

73. Common questions of law and fact exist as to all members of the class. These questions predominate over questions affecting only individual class members.

74. The named Plaintiffs' claims are typical of the claims of the members of the class they seek to represent. The named Plaintiffs and the class members are direct purchasers of CITGO's gasoline and other oil-based products and were damaged by the same anticompetitive conduct committed by CITGO and its co-conspirators.

75. The named Plaintiffs are adequate representatives of the class. Their interests do not conflict with the interests of the class members they seek to represent. Plaintiffs have retained counsel who are competent and experienced in complex class action and antitrust litigation. Finally, Plaintiffs intend to prosecute this action vigorously. The interests of the members of the class will be fairly and adequately protected by Plaintiffs and their counsel. The interests of Plaintiffs are coincident with, and not antagonist to, those of the class members.

76. The class action device is superior to other available means for the fair and efficient adjudication of the claims of Plaintiffs and of the class. Judicial management of this litigation is essential because of the severe economic consequences of CITGO's past and future anticompetitive activities in the United States. This class action is the only method by which all of the class members' common claims can economically and expeditiously be adjudicated in one proceeding and thereby preclude the possibility of multiple trials and inconsistent judgments in courts throughout the United States.

COUNT I

CITGO IS A CO-CONSPIRATOR WITH THE MEMBERS OF OPEC IN VIOLATION OF SECTION 1 OF THE SHERMAN ACT AND SECTION 4 OF THE CLAYTON ACT

77. Plaintiff incorporates the allegations described in Paragraphs 1 through 66 above as if fully set forth herein.

78. CITGO is a member of and willing participant in OPEC's price-fixing conspiracy to sell oil-based products at anticompetitive prices in the United States. CITGO has agreed with OPEC and its members to provide material assistance to the cartel, and otherwise to facilitate its price-fixing scheme. CITGO's anticompetitive

activities and the anticompetitive activities of the unnamed co-conspirators pursuant to its agreement with OPEC are *per se* violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 4 of the Clayton Act, 15 U.S.C. § 15.

79. As a direct result of CITGO's and the unnamed co-conspirators' unlawful conspiracy, Plaintiffs and the class members have been overcharged for gasoline and other oil-based products.

COUNT II

CITGO IS A CO-CONSPIRATOR WITH VENEZUELA AND PDVSA IN VIOLATION OF SECTION 1 OF THE SHERMAN ACT AND SECTION 4 OF THE CLAYTON ACT

80. Plaintiff incorporates the allegations described in Paragraphs 1 through 69 above as if fully set forth herein.

81. CITGO is a member of and willing participant in Venezuela's and PDVSA's price-fixing conspiracy to sell oil-based products at anticompetitive prices in the United States. CITGO has agreed to provide Venezuela and PDVSA material assistance and to otherwise facilitate their price-fixing scheme. CITGO's anticompetitive activities and the anticompetitive activities of the unnamed co-conspirators pursuant to its agreement with Venezuela and PDVSA are *per se* in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 4 of the Clayton Act, 15 U.S.C. § 15.

82. As a direct result of CITGO's and the unnamed co-conspirators' unlawful conspiracy, Plaintiffs and the class members have been overcharged for gasoline and other oil-based products.

COUNT III

CITGO IS LIABLE FOR VENEZUELA'S AND PDVSA'S VIOLATIONS OF SECTION 1 OF THE SHERMAN ACT AND SECTION 4 OF THE CLAYTON ACT

83. Plaintiff incorporates the allegations described in Paragraphs 1 through 72 above as if fully set forth herein.

84. Venezuela and PDVSA are active members of the OPEC conspiracy, and their anticompetitive activities in concert with OPEC and its member nations are *per se* violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 4 of the Clayton Act, 15 U.S.C. § 15. Because of the role of CITGO in facilitating and implementing within United States' sovereign territory Venezuela's and PDVSA's unlawful price-fixing scheme, CITGO is liable for Venezuela's and PDVSA's violations of the Sherman Act.

85. As a direct result of CITGO's and the unnamed co-conspirators' unlawful conspiracy, Plaintiffs and the class members have been overcharged for gasoline and other refined products.

JURY DEMAND

86. Plaintiffs demand a trial by jury, pursuant to Rule 38 of the Federal Rules of Civil Procedure, of all issues triable of right by jury.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs demand:

- (1) That this case be certified as a nationwide class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- (2) That CITGO's unlawful combination and conspiracy alleged herein be adjudged and decreed to be an unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1) and Section 4 of the Clayton Act (15 U.S.C. § 15);

- (3) That Plaintiffs and class members recover actual damages incurred as a result of the illegal OPEC price-fixing cartel, as provided by law, in an amount to be determined at trial;
- (4) That Plaintiffs and class members recover ascertainable future damages that will be incurred as a result of the illegal OPEC price-fixing cartel, as provided by law, in an amount to be determined at trial;
- (5) That Plaintiffs and class members recover punitive damages, as provided by law, in an amount to be determined at trial;
- (6) That CITGO be required to disgorge all unlawful profits earned by the OPEC price-fixing cartel;
- (7) That the Court, pursuant to Section 4 of the Clayton Act, 15 U.S.C. § 15(a), award Plaintiffs and the class members threefold the damages sustained by Plaintiffs and the class members;
- (5) That, pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, the Court grant Plaintiffs injunctive relief against threatened continued violations of the antitrust laws, as described herein, by CITGO.
- (6) That the Plaintiffs recover their costs of this suit, including reasonable attorney's fees as provided by law; and
- (7) That Plaintiffs be granted such other, further, and different legal and equitable relief as the nature of the case may require or as may be deemed just and appropriate by this Court.

Dated November 13, 2006

Respectfully Submitted,

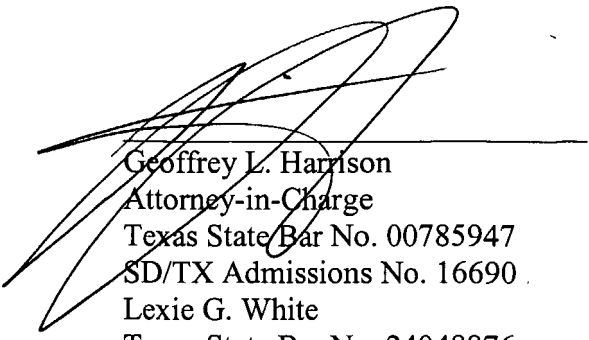
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