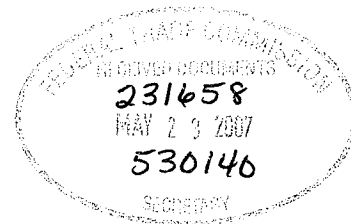


UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



In the Matter of)

Paul L. Foster,)

Western Refining, Inc., and)

Giant Industries, Inc.)

Docket No. D09323

**DEFENDANT PAUL L. FOSTER'S AND WESTERN REFINING, INC.'S ANSWER TO
FEDERAL TRADE COMMISSION'S COMPLAINT**

Pursuant to 16 C.F.R. § 3.12, Defendants Paul L. Foster and Western Refining, Inc. ("Western") (collectively "Answering Defendants") hereby answer the Federal Trade Commission's May 3, 2007, Complaint as follows.

RESPONSES TO THE FTC'S ALLEGATIONS

1. Answering Defendants admit the first sentence, except deny that the zip code for 6500 Trowbridge Drive is 79905. Answering Defendants further admit that Mr. Foster is the President and Chief Executive Officer of Western Refining, Inc. Answering Defendants deny any remaining allegations in paragraph 1.

2. Denied.

3. Answering Defendants admit the first sentence, except deny that the zip code for 6500 Trowbridge Drive is 79905. Answering Defendants deny any remaining allegations in paragraph 3.

4. Answering Defendants admit that Western is a crude oil refiner and marketer of refined product, including gasoline, diesel, and other light petroleum products. Answering Defendants deny any remaining allegations in paragraph 4.

5. This paragraph states a legal conclusion to which no response is required and is therefore denied.

6. This paragraph relates to parties other than Answering Defendants and is therefore denied.

7. This paragraph relates to parties other than Answering Defendants and is therefore denied.

8. This paragraph relates to parties other than Answering Defendants and is therefore denied.

9. Answering Defendants admit they entered into a merger agreement on August 26, 2006, amended on November 12, 2006. Answering Defendants deny all remaining allegations in paragraph 9.

10. Admitted.

11. Answering Defendants do not know the basis for the Commission's actions and this paragraph calls for a legal conclusion and is therefore denied.

12. Answering Defendants admit the first sentence. Answering Defendants deny all remaining allegations in paragraph 12.

13. Denied.

14. Answering Defendants admit that light petroleum products can be manufactured from crude oil and are so manufactured at refineries in the United States and elsewhere, and that

gasoline, diesel fuels, and jet fuels are not generally demand-side substitutes for each other.

Answering Defendants deny any remaining allegations in paragraph 14.

15. Answering Defendants admit that light petroleum products can be transported from many sources to locations where the products are demanded. Answering Defendants deny any remaining allegations in paragraph 15.

16. Answering Defendants admit that waterborne vessels or pipelines are two of the modes of transportation that can be used to deliver light petroleum products into product terminals used for storage and distribution or further shipment; that product terminals are facilities with large storage tanks that can be used to receive light petroleum products for storage and for redistribution; and that product terminals can perform value-added services, such as handling and injection of motor fuel additives. Answering Defendants deny any remaining allegations in paragraph 16.

17. Answering Defendants admit that light petroleum products can be transported from product terminals to final distribution points by tanker trucks sometimes capable of carrying about 9,000 gallons, the equivalent of almost 200 barrels. Answering Defendants admit that producing refineries may be able to provide distribution services to wholesale customers from light petroleum product services located at such refineries. Answering Defendants deny any remaining allegations in paragraph 17.

18. Denied.

19. Answering Defendants admit that Western and Giant are refiners that supply petroleum products. Answering Defendants deny all remaining allegations in paragraph 19.

20. Answering Defendants admit that Giant operates refineries in Ciniza and Bloomfield and owns a petroleum products terminal in Albuquerque. The remaining allegations

in paragraph 20 relate to parties other than Answering Defendants and are therefore denied.

Answering Defendants deny any remaining allegations in paragraph 20.

21. Answering Defendants admit on information and belief that Giant can supply its Albuquerque product terminal by truck from Giant's New Mexico refineries and from the Plains pipeline. Answering Defendants admit that the Plains pipeline transports light petroleum products north from El Paso to Albuquerque and south from El Paso to Juarez, Mexico.

Answering Defendants admit on information and belief that the Plains pipeline is owned by Plains All American Pipeline, L.P. Answering Defendants deny that the Plains Pipeline originates at the Western refinery, and deny any remaining allegations in paragraph 21.

22. Answering Defendants admit that Western owns and operates a refinery complex in El Paso, that Western produces transportation fuels, that Western products make their way to New Mexico, West Texas, Arizona, and Juarez, Mexico, and that Western products make their way to destinations via the Plains Pipeline. Answering Defendants deny any remaining allegations in paragraph 22.

23. Answering Defendants admit that the capacity of the Plains Pipeline is allocated. The remainder of paragraph 23 consists of legal conclusions to which no response is required or describes the actions of parties other than Answering Defendants and is therefore denied.

24. This paragraph relates to parties other than Answering Defendants and is therefore denied.

25. This paragraph relates to parties other than Answering Defendants and is therefore denied.

26. This paragraph relates to parties other than Answering Defendants and is therefore denied.

27. This paragraph relates to parties other than Answering Defendants and is therefore denied.

28. Denied.

29. Answering Defendants admit that in certain circumstances Western can increase the amount of gasoline it ships on the Plains Pipeline to Albuquerque. Answering Defendants deny any remaining allegations in paragraph 29.

30. Answering Defendants admit the first sentence of paragraph 30. Answering Defendants deny any remaining allegations in paragraph 30.

31. Denied.

32. On information and belief, Answering Defendants admit that Giant's two New Mexico refineries are landlocked and that Giant has faced a reduction in crude oil supplies that reduced the rates at which the Giant refineries refined crude oil. Except as expressly admitted, this paragraph relates to parties other than Answering Defendants and is therefore denied.

33. This paragraph relates to parties other than Answering Defendants and is therefore denied.

34. Answering Defendants admit that Giant trucks gasoline to locations in New Mexico from its New Mexico refineries. Answering Defendants deny any remaining allegations in paragraph 34.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

39. Denied.

40. Answering Defendants incorporate their responses to paragraphs 1-40 in response to this paragraph.

41. Denied.

42. Answering Defendants incorporate their responses to paragraphs 1-40 in response to this paragraph.

43. Denied.

The portion of the Complaint on pages 9-10 sets out notices and legal conclusions and does not require a response.

Regarding the “contemplated relief” set out on pages 10-11 of the Complaint, in paragraphs numbered 1-6, Answering Defendants deny that any basis exists for the relief requested and deny that any such relief is appropriate, legal, in the public interest or that it should be granted.

DEFENSES

The inclusion of any ground within this section does not constitute an admission that Defendants bears the burden of proof on each or any of the matters, nor does it excuse complaint counsel from establishing each element of its purported claim for relief.

- 1) The relief sought is barred due to laches.
- 2) The relief sought is barred due to unclean hands.
- 3) The complaint fails to state a claim upon which relief can be granted.
- 4) Granting the relief sought is contrary to the public interest.
- 5) Efficiencies and other procompetitive benefits, resulting from the merger, outweigh any and all proffered anticompetitive effects.

- 6) The merger is not anticompetitive and will not lessen competition in any line of commerce.
- 7) Market concentration statistics do not accurately reflect the competitive dynamics of the industry.
- 8) The FTC could not have a reason to believe that the merger will lessen competition.
- 9) The actions of the FTC in investigating and challenging this merger infringes defendants' rights under the United States Constitution and the Clayton Act.
- 10) Answering Defendants reserve the right to assert other defenses as they become known to Answering Defendants.

WHEREFORE, Answering Defendants respectfully requests that the ALJ (i) deny the FTC's contemplated relief, (ii) dismiss the Complaint in its entirety with prejudice, (iii) award Answering Defendants their costs of suit, including attorneys' fees, and (iv) award such other and further relief as the ALJ may deem proper.

Respectfully submitted,

HELLER EHRMAN LLP

By 

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WESTERN REFINING, INC.

Lowry Barfield, General Counsel
6500 Trowbridge Drive
El Paso, TX 79905
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***Attorneys for Defendants Paul L. Foster and
Western Refining, Inc.***

NOTICE OF APPEARANCE



CASE NAME In the Matter of Paul L. Foster, Western Refining, Inc., and Giant Industries Inc.	FILE/DOCKET NUMBER No. D09323
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► Pursuant to Section 4.1 of the Commission's Rule of Practice, enter in the above proceeding the appearance of

- counsel or representative for the respondent (Complete items 1, 2, 4, and 5 below)
 counsel supporting the complaint (Complete items 1, 3, 4, and 5 below)

1. COUNSEL OR REPRESENTATIVE	2. RESPONDENTS
<small>Include name, address and telephone of each</small> Marc G. Schildkraut Michael P. A. Cohen Katherine E. Wood HELLER EHRMAN LLP 1717 Rhode Island Avenue NW Washington, D.C. 20036 Tel: (202) 912-2000 Fax: (202) 912-2020	<small>Include address and telephone numbers of all persons, partnerships, corporations, or associations</small> Paul L. Foster 6500 Trowbridge Drive El Paso, Texas 79905 (915) 775-3300 Western Refining, Inc. 6500 Trowbridge Drive El Paso, Texas 79905 (915) 775-3300

3. ASSOCIATE/ASSISTANT DIRECTOR

4. SIGNATURE OF SENIOR COUNSEL 	5. DATE SIGNED May 23, 2007
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Return this form to: H-135
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, D.C. 20580

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of

Paul L. Foster,

Western Refining, Inc., and

Giant Industries, Inc.

Docket No. D09323

PUBLIC

DECLARATION OF MARC G. SCHILDKRAUT

I, Marc G. Schildkraut, declare as follows:

1. I am an attorney with the law firm of Heller Ehrman LLP, counsel for Defendants Paul L. Foster and Western Refining, Inc. I make this declaration pursuant to Rule 4.1(d) of the Federal Trade Commission's Rules of Practice.

2. I am a member of the Bar of District of Columbia (Bar No. 96940) and Bar of the State of New York. I am admitted to practice before the United States Courts of Appeals for the Federal and Eleventh Circuits; and the United States District Court for District of Columbia. I further attest that I am in good standing within the legal profession.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: May 23, 2007.



Marc G. Schildkraut

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of

Paul L. Foster,
Western Refining, Inc., and
Giant Industries, Inc.

Docket No. D09323

PUBLIC

DECLARATION OF MICHAEL P. A. COHEN

I, Michael P. A. Cohen, declare as follows:

1. I am an attorney with the law firm of Heller Ehrman LLP, counsel for Defendants Paul L. Foster and Western Refining, Inc. I make this declaration pursuant to Rule 4.1(d) of the Federal Trade Commission's Rules of Practice.

2. I am a member of the Bar of the District of Columbia (Bar No. 435024) and the Commonwealth of Virginia (Bar No. 31584). I am admitted to practice before the United States Supreme Court, the United States Courts of Appeals for the D.C. Circuit, the United States Court of Appeals for the Fourth Circuit, the United States District Court for the District of Columbia, the United States District Court for the Eastern District of Virginia and the Court of International Trade. I further attest that I am in good standing within the legal profession.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: May 22, 2007.



Michael P. A. Cohen

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of

Paul L. Foster,

Western Refining, Inc., and

Giant Industries, Inc.

Docket No. D09323

PUBLIC

DECLARATION OF KATHERINE E. WOOD

I, Katherine Elizabeth Wood, declare as follows:

1. I am an attorney with the law firm of Heller Ehrman LLP, counsel for Defendants Paul L. Foster and Western Refining, Inc. I make this declaration pursuant to Rule 4.1(d) of the Federal Trade Commission's Rules of Practice.

2. I am a member of the Bar of the District of Columbia (#488724), New York (#599270), and Oregon. I am admitted to practice before the United States District Court for the District of Columbia (#488724). I further attest that I am in good standing within the legal profession.

I declare under penalty of perjury that the foregoing is true and correct.

Executed: May 23, 2007.

Katherine E. Wood
Katherine E. Wood

CERTIFICATE OF SERVICE AND COMPLIANCE

I, Nara Neves, hereby certify that on May 23, 2007 copies of the foregoing **DEFENDANTS' ANSWER TO FTC'S COMPLAINT** and **NOTICE OF APPEARANCE** were served as indicated:

Hon. Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
Room 113
600 Pennsylvania Avenue, NW
Washington, D.C. 20580
(Via hand delivery)

Donald S. Clark
Federal Trade Commission
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Room H-135
Washington, DC 20580
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dclark@ftc.gov; secretary@ftc.gov
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tdsmith@jonesday.com
(Via e-mail and hand delivery)

I further certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that a paper copy with an original signature is being filed with the Secretary of the Commission on the same day by other means.


Nara Neves
HELLER EHRMAN LLP
202.912.2638