

**PUBLIC VERSION**

# **EXHIBIT A**

UNITED STATES OF AMERICA BEFORE THE FEDERAL TRADE COMMISSION  
WASHINGTON D.C.

In the Matter of

UNION OIL COMPANY OF CALIFORNIA,  
a corporation.

Docket No. 9305

**RESPONDENT UNION OIL COMPANY OF CALIFORNIA'S ANSWERS TO  
COMPLAINT COUNSEL'S THIRD SET OF INTERROGATORIES**

Pursuant to Section 3.35 of the Federal Trade Commission's Rules of Practice, Respondent Union Oil Company of California ("Unocal") submits the following Answers to Complaint Counsel's Third Set of Interrogatories to Respondent Union Oil Company of California. Unocal's objections to these interrogatories were made on August 7, 2003.

**INTERROGATORY NO. 7 STYLED AS NO. 5:**

Describe in detail how the regression equations set forth in the Unocal Patents were derived.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 7 as follows. The manner in which the regression equations set forth in the Unocal Patents was derived can be ascertained, pursuant to Section 3.35(c) of the Federal Trade Commission Rules of Practice, by an examination of the depositions in the '393 litigation of the inventors on the '393 Patent. This topic was the subject of many hours of questioning, and it would be redundant and burdensome for Unocal to specify in detail what has already been explained by extensive testimony.

For example, an explanation of this derivation may be ascertained by reviewing these depositions as a whole and particularly by reviewing such sections as Croudace at 372:22-377:23; 1609:21-1611:13 and Jessup at 225:19-227:17; 429:09-436:02; 800:19-808:24; 827:23-830:25; 1116:05-1138:18. *See also* Gregory Wirzbicki '393 Dep. at 36:05-44:02; 648:22-650:03.

**INTERROGATORY NO. 8 STYLED AS NO. 6:**

Identify all companies that, to your knowledge, produce gasoline that has properties or characteristics that fall within, or are covered by, one or more of the compositional claims of the Unocal Patents.

**ANSWER:**

REDACTED

REDACTED

**INTERROGATORY NO. 9 STYLED AS NO. 7:**

For each company identified by you in response to Interrogatory No. 6 above, state the volumes of gasoline produced by each company for each year since 1996 that has properties or characteristics that fall within, or are covered by, one or more of the compositional claims of the Unocal Patents.

**ANSWER:**

REDACTED

REDACTED

**INTERROGATORY NO. 10 STYLED AS NO. 8:**

Please state whether you contend that the conduct of Unocal as alleged in the Complaint has increased incentives to innovate in the field of low emissions, reformulated gasoline in California.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 10 as follows. Unocal contends that the law and policy of the United States, as reflected in Article 1, Section 8 of the U.S. Constitution and the United States patent laws, codified at 35 U.S.C. §§ 101 et seq., reflects a judgment that incentives to innovate are increased when inventors are allowed to exercise the property rights granted to them through validly-issued patents. Unocal further contends that its conduct with respect to its patented reformulated gasoline compositions has at all times been consistent with the rights granted to Unocal pursuant to the United States patent laws.

**INTERROGATORY NO. 11 STYLED AS NO. 9:**

If your response or answer to Interrogatory No. 8 is “yes” or something other than an unqualified “no,” please state all facts that support your contention or answer to Interrogatory No. 8.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 11 as follows. Unocal has no obligation to perform research for the benefit of Complaint Counsel in order to compile and present "all facts" pertinent to this topic. Evidence is readily available, however, which supports Unocal's contention stated in response to Interrogatory No. 10. A non-exhaustive list of such evidence is as follows.

Unocal has received patents on reformulated gasoline compositions based on the determination by the United States Patent and Trademark Office that Unocal's inventions satisfied all the statutory requirements for patentability. The fundamental premise of the patent laws is that the grant to an inventor of a right of limited duration to exclude others from making, selling, or using the invention described by patent claims as an appropriate incentive to promote innovation and encourage public disclosure of inventions. This basic principle is as applicable to low-emissions, reformulated gasoline as any other field of technology.

**INTERROGATORY NO. 12 STYLED AS NO. 10:**

Please state whether you contend that even with the alleged increased royalties and higher prices for reformulated gasoline, as alleged in paragraph 8 of the Complaint, CARB Phase 2 compliant California RFG is both cleaner burning and cheaper than methanol.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 12 as follows. Unocal contends that Phase 2-compliant California RFG has been and continues to be a viable option for satisfying the vehicle emissions requirements promulgated by CARB and that Phase 2-compliant California RFG is a less expensive means of compliance than methanol.

**INTERROGATORY NO. 13 STYLED AS NO. 11:**

If your response or answer to Interrogatory No. 10 above is "yes" or something other than an unqualified "no," please state all facts that support your contention or answer to Interrogatory No. 10.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 13 as follows. Information regarding the subject matter of this interrogatory is controlled by third parties and is therefore equally available to both parties in this litigation. Unocal has no obligation to perform research for the benefit of Complaint Counsel in order to compile and present "all facts" pertinent to this topic. Evidence is readily available, however, which supports Unocal's contention stated in response to Interrogatory No. 12. A non-exhaustive list of such evidence is as follows.

During the pendency of the Phase 2 RFG rulemaking, the Auto/Oil Air Quality Improvement Research Program undertook a comparative investigation into the relative costs of methanol-based fuels, (i.e., M85), and reformulated gasoline. *See* Economics Bulletin No. 1, "The Economics of Methanol," (Jan. 1992). That study concluded that, in the short-term, methanol was likely to cost from 74 to 79 cents per equivalent energy gallon more than conventional gasoline. The Auto/Oil study also noted that transition costs involved with developing a new distribution infrastructure and automobile population capable of running on methanol would be very significant.

The study's conclusion that methanol-based fuels were more expensive than reformulated gasoline, and were likely to remain more expensive, has subsequently been demonstrated by the fact that widespread conversion to methanol fuels -- in place of reformulated gasoline -- has not occurred in California. Although California's low-emission vehicle standards may be satisfied either through the use of Phase 2-compliant California RFG or methanol (or other "clean" fuels), vehicle manufacturers, refiners, and consumers have continued to rely overwhelmingly on reformulated gasoline for automotive fuel. With respect to methanol-based fuels in particular, CARB has observed that "it is not expected that any new M85 vehicles will be produced for sale in California,"

as of the 1998 model year, and that “the potential for M85 as a significant alternative fuel in future LEV fleets is minimal.” See Initial Statement of Reasons to the Clean Fuels Regulations Regarding Clean Fuel Outlets (June 4, 1999) at 14.

**INTERROGATORY NO. 14 STYLED AS NO. 12:**

Please state whether you contend that information that constitutes “data” related to Unocal’s RFG research and “equations” that were derived from analysis of the data are two distinct bodies of knowledge.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 14 as follows. Unocal contends that it has treated data and equations as separate concepts.

**INTERROGATORY NO. 15 STYLED AS NO. 13:**

If your response or answer to Interrogatory No. 12 above is “yes” or something other than an unqualified “no,” please state all facts that support your contention or answer to Interrogatory No. 12.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 15 as follows. Several documents and deposition testimony adduced in this litigation, which are equally available to both parties, provide support for Unocal’s contention that data and equations are two distinct bodies of knowledge. Unocal has no obligation to perform research for the benefit of Complaint Counsel in order to compile and present “all facts” pertinent to this topic. Evidence is readily available, however, which supports Unocal’s contention stated in response to Interrogatory No. 14. A non-exhaustive list of such evidence is as follows.

While equations may be capable of being derived from data, these two concepts are fundamentally distinct. Data are the actual results from testing while the equations represent the



relationships that may be derived from analysis of the data. Data is a term that encompasses the raw numbers that are the product of laboratory research. (Miller Dep. at 178:19-179:03.)

Unocal has treated data and equations as separate concepts. Thus, in RX 2, which is a letter dated July 1, 1991 from J. Michael Kulakowski - then of Unocal - to Peter Venturini of CARB, Mr. Kulakowski distinctly refers to data and equations separately. Mr. Kulakowski, who was writing for Mr. Lamb, informed CARB of the conditions upon which Unocal would make public its equations and underlying data. According to Mr. Kulakowski, "If CARB pursues a meaningful dialogue on a predictive model approach to Phase 2 gasoline, Unocal will consider making the equations and the underlying data public as required to assist in the development of a predictive model." (RX 2 (emphasis added).)

**INTERROGATORY NO. 16 STYLED AS NO. 14:**

Please state whether you contend that Unocal urged CARB not to adopt the Phase 2 regulations that CARB ultimately adopted.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 16 as follows. Unocal contends that it did not support the regulations as ultimately adopted.

**INTERROGATORY NO. 17 STYLED AS NO. 15:**

If your response or answer to Interrogatory No. 14 above is "yes" or something other than an unqualified "no," please state all facts that support your contention or answer to Interrogatory No. 14.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 17 as follows. Documentary evidence and deposition testimony adduced in this litigation, which are equally available to both parties, provide support for Unocal's contention that Unocal did not support

the regulations as ultimately adopted. For example, the Final Statement of Reasons for Rulemaking published by CARB makes repeated mention of Unocal's position. Furthermore, Unocal has no obligation to perform research for the benefit of Complaint Counsel in order to compile and present "all facts" pertinent to this topic. Evidence is readily available, however, which supports Unocal's contention stated in response to Interrogatory No. 16. A non-exhaustive list of such evidence is as follows.

Before the adoption of the Phase 2 regulations, Unocal was a strong advocate of a pure predictive model - a model with targeted emissions reductions and no caps. It encouraged CARB to adopt such a model and further urged CARB to link the compliance date of the regulations to the adoption of a predictive model. (See, e.g., RX 33 (November 21, 1991 letter from R.C. Beach to J. Sharpless).) Unocal advocated for the adoption of a predictive model and against regulations that prescribe specific limits on individual fuel properties. At the November Board Hearing, while testifying for Unocal, Denny Lamb argued to the Board that a T50 specification was unnecessary. (See RX 60 at 44 (hearing transcript).)

**INTERROGATORY NO. 18 STYLED AS NO. 16:**

Please state whether you contend that after CARB adopted its Phase 2 regulations, Unocal urged CARB to delay the adoption of those regulations.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 18 as follows. Unocal contends that before and after CARB adopted its Phase 2 regulations, Unocal urged CARB to link the compliance date of the regulations to the adoption of a predictive model.

**INTERROGATORY NO. 19 STYLED AS NO. 17:**

If your response or answer to Interrogatory No. 16 above is "yes" or something other than an unqualified "no," please state all facts that support your contention or answer to Interrogatory No. 16.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 19 as follows. Documents and deposition testimony adduced in this litigation, which are equally available to both parties, provide support for Unocal's contention that before and after CARB adopted its Phase 2 regulations, Unocal urged CARB to link the compliance date of the regulations to the adoption of a predictive model. Specifically, Unocal wanted the approximately four-year compliance period to start running from the date that CARB adopted a predictive model. Unocal has no obligation to perform research for the benefit of Complaint Counsel in order to compile and present "all facts" pertinent to this topic. Evidence is readily available, however, which supports Unocal's contention stated in response to Interrogatory No. 16. A non-exhaustive list of such evidence is as follows.

As part of its request to link compliance to the adoption of the predictive model, Unocal was advocating that the CARB look at some innovative approaches, such as a scrap program, to make up any possible shortfall. (Lamb IH at 267:19-23.) In turn, Unocal could then have the "full amount of time necessary to build refinery modifications that could take advantage of whatever [CARB's] final model allowed us to do." (*Id.* at 267:24-268:05.) Unocal represented to CARB that it wanted to use the predictive model for capital planning and in compliance strategies. (See, e.g., RX 33 (November 21, 1991 letter from R.C. Beach to J. Sharpless); RX 36 (March 16, 1992 CARB notes of meeting with Unocal).)

Unocal continued to advocate for delay in compliance even after the Phase 2 regulations and their March 1996 implementation date were approved by the CARB. For example, in June of 1992,

Unocal renewed its request that implementation be delayed. In comments submitted by Dennis W. Lamb, Unocal stated:

Unocal renews its request that the implementation date for Phase 2 gasoline be delayed one month for each month of slippage in the model schedule past April 1991. This will allow four years to integrate the model into capital plans for Phase 2 gasoline, thus allowing refiners to take advantage of the flexibility afforded by the model which was intended by the Board.

(RX 39 at CARB0003235-36; *see also* CX 0575 at 003-004 (testimony of J.M. Kulakowski to CARB on August 19, 1992).)

**INTERROGATORY NO. 20 STYLED AS NO. 18:**

Please state whether you contend that if CARB had adopted the regulatory approach advocated by Unocal during the CARB Phase 2 rulemaking, the resulting regulations would not have “substantially overlapped with Unocal’s” patent claims.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 20 as follows. Unocal contends that if CARB had a performance-based regulation using a predictive model with targeted emissions and with no caps or limitations, the resulting regulations would not “overlap” the claims of the Unocal Patents.

**INTERROGATORY NO. 21 STYLED AS NO. 19:**

If your response or answer to Interrogatory No. 18 above is “yes” or something other than an unqualified “no,” please state all facts that support your contention or answer to Interrogatory No. 18.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 21 as follows. Information regarding the subject matter of this interrogatory is controlled by third parties and is therefore equally available to both parties in this litigation. Unocal has no obligation to perform research for the benefit of Complaint Counsel in order to compile and present “all facts”

pertinent to this topic. Evidence is readily available, however, which supports Unocal's contention stated in response to Interrogatory No. 21. A non-exhaustive list of such evidence is as follows.

By definition, a performance-based regulation would not require specific caps or limitations and, therefore, would not require a specific composition of gasoline. All of the claims of the Unocal Patents require the existence of a composition. A performance-based regulation, which would not require any compositions, could not, therefore, "overlap" the claims of the Unocal Patents.

**INTERROGATORY NO. 22 STYLED AS NO. 20:**

Please state whether you contend that CARB never asked any participant in the CARB Phase 2 proceedings, including Unocal, to disclose any patents or patent applications that might be impacted by the CARB Phase 2 regulations.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 22 as follows. Based on the information known to Unocal from its participation in the Phase 2 rulemaking, CARB documents produced in discovery, and deposition testimony adduced from CARB employees, Unocal is not aware of any evidence or suggestion that CARB ever asked any participant in the Phase 2 rulemaking to disclose any patents or patent applications. Moreover, as of the completion of CARB's Phase 2 rulemaking, it was not CARB's practice to ask participants to disclose whether they possessed any patents or patent applications that might be impacted by the regulations. Unocal believes that CARB acted consistently with this practice. Unocal further contends that CARB did not ask Unocal to disclose such a fact.

**INTERROGATORY NO. 23 STYLED AS NO. 21:**

If your response or answer to Interrogatory No. 20 above is "yes" or something other than an unqualified "no," please state all facts that support your contention or answer to Interrogatory No. 20.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 23 as follows. Information regarding the subject matter of this interrogatory is controlled by third parties and is therefore equally available to both parties in this litigation. Unocal has no obligation to perform research for the benefit of Complaint Counsel in order to compile and present "all facts" pertinent to this topic. Evidence is readily available, however, which supports Unocal's contention stated in response to Interrogatory No. 23. A non-exhaustive list of such evidence is as follows.

In support of its contention, Unocal relies on deposition testimony of employees of the California Air Resources Board and of numerous refiners that has been and is currently being adduced in this litigation, which is equally available to both parties. In addition to the testimony of these third-parties, former Unocal employee J. Michael Kulakowski testified in his deposition that he was never asked by CARB about any patent or pending patent during the relevant time frame of the adoption of the Phase 2 regulations and 1994 amendments. (Kulakowski Dep. at 120:15-121:03.)

**INTERROGATORY NO. 24 STYLED AS NO. 22:**

Please state whether you contend that no participant in the CARB Phase 2 proceedings made any public disclosure of any patents or patent applications that might be impacted by the CARB Phase 2 regulations.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 24 as follows. While Unocal understands that no automobile or oil company disclosed to CARB any patent or patent application during the development of the Phase 2 regulations, there is information that William Talbert disclosed a patent.

**INTERROGATORY NO. 25 STYLED AS NO. 23:**

If your response or answer to Interrogatory No. 22 above is "yes" or something other than an unqualified "no," please state all facts that support your contention or answer to Interrogatory No. 22.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 25 as follows. Information regarding the subject matter of this interrogatory is controlled by third parties and is therefore equally available to both parties in this litigation. Unocal has no obligation to perform research for the benefit of Complaint Counsel in order to compile and present "all facts" pertinent to this topic. Evidence is readily available, however, which supports Unocal's contention stated in response to Interrogatory No. 25. A non-exhaustive list of such evidence is as follows.

Unocal bases its understanding on deposition testimony of employees of the California Air Resources Board that has been adduced in this litigation, which is equally available to both parties. This testimony, however, is conflicting. In addition, it is unclear exactly when the Talbert patent was disclosed to CARB.

**INTERROGATORY NO. 26 STYLED AS NO. 24:**

Please state whether you contend that following Unocal's submission to CARB of the document produced by CARB as CARB FTC 0060507, CARB did not seek any information from Unocal regarding any patent application that it may have and proceeded to complete its rulemaking by enacting a regulation.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 26 as follows. Unocal contends that following its submission to CARB of the document produced by CARB as CARB FTC 0060507, CARB did not seek any information from Unocal regarding any patent application that it may have and proceeded to complete its rulemaking by enacting a regulation.

**INTERROGATORY NO. 27 STYLED AS NO. 25:**

If your response or answer to Interrogatory No. 24 above is "yes" or something other than an unqualified "no," please state all facts that support your contention or answer to Interrogatory No. 24.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 27 as follows. Deposition testimony adduced in this litigation, which is equally available to both parties, provides support for Unocal's contention that CARB did not seek any information from Unocal regarding any patent application that Unocal may have had and proceeded to complete its rulemaking by enacting a regulation. Unocal has no obligation to perform research for the benefit of Complaint Counsel in order to compile and present "all facts" pertinent to this topic. Evidence is readily available, however, which supports Unocal's contention stated in response to Interrogatory No. 25. A non-exhaustive list of such evidence is as follows.

Unocal employees who made the presentation reflected in the document produced by CARB as CARB FTC 0060507 do not recall any follow-up by the CARB on Unocal's detergent additive patent application. Furthermore, to Unocal's knowledge, neither Unocal nor the California Air Resources Board has produced any documents indicating that the CARB sought any information regarding any patent application.

**INTERROGATORY NO. 28 STYLED AS NO. 26:**

Please state whether you contend that CARB has never asked any participant in a rulemaking to disclose whether it possesses any patents or patent applications that may relate to the subject matter of the rulemaking.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 28 as follows. Based on the information known to Unocal from its participation in CARB rulemakings, CARB documents produced in discovery, and deposition testimony adduced from CARB employees,



Unocal is not aware of any evidence or suggestion that CARB asked any participant in a rulemaking to disclose any patents or patent applications. Moreover, there is evidence that it was not CARB's practice to ask whether participants in rulemakings possessed any patents or patent applications that may relate to the subject matter of the rulemaking.

**INTERROGATORY NO. 29 STYLED AS NO. 27:**

If your response or answer to Interrogatory No. 26 above is "yes" or something other than an unqualified "no," please state all facts that support your contention or answer to Interrogatory No. 26.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 29 as follows. Information regarding the subject matter of this interrogatory is controlled by third parties and is therefore equally available to both parties in this litigation. Unocal has no obligation to perform research for the benefit of Complaint Counsel in order to compile and present "all facts" pertinent to this topic. Evidence is readily available, however, which supports Unocal's contention stated in response to Interrogatory No. 29. A non-exhaustive list of such evidence is as follows.

Deposition testimony adduced in this litigation, which is equally available to both parties, provides support for Unocal's contention that it was not CARB's practice to ask whether participants in rulemakings possessed any patents or patent applications that may relate to the subject matter of the rulemaking. Unocal will rely on testimony of numerous California Air Resources Board employees to support this contention.

**INTERROGATORY NO. 30 STYLED AS NO. 28:**

Please state whether you contend that as of the time of the completion of CARB's Phase 2 rulemaking, CARB had never asked any participant in a rulemaking to disclose whether it possesses any patents or patent applications that may relate to the subject matter of the rulemaking.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 30 as follows. Based on the information known to Unocal from its participation CARB rulemakings, CARB documents produced in discovery, and deposition testimony adduced from CARB employees, Unocal is not aware of any evidence or suggestion that CARB asked any rulemaking participant to disclose any patents or patent applications. Furthermore, as of the completion of CARB's Phase 2, it was not CARB's practice during the Phase 2 rulemaking to ask participants to disclose whether they possessed any patents or patent applications that may relate to the subject matter of the rulemaking, and Unocal believes that CARB acted consistently with this practice. Unocal further contends that CARB did not ask Unocal to disclose such a fact.

**INTERROGATORY NO. 31 STYLED AS NO. 29:**

If your response or answer to Interrogatory No. 28 above is "yes" or something other than an unqualified "no," please state all facts that support your contention or answer to Interrogatory No. 28.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 31 as follows. Information regarding the subject matter of this interrogatory is controlled by third parties and is therefore equally available to both parties in this litigation. Unocal has no obligation to perform research for the benefit of Complaint Counsel in order to compile and present "all facts" pertinent to this topic. Evidence is readily available, however, which supports Unocal's contention stated in response to Interrogatory No. 31. A non-exhaustive list of such evidence is as follows.

Deposition testimony adduced in this litigation, which is equally available to both parties, provides support for Unocal's contention that it was not CARB's practice to ask whether participants in rulemakings possessed any patents or patent applications that may relate to the subject matter of

the rulemaking. Unocal will rely on testimony of numerous California Air Resources Board employees to support this contention. In addition to the testimony of these third-parties, former Unocal employee J. Michael Kulakowski testified in his deposition that he was never asked by CARB about any patent or pending patent during the relevant time frame of the adoption of the Phase 2 regulations and 1994 amendments. (Kulakowski Dep. at 120:15-121:03.)

**INTERROGATORY NO. 32 STYLED AS NO. 30:**

Please state whether you contend that refiners appearing before CARB regularly designate submissions of confidential information to CARB with a notice that refers to the information as “proprietary.”

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 32 as follows. Unocal contends that refiners appearing before CARB designated submissions of confidential information to CARB with a notice that refers to the information as “proprietary.”

**INTERROGATORY NO. 33 STYLED AS NO. 31:**

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If your response or answer to Interrogatory No. 33 above is “yes” or something other than an unqualified “no,” please state all facts that support your contention or answer to Interrogatory No. 30.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 33 as follows. Information regarding the subject matter of this interrogatory is controlled by third parties and is therefore equally available to both parties in this litigation. Unocal has no obligation to perform research for the benefit of Complaint Counsel in order to compile and present “all facts” pertinent to this topic. Evidence is readily available, however, which supports Unocal’s contention stated in response to Interrogatory No. 32. A non-exhaustive list of such evidence is as follows.

Documents and information submitted by certain refiners to CARB are frequently labeled as “proprietary.” Examples of such documents can be found at EXMOUNO-003569, 4607, and 4622, 7114 and at SHUNO-0001641.

**INTERROGATORY NO. 34 STYLED AS NO. 32:**

Please state whether you contend that no standard setting organization in which members of the petroleum industry participated requires participants to disclose ownership of patent applications.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 34 as follows. Unocal is not aware of any standard-setting organization in which members of the petroleum industry participated that requires participants to disclose ownership of patent applications.

**INTERROGATORY NO. 35 STYLED AS NO. 33:**

If your response or answer to Interrogatory No. 32 above is “yes” or something other than an unqualified “no,” please state all facts that support your contention or answer to Interrogatory No. 32.

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**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 35 as follows. Information regarding the subject matter of this interrogatory is controlled by third parties and is therefore equally available to both parties in this litigation. Unocal has no obligation to perform research for the benefit of Complaint Counsel in order to compile and present “all facts” pertinent to this topic. Evidence is readily available, however, which supports Unocal’s contention stated in response to Interrogatory No. 34. A non-exhaustive list of such evidence is as follows.

Third-party discovery has been taken in this investigation from organizations involved in the promulgation of voluntary consensus standards, including the American Petroleum Institute, the

Society of Automotive Engineers, and ASTM. Unocal believes that members of the petroleum industry participate in each of these organizations. The subpoenas issued to these organizations specifically requested “[a]ll documents evidencing, reflecting or referring to any rules, bylaws, policies or procedures from 1985 to the present relating to the disclosure of intellectual property rights in connection with the development or adoption of industry standards.” The documents produced by the organizations in response to the discovery requests do not contain any indication that member organizations are required to disclose ownership of patent applications. See, e.g., ASTM 00001-196; SAE00001-3; API0001-226.

**INTERROGATORY NO. 36 STYLED AS NO. 34:**

Please state whether you contend that as of the time of the completion of CARB’s Phase 2 rulemaking, no standard setting organization in which members of the petroleum industry participated required participants to disclose their ownership of patent applications.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 36 as follows. Unocal is not aware of any standard-setting organization in which members of the petroleum industry participated that, as of the time of the completion of CARB’s Phase 2 rulemaking, required participants to disclose ownership of patent applications.

**INTERROGATORY NO. 37 STYLED AS NO. 35:**

If your response or answer to Interrogatory No. 34 above is “yes” or something other than an unqualified “no,” please state all facts that support your contention or answer to Interrogatory No. 34.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 37 as follows. Information regarding the subject matter of this interrogatory is controlled by third parties and is therefore equally available to both parties in this litigation. Unocal has no obligation to

perform research for the benefit of Complaint Counsel in order to compile and present “all facts” pertinent to this topic. Evidence is readily available, however, which supports Unocal’s contention stated in response to Interrogatory No. 36. A non-exhaustive list of such evidence is as follows.

Third-party discovery has been taken in this investigation from organizations involved in the promulgation of voluntary consensus standards, including the American Petroleum Institute, the Society of Automotive Engineers, and ASTM. Unocal believes that members of the petroleum industry participate in each of these organizations. The subpoenas issued to these organizations specifically requested “[a]ll documents evidencing, reflecting or referring to any rules, bylaws, policies or procedures from 1985 to the present relating to the disclosure of intellectual property rights in connection with the development or adoption of industry standards.” The documents produced by the organizations in response to the discovery requests do not contain any indication that member organizations were required to disclose ownership of patent applications as of the time of completion of the CARB Phase 2 rulemaking. See, e.g., ASTM 00001-196; SAE00001-3;

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API0001-226.

**INTERROGATORY NO. 38 STYLED AS NO. 36:**

Please state whether you contend that all of the requirements of the California Clean Air Act would not have been satisfied if CARB had not adopted the Phase 2 regulations.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 38 as follows. Unocal contends that CARB’s adoption of the Phase 2 RFG regulations was a critical and essential element of California’s efforts to comply with the requirements of the California Clean Air Act.

**INTERROGATORY NO. 39 STYLED AS NO. 37:**

If your response or answer to Interrogatory No. 36 above is “yes” or something other than an unqualified “no,” please state all facts that support your contention or answer to Interrogatory No. 36.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 39 as follows. Information regarding the subject matter of this interrogatory is controlled by third parties and is therefore equally available to both parties in this litigation. Unocal has no obligation to perform research for the benefit of Complaint Counsel in order to compile and present “all facts” pertinent to this topic. Evidence is readily available, however, which supports Unocal’s contention stated in response to Interrogatory No. 38. A non-exhaustive list of such evidence is as follows.

The California Clean Air Act requires that CARB seek to “achieve the maximum degree of emission reduction possible from vehicular and other mobile sources in order to accomplish the attainment of the state standards at the earliest possible date.” Cal. Health & Safety Code § 43018(a). ~~CARB itself repeatedly referenced this mandate in justifying its enactment of the Phase 2~~ RFG regulations. For example, in response to comments challenging the cost-effectiveness of the Phase 2 RFG regulations, CARB stated that “[i]n order to achieve the mandates set forth by the California Clean Air Act, all possible control measures must be considered.” *See* Final Statement of Reasons for Rulemaking at 86. With respect to the necessity of the Phase 2 RFG regulations in particular, CARB stated that “[n]o other measures can provide the dramatic emissions benefits provided by Phase 2 RFG.” *Id.* at 105. Notably, CARB considered that “[e]ven with these regulations and other planned measures, statewide attainment of the state ozone standard cannot be projected. The regulations are therefore necessary.” FSRR at 152.

**INTERROGATORY NO. 40 STYLED AS NO. 38:**

Please state whether you contend that all of the requirements of the United States Clean Air Act would not have been satisfied if CARB had not adopted the Phase 2 regulations.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 40 as follows. Unocal contends that CARB's adoption of the Phase 2 RFG regulations was a critical and essential element of California's efforts to comply with the requirements of the United States Clean Air Act.

**INTERROGATORY NO. 41 STYLED AS NO. 39:**

If your response or answer to Interrogatory No. 38 above is "yes" or something other than an unqualified "no," please state all facts that support your contention or answer to Interrogatory No. 38.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 41 as follows. Information regarding the subject matter of this interrogatory is controlled by third parties and is therefore equally available to both parties in this litigation. Unocal has no obligation to perform research for the benefit of Complaint Counsel in order to compile and present "all facts" pertinent to this topic. Evidence is readily available, however, which supports Unocal's contention stated in response to Interrogatory No. 40. A non-exhaustive list of such evidence is as follows.

Documents and testimony of CARB and CARB representatives have identified the importance of the Phase 2 RFG rulemaking in California's attempts to comply with the requirements of the United States Clean Air Act. In CARB's Final Statement of Reasons for Rulemaking for the Phase 2 RFG regulations, CARB noted that "[i]mplementation of only the federal gasoline standards would leave the state far short of obtaining the emissions reductions needed to meet either the federal or state ambient air quality standards. The result would be a far greater likelihood of sanctions on



federal transportation funds and new source growth, and an imposition of a greater burden on other California industries to reduce emissions.” FSRR at 172.

At the time of the Phase 2 RFG rulemaking, various areas in California had been designated by the Environmental Protection Agency as non-attainment areas for ozone under the standards of the Clean Air Act. *See* 59 Fed. Reg. 56,694 (Nov. 6, 1991). This designation required California to submit a State Implementation Plan outlining the measures that would be taken to bring each of the non-attainment areas into compliance with the federal ozone standards. The emission reductions anticipated from the Phase 2 RFG regulations were credited in California’s State Implementation Plan as submitted to the EPA. *See* Approval and Promulgation of State Implementation Plans; California, 60 Fed. Reg. 43,379, 43,381 (Aug. 21, 1995).

In fact, the emission reductions accounted for by the Phase 2 RFG regulations were deemed to be one of the most significant measures adopted by California in its efforts to comply with the Clean Air Act. CARB stated that “[w]e know of no other measures that will reduce emissions from gasoline-powered motor vehicles in the latter part of this decade nearly as much as the Phase 2 RFG regulations.” (FSRR at 88.) CARB explored all possible measures in its attempts to locate means of reducing pollutants. As Michael Kenny, formerly general counsel of CARB testified in his deposition, California found it “extraordinarily difficult” to identify “the level of emissions reductions that [were] necessary” for the State Implementation Plan. (Kenny Dep. at 44:22-25.)

**INTERROGATORY NO. 42 STYLED AS NO. 40:**

Please state whether you contend CARB employees met with representatives of other companies and organizations in connection with its Phase 2 RFG rulemaking, both before and after the issuance of Notices of Proposed Rulemaking, in both private and public forums to receive views on policy issues.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 42 as follows. Unocal contends that before and after issuing its Notice of Proposed Rulemaking in connection with the Phase 2 RFG regulations, CARB met with representatives of other companies and organizations in both private and public forums to receive views on policy issues.

**INTERROGATORY NO. 43 STYLED AS NO. 41:**

If your response or answer to Interrogatory No. 40 above is “yes” or something other than an unqualified “no,” please state all facts that support your contention or answer to Interrogatory No. 40.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 43 as follows. Information regarding the subject matter of this interrogatory is controlled by third parties and is therefore equally available to both parties in this litigation. Unocal has no obligation to perform research for the benefit of Complaint Counsel in order to compile and present “all facts” pertinent to this topic. Evidence is readily available, however, which supports Unocal’s contention stated in response to Interrogatory No. 42. A non-exhaustive list of such evidence is as follows.

Documentary discovery and depositions taken in this action indicate that CARB held numerous meetings with parties interested in the Phase 2 RFG regulations both before and after its October 4, 1991, Notice of Public Hearing and Initial Statement of Reasons for its proposed Phase 2 RFG regulations. For example, CARB held at least two public workshops with interested parties relating to the Phase 2 RFG regulations in June and August of 1991, preceding the formal initiation of the rulemaking. The deposition transcripts of CARB officials further acknowledge that multiple private meetings held between CARB and representatives of the oil and auto industries to discuss the Phase 2 RFG regulations. (*E.g.* Simeroth Dep. at 85:15-25, 86:14-19 (“We were having meetings continually starting June to November of [1991]. . .”).).

**INTERROGATORY NO. 44 STYLED AS NO. 42:**

Please state whether you contend that CARB never communicated to participants in any RFG rulemaking that it was engaged in a “fact finding.”

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 44 as follows. Unocal is not aware of any instance in which CARB communicated to participants in RFG rulemaking that it was engaged in a “fact-finding.”

**INTERROGATORY NO. 45 STYLED AS NO. 43:**

If your response or answer to Interrogatory No. 42 above is “yes” or something other than an unqualified “no,” please state all facts that support your contention or answer to Interrogatory No. 42.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 45 as follows. Information regarding the subject matter of this interrogatory is controlled by third parties and is therefore equally available to both parties in this litigation. Unocal has no obligation to perform research for the benefit of Complaint Counsel in order to compile and present “all facts” pertinent to this topic. Moreover, this interrogatory appears to request that Unocal offer proof for a negative proposition. Accordingly, Unocal’s response is that it is not aware of any instance in which CARB expressly communicated to participants in RFG rulemaking that it was engaged in a “fact-finding.”

**INTERROGATORY NO. 46 STYLED AS NO. 44:**

Please state whether you contend that CARB never made any determinations that it designated as findings of fact in connection with any RFG rulemaking.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 46 as follows. Unocal contends that CARB never designated any determinations as “findings of fact” in connection with any RFG rulemaking.

**INTERROGATORY NO. 47 STYLED AS NO. 45:**

If your response or answer to Interrogatory No. 44 above is “yes” or something other than an unqualified “no,” please state all facts that support your contention or answer to Interrogatory No. 44.

**ANSWER:**

Subject to and without waiving its objections, Unocal answers Interrogatory No. 47 as follows. Information regarding the subject matter of this interrogatory is controlled by third parties and is therefore equally available to both parties in this litigation. Unocal has no obligation to perform research for the benefit of Complaint Counsel in order to compile and present “all facts” pertinent to this topic. Moreover, this interrogatory appears to request that Unocal offer proof for a negative proposition. Accordingly, Unocal’s response is that it is not aware of any instance in which CARB has designated determinations as “findings of fact” in connection with RFG rulemaking. CARB’s Final Statement of Reasons published after adoption of the Phase 2 RFG regulations does not contain any determination designated as “findings of fact.”


Dated: August 13, 2003.



Charles O. Strathman  
Vice President and Chief Legal Officer  
Union Oil Company of California

VERIFICATION

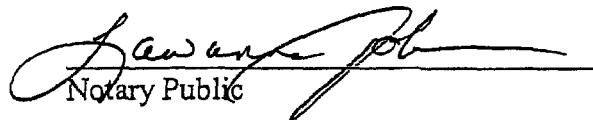
This Respondent Union Oil Company of California's Answers to Complaint Counsel's Third Set of Interrogatories was prepared and assembled under my supervision. The information is, to the best of my knowledge, true, correct and complete.



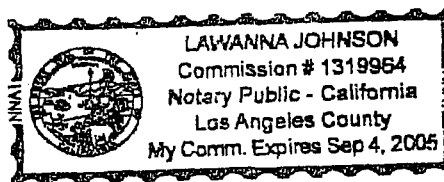
Charles O. Strathman  
Vice President and Chief Legal Officer  
Union Oil Company of California

STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

Subscribed and sworn to before me  
this 13 day of August, 2003.



Notary Public



**ATTACHMENT A**  
**RESTRICTED CONFIDENTIAL, ATTORNEY'S EYES ONLY**  
**FTC DOCKET NO. 9305**

**REDACTED**

**CERTIFICATE OF SERVICE**

I hereby certify that on August 28, 2003, I caused a copy of the attached  
RESPONDENT UNION OIL COMPANY OF CALIFORNIA'S ANSWERS TO  
COMPLAINT COUNSEL'S THIRD SET OF INTERROGATORIES to be served upon  
the following persons by hand delivery.

J. Robert Robertson, Esq.  
Lead Complaint Counsel  
Bureau of Competition  
Federal Trade Commission  
600 Pennsylvania Ave. NW, Drop 374  
Washington, DC 20580

Richard B. Dagen, Esq.  
Chong S. Park, Esq.  
Complaint Counsel  
Bureau of Competition  
Federal Trade Commission  
601 New Jersey Avenue, NW, Drop 6264  
Washington, DC 20001

  
\_\_\_\_\_  
Susan M. Dale

# EXHIBIT B



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ATTORNEYS AT LAW

Bethany D. Krueger  
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September 16, 2003

*Via Federal Express*

J. Robert Robertson, Esq.  
Senior Litigation Counsel  
Federal Trade Commission  
600 Pennsylvania Avenue NW, Drop 374  
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Richard B. Dagen, Assistant Director  
Chong S. Park, Esq.  
Bureau of Competition  
Federal Trade Commission  
601 New Jersey Avenue NW, Drop 6264  
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Re: *In the Matter of Union Oil Company of California*  
Docket No. 9305  
Our File No. 028012-0008

Dear Counsel:

It has come to our attention that Respondent Union Oil Company of California's Answers to Complaint Counsel's Third Set of Interrogatories, served upon you on August 28, 2003, erroneously omitted the phrase "Restricted Confidential, Attorney's Eyes Only, FTC Docket No. 9305" in the footer. Specifically, the answers to Interrogatories 8 and 9 contain confidential information with respect to Unocal's licensees. Therefore, I have enclosed a corrected version of these interrogatories exhibiting the appropriate footer. With the exception of addition of the footer, these interrogatories are identical in all respects to those served upon you on August 28, 2003.

Very truly yours,

ROBINS, KAPLAN, MILLER & CIRESI L.L.P.



Bethany D. Krueger

BDK/vr

Enc.

cc: Joseph Kattan, P.C.

**PUBLIC VERSION**

**EXHIBIT C**  
**Redacted in Its Entirety**