

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

PERSIAN GULF INC., Individually
and on Behalf of All Others Similarly
Situating,

Plaintiff,

v.
BP WEST COAST PRODUCTS LLC,
et al.,

Defendants.

RICHARD BARTLETT, et al.,
Individually and on Behalf of All
Others Similarly Situated,

Plaintiffs,

v.
BP WEST COAST PRODUCTS LLC,
et al.,

Defendants.

CASE NO. 15cv1749-JO-AGS

**ORDER GRANTING
DEFENDANTS' MOTIONS
FOR SUMMARY JUDGMENT**

Lead Case No. 18-cv-1374-JO-
AGS (consolidated with No.18-cv-
1377-JO-AGS)

1 In this putative class action for antitrust conspiracy, Defendants Chevron U.S.A. Inc.
 2 (“Chevron”), Exxon Mobil Corporation and ExxonMobil Refining & Supply Co.
 3 (“Exxon”), Phillips 66, BP West Coast Products LLC (“BP”), Tesoro Refining &
 4 Marketing Company LLC (“Tesoro”), Equilon Enterprises LLC (d/b/a Shell Oil Products
 5 US) (“Shell”), Valero Marketing and Supply Company (“Valero”), and Alon USA Energy,
 6 Inc. (“Alon”) (together, “Defendants”) filed motions for summary judgment. Dkts. 615,
 7 619, 625. Defendants also filed motions to exclude the expert testimony of Plaintiffs’
 8 proffered experts: Robert McCullough, Dr. Paul Hanouna, and Dr. Michael Williams.
 9 Dkts. 613, 616. Plaintiffs have similarly filed motions to exclude the testimony of
 10 Defendants’ proffered experts: Andrew Lipow, Dr. Janusz Ordoover, and Dr. Richard
 11 Bergin. Dkts. 622, 626.

12 For the reasons stated below, the Court grants Defendants’ motions for summary
 13 judgment. Dkts. 615, 619, 625. The Court also grants in part Defendants’ motion to
 14 exclude the expert testimony of Dr. Williams and Dr. Hanouna on the issue of causation.
 15 Dkt. 616. The parties’ remaining motions to exclude expert testimony, including
 16 Defendants’ motion to exclude Dr. Williams’ and Dr. Hanouna’s testimony on issues
 17 outside of causation, are dismissed as moot. Dkts. 613, 622, 626.

18 I. PROCEDURAL HISTORY

19 Plaintiff Persian Gulf Inc. (“Persian Gulf”), the operator of a retail gas station, filed
 20 its antitrust lawsuit on behalf of retail stations in California on July 7, 2015. *See* Dkt 1.¹
 21 On June 21, 2018, individual consumers Joshua Ebright, Paul Lee, and David Rinaldi (the
 22

23
 24 ¹ Unless otherwise noted, citations to “Dkt.” refer to *Persian Gulf, Inc. v. BP West Coast Products*
 25 *LLC, et al.*, 15cv1749-JO-AGS.

1 “Consumer Plaintiffs”) filed two separate lawsuits on behalf of consumers who purchased
2 gasoline in California.² These lawsuits alleged that eight current and former gas refiners
3 in California—Defendants Chevron, Phillips 66, BP, Tesoro, Shell, Valero, Exxon, and
4 Alon—conspired to fix gas prices in California from 2012 to present in violation of § 1 of
5 the Sherman Act, Cartwright Act, Cal. Bus. & Prof. Code § 16700, *et seq.*, and § 17200 of
6 the Cal. Bus. & Prof. Code, commonly known as the UCL. *See* Dkt. 76; *Bartlett*, Dkt. 44.

7 On July 25, 2018, the Court consolidated the two Consumer Plaintiffs’ cases into
8 one action. *Bartlett*, Dkt. 37. Thereafter, the Court ordered the coordination of Persian
9 Gulf’s and Consumer Plaintiffs’ cases for discovery and motion briefing because the
10 allegations were nearly identical. *See* Dkt. 143. Accordingly, the Court set a single
11 briefing schedule governing both Persian Gulf’s and the Consumer Plaintiffs’ cases which
12 included deadlines for motions for summary judgment and motions to exclude expert
13 testimony. *See* Dkt. 589.

14 After exhaustive discovery proceedings, Defendants Chevron, Shell, Valero, and
15 Phillips 66 filed a joint motion for summary judgment, arguing that Plaintiffs did not have
16 evidence to support a reasonable inference of conspiracy or causation. *See* Dkt. 625 (“Joint
17 MSJ”). The remaining Defendants joined the Joint MSJ, and Defendants Alon and Tesoro
18 also filed separate motions for summary judgment. *See* Dkts. 615, 619, 630, 632, 634, 636.
19 In addition, the parties moved to exclude one another’s expert reports under *Daubert v.*
20 *Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). *See* Dkts. 613, 616, 622, 626.

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24 ² *See Bartlett et al v. BP West Coast Products LLC et al.*, 18cv1374-JO-AGS; *Rinaldi et al. v. BP*
25 *West Coast Products LLC et al.*, 18-cv-1377-JO-AGS.

II. FACTS

A. Background Information on the Gasoline Market in California

Plaintiffs' price fixing allegations are best understood within the larger context of California's gas market and its unique supply-chain challenges. The Court, therefore, provides the following brief overview of the players in the market, how the market is supplied, and how gas is sold in the state.

In California, a small group of refiners control the entirety of gas production in the state. *See, e.g.*, Dkt. 622, Ex. 2 ("Lipow Report") ¶ 31; Dkt. 647, Ex. 1 ("McCullough Report") ¶¶ 20, 66.³ This highly concentrated market is comprised of the eight Defendants in this case, including gas giants like Exxon and Chevron,⁴ plus additional non-Defendant refiners with varying market shares.⁵ Because Defendants do business in a highly concentrated market with few players, they are admittedly conscious of one another's pricing and actions in the market, as the actions of any one refiner can substantially impact the other refiners. *See, e.g.*, J. Hodgson Declaration ¶¶ 11–15, 19–20; P. Brooks

³ The Court declines to rule on the admissibility of the expert opinions contained in the McCullough and Lipow reports as moot. Where there is no dispute, however, the Court has referenced these reports as sources of background information about the gas industry.

⁴ For instance, evidence in the record suggests that Exxon may have accounted for 8% of California gas supply in 2015, *see* Dkt. 629-1 ("Defs. Exs.") Defs. Ex. 1 at 144:17–145:9, and Plaintiffs' expert suggests that Chevron may have accounted for 18% of California gas production during the class period. *See* McCullough Report ¶ 67.

⁵ The evidence in the record also indicates that additional non-Defendant refiners may have contributed substantially to California gas production at various points during the class period. *See, e.g., id.* (noting that non-Defendant PBF accounted for 12% of production and non-Defendant Marathon accounted for up to 30% of production).

1 Declaration ¶ 96; K. Archambault Declaration ¶ 59; J. Harris Declaration ¶ 6; M. O’Neal
2 Declaration ¶ 3.⁶

3 The California gas market largely depends on this small group of in-state refiners
4 because California is a “gasoline island” isolated from other sources of supply. Dkt. 629-
5 1 (“Def. Exs.”) Defs. Ex. 2; McCullough Report ¶¶ 37–39. California suffers from a lack
6 of direct pipeline connectivity to other major refinery centers, such as the Gulf Coast and
7 the Pacific Northwest. *See* McCullough Report ¶¶ 37–39; Dkt. 722, Joint Statement of
8 Undisputed Facts (“Joint Statement”) ¶ 12. Thus, California can only receive imports by
9 sea, which is costly and requires weeks of lead time. *See, e.g.*, Joint Statement ¶ 12; K.
10 Archambault Declaration ¶¶ 22–26, 34; H. Henderlite Declaration ¶¶ 24–26; Dkt. 699
11 (“Opposition”) at 29. Given refiners’ finite production capacity and the limited options for
12 external supply, prices in the California gas market are sensitive to events such as refinery
13 shutdowns. *See, e.g.*, Opposition at 1; Joint Statement ¶ 15. According to the Attorney
14 General of California, because of these factors, “California’s gasoline market has been
15 characterized by high gas and diesel prices and recurrent price spikes.” *See* Defs. Ex. 2 at
16 1.

17 The California gas market also faces another unique limitation: only a specific gas
18 formulation called CARBOB may be sold in the state. California refiners produce a variety
19 of gas products, such as diesel, jet fuel, and different formulations of gas, including
20

21
22 ⁶ Unless otherwise stated, citations to declarations in this opinion refer to the declarations in
23 Defendants’ Joint Appendix (hereinafter, “J.A.”) in support of their Joint Motion for Summary Judgment.
24 Dkt. 629-2. Similarly, citations to Chevron’s, Shell’s, Exxon’s, Phillips 66’s, Valero’s, and BP’s exhibits
(*e.g.*, Chevron Ex. 1) refer to the exhibits to the declarations in the Joint Appendix at Dkt. 629-2.

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