

STATE OF VERMONT

SUPERIOR COURT
Chittenden Unit

CIVIL DIVISION
Docket No. 617-6-15 Cnev

JACOB R. KENT, ANNE B. VERA,)
THOMAS R. MARHAR and DAWN M.)
MAHAR, DAVID C. CARTER and)
BARBARA CARTER and all others)
Similarly situated)
) **Plaintiffs,**)
))
) **v.**)
))
R.L. VALLEE, INC., S.B. COLLINS, INC.,)
WESCO, INC. and CHAMPLAIN OIL)
COMPANY, INC.)
) **Defendants.**)

MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Defendant S.B. Collins, Inc. (“S.B. Collins”), by and through its attorneys, Sheehey Furlong & Behm P.C., moves this Court to dismiss the Complaint pursuant to V.R.C.P. 12(b)(6) for failure to state a claim upon which relief may be granted. In support of its Motion, S.B. Collins relies upon the following Memorandum of Law and Exhibits.

Memorandum

I. Introduction.

The Plaintiffs’ sprawling class action Complaint makes sweeping but legally deficient allegations that four Vermont businesses fixed the price of gasoline over a long, unspecified period in three northwestern Vermont counties. The Plaintiffs fail to state a claim because they do not, and cannot, make any factually specific allegations regarding the fundamental and critical element of a price fixing charge: that competitors agreed or conspired to fix prices. Although their Complaint mouths the words agreement and conspiracy, the Plaintiffs’

allegations concerning those concepts are wholly conclusory and unmoored from any particular, plausible factual basis.

Boiled to its essence, the Complaint asserts that the Defendants have supposedly charged identical and higher than competitive prices in the alleged market, and further alleges that the only inference that can be drawn from such facts is that the four Defendants *must have* met and agreed to fix those prices at some unknown time in some unknown place for some unknown duration. The Plaintiffs could not be more clearly wrong in alleging that a price fixing agreement is the only explanation for supra competitive, parallel pricing in a concentrated market with high entry barriers like the one they allege exists in their Complaint.

The courts and antitrust commentators have uniformly recognized that parallel conduct by sellers is a natural consequence of market concentration, and that parallel pricing in such markets frequently occurs without an agreement. Because even supra competitive prices arrived at through consciously parallel behavior are lawful in the absence of an agreement, allegations like those in Plaintiffs' Complaint are deficient as a matter of law. As stated by the United States Supreme Court, parallel conduct by sellers does not suggest conspiracy, and a conclusory allegation that there was an agreement between the sellers at some unidentified point does not supply an adequate basis to support an illegal price fixing claim. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556-57 (2007).¹

Accordingly, in *Twombly*, the Court dismissed a price fixing complaint because, like here, it contained only conclusory allegations of agreement. In rejecting bare allegations of parallel conduct and naked conclusions of conspiracy as being insufficient, the Court held that a

¹ *Twombly* involved a claim made under section one of the Sherman Act, 15 U.S.C.A. § 1, the primary federal law outlawing price fixing. As explained in more detail below, although Plaintiffs have brought their price fixing claim pursuant to Vermont's Consumer Protection Act, 9 V.S.A. §§ 2451 *et seq.*, whether there is a price fixing violation will ultimately be determined based on whether the pricing at issue violates the federal antitrust laws.

price fixing complaint must contain “enough factual matter (taken as true) to suggest that an agreement was made.” *Id.* Plaintiffs’ Complaint consists only of allegations that the Defendants engaged in parallel, supra competitive pricing and conclusory assertions that somewhere, sometime and somehow they entered into a secret, unevicdnced agreement. That is not enough, and Plaintiffs’ Complaint should be dismissed.

Although Vermont’s Supreme Court passed on the opportunity to adopt the *Twombly* standard in two sharply divided 2008 decisions, as explained in more detail in Section II of this Memorandum, those cases are significantly distinguishable from the instant matter. Neither was an antitrust case. As *Twombly* emphasized, antitrust discovery is almost always extremely expensive, and justifies requiring a plaintiff to provide some factual basis before permitting it to proceed with costly discovery. The discovery requests already served by Plaintiffs in this case are extraordinarily broad and will impose very heavy costs upon Defendants. Furthermore, the plaintiffs in the 2008 cases were individuals (a prison inmate and a disabled employee) with very limited resources and abilities relative to the defendants (the State of Vermont). That is certainly not the case here. Applying *Twombly* to judge the sufficiency of Plaintiffs’ Complaint is thus compatible with existing Vermont case law and this Court should do so.

II. Standard of Review.

Although Plaintiffs’ Complaint is riddled with inaccurate allegations, for purposes of this Motion, this Court must accept as true the facts allcged in the Complaint. *See Richards v. Town of Norwich*, 169 Vt. 44, 49 (1999). If, accepting Plaintiffs’ factual allegations as true, there exist no facts or circumstances that would entitle them to relief, the Court should dismiss the Complaint. V.R.C.P. 12(b)(6).

To satisfy Rule 8 in a price-fixing case, the Complaint must contain “enough factual matter (taken as true) to suggest that an agreement was made.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007). “[A]n allegation of parallel conduct and a bare assertion of conspiracy will not suffice.” *Id.* In cases in which the complaint alleges only parallel conduct, the allegations “must be placed in a context that raises a suggestion of a preceding agreement, not merely parallel conduct that could just as well be independent action.” *Id.* A complaint that only makes allegations of parallel conduct and a bare assertion of conspiracy must be dismissed. Parallel pricing may provide some support for a price fixing claim, “but without some further factual enhancement [they] stop[] short of the line between possibility and plausibility.” *Id.*

Since *Twombly* was decided in 2007, the Vermont Supreme Court has not had frequent occasion to consider whether to adopt it as the standard for interpreting V.R.C.P. 8, and it has never done so in the context of an antitrust case. In two 2008 cases, the Vermont Supreme Court resisted the adoption of *Twombly* without much discussion, over the strong objection from two dissenting justices. See *Colby v. Umbrella, Inc.*, 2008 VT 20, 184 Vt. 1; *Bock v. Gold*, 2008 VT 81, 184 Vt. 575.

This Court may apply *Twombly* here consistent with Vermont Supreme Court precedent because neither *Colby* nor *Bock* was a case involving alleged violations of federal antitrust law.² It is appropriate to apply *Twombly* in an antitrust case like this one because a claim for violation of antitrust laws is a “a unique type of claim prone to burdensome discovery requests.” *Starr v. County of Los Angeles*, 659 F.3d 850, 852 (9th Cir. 2011). Even before the United States

² Because the substantive law on antitrust is nearly all federal law, it is appropriate to interpret Vermont’s Rule 8 consistently with the “almost identical” federal rule in antitrust cases. Reporter’s Notes to V.R.C.P. 8. Indeed, Vermont courts frequently look to analogous federal rules for guidance in interpretation. *E.g.*, *Wright v. Honeywell Int’l, Inc.*, 2009 VT 123, ¶ 10, 187 Vt. 123 (“To the extent that the Vermont rule mirrors the comparable federal rule, we look to federal precedent to aid our interpretation of our rule.”); *State v. Amidon*, 2008 VT 122, ¶ 16, 185 Vt. 1 (“[W]hen our rule is identical to its federal counterpart, we look to federal cases interpreting the federal rule for guidance.”); *Mobbs v. Cent. Vermont Ry., Inc.*, 155 Vt. 210, 215 (1990) (when Vermont rule is “substantially similar” to federal rule, courts “look to federal case law for guidance.”).

Supreme Court decided *Twombly*, courts were cautioning against allowing bare-bones antitrust cases to proceed past the pleading stage: “[S]ome threshold of plausibility must be crossed at the outset before a patent antitrust case should be permitted to go into its inevitably costly and protracted discovery phase.” *Asahi Glass Co. v. Pentech Pharm., Inc.*, 289 F. Supp. 2d 986, 995 (N.D. Ill. 2003) (Posner, J.).

As the Court explained in *Twombly*, antitrust discovery is almost always extensive, expansive, and expensive: “[I]t is only by taking care to require allegations that reach the level suggesting conspiracy that we can hope to avoid the potentially enormous expense of discovery.” 550 U.S. at 559. This case is no different. Indeed, Plaintiffs have already served broad discovery requests that would require Defendants to produce virtually every scrap of paper and bit of electronic data in their possession. *See* Exhibit A attached hereto.

The courts in Florida appear to be adopting just this approach on the same issue. In *MYD Marine Distributor, Inc. v. International Paint Ltd.*, 76 So.3d 42 (2011), the Florida appellate court held that “Florida courts should look to *Twombly* in determining whether an agreement in violation of the state antitrust law can be *reasonably* inferred from the alleged facts.” *Id.* at 47 n.4 (emphasis in original). At the same time, Florida courts do not apply *Twombly* in cases outside of the antitrust context. *E.g.*, *Wendt v. La Costa Beach Resort Condominium Assoc., Inc.*, 14 So.3d 1179, 1181 (2009); *Baker v. Batmasian*, No. 502014CA008594XXXXMB, 2015 WL 1324856 at *1 (Fla. Cir. Ct. Mar. 25, 2015) (“Motions [to dismiss] should be granted only when the party seeking dismissal has conclusively demonstrated that plaintiff could prove no set of facts whatsoever in support of the cause of action.”).

Further, the Vermont Supreme Court’s reluctance to adopt a heightened pleading standard in the *Colby* and *Bock* cases was based on materially different facts than the instant

case, and thus those cases are distinguishable. The plaintiffs in *Colby* and *Bock* (a prison inmate and a disabled state employee) had limited resources and abilities relative to those of the defendants (the State), and the Court's reluctance to hold those plaintiffs to the higher pleading standard articulated in *Twombly* was understandable. In stark contrast, the named Plaintiffs in this case enjoy support from six attorneys at three law firms across five states, including a national class action firm that, by its own description, is "competent and experienced in complex civil litigation," (Complaint at ¶ 38.) The Defendants, on the other hand, are Vermont family-owned businesses.

Because *Colby* and *Bock* do not involve alleged antitrust violations and because they are factually distinguishable from this case, this Court may apply the *Twombly* standard to this antitrust price fixing case consistent with Vermont Supreme Court precedent, and it should do so.³

III. Relevant Price Fixing Law.

In their Complaint, Plaintiffs allege that Defendants agreed to fix prices of wholesale and retail gasoline in violation of the Vermont Consumer Protection Act ("VCPA"), 9 V.S.A. §§ 2451 *et seq.* When analyzing a claim under the VCPA, Vermont courts are "guided by the construction of similar terms contained in Section 5(a)(1) of the Federal Trade Commission Act." 9 V.S.A. § 2453(b).

The Federal Trade Commission Act ("FTC Act") bans "unfair methods of competition" and "unfair or deceptive acts or practices." 15 U.S.C. § 45(a)(1). Section one of the Sherman Act bans "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce." 15 U.S.C. § 1. All violations of the Sherman Act are violations

³ In the alternative, this Court may adopt the standards articulated in *Twombly*, and the line of federal antitrust law preceding it, as appropriate guiding authority on the *substantive* principles of antitrust law, consistent with the directive of 9 V.S.A. § 2453a(c). *See generally* Motion to Dismiss filed by Co-Defendant R.L. Vallec, Inc.

of the FTC Act. *Lippa's, Inc. v. Lenox, Inc.*, 305 F. Supp. 182, 186 (D. Vt. 1969) (“[A]ny activity that violates . . . the Sherman Act . . . also violates § 5(a)(1) of the FTCA.”) (citing *Times-Picayune Publishing Co. v. United States*, 345 U.S. 594, 609 (1953)).

“In general, practices challenged under the Sherman Act are struck down only if they are unreasonable and anticompetitive.” *White v. R.M. Packer Co.*, 635 F.3d 571, 575 (2011). Agreements between competitors to fix prices are presumed to be anticompetitive and thus are *per se* illegal. *National Soc. of Professional Engineers v. United States*, 435 U.S. 679, 692 (1978). In contrast, independent decisions by market participants that have an anticompetitive result are not illegal. *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 227 (1993). In other words, the law “does not require sellers to compete; it just forbids their agreeing or conspiring not to compete.” *In re Text Messaging Antitrust Litigation*, 630 F.3d 622, 627 (7th Cir. 2010) (Posner, J.).

Here, Plaintiffs have pled facts that suggest that the putative class market is oligopolistic – that is, it has relatively few sellers, high entry barriers, and relatively inelastic demand (i.e., demand that does not fluctuate much in response to price changes). Oligopolistic markets are susceptible to and are frequently characterized by conscious parallelism (or economic interdependence) in pricing:

[C]onscious parallelism is the practice of interdependent pricing in an oligopolistic market by competitor firms that realize that attempts to cut prices usually reduce revenue without increasing any firm’s market share, but that simple price leadership in such a market can readily increase all competitors’ revenues.

City of Tuscaloosa v. Harcros Chemicals, Inc., 158 F.3d 548, 570 (11th Cir. 1998) (citations omitted). Oligopoly pricing is termed “interdependent” because, although “each seller may independently decide upon its own course of action, any rational decision must take into account the anticipated reaction of the other” sellers. P. Areeda and H. Hovencamp, *Antitrust Law*,

¶ 1429a p. 207 (2d. ed. 2003) (interdependent behavior is an inevitable result of an oligopolistic market).

Because such parallel pricing occurs without agreement or conspiracy, federal courts have unanimously held that conscious parallelism is not unlawful under either the Sherman Act or the FTC Act. *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 227 (1993); *Blomkest Fertilizer, Inc. v. Potash Corp. of Saskatchewan*, 203 F.3d 1028, 1032-33 (8th Cir. 2000) (“Evidence that a business consciously met the pricing of its competitors does not prove a violation of the antitrust laws.”); *E.I. du Pont de Nemours & Co. v. F.T.C.*, 729 F.2d 128, 139 (2d Cir. 1984) (“[C]onsciously parallel pricing of an identical product does not violate the antitrust laws” including § 5 of the FTC Act).

IV. Discussion.

A. To Survive Dismissal, Plaintiffs Must Plead Facts To Suggest Agreement Rather Than Conscious Parallelism.

A plaintiff may allege one of two kinds of agreement that violate the antitrust laws: express agreement or tacit agreement. When a plaintiff alleges express agreement, “a bare assertion of conspiracy will not suffice” to sustain a claim. *Twombly*, 550 U.S. at 557. “Without more, . . . a conclusory allegation of agreement at some unidentified point does not supply facts adequate to show illegality.” *Id.* at 556-57. Even before *Twombly*, courts held that “[a] general allegation of conspiracy . . . without a statement of the facts constituting the conspiracy, is a mere allegation of a legal conclusion and is inadequate of itself to state a cause of action.” *Larry R. George Sales Co. v. Cool Attic Corp.*, 587 F.2d 266, 273 (5th Cir. 1979); *see also Estate Construction Co. v. Miller & Smith Holding Co.*, 14 F.3d 213, 220-21 (4th Cir. 1994).

A tacit agreement requires evidence excluding the possibility of independent action and demonstrating competitors had a meeting of the minds and “a conscious commitment to a

common scheme designed to achieve an unlawful objective.” *Monsanto v. Spray-Rite Services Corp.*, 465 U.S. 752, 764 (1984) (quotations and citations omitted). In oligopolistic markets, like the one alleged in the instant complaint, uniform behavior can just as easily be the result of conscious parallelism as tacit agreement. For that reason, courts require that in order to state a claim, a plaintiff must place his allegations “in a context that raises a suggestion of a preceding agreement, not merely parallel conduct that could just as well be independent action.” *Twombly*, 550 U.S. at 557; *see also White*, 635 F.3d at 577 (“Plaintiffs must establish that it is plausible that defendants are engaged in more than mere conscious parallelism, by pleading . . . evidence pointing toward conspiracy.”) (citing *Twombly*, 550 U.S. at 556).

These required additional facts, often called plus factors, “ensure that courts punish concerted action—an actual agreement—instead of the unilateral, independent conduct of competitors. In other words, the factors serve as proxies for direct evidence of an agreement.” *In re Flat Glass Antitrust Litigation*, 385 F.3d 350, 360 (3d Cir. 2004) (internal quotations omitted); *see also* 6 Areeda & Hovenkamp, *Antitrust Law* ¶ 1434a p. 241 (2d ed. 2003) (“[T]he courts have been very clear that mere parallelism, including interdependent conscious parallelism, cannot support a conspiracy finding unless there are additional or ‘plus’ factors.”).

B. Plaintiffs Have Not Adequately Pled Agreement.

i. The Complaint Contains Only Conclusory Allegations of Express Agreement.

Plaintiffs’ Complaint contains only one theory of agreement to fix prices: that the Defendants expressly agreed to do so. The most Plaintiffs say about the alleged express agreement is that it was reached “during secret meetings and conversations, often conducted at undisclosed, out-of-the-way locations,” at which no one but the Defendants was present.

(Complaint at ¶ 79.) The Complaint fails to identify who attended the meetings, what was said, when they occurred, or any other detail regarding the alleged agreement.

Plaintiffs' allegation is so vague, free of detail, and conclusory that it could be inserted verbatim into any price fixing complaint on any subject matter against any set of defendants in any location and for any period of time. It is less of an allegation than it is an excuse for its complete dearth of detail. It begs for the question: if Plaintiffs know absolutely nothing about the alleged meeting or agreement, how do they know there was one? It suffices to say at this point, however, that the allegation is patently insufficient to state a price fixing claim both before and after the *Twombly* case. *E.g., Larry R. George Sales Co.* 587 F.2d at 273 (5th Cir. 1979); *White*, 635 F.3d at 575.

ii. The Complaint Does Not Allege a Tacit Agreement and Does Not Adequately Set Forth Such An Agreement.

The Complaint contains no allegation directly stating that the Defendants reached a tacit agreement to fix prices. Moreover, even if it did make such an allegation, the Complaint lacks allegations of “plus factors” that suggest a tacit agreement to fix prices rather than mere conscious parallelism. For those reasons, Plaintiffs' allegations are insufficient to state a claim.

Plaintiffs repeatedly assert that the gasoline market alleged in their Complaint is concentrated among relatively few sellers, has high barriers to entry and inelastic demand, and has yielded supra competitive prices and seller profits. (Complaint at ¶¶ 5, 7, 41-55, 68.)⁴ These allegations do not serve as plus factors that negate an inference of conscious parallel pricing. To

⁴ Plaintiffs also allege that the Defendants act as both wholesalers and retailers in the alleged market, although they do not explain how that fact relates to the alleged conspiracy. In any event, it is clear that vertical integration is not a plus factor suggestive of agreement. *See White*, 635 F.3d at 584 (“Nothing forbids producers from selling in two different levels of the same market, here the wholesale and retail levels.”); *see also* 6 Areeda & Hovenkamp, *Antitrust Law* ¶ 1435i p. 267 (vertical integration is too often justifiable to be considered as an undesirable practice facilitating conspiracy).

the contrary, they simply allege market conditions under which parallel pricing thrives, along with some of the typical consequences of such pricing.

“High barriers to entry and inelastic demand are two hallmarks of oligopolistic markets susceptible to successful parallel pricing practice, ***but neither helps to distinguish between agreement and mere conscious parallelism*** as the root cause of those practices.” *White*, 635 F.3d at 582 (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 591 n. 15 (1986)) (emphasis added). A market “in which a small group of manufacturers engage in consciously parallel pricing of an identical product does not violate the antitrust laws” even when such prices are “supra competitive” or occur in “lock step.” *E.I du Pont*, 729 F.2d at 139 (reversing finding that certain pricing practices violated § 5 of the FTC Act).

Where parallel conduct, high prices, and high profits are stable over time, as alleged in Plaintiffs’ Complaint, they are at least as indicative of conscious parallelism as agreement: “Pricing behaviors do not function as ‘plus factors’ when they are stable over time, because that factual context undermines any inference that the pricing behavior represents a sudden shift marking the *beginning* of a price-fixing conspiracy.” *White*, 635 F.3d at 581. Nor is the allegation that the Defendants’ market shares have remained stable over time (Complaint at ¶ 46) a plus factor, as conscious parallelism enables market participants “to maintain stable relative market shares.” *Id.* at 582.

In short, none of the factors described in the preceding paragraphs are plus factors. Rather, they only confirm that the alleged market has conditions that are “conducive to conscious parallelism.” *Id.* Further, it is hardly surprising that retail gasoline prices parallel one another when one considers the free availability of pricing data for retail gasoline stations. Compared to many industries where pricing data is less transparent, gasoline pricing data is ***mandated*** to be

public. 9 V.S.A. § 4110. Indeed, viewing and responding to competitors' prices is even easier in the digital age with the advent of websites and apps that track gasoline prices on a minute-by-minute basis. See, e.g., Gas Buddy (<http://www.gasbuddy.com>).⁵

Plaintiffs next allege that prices are higher in the alleged three-county market than they are elsewhere in Vermont, and that the higher prices are indicative of conspiracy. (Complaint at ¶¶ 68, 70.) Yet, it is hardly surprising that different markets yield different average prices. If a market is oligopolistic, as Plaintiffs allege the three-county market is here, higher prices are expected there – not because of any agreement, but because of the natural characteristics of the market itself. See *White*, 635 F.3d at 582 (variation in prices does not indicate collusion where market with higher prices is susceptible to conscious parallelism). Because the Plaintiffs allege that the three-county market is oligopolistic and that the markets elsewhere in Vermont are not, it is not a plus factor to allege that the prices are higher in the putative market than outside of it.

After alleging that environmental laws, zoning regulations, community opposition, and the cost and complexity of storing and dispensing gasoline have raised entry barriers (Complaint at ¶ 48), the Complaint then implausibly alleges that Defendants have contributed to erecting those barriers through deed restrictions, litigation, and lobbying and testifying before the legislature.

The allegation that Defendants created restrictive deed covenants refers to a fairly ordinary business practice⁶ (Complaint at ¶¶ 7, 48) and, moreover, it does not assert that any such deed restrictions were imposed as a result of *collusive* rather than individual action by the

⁵ The Vermont Attorney General recommends that consumers use Gas Buddy “to obtain information about local gasoline prices.” See Vermont Attorney General, Gasoline Pricing (<http://ago.vermont.gov/focus/consumer-info/fuel/gasoline-pricing.php>).

⁶ It is also worth noting that covenants in commercial property deeds imposing reasonable restrictions on competitors are lawful and are common across the spectrum of businesses. E.g., *Vermont National Bank v. Chittenden Trust Co.*, 143 Vt. 257, 261-62 (1983).

Defendants. Independent conduct creates no inference of agreement. Furthermore, the only three deed covenants specifically alleged in the Complaint all relate to property owned by a single defendant (not S.B. Collins) located *outside* of the alleged three-county market (Complaint at ¶¶ 52-54). These restrictions could not have had even a theoretical effect on entry barriers *inside* of the alleged market. In short, the deed covenant allegations cannot serve as a plus factor.

Finally, the Plaintiffs' allegations that some Defendants have participated in legal proceedings, engaged in lobbying efforts, and given testimony before legislative committees⁷ are not plus factors for a variety of reasons. It suffices to say, however, that all of those activities are protected by the First Amendment and cannot form any basis for liability. The leading United States Supreme Court case on the issue, *Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), makes clear that it does not violate the antitrust laws for businesses to act together to participate in the legislative process: "[T]he Sherman Act does not prohibit two or more persons from associating together in an attempt to persuade the legislature or the executive to take particular action with respect to a law that would produce a restraint or monopoly." *Id.* at 136; *see also Mylan Technologies, Inc. v. Zydus Noveltch, Inc.*, No 41-1-09 CnC, 2015 WL 3935320 at *9-10 (Vt. Super. Apr. 7, 2015) (applying *Noerr* to state law claims).

The Supreme Court later applied *Noerr* to hold that the same First Amendment protection applies to participation in legal proceedings: "Litigation has a *Noerr* immunity that cannot be taken away, no matter what the claimant's motive, unless it is objectively baseless."

Professional Real Estate Investors v. Columbia Pictures Industries, 508 U.S. 49, 54 (1993)

⁷ The Complaint does not allege that S.B. Collins ever gave testimony before a legislative committee or participated in a legal proceeding. Indeed, the *only* allegation regarding statements made by S.B. Collins is that its President answered a question from an unidentified media outlet at some unidentified point as to the reason for the difference in prices between Burlington and Middlebury by saying "I don't have an answer for that." (Complaint at ¶ 13.) Plaintiffs do not allege whether they believe that answer was accurate or why it is possibly relevant to anything.

(quotation omitted). Because *Noerr* affords First Amendment protection to participation in court proceedings and in the legislative process, Plaintiffs' allegations of such activity cannot serve as plus factors.

In sum, whether Plaintiffs meant to plead a tacit agreement shown by plus factors indicating conspiracy rather than conscious parallelism, they have utterly failed to do so. None of the Plaintiffs' allegations suggests price fixing rather than agreement-free, parallel pricing occurring in the oligopolistic market they allege in their own Complaint. Because Plaintiffs have wholly failed to allege any factual basis or context to support a price fixing agreement (express or tacit), this Court should dismiss the Complaint.

V. Conclusion.

For the foregoing reasons, this Court should dismiss the Complaint for failure to state a claim under V.R.C.P. 12(b)(6).

DATED at Burlington, Vermont this 5th day of October, 2015.

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EXHIBIT A

SUPERIOR COURT
CHITTENDEN UNIT

STATE OF VERMONT

CIVIL DIVISION

JACOB R. KENT, ANNE B. VERA,
THOMAS R. MAHAR, DAWN M.
MAHAR, DAVID C. CARTER and
BARBARA CARTER and all others
similarly situated,

Plaintiffs,

v.

R.L. VALLEE, INC., SB COLLINS, INC.,
WESCO, INC., and CHAMPLAIN OIL
COMPANY, INC.,

Defendants.

Case No. 617-6-15 Cncv

PLAINTIFFS' FIRST INTERROGATORIES TO DEFENDANT SB COLLINS, INC.

Pursuant to Vermont Rule of Civil Procedure 33, Plaintiffs Jacob Kent, Anne B. Vera, Thomas R. Mahar, Dawn M. Mahar, David C. Carter, Barbara Carter, and all others similarly situated ("Plaintiffs"), by and through counsel, hereby propound the following interrogatories to SB Collins, Inc. ("SB Collins") to be answered separately and fully in writing and signed under oath within forty-five (45) days after service of the summons and amended complaint or such time as the Court may order at the offices of Joshua Simonds, The Burlington Law Practice, PLLC, 2 Church Street, Suite 2-G, Burlington, VT 05401.

DEFINITIONS AND INSTRUCTIONS

For the purposes of these Interrogatories, the following definitions shall apply:

1. "Concerning" means describing, discussing, constituting, containing, considering, embodying, evaluating, mentioning, memorializing, supporting, collaborating, demonstrating, proving, evidencing, showing, refuting, disputing, rebutting, regarding, controverting, contradicting, made in connection with or by reason of, or derived or arising therefrom.

2. "Agent" means any past or present director, officer, counsel, shareholder, member, representative, contractor, consultant or employee of any person or entity or any person that assisted, acted for, or purported to assist or act for or on behalf of such person or entity.

3. "Cause of Action" means the above captioned case, Case No. 617-6-15 Cncv pending in the Superior Court of the State of Vermont, Chittenden Unit, Civil Division.

4. "Communicate" or "Communication" means any written or other transmission or exchange of words, thoughts or ideas to another person or entity, whether person-to-person, in a group, in a meeting, by telephone, by letter, by telex, facsimile, electronic mail, texting, or by any other process or medium, electronic or otherwise.

5. "State" and "Describe" means to: (a) describe fully by reference to underlying facts rather than ultimate facts or conclusions of fact or law; (b) particularize as to: (i) date and time, (ii) place, (iii) manner, and (iv) identity of

person or persons involved, including the present residence address and name and address of employer.

6. "Document" or "Documents" have the broadest meaning permissible under the Vermont Rules of Civil Procedure and include, by way of example and not limitation, the original and all copies and translations of any information in any written, recorded, electronic, or graphic form, including all memoranda, notes, inter-office and intra-office Communications, telegrams, letters, e-mail, computer models, spreadsheets, data, reports, accounts, records, calendars, diaries, minutes, contracts or other legal documents, insurance policies, telephonic or personal Communications, tape recordings, microfilm, film, stenographic notes, bulletins, notices, computer data and other data or information sources in any written, printed or recorded matter of any character in the possession, custody or control of you, your attorneys, Agents, or other persons under your control. Without limiting the foregoing, the term "Document" or "Documents" shall include any copy which differs in any respect from the original or other versions of the document, such as copies containing notations, insertions, corrections, marginal notes or any other variations.

7. "Include," "Includes," and "Including" shall be construed to mean "without limitation."

8. "Person," means any natural person or any business, legal or governmental entity or association.

9. When referring to a Person, "Identify" means give, to the extent known, the person's (i) full name, (ii) present or last known address, and (iii) when referring to a natural person, the present or last known place of employment. Once a person has been identified in accordance with this paragraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

10. When referring to Documents, "Identify" means give, to the extent known the (i) type of Document, (ii) title of the Document (iii) general subject matter, (iv) date of the Document; and (v) author(s), addressee(s), and recipient(s). Whenever the identification of a Document is requested, you may, in lieu of such identification, attach a true and legible copy of such Document to your answers to these requests, with the understanding that counsel may inspect the original Document at a mutually agreed time and place.

11. "Acquire," "Acquiring" and "Acquisition" means to lease, option or purchase.

12. "Interest" means any economic interest, financial interest, ownership interest, equitable interest, or any legal or equitable right or privilege to wholly or partially exercise any dominion or control directly or indirectly, actually or virtually.

13. "Class Area" means the area of Vermont encompassing Chittenden County, Franklin County and Grand Isle County.

14. "Class Period" means the time period from January 1, 2005 to the present.

15. "Gasoline" means a refined petroleum product used as fuel for internal combustion engines, including automobiles.

16. "Terminal" means a Gasoline facility in which Gasoline arrives by pipeline, ship or barge and is sold to Gasoline Suppliers.

17. "Terminal Price" or "Rack Price" means the price paid for Gasoline at the Terminal.

18. "Gasoline Supplier" or "Gasoline Wholesaler" means those entities that Acquire Gasoline at the Terminal and sell that Gasoline to Retail Gasoline Stations.

19. "Retail Gasoline Station" means the full- or self-service Retail Gasoline pumps and underground gasoline storage tanks at a site whether or not there are also convenience stores, automobile service bays, or any other business associated with the Retail Gasoline Station.

20. "Wholesale Gasoline" means Gasoline sold or delivered to Retail Gasoline Stations for subsequent sale to consumers.

21. "Retail Gasoline" means Gasoline purchased by consumers from Retail Gasoline Stations.

22. "Senate Hearings" means the hearings before the United States Senate Committee on Energy and Natural Resources held on August 6, 2012 in Burlington, Vermont.

23. "2013 Committee Hearings" means the hearings on January 22, 2013 before the Joint Committee of the Vermont House of Representatives Transportation Committee, Judiciary Committee, and Commerce Committee.

24. "2015 Committee Hearings" means the hearings on January 22, 2015 before the Vermont House of Representatives Commerce and Economic Committee.

25. "RL Vallee" means Defendant R.L. Vallee, Inc., a Vermont corporation, including any of its predecessors or successors in interest, affiliates, parents, subsidiaries, divisions, departments, offices and, for each of the foregoing, and present or former directors, officers, executives, trustees, employees, representatives, advisors, accountants, Agents, attorneys, associates or any other person(s) known, believed, or suspected to be acting or purporting to act on its behalf, now or at any previous time.

26. "SB Collins" means SB Collins, Inc., a Vermont corporation, including any of its predecessors or successors in interest, affiliates, parents, subsidiaries, divisions, departments, offices and, for each of the foregoing, and present or former directors, officers, executives, trustees, employees, representatives, advisors, accountants, Agents, attorneys, associates or any other person(s) known, believed, or suspected to be acting or purporting to act on its behalf, now or at any previous time.

27. "Wesco" means Champlain Farms/Wesco, Inc., a Vermont corporation, including any of its predecessors or successors in interest, parents, subsidiaries,

divisions, departments, offices and, for each of the foregoing, and present or former directors, officers, executives, trustees, employees, representatives, advisors, accountants, agents, attorneys, associates or any other person(s) known, believed, or suspected to be acting or purporting to act on its behalf, now or at any previous time.

28. "Champlain" means Champlain Oil Company, Inc., a Vermont corporation, including any of its predecessors or successors in interest, parents, subsidiaries, divisions, departments, offices and, for each of the foregoing, and present or former directors, officers, executives, trustees, employees, representatives, advisors, accountants, agents, attorneys, associates or any other person(s) known, believed, or suspected to be acting or purporting to act on its behalf, now or at any previous time.

29. "VPA" means the Vermont Petroleum Association, including any of its predecessors or successors in interest, parents, subsidiaries, divisions, departments, offices and, for each of the foregoing, and present or former directors, officers, executives, trustees, employees, representatives, advisors, accountants, agents, attorneys, associates or any other person(s) known, believed, or suspected to be acting or purporting to act on its behalf, now or at any previous time. The term VPA explicitly includes Joseph Choquette III and also explicitly includes the Vermont Retail and Grocers Association.

30. "You" and/or "Your," and all variants thereof, shall refer to SB Collins including any of its predecessors or successors in interest, present and former

affiliates, parents, subsidiaries, divisions, departments, offices and, for each of the foregoing, and present or former directors, officers, executives, trustees, employees, members, shareholders, partners, representatives, advisors, accountants, Agents, attorneys, associates or any other person(s) known, believed, or suspected to be acting or purporting to act on its behalf, now or at any previous time.

31. The present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular. "All" means "any and all;" "any" means "any and all;" "And" and "or" encompass both "and" and "or;" words in the masculine, feminine or neuter form shall include each of the other genders.

INSTRUCTIONS

1. These Interrogatories require that You respond in a manner that satisfies the requirements of the Vermont Rules of Civil Procedure and shall be deemed continuing pursuant to Vermont Rule of Civil Procedure 26.

2. Where knowledge or information in Your possession or control is requested or inquired of, such request or inquiry also seeks knowledge or information in the possession or control of Your employers, prospective employers, former employers, employees, former employees, representatives, relatives, friends, Agents, independent contractors, consultants, attorneys, affiliates or any other Person or public or private entity acting on Your behalf.

3. Each answer should be preceded by the identification and verbatim quote of the interrogatory to which the answer responds.

4. Each interrogatory should be answered separately and fully in writing and under oath.

5. If an interrogatory cannot be answered in full, it should be answered to the extent possible, with an explanation as to why the remainder cannot be answered, disclosing whatever information, knowledge, or belief You do have with respect to the unanswered portion, including the names and addresses of any Persons or entities having further information.

6. All interrogatories should be answered on the basis of Your knowledge or information and belief. If any answer is given on information and belief, that fact should be stated in the answer. All interrogatories should include all information available to You as of the date of the answers and responses, including information obtained by or in the possession of Your Agents and representatives, and any other person acting on Your behalf.

7. If You assert a privilege, in whole or in part, with respect to any interrogatory, or You object to answering an interrogatory, in whole or in part, on any ground, You shall answer all remaining parts of the interrogatory, state the nature of the privilege or objection, including work product, that is being claimed, the facts sufficient to support Your claim of privilege or objection. You shall also Identify each item of information, Communication, Document, or part thereof upon which the privilege is

claimed, including: (a) the type and title of the Document or Communications; (b) the general subject matter of the Document or Communication; (c) the date of the Document or Communication; (d) the author of the Document or Person who Communicated the information; (e) the recipient or addressees of the Document or Communication and the entity with which the recipient or addressee is affiliated; (f) the signer of the Document and the entity with which the signer is affiliated; (g) each Person now in possession of the original or a copy of the Document, information, or Communication; (h) such other information as is sufficient to establish the privilege and/or immunity claimed; and (i) the number of the interrogatory to which the Document, information, or Communication is responsive.

8. If You object to any interrogatory on the basis that it is overbroad, respond to that interrogatory narrowed in such a way as to render it not overbroad in Your opinion and state the extent to which You have narrowed the interrogatory for purposes of Your response.

9. If in answering these interrogatories, You claim any ambiguity in a question, instruction or definition, set forth the matter deemed ambiguous and the construction used in answering the interrogatory.

10. If any of the following interrogatories call for identification or reference to Documents that You know to be missing, destroyed or otherwise disposed of, identify such Documents and give particular details as to the disposition of each Document, the identity of the Person last known to have

the document in his or her possession or subject to his or her or its control, and the identity of each person You have reason to believe had knowledge of its contents or received a copy of the document.

11. Plaintiffs reserve the right to amend, supplement, and/or modify the interrogatories contained herein.

12. Unless otherwise stated, the time period covering these Interrogatories is January 1, 2005 to the present.

INTERROGATORIES

1. Describe Your policies or practices directed to compliance with the Vermont Consumer Protection Act (“VCPA”), 9 V.S.A. §§ 2451-2480g.

2. Describe Your policies or practices regarding the retention, destruction, disposal or preservation of Documents.

3. Identify the Person(s) answering these Interrogatories and the numbered Interrogatory about which each Person has knowledge.

4. Identify all Persons who have or may have information, Documents, or knowledge relating to this Cause of Action, including the claims and allegations contained in Plaintiffs’ complaint in this Cause of Action. For every Person Identified, include their respective position, including their title, group, division, department, and immediate supervisor. If the Person Identified had more than one position, Identify every position. For every Person, include a summary of the facts known to each Person.

5. Identify all Persons who currently are, or previously were during the Class Period, employed at or acting on behalf of SB Collins, whose responsibilities Concerned or Included: (i) Retail Gasoline prices in the Class Area; (ii) Wholesale Gasoline prices in the Class Area; or (iii) Gasoline distribution in the Class Area.

6. Identify and Describe every Communication You have had with any defendant named in this Cause of Action.

7. State Your percentage or share of Wholesale and Retail Gasoline sales in the Class Area for each year in the Class Period (by volume, by dollars, and by number of Retail Gasoline Stations.)

8. Identify all Persons who acted as Your Agent, including contractors and employees, who delivered Wholesale Gasoline to any Retail Gasoline Station in the Class Area during the Class Period whether owned by You or another Person. For each Agent, provide their most recent name, address, and telephone number (cellular or otherwise) available to You.

9. Identify every Gasoline Station located in the Class Area in which You had or have an Interest during the Class Period. For every Gasoline Station You Identify in responding to this Interrogatory, Identify: (i) the type of Your interest; (ii) the extent of Your Interest; (iii) when You Acquired Your Interest; (iv) if and when You sold Your Interest; and (v) the name and address of the Gasoline Station.

10. Identify every Gasoline Station listed in response to the previous interrogatory to which You did not provide all of their Wholesale Gasoline requirements during the Class Period. For every Gasoline Station You Identify in responding this Interrogatory, Identify: (i) the name and address of the Gasoline Station; (ii) all other Wholesale Gasoline suppliers for each Gasoline Station; and (iii) estimates for each Gasoline Station of Your share of total Wholesale Gasoline deliveries from all suppliers.

11. Identify every Gasoline Station located in the Class Area that You leased from another Person and that You operated during the Class Period. For every Gasoline Station You Identify in responding to this Interrogatory, Identify: (i) the name and address of the Gasoline station; (ii) the Person from whom You leased the Gasoline Station; (iii) the landlord of the Gasoline Station if different than the Person from whom You leased the Gasoline Station; and (iv) the dates that You operated the Gasoline Station.

12. Identify every Gasoline Station listed in response to the previous interrogatory to which You did not provide all of their Wholesale Gasoline requirements during the Class Period. For every Gasoline Station You Identify in responding this Interrogatory, Identify: (i) the name and address of the Gasoline Station; (ii) all other Wholesale Gasoline suppliers for each Gasoline Station; and (iii) estimates for each Gasoline Station of Your share of total Wholesale Gasoline deliveries from all suppliers.

13. Identify every Gasoline Station located in the Class Area that You owned and that was operated by a Person unaffiliated with You during the Class Period. For every Gasoline Station You Identify in responding to this Interrogatory, Identify: (i) the name and address of the Gasoline station; (ii) the Person to whom You leased the Gasoline Station; (iii) the landlord of the Gasoline Station if different than the Person to whom You leased the Gasoline Station; and (iv) the dates that the Gasoline Station was operated by an unaffiliated Person.

14. Identify every Gasoline Station listed in response to the previous interrogatory to which You did not provide all of their Wholesale Gasoline requirements during the Class Period. For every Gasoline Station You Identify in responding this Interrogatory, Identify: (i) the name and address of the Gasoline Station; (ii) all other Wholesale Gasoline suppliers for each Gasoline Station; and (iii) estimates for each Gasoline Station of Your share of total Wholesale Gasoline deliveries from all suppliers.

15. Identify every Gasoline Station located in Class Area to which You, or any entity in which You have an Interest, have sold or supplied Gasoline. For every Gasoline Station You Identify in responding to this Interrogatory, Identify: (i) the time period in which Gasoline was sold or supplied to the Gasoline Station; (ii) the amount of Gasoline, by week, sold or supplied to each Gasoline Station; (iii) the price(s) charged, by week, to each Gasoline

Station for the Gasoline; and (iv) whether You were the sole supplier of Gasoline to the Gasoline Station.

16. Identify every Gasoline Station listed in response to the previous interrogatory to which You did not provide all of their Wholesale Gasoline requirements during the Class Period. For every Gasoline Station You Identify in responding this Interrogatory, Identify: (i) the name and address of the Gasoline Station; (ii) all other Wholesale Gasoline suppliers for each Gasoline Station; and (iii) estimates for each Gasoline Station of Your share of total Wholesale Gasoline deliveries from all suppliers.

17. Identify every gas pump or tank owned by You that is in use by a Retail Gasoline Station not owned by You. For each such Retail Gasoline Station, provide the address, contact person, and telephone number.

18. Identify the price(s) paid by You, or any entity in which You have an interest, by week, for the Gasoline You Acquired at the Terminal.

19. Identify every Gasoline Station not owned or operated by You that Acquired Wholesale Gasoline from You. For every Gasoline Station identified in this Interrogatory, Identify: (i) the name and address of the Gasoline Station; (ii) the owner of the Gasoline Station; and (iii) the dates in which You supplied the Wholesale Gasoline.

20. For every Gasoline Station Identified in the previous Interrogatory, Identify those Gasoline Stations that Acquired from You less than its full Gasoline requirements. For each Gasoline Station Identified in this

Interrogatory, Identify its other Gasoline suppliers and estimate the percentage of the Gasoline Station's full requirements that were supplied by Your Wholesale Gasoline operation.

21. Identify every Agreement You have had with Gasoline Stations located in the Class Area to sell, supply or otherwise provide Gasoline to those Gasoline Stations.

22. Identify all Real Property You have Acquired or sold within the Class Area during the Class Period. For all Real Property You Identify for this Interrogatory, Identify all Agreements related to each Acquisition or sale, including any deed restrictions Concerning those Acquisitions or sales.

23. Identify every Gasoline Station outside of the Class Area to which You sold Gasoline during the Class Period. In responding to this Interrogatory, include: (i) the name and address of the Gasoline Station; and (ii) the Gasoline Station owner.

24. Identify every Wholesale Gasoline delivery vehicle, distinguished by volume-carrying capacity, owned or leased by You during the Class Period. For every vehicle Identified in response to those Interrogatory, specify the dates You owned or leased the vehicles.

25. Identify every Wholesale Gasoline delivery vehicle, distinguished by volume-carrying capacity, owned or leased by Persons unaffiliated with You and which was under contract with You to deliver Gasoline to Your retail Gasoline Station customers (whether or not owned by You). Identify

Your aggregate gross profits, by week, for the sale of Gasoline to Retail Gasoline Stations in the Class Area.

26. Identify Your aggregate net profits, by week, for the sale of Gasoline to Retail Gasoline Stations in the Class Area.

27. Identify Your aggregate gross profits, by week, for the sale of Retail Gasoline at Gasoline Stations in which You have an Interest.

28. Identify Your aggregate gross profits, by week, for the sale of Retail Gasoline at Gasoline Stations in which You have an Interest.

29. Identify every meeting, conference, event or gathering, formal or informal You have attended with any Person related to or involved with RL Vallee, Wesco, Champlain, or the VPA.

30. Identify every meeting, conference, event or gathering, formal or informal, sponsored by or in any way Concerning the VPA that You attended or are aware of. This Interrogatory includes any meeting, conference, event or gathering in which any Person involved with the VPA was present.

31. Identify every telephone call, go to meeting, or electronic conference or Communication Concerning the VPA that You attended or are aware of.

32. Identify all transportation costs incurred by You, by week, to transport Gasoline from a Terminal to Retail Gasoline Stations within the Class Area.

33. Identify all taxes incurred by You, by year, in operating Retail Gasoline Stations within the Class Area.

34. Identify all Terminal Costs, by week, in Acquiring Gasoline from a Terminal for sale or distribution within the Class Area.

35. Identify all costs incurred by You related to fuel reformulations for Gasoline sold or distributed by You within the Class Area.

36. Identify all fees associated with customers' use of credit cards at Retail Gasoline Stations within the Class Area in which You have an Interest. This Interrogatory includes any benefit You receive from the customers' use of credit cards.

37. Identify all Documents related to any fees or charges payable to You associated with customers use of credit cards at Retail Gasoline Stations within the Class Area in which You have an Interest.

38. Identify all labor costs, by Retail Gasoline Station, incurred by You in operating every Retail Gasoline Station in which You have an interest.

39. Identify all repair costs, by Retail Gasoline Station, incurred by You in operating every Retail Gasoline Station in which You have an interest.

40. Identify all storage tank costs, by Retail Gasoline Station, incurred by You in operating every Retail Gasoline Station in which You have an interest.

41. Identify all costs, by Retail Gasoline Station, incurred by You in building every Retail Gasoline Station in which You have an interest.

42. Identify all property taxes, by Retail Gasoline Station, incurred by You in operating every Retail Gasoline Station in which You have an interest.

43. Identify all environmental compliance costs, by Retail Gasoline Station, incurred by You in operating every Retail Gasoline Station in which You have an interest.

44. Identify all utility costs, by Retail Gasoline Station, incurred by You in operating every Retail Gasoline Station in which You have an interest.

45. Identify all costs, by Retail Gasoline Station, incurred by You caused by individuals driving off from Your Retail Gasoline Stations after obtaining Gasoline and without paying for that Gasoline.

46. Identify all costs related to maintaining adequate inventory levels of Gasoline, by Retail Gasoline Station, incurred by You in operating every Retail Gasoline Station in which You have an interest.

47. Identify all costs, by Retail Gasoline Station, incurred by You in placing flowers within every Retail Gasoline Station in which You have an interest.

48. Describe in detail your estimates of the total economic value of SB Collins separately for each year from 2005 to the present, including all amounts, calculations, formulas, methodologies, assumptions.

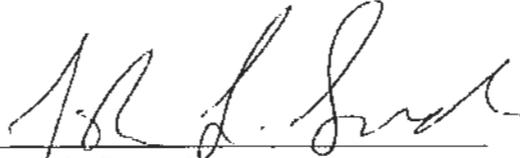
49. Identify all Persons who will offer testimony on Your behalf at any hearing or trial in this Cause of Action. For each Person You Identify, describe the general scope and substance of that Person's anticipated testimony

50. Identify all expert or opinion witnesses whom You intend to call any hearing or trial in this Cause of Action. For each Person You Identify, describe the general scope and substance of that Person's anticipated testimony.

51. List all businesses, including names, contract Persons and addresses, that use any point of sale ("POS") service or device offered by You.

52. Identify and Describe every proceeding, formal or informal, related to Vermont Act 250 that you have been involved in during the Class Period.

0/1/15

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(pro hac vice application to be submitted)

Counsel for Plaintiffs

* *Pro hac vice* applications submitted

SUPERIOR COURT
CHITTENDEN UNIT

STATE OF VERMONT

CIVIL DIVISION

JACOB R. KENT, ANNE B. VERA,
THOMAS R. MAHAR, DAWN M.
MAHAR, DAVID C. CARTER and
BARBARA CARTER and all others
similarly situated,

Plaintiffs,

v.

R.L. VALLEE, INC., SB COLLINS, INC.,
WESCO, INC., and CHAMPLAIN OIL
COMPANY, INC.,

Defendants.

Case No. 617-6-15 Cnev

**PLAINTIFFS' FIRST REQUESTS FOR PRODUCTION
TO DEFENDANT SB COLLINS, INC.**

Pursuant to Vermont Rule of Civil Procedure 34, Plaintiffs Jacob Kent, Anne B. Vera, Thomas R. Mahar, Dawn M. Mahar, David C. Carter and all others similarly situated ("Plaintiffs"), by and through counsel, hereby propound the following requests for production of documents and things to Defendant SB Collins, Inc. ("SB Collins"). Plaintiffs request that SB Collins produce for inspection and copying the following articles, documents or things in its possession, custody or control. The requested articles, documents or things requested are to be produced according to the definitions and instructions set forth below and made available at the offices of Joshua Simonds, The Burlington Law Practice, PLLC, 2 Church Street, Suite 2-G, Burlington, VT 05401,

within forty-five (45) days after service of the summons and amended complaint or at such other time and location as ordered by the Court.

DEFINITIONS

For the purposes of these Requests for Production, the following definitions shall apply:

1. "Concerning" means describing, discussing, constituting, containing, considering, embodying, evaluating, mentioning, memorializing, supporting, collaborating, demonstrating, proving, evidencing, showing, refuting, disputing, rebutting, regarding, controverting, contradicting, made in connection with or by reason of, or derived or arising therefrom.
2. "Agent" means any past or present director, officer, counsel, shareholder, member, representative, consultant or employee of any person or entity or any person that assisted, acted for, or purported to assist or act for or on behalf of such person or entity.
3. "Cause of Action" means the above captioned case, Case No. 617-6-15 Cncv pending in the Superior Court of the State of Vermont, Chittenden Unit, Civil Division.
4. "Communicate" or "Communication" means any written or other transmission or exchange of words, thoughts or ideas to another person or entity, whether person-to-person, in a group, in a meeting, by telephone, by letter, by telex, facsimile, electronic mail, texting, or by any other process or medium, electronic or otherwise.
5. "Document" or "Documents" have the broadest meaning permissible under the Vermont Rules of Civil Procedure and Include, by way of example and not limitation,

the original and all copies and translations of any information in any written, recorded, electronic, or graphic form, Including all memoranda, notes, inter-office and intra-office communications, telegrams, letters, e-mail, computer models, spreadsheets, data, reports, accounts, records, calendars, diaries, minutes, contracts or other legal documents, insurance policies, telephonic or personal communications, tape recordings, microfilm, film, stenographic notes, bulletins, notices, computer data and other data or information sources in any written, printed or recorded matter of any character in the possession, custody or control of you, your attorneys, agents, or other persons under your control. Without limiting the foregoing, the term "Document" or "Documents" shall include any copy which differs in any respect from the original or other versions of the document, such as copies containing notations, insertions, corrections, marginal notes or any other variations.

6. "Include," "Includes," and "Including" shall be construed to mean "without limitation."

7. "Person," means any natural person or any business, legal or governmental entity or association.

8. "Acquire," "Acquiring" and "Acquisition" means to lease, option or purchase.

9. "Interest" means any economic interest, financial interest, ownership interest, equitable interest, or any legal or equitable right or privilege to wholly or partially exercise any dominion or control directly or indirectly, actually or virtually.

10. "Class Area" means the area of Vermont encompassing Chittenden County, Franklin County and Grand Isle County.

11. "Class Period" means the time period from January 1, 2005 to the present.
12. "Gasoline" means a refined petroleum product used as fuel for internal combustion engines, including automobiles.
13. "Terminal" means a Gasoline facility in which Gasoline arrives by pipeline, ship or barge and is sold to Gasoline Suppliers.
14. "Terminal Price" or "Rack Price" means the price paid for Gasoline at the Terminal.
15. "Gasoline Supplier" or "Gasoline Wholesaler" means those entities that Acquire Gasoline at the Terminal and sell that Gasoline to Retail Gasoline Stations.
16. "Retail Gasoline Station" means the full- or self-service Retail Gasoline pumps and underground gasoline storage tanks at a site whether or not there are also convenience stores, automobile service bays, or any other business associated with the Retail Gasoline Station.
17. "Wholesale Gasoline" means Gasoline sold or delivered to Retail Gasoline Stations for subsequent sale to consumers.
18. "Retail Gasoline" means Gasoline purchased by consumers from Retail Gasoline Stations.
19. "Senate Hearings" means the hearings before the United States Senate Committee on Energy and Natural Resources held on August 6, 2012 in Burlington, Vermont.

20. "2013 Committee Hearings" means the hearings on January 22, 2013 before the Joint Committee of the Vermont House of Representatives Transportation Committee, Judiciary Committee, and Commerce Committee.

21. "2015 Committee Hearings" means the hearings on January 22, 2015 before the Vermont House of Representatives Commerce and Economic Committee.

22. "RL Vallee" means Defendant R.L. Vallee, Inc., a Vermont corporation, including any of its predecessors or successors in interest, affiliates, parents, subsidiaries, divisions, departments, offices and, for each of the foregoing, and present or former directors, officers, executives, trustees, employees, representatives, advisors, accountants, Agents, attorneys, associates or any other person(s) known, believed, or suspected to be acting or purporting to act on its behalf, now or at any previous time.

23. "SB Collins" means SB Collins, Inc., a Vermont corporation, including any of its predecessors or successors in interest, affiliates, parents, subsidiaries, divisions, departments, offices and, for each of the foregoing, and present or former directors, officers, executives, trustees, employees, representatives, advisors, accountants, Agents, attorneys, associates or any other person(s) known, believed, or suspected to be acting or purporting to act on its behalf, now or at any previous time.

24. "Wesco" means Champlain Farms/Wesco, Inc., a Vermont corporation, including any of its predecessors or successors in interest, parents, subsidiaries, divisions, departments, offices and, for each of the foregoing, and present or former directors, officers, executives, trustees, employees, representatives, advisors,

accountants, agents, attorneys, associates or any other person(s) known, believed, or suspected to be acting or purporting to act on its behalf, now or at any previous time.

25. "Champlain" means Champlain Oil Company, Inc., a Vermont corporation, including any of its predecessors or successors in interest, parents, subsidiaries, divisions, departments, offices and, for each of the foregoing, and present or former directors, officers, executives, trustees, employees, representatives, advisors, accountants, agents, attorneys, associates or any other person(s) known, believed, or suspected to be acting or purporting to act on its behalf, now or at any previous time.

26. "VPA" means the Vermont Petroleum Association, including any of its predecessors or successors in interest, parents, subsidiaries, divisions, departments, offices and, for each of the foregoing, and present or former directors, officers, executives, trustees, employees, representatives, advisors, accountants, agents, attorneys, associates or any other person(s) known, believed, or suspected to be acting or purporting to act on its behalf, now or at any previous time. The term VPA explicitly includes Joseph Choquette III and also explicitly includes the Vermont Retail and Grocers Association.

27. "You" and/or "Your," and all variants thereof, shall refer to SB Collins including any of its predecessors or successors in interest, present and former affiliates, parents, subsidiaries, divisions, departments, offices and, for each of the foregoing, and present or former directors, officers, executives, trustees, employees, members, shareholders, partners, representatives, advisors, accountants, agents, attorneys, associates,

independent contractors or any other person(s) known, believed, or suspected to be acting or purporting to act on its behalf, now or at any previous time.

28. The present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular. "All" means "any and all;" "any" means "any and all;" "And" and "or" encompass both "and" and "or;" words in the masculine, feminine or neuter form shall include each of the other genders.

INSTRUCTIONS

1. These requests require that You produce Documents in a manner that satisfies the requirements of Vermont Rule of Civil Procedure 34 and shall be deemed continuing to the extent required under Vermont Rule of Civil Procedure 26.

2. Where knowledge or information in Your possession or control is requested or inquired of, such request or inquiry also seeks knowledge or information in the possession or control of Your employers, prospective employers, former employers, employees, former employees, representatives, relatives, friends, Agents, independent contractors, consultants, attorneys, affiliates or any other Person or public or private entity acting on Your behalf.

3. Each answer should be preceded by the identification and verbatim quote of the request to which the answer responds.

4. Each request should be answered separately and fully in writing.

5. If a request cannot be answered in full, it should be answered to the extent possible, with an explanation as to why the remainder cannot be answered, disclosing

whatever information, knowledge, or belief You do have with respect to the unanswered portion, including the names and addresses of any Persons or entities having further information.

6. All requests should be answered on the basis of Your knowledge or information and belief. If any answer is given on information and belief, that fact should be stated in the answer. All requests should include all information available to You as of the date of the answers and responses, including information obtained by or in the possession of Your Agents and representatives, and any other person acting on Your behalf.

7. If You assert a privilege, in whole or in part, with respect to any request, or You object to answering an request, in whole or in part, on any ground, You shall answer all remaining parts of the request, state the nature of the privilege or objection, including work product, that is being claimed, and the facts sufficient to support Your claim of privilege or objection, You shall also identify each item of information, Communication, Document, or part thereof upon which the privilege is claimed, including: (a) the type and title of the Document or Communications; (b) the general subject matter of the Document or Communication; (c) the date of the Document or Communication; (d) the author of the Document or Person who communicated the information; (e) the recipient or addressees of the Document or Communication and the entity with which the recipient or addressee is affiliated; (f) the signer of the Document and the entity with which the signer is affiliated; (g) each Person now in possession of the original or a copy of the Document, information, or Communication; (h) such other

information as is sufficient to establish the privilege and/or immunity claimed; and (i) the number of the request to which the Document, information, or Communication is responsive.

8. If You object to any request on the basis that it is overbroad, respond to that request narrowed in such a way as to render it not overbroad in Your opinion and state the extent to which You have narrowed the request for purposes of Your response.

9. If in answering these requests, You claim any ambiguity in a question, instruction or definition, set forth the matter deemed ambiguous and the construction used in answering the request.

10. If any of the following requests call for identification or reference to Documents that You know to be missing, destroyed or otherwise disposed of, identify such Documents and give particular details as to the disposition of each Document, the identity of the Person last known to have the document in his or her possession or subject to his or her or its control, and the identity of each person You have reason to believe had knowledge of its contents or received a copy of the document.

11. Plaintiffs wish to meet and confer with Defendants regarding protocols for the production of electronically stored information ("ESI") governing productions in this matter.

12. Plaintiffs reserve the right to amend, supplement, and/or modify the requests contained herein.

13. Unless otherwise stated, the time period covering these requests is January 1, 2005 to the present.

REQUESTS

1. All Documents relating to Your policies or practices directed to compliance with the Vermont Consumer Protection Act (“VCPA”), 9 V.S.A. §§ 2451-2480g.

2. All Documents sufficient to show the manner in which you have maintained records relating to Gasoline, including Documents sufficient to describe all electronic data processing systems, programs and outputs used to record, store, compute, analyze or retrieve electronically stored information relating to your pricing, production, distribution, marketing or sale of Gasoline.

3. Documents related to Your policies or practices with respect to the retention, destruction, disposal or preservation of Documents.

4. Documents sufficient to show your organizational structure throughout the Class Period, including but not limited to, departments, divisions, parents, subsidiaries, joint ventures, affiliates, or other sub-units that were engaged in the sale of Gasoline, including, where applicable, the percentage of any stock or other interests owned by each entity.

5. All organizational charts and/or documents identifying any Person acting in any capacity related to Your Wholesale Gasoline or Retail Gasoline businesses.

6. All Documents Identifying all Persons who have participated in your Wholesale Gasoline business, including employees or contractors who have delivered Gasoline from a Terminal to any Retail Gasoline Station whether owned by You or not.

7. All Documents and Communications You identified, gathered, reviewed, referred to, considered, and/or relied on to answer any of Plaintiffs' First Set of Interrogatories directed to You and served in this Cause of Action.

8. All of Your calendars; travel records; expense reports; telephone records; trade association materials; Diaries; to-do lists; appointment notes; expense reports; and telephone number/call logs.

9. Documents sufficient to show changes in supply, demand, pricing or discounting for Wholesale or Retail Gasoline.

10. All business plans, planning analyses, budgets, forecasts, or sales or profit projections relating to Wholesale or Retail Gasoline.

11. All invoices associated with Your Wholesale or Retail Gasoline businesses.

12. All documents relating to policies, methods, formulas or factors to be used in determining, computing or quoting prices for Wholesale or Retail Gasoline.

13. All documents related to Your published prices, price lists, price schedules, price announcements and price changes for Wholesale or Retail Gasoline.

14. All documents relating to Your or any other Person's percentage or share of Wholesale or Retail Gasoline sales in the Class Area (by volume, by dollars, and by number of Retail Gasoline Stations.)

15. Documents that show the identity of other Person's engaged in the Wholesale or Retail Gasoline business in the Class Area.

16. All Your monthly, quarterly, and yearly: (i) general ledgers; (ii) detailed balance sheets; (iii) detailed cash flow statements; (iv) detailed profit and loss

statements; (v) bank feasibility reports; (vi) monthly income statements; (vii) annual income statements; and (viii) federal, state, or local government tax filings.

17. All Your monthly and annual income statements for both Your Wholesale Gasoline operations and your Retail Gasoline Station operations. Provide separate income and expense reports if Your business records distinguish income and expenses between wholly owned (or leased) and operated Gasoline Stations, on the one hand, and those owned by You but operated under contracts with unaffiliated Persons, on the other hand.

18. All externally and internally produced assessments of Retail Gasoline market conditions and competition anywhere in the Class Area.

19. All externally and internally produced assessments of Wholesale Gasoline market conditions and competition anywhere in the Class Area.

20. All Documents and Communications Concerning: (i) Gasoline Station openings or closings in the Class Area; (ii) changes in Gasoline Station ownership in the Class Area; (iii) deed restrictions on land in the Class Area; and (iii) attempts to open new Gasoline Stations by Yourself or other Persons in the Class Area.

21. All Documents prepared for or disclosed to any actual or potential lender, investor, bank, financial institution, or acquirer Concerning all or any part of Your operations in the Class Area.

22. All Documents Concerning: (i) financial valuations; (ii) financial projections; (iii) business plans; and (iv) offering memoranda created by You or anyone for all or any part of Your operations.

23. For each of Your Acquisitions of real property in the Class Area, all Documents Concerning or sufficient to show: (i) detailed cash flow statements; (ii) detailed profit and loss statements; (iii) internal rate of return (IRR); (iv) return on investment (ROI); (v) return on equity (ROE); and (vi) return on debt (ROD).

24. For each Gasoline Station located in the Class Area that You leased from another Person and that You operated during the Class Period, all Documents concerning those leases including copies of the leases and communications related to those leases.

25. For each Gasoline Station, gasoline pump or gasoline storage tank located in the Class Area that You owned but that was operated by a Person unaffiliated with You, all Documents concerning those arrangements including all contracts and agreements with the those Persons and all communications Concerning those contracts and agreements.

26. With respect to Your Retail Gasoline Stations, all Documents Concerning or sufficient to show actual, projected or estimated: (i) detailed cash flow statements; (ii) detailed profit and loss statements; (iii) internal rate of return (IRR); (iv) return on investment (ROI); (v) return on equity (ROE); and (vi) return on debt (ROD).

27. With respect to Your Wholesale Gasoline operations, all Documents Concerning or sufficient to show actual, projected or estimated: (i) detailed cash flow statements; (ii) detailed profit and loss statements; (iii) internal rate of return (IRR); (iv) return on investment (ROI); (v) return on equity (ROE); and (vi) return on debt (ROD).

28. Documents Concerning meetings or Communications with RL Vallee, Wesco, Champlain, or VPA Concerning the purchase, sale, distribution, marketing, pricing of or competition related to Gasoline, Wholesale Gasoline or Retail Gasoline.

29. Communications between You and any Person selling Wholesale Gasoline in the Class Area related to Gasoline.

30. Communications between You and any Person selling Retail Gasoline in the Class Area related to Gasoline.

31. Documents Concerning meetings or Communications with the VPA.

32. Communications between You and any Person Concerning the Senate Hearings.

33. Communications between You and any Person Concerning the 2013 Committee Hearings.

34. Communications between You and any Person Concerning the 2015 Committee Hearings.

35. Documents Concerning Your Acquisition of Gasoline at a Terminal, including: (i) invoices showing the seller and the Terminal location; (ii) Acquisition date; (iii) volume of Gasoline purchased by grade; (iv) unit prices gross and net of any discounts; (v) contracts or agreements to which You are or were a party; (vi) amounts, per day, of Gasoline Acquired at a Terminal; (vii) price(s), per day, of Gasoline Acquired at a Terminal. This request includes all electronic general ledger spreadsheets logging or identifying Your Acquisition of Gasoline at a Terminal.

36. For each sale of Wholesale Gasoline to stations in the Class Area (whether owned or operated by You or others), provide billing invoices Identifying: (i) the Gasoline Station's owner; (ii) the name and address of the purchasing Gasoline Station; (iii) the delivery date of the Wholesale Gasoline; (iv) the volume of Wholesale Gasoline delivered by grade; and (v) the unit price gross and net of any discount of the Wholesale Gasoline. If sales to Gasoline Stations owned by You are handled by bookkeeping transfers, then, in addition to the non-price information listed above, provide records showing the unit transfer price for each Gasoline grade delivered to each Gasoline Station. This request includes all electronic company general ledger spreadsheets logging Wholesale Gasoline sales.

37. Documents Concerning Your sale of Retail Gasoline, by grade, including (i) amounts, per day, of Gasoline sold by Your Retail Gasoline Stations; (ii) price(s), per day, charged by Your Retail Gasoline Stations.

38. Documents Concerning the daily Retail Gasoline prices by grade during the Class Period at any Gasoline Station selling Gasoline delivered by Your Wholesale Gasoline operation.

39. Communications to employees of Gasoline Stations You operate (whether owned or leased) specifying the mechanism or process by which daily Retail Gasoline prices are to be set for each grade of Gasoline.

40. Documents Concerning Your gross profits from the sale of Retail Gasoline within the Class Area.

41. Documents Concerning Your gross profits from the sale of Retail Gasoline outside of the Class Area.

42. Documents Concerning Your gross profits from the sale of Wholesale Gasoline within the Class Area.

43. Documents Concerning Your gross profits from the sale of Wholesale Gasoline outside of the Class Area.

44. For any sale of Gasoline to Gasoline Stations outside of the Class Area, Documents Concerning: (i) the name and address of the Gasoline Station; (ii) the Gasoline Station owner; (iii) the date(s) of sale of Gasoline; (iv) the volume of Gasoline sales by grade, and unit price gross and net of discounts.

45. Documents Concerning all Retail Gasoline Stations located in the Class Area in which You had or have an Interest during the Class Period, Including: (i) Agreements related to the Acquisition or Sale of the Gasoline Station; (ii) Amounts of Gasoline sold; and (iii) Prices of Gasoline Sold

46. Documents Concerning all Gasoline Stations located in the Class Area in which You or any entity in which You have an Interest, have sold or supplied Wholesale Gasoline including: (i) Agreements governing the relationship; (ii) Amounts of Gasoline supplied; and (iii) Prices of Gasoline supplied.

47. Documents Concerning any Wholesale Gasoline delivery vehicles owned or leased by You.

48. Documents Concerning the number of round trips made, per day, between a Terminal and any Gasoline Station by any Wholesale Gasoline delivery vehicle owned or leased by You.

49. Documents Concerning any Whole Gasoline delivery vehicles owned or leased by Persons unaffiliated with You but which delivered Gasoline to Retail Gasoline Stations owned or operated by You.

50. Documents Concerning the number of round trips made, per day, between a Terminal and any Gasoline Station by any Wholesale Gasoline delivery vehicle owned or leased by Persons unaffiliated with You but which delivered Gasoline to Retail Gasoline Stations owned or operated by You.

51. Documents, including contracts, agreements and correspondence, between You and each of the unaffiliated Wholesale Gasoline delivery companies referenced in the previous two requests.

52. All logs of daily Retail Gasoline price instructions from You to (i) any of the Gasoline Stations You own or operated stations (whether owned or leased) and (ii) any Gasoline Stations operated by Persons other than You for which the leases and/or operating agreements reference on prices set by You.

53. All contracts or agreements between You and any Gasoline Station detailing or Concerning operating requirements (including resale prices for Gasoline) for all Gasoline Stations: (i) owned and operated by You; (ii) owned by You but operated by other Persons; (iii) owned by Persons other than You but operated by You;

and (iv) that purchased Wholesale Gasoline from You and were not already included in (i), (ii), or (iii).

54. Documents Concerning acquisition of Gasoline at a Terminal.

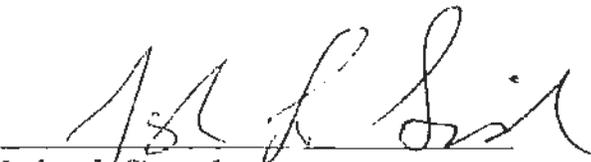
55. All Documents related to any point of sale (POS) business You engage in.

56. All Documents relating to any actions by You to conceal or avoid detection by any Person of Communications, understandings, or agreements between You and any other Person regarding the price or supply of Wholesale or Retail Gasoline.

57. All Documents relating to Your ability to pay damages or fines in connection with any public prosecution or private litigation alleging any violation of the Vermont antitrust laws.

8/11/15

By:



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(*pro hac vice* application to be submitted)

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* *Pro hac vice* applications pending