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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

MDL

Case No. CV-05-01671 CAS (VBKx)

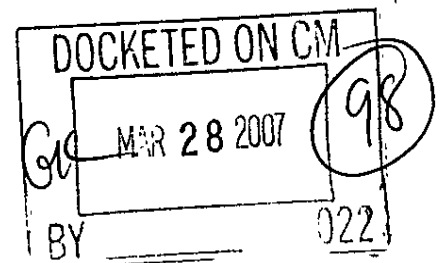
IN RE REFORMULATED GASOLINE
(RFG) ANTITRUST & PATENT
LITIGATION

**ORDER GRANTING PLAINTIFFS'
MOTION FOR CLASS
CERTIFICATION**

I. BACKGROUND

Class plaintiffs¹ allege that defendants Union Oil Co. of California and Unocal Corporation (collectively, "Unocal") unlawfully obtained market power by manipulating the California Air Resources Board ("CARB") rulemaking proceedings regarding emission standards and regulations for "reformulated" gasoline ("RFG"). Consolidated Class Action Complaint ("Complaint"), filed September 12, 2005, ¶¶ 1, 3,

¹ Plaintiffs Caleb Klepper, Corrine Sealey, Christopher Sheppard, Stephen Buckser, Asher Rubin, Jeffrey Rubin, Corey Rosen, Gail Harper, and Michael Shames, bring suit on behalf of themselves and all others similarly situated.



1 160.² Specifically, plaintiffs allege that Unocal made materially false and misleading
2

3 ² The following consolidated cases were originally filed in state court as set
4 forth below:

5 Case No. CV 04-09600, Acosta v. Union Oil Company of California was filed in the Los
6 Angeles County Superior Court on November 1, 2004, removed to the Central District of
7 California on November 23, 2004, and dismissed without prejudice pursuant to stipulation
8 on November 30, 2006;

9 Case No. CV 05-03441, Harper v. Union Oil Company of California was filed in the
10 Alameda County Superior Court, and removed to the Northern District of California on
11 December 3, 2004;

12 Case No. CV 05-03443, Haro v. Union Oil Company of California was filed in the San
13 Francisco County Superior Court on November 10, 2004, was removed to the Northern
14 District of California on December 10, 2004, and was remanded to the San Francisco
15 County Superior Court on September 13, 2005;

16 Case No. CV 05-03445, Rosen v. Union Oil Company of California was filed in the San
17 Francisco County Superior Court on November 15, 2004, and removed to the Northern
18 District of California on December 10, 2004;

19 Case No. CV 05-03446, Sullivan v. Union Oil Company of California was filed in the San
20 Francisco County Superior Court on November 4, 2004, and removed to the Northern
21 District of California on December 10, 2004;

22 Case No. CV 05-03577, Shames v. Union Oil Company of California, was filed in the San
23 Diego County Superior Court on November 9, 2004, and removed to the Southern District
24 of California on May 25, 2005.

25 The following consolidated cases were originally filed in federal district court as set
26 forth below:

27 Case No. CV 04-08795, Kleppner v. Union Oil Company of California was filed in the
28 United States District Court for the Central District of California on October 22, 2004;

Case No. CV 05-00309, Sealey v. Union Oil Company of California was filed in the United
States District Court for the Central District of California on January 12, 2005;

Case No. CV 05-01264, Sheppard v. Union Oil Company of California was filed in the
United States District Court for the Central District of California on February 18, 2005;

Case No. CV 05-03438, Buckser v. Union Oil Company of California was filed in the
United States District Court for the Northern District of California on November 9, 2004;

Case No. CV 05-03439, Rubin v. Union Oil Company of California was filed in the United
States District Court for the Northern District of California on November 12, 2004.

(continued...)

1 statements, resulting in the development of RFG regulations that substantially
2 overlapped with Unocal's then-undisclosed patent claims. Id. ¶¶ 4, 160-161. Plaintiffs
3 allege that Unocal exercised the market power obtained through this manipulation by
4 enforcing its patents, which have now been terminally disclaimed, through litigation
5 and licensing activities. Id. ¶ 171.

6 Plaintiffs allege that Unocal's anti-competitive conduct has materially caused
7 and threatened to cause substantial harm to consumers by artificially raising the retail
8 price of RFG in California resulting from refiners' actual and potential liability for
9 patent infringement, substantial costs incurred by refiners to "blend around" the
10 patents, royalties paid by refiners, harm to supply in the market due to reluctance of
11 importers to import RFG into California, and disincentives to refiners to make capital
12 investments necessary to increase production of RFG. Id. ¶ 174.

13 Plaintiffs seek to certify a class comprised of:

14 All consumers who purchased CARB-compliant summertime reformulated
15 gasoline in the State of California at any time during the period from
16 January 1995 to and including August 11, 2005. Excluded from the class
17 are governmental entities, defendants, their co-conspirators, along with all
18 of their respective parents, subsidiaries, and/or affiliates, and any and all
19 judges and justices assigned to hear any aspect of this litigation.

20 Mot. at 24.

21 The Complaint alleges claims against Unocal³ for: (1) equitable and injunctive
22 relief pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26; (2) common law

23
24 ² (...continued)

25 On May 4, 2005, the Judicial Panel on Multidistrict Litigation transferred the above
26 cases to the United States District Court for the Central District of California, pursuant to
28 U.S.C. § 1407, and assigned them to the Honorable Christina A. Snyder.

27 ³The Complaint also named Chevron Corporation ("Chevron") as a defendant.
28 Pursuant to a stipulation filed December 2, 2005, the parties dismissed without prejudice
all claims against Chevron.

1 monopolization; (3) violation of the Cartwright Act, Cal. Bus. & Prof. Code § 16720;
2 (4) violation of the Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200;
3 and (5) unjust enrichment.

4 Unocal filed a motion to dismiss the Complaint on September 26, 2005. On July
5 21, 2006, the Court granted Unocal's motion to dismiss plaintiff's Clayton Act claim,
6 and denied Unocal's motion in all other respects.

7 On September 15, 2006, plaintiffs filed the instant motion for class certification.
8 Unocal filed its opposition on January 16, 2007. On February 15, 2007, plaintiffs filed
9 a reply. After carefully considering the parties' arguments, the Court hereby finds and
10 concludes as follows.

11 II. LEGAL STANDARD

12 "Class actions have two primary purposes: (1) to accomplish judicial economy
13 by avoiding multiple suits, and (2) to protect rights of persons who might not be able to
14 present claims on an individual basis." Haley v. Medtronic, Inc., 169 F.R.D. 643, 647
15 (C.D. Cal. 1996) (citing Crown, Cork & Seal Co. v. Parker, 462 U.S. 345 (1983)).
16 Federal Rule of Civil Procedure 23 governs class actions. A class action "may be
17 certified if the trial court is satisfied after a rigorous analysis, that the prerequisites of
18 Rule 23(a) have been satisfied." General Tel. Co. of the Southwest v. Falcon, 457 U.S.
19 147, 161 (1982).

20 To certify a class action, plaintiffs must set forth prima facie facts that support
21 the four requirements of Rule 23(a): (1) numerosity; (2) commonality; (3) typicality;
22 and (4) adequacy of representation. Dunleavy v. Nadler (In re Mego Fir. Corp. Sec.
23 Litig.), 213 F.3d 454, 462 (9th Cir. 2000) (internal quotations omitted). These
24 requirements effectively "limit the class claims to those fairly encompassed by the
25 named plaintiff's claims." Falcon, 457 U.S. at 155 (quoting Califano v. Yamasaki, 442,
26 U.S. 682, 701 (1979)).

27 If the district court finds that the action meets the prerequisites of Rule 23(a), the
28 court must then consider whether the class is maintainable under one or more of the

1 three alternatives set forth in Rule 23(b). Plaintiffs seek certification under Rule
2 23(b)(3) which governs in a case where money damages is the predominant form of
3 relief sought, which is the case here. A class is maintainable under Rule 23(b)(3)
4 where “questions of law or fact common to the members of the class *predominate* over
5 any questions affecting only individual members,” and where “a class action is
6 *superior* to other available methods for fair and efficient adjudication of the
7 controversy.” Fed. R. Civ. P. 23(b)(3) (emphasis added). “The Rule 23(b)(3)
8 predominance inquiry tests whether the proposed classes are sufficiently cohesive to
9 warrant adjudication by representation.” Hanlon v. Chrysler Corp., 150 F.3d 1011,
10 1022 (9th Cir. 1998) (citing Amchem Products, Inc. v. Windsor, 521 U.S. 591 (1997)).
11 The predominance inquiry measures the relative weight of the common to
12 individualized claims. Id. “Implicit in the satisfaction of the predominance test is the
13 notion that the adjudication of common issues will help achieve judicial economy.”
14 Zinser v. Accufix Research Inst., Inc., 253 F.3d 1180, 1189 (9th Cir. 2001) (citing
15 Valentino v. Carter-Wallace, Inc., 97 F.3d 1227, 1234 (9th Cir. 1996)). In determining
16 superiority, the court must consider the four factors of Rule 23(b)(3): (1) the interests
17 members in the class have in individually controlling the prosecution or defense of the
18 separate actions; (2) the extent and nature of any litigations concerning the controversy
19 already commenced by or against members of the class; (3) the desirability or
20 undesirability of concentrating the litigation of the claims in the particular forum; and
21 (4) the difficulties likely encountered in the management of a class action. Id. at 1190-
22 1993. “If the main issues in a case require the separate adjudication of each class
23 member's individual claim or defense, a Rule 23(b)(3) action would be inappropriate.”
24 Id. (citing 7A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal
25 Practice and Procedure § 1778 at 535-39 (2d. ed. 1986) (hereinafter “Wright, Miller &
26 Kane”)).
27
28

RECORDED

1 **III. DISCUSSION**

2 **A. Rule 23(a) Requirements**

3 Unocal does not appear to dispute that the requirements of Rule 23(a) are met in
4 this case.

5 **1. Numerosity**

6 Rule 23(a)(1) requires the members of a proposed class to be so numerous that
7 joinder of all of the class members would be impracticable. Fed. R. Civ. P. 23(a).
8 However, “[i]mpracticability does not mean ‘impossibility,’ but only the difficulty or
9 inconvenience in joining all members of the class.” Harris v. Palm Springs Alpine
10 Estates, Inc., 329 F.2d 909, 913-14 (9th Cir. 1964) (quoting Advertising Specialty Nat.
11 Ass’n v. FTC, 238 F.2d 108, 119 (1st Cir. 1956)).

12 Plaintiffs argue that, because “RFG is the exclusive gas sold in California during
13 the summertime months and has been for many years, the class easily is in the
14 millions.” Mot. at 6. The Court concludes that plaintiffs have satisfied the numerosity
15 requirement.

16 **2. Commonality**

17 Commonality requires “questions of law or fact common to the class.” Rule
18 23(a)(2). The commonality requirement is generally construed liberally; the existence
19 of only a few common legal and factual issues may satisfy the requirement. Jordan v.
20 County of Los Angeles, 669 F.2d 1311, 1320 (9th Cir. 1982).

21 Plaintiffs argue that the instant litigation involves the common questions of
22 whether (1) Unocal attempted to, or did, maintain a monopoly through anticompetitive
23 activity; (2) Unocal’s conduct violated the Cartwright Act, Cal. Bus. & Prof. Code §
24 17200 et seq., and California common law; (3) Unocal was unjustly enriched; (4)
25 Unocal’s conduct caused damage to the class and the amount of such damage; and (5)
26 Unocal is liable for punitive and/or treble damages. The Court concludes that the
27 instant action addresses common questions of law and fact, sufficient to satisfy the
28 commonality requirement of Rule 23(a)(2).

3. Typicality

Typicality requires a determination of whether the named plaintiff's claims are typical of those of the proposed class they seek to represent. Rule 23(a)(3).

"[R]epresentative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." Hanlon, 150 F.3d at 1020; Schwartz v. Harp, 108 F.R.D. 279, 282 (C.D. Cal. 1985) ("A plaintiff's claim meets this requirement if it arises from the same event or course of conduct that gives rise to claims of other class members and the claims are based on the same legal theory.").

Plaintiffs argue that the "class representatives and the class members all must prove the same things: anticompetitive conduct by Unocal that resulted in all class members being forced to pay artificially inflated prices for RFG in California." Mot. at 7. The Court concludes that plaintiffs' claims arise from the "same event or course of conduct" as those of the various class members, as required under Rule 23(a)(3), and are typical of the claims of the proposed class. Schwartz, 108 F.R.D. at 282; Rosario v. Livaditis, 963 F.2d 1013, 1018 (7th Cir. 1992).⁴

4. Adequacy of Representation

The adequacy of representation requirement of Rule 23(a)(4) involves a two-part inquiry: "(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute

⁴The Court further notes that variations in the degree of injury allegedly suffered by each class member do not defeat typicality. "It is *not* necessary that all class members suffer the same injury as the class representatives." Judge William W. Schwarzer, Judge A. Wallace Tashima, & James M. Wagstaffe, Federal Civil Procedure Before Trial, § 10:292 (The Rutter Group, 2006) (emphasis in original). Rather, a "plaintiff's claim may be 'typical' although other members of the class suffered less (or more) injury." Id. § 10:293 (citing Rosario, 963 F.2d at 1017 ("The fact that there is some factual variation among the class grievances will not defeat a class action.")).

1 the action vigorously on behalf of the class?" Hanlon, 150 F.3d at 1020. It appears to
2 the Court that the named plaintiffs and their counsel will adequately represent the class.

3 Accordingly, the requirements of Rule 23(a) are satisfied. The Court next turns
4 to the requirements of Rule 23(b)(3).

5 **B. Rule 23(b)(3) Requirements**

6 Certification under Rule 23(b)(3) is proper "whenever the actual interests of the
7 parties can be served best by settling their differences in a single action." Hanlon, 150
8 F.3d at 1022 (internal quotations omitted). As noted above, Rule 23(b)(3) calls for two
9 separate inquiries: (1) do issues common to the class "predominate" over issues unique
10 to individual class members, and (2) is the proposed class action "superior" to other
11 methods available for adjudicating the controversy. Fed. R. Civ. P. 23(b)(3). The latter
12 requirement requires consideration of the difficulties likely to be encountered in the
13 management of this litigation as a class action, including, especially, whether and how
14 the case may be tried. In making these determinations, the Court does not decide the
15 merits of any claims or defenses, or whether the plaintiffs are likely to prevail on their
16 claims. Rather, the Court must determine whether plaintiffs have shown that there are
17 plausible class-wide methods of proof available to prove their claims.

18 **1. Plaintiffs' Antitrust Claims**

19 Plaintiffs allege claims for common law monopolization and violation of the
20 Cartwright Act.⁵ The Cartwright Act, codified at Cal. Bus. & Prof. Code § 16700, et
21

22 ⁵As discussed in the Court's June 21, 2006 order, California authority suggests that
23 a business tort of monopolization may be recognized under California law separate and
24 apart from statutory claims arising under the Cartwright Act. See Burdell v. Grandi, 152
25 Cal. 376, 383 (1907)("The court finds that [the defendant] imposed [conditions in a deed,
26 which prohibited the sale of intoxicating liquors on the premises,] to create a monopoly
27 in his own behalf in the sale of intoxicating liquors upon other property in the town owned
28 and leased by him . . . Conditions imposed to attain that end are, as we have seen, against
public policy and void."); Exxon Corp. v. Superior Court, 51 Cal. App. 4th 1672, 1687
(1997)(separately analyzing the propriety of summary adjudication as to causes of action
(continued...))

1 seq., requires a plaintiff to prove the existence of a “trust,” defined in part as “a
 2 combination of capital, skill or act by two or more persons,” for the prohibited
 3 purposes enumerated by Cal. Bus. & Prof. Code § 16720. Under the Cartwright Act,
 4 plaintiffs are required to show that they have suffered antitrust injury, i.e., “injury of
 5 the type the antitrust laws were intended to prevent and that flows from that which
 6 makes defendants’ acts unlawful.” Atlantic Richfield Co. v. USA Petroleum Co., 495
 7 U.S. 328, 334 (1990). To prevail on their monopolization claim, plaintiffs must
 8 establish (1) possession of monopoly power in the relevant market, (2) willful
 9 acquisition or maintenance of that power, and (3) antitrust injury. See Austin v.
 10 McNamara, 979 F.2d 728, 739 (9th Cir. 1992).

11 Parsing the Supreme Court’s definition, the Ninth Circuit has explained that
 12 there are four requirements for antitrust injury: “(1) unlawful conduct, (2) causing an
 13 injury to the plaintiff, (3) that flows from that which makes the conduct unlawful, and
 14 (4) that is of the type the antitrust laws were intended to prevent.” Knevelbaard Dairies
 15 v. Kraft Foods, Inc., 232 F.3d 979, 987 (9th Cir. 2000) (quoting Am. Ad Mgmt., Inc. v.
 16 General Tel. Co., 190 F.3d 1051, 1055 (9th Cir. 1999)).

17 **a) Predominance and Commonality**

18 “Implicit in the satisfaction of the predominance test is the notion that the
 19 adjudication of common issues will help achieve judicial economy.” See Valentino, 97
 20 F.3d at 1234. Thus, the Court must determine whether common issues constitute such
 21 a significant aspect of the action that “there is a clear justification for handling the
 22 dispute on a representative rather than on an individual basis.” 7A Wright, Miller, &
 23 Kane § 1778 (3d ed. 2005). For the proponent to satisfy the predominance inquiry, it is
 24 not enough to establish that common questions of law or fact exist, as it is under Rule
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26
 27 ⁵ (...continued)
 28 for violation of the Cartwright Act and for the business tort of monopolization).

1 23(a)(2)'s commonality requirement -- the predominance inquiry under Rule 23(b) is
2 more rigorous. Amchem Prods., Inc., 521 U.S. at 624. The predominance question
3 "tests whether proposed classes are sufficiently cohesive to warrant adjudication by
4 representation." Id. at 623. The Court, therefore, must balance concerns regarding the
5 litigation of issues common to the class as a whole with questions affecting individual
6 class members. Abed v. A. H. Robins Co. (In re Northern District of California,
7 Dalkon Shield IUD Products Liability Litigation), 693 F.2d 847, 856 (9th Cir. 1982).

8 **(i) Classwide Proof of Violation and Impact**

9 With regard to violation, plaintiffs argue that "[w]hether Unocal violated the
10 Cartwright Act and monopolized the technology market for RFG in California is a
11 question that depends solely upon an analysis of Unocal's behavior and the behavior of
12 entities with whom Unocal dealt. . . . Since this conduct did not vary among class
13 members, proof relevant to any one purchaser must of necessity apply equally to all
14 class members." Mot. at 10.

15 With regard to impact, plaintiffs contend that where an antitrust action is brought
16 under the Cartwright Act, there is an "inference of classwide impact of injury" upon
17 showing of an antitrust conspiracy by the defendant. Id. at 11 (quoting In re Cipro
18 Cases I and II, 2003 WL 23005275 at *5 (Cal. Superior Ct. Nov. 25, 2003), affirmed in
19 part by 121 Cal. App. 4th 402 (2004)). Plaintiffs assert that they need not show that
20 Unocal's conduct was the sole cause of the injury, or prove that each class member was
21 injured. Id. Rather, plaintiffs argue that they need only submit a plausible economic
22 methodology to demonstrate that proof of impact is possible on a classwide basis. Id.
23 at 12.

24 For that purpose, plaintiffs submit the declaration of Dr. Janet Netz ("Dr. Netz"),
25 who has opined that Unocal's alleged anticompetitive behavior reduced the supply of
26 RFG, increased the cost of producing RFG, and therefore caused RFG retail prices to
27 inflate a measurable amount above what the prices would have been absent Unocal's
28

1 alleged illegal conduct. *Id.*; Netz Decl. ¶¶ 47-64. Dr. Netz testifies that Unocal's
2 alleged illegal conduct decreased the RFG supply by causing the reduction of (1) the
3 capacity of refineries that were updated to conform to CARB Phase 2 standards; (2)
4 other production of CARB-compliant summertime gasoline in California; and (3)
5 imports of CARB-compliant summertime gasoline into California. Mot. at 13; Netz
6 Decl. ¶ 50. Dr. Netz testifies that Unocal's conduct increased the cost of producing
7 RFG because gasoline producers incurred (1) costs of blending around Unocal's
8 patents; (2) royalty costs paid by refiners who licensed Unocal's patents; (3) capital and
9 operating expenditures that were higher than would be expected absent the stricter
10 CARB regulations influenced by Unocal's conduct; and (4) patent litigation costs and
11 uncertainty. Mot. at 13; Netz Decl. ¶¶ 53-60.

12 Dr. Netz testifies that these changes affected the entire RFG market because
13 RFG is a fungible commodity, supply of RFG is constrained geographically and by
14 refiner capacity, and therefore pricing of the RFG wholesale market is impacted
15 primarily by the highest marginal cost refiner; i.e, the refiner with the highest marginal
16 costs. Netz Decl. ¶¶ 21-22, 61.⁶ Plaintiffs argue that Unocal's conduct would have
17 necessarily affected the entire price structure for RFG by increasing the costs of the
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19
20 ⁶Dr. Netz testifies:

21 Competition tends to drive price down as firms attempt to attract additional
22 customers. If the lower price attracts a sufficiently large increase in
23 customers, profits from the new customers will more than make up for the
24 reduction in profit per unit. However, if the firm has a capacity constraint,
25 there is a limit to how many new customers a firm can actually serve. If a
26 firm is already producing as much as it can, there is no point to reducing
27 price (and hence profit), because the firm will not be able to sell anymore.
28 Thus, the price charged in the marketplace for RFG is the price that is
charged by the refiner with the highest production costs.

Netz Decl. ¶ 21.

1 highest marginal cost refiner because the rest of the wholesale market will key off of
2 that refiner's pricing. Mot. at 13; Netz Decl. ¶¶ 21-22, 61. According to Dr. Netz, if
3 the highest marginal cost refiner's costs rise, that refiner "will raise the price it charges
4 in order to recoup the increased costs. . . . Competing firms will likewise raise their
5 prices. There is no incentive for competing firms to charge a lower price; they cannot
6 hope to gain market share from the relatively lower price in the presence of the capacity
7 constraint. In other words, when the marginal producer's costs rise, the entire price
8 structure shifts upwards. Individual consumers may pay different prices, but all
9 consumers will pay higher prices." Netz Decl. ¶ 22. Dr. Netz testifies that in these
10 circumstances there will be a "pass-through" of changes in upstream costs to
11 downstream consumers in the form of increased downstream prices. Id. ¶ 62. Dr. Netz
12 opines that, regardless of variations in individual sales of RFG by geographic location,
13 level of resale or grade, the aggregate result of higher costs for the highest marginal
14 cost refiner will give rise to an identifiable pattern of price pass-through, which is
15 described by the "pass-through rate." Id. ¶¶ 63, 65-73. Dr. Netz asserts that numerous
16 peer-reviewed economic studies have shown that costs at the wholesale level for
17 California RFG are passed on to the end consumer at a pass-through rate that is near or
18 equal to 100%. Id. ¶ 64. According to Dr. Netz, Unocal's alleged anticompetitive
19 conduct shifted the entire price structure of RFG upwards, such that all class members
20 pay supra-competitive prices, although individual class members may have suffered
21 varying degrees of harm. Id. ¶¶ 65-66.

22 Unocal argues that the alleged increased costs of refiners varied significantly by
23 refiner and over time, making common proof of impact impossible. Opp'n at 11. First,
24 Unocal contends that royalty costs and patent infringement and litigation costs were
25 only incurred by a portion of refiners during limited periods of time. Next, as to blend
26 around costs, Unocal asserts that refiners believed the Unocal patents were invalid, and
27 therefore made little or no effort to blend around them. Id. at 12; Enson Decl., Exs. 10-
28 14. Unocal also argues that wholesale and retail prices varied significantly among

1 different distribution channels, and therefore individual proof will be required to show
2 harm to each consumer. Opp'n at 13. Unocal asserts that, in the California gasoline
3 distribution system, gasoline goes from refiners to consumers by several different types
4 of gas stations which are supplied by different distribution channels and are charged
5 different wholesale prices. Id. Unocal further contends that prices vary by geographic
6 location, as well as within the same geographic area in response to local competition.
7 Id. at 14. Unocal argues that, as a result of these variations in the RFG market,
8 common issues do not predominate.

9 Unocal challenges Dr. Netz's opinion that the highest marginal cost refiner
10 determines the wholesale RFG price. Unocal contends that Dr. Netz admitted at
11 deposition that she does not know whether this is, in fact, true, and that Dr. Netz
12 admitted that she had not done the requisite analysis to know whether her hypothetical
13 model reflects the California RFG market. Opp'n at 15 (citing Netz Depo. at 241:18-
14 244:12, etc.). Unocal also challenges Dr. Netz's opinion that Unocal's alleged conduct
15 reduced the supply of RFG, and asserts that Dr. Netz admitted at her deposition that she
16 has not analyzed whether supply was actually reduced during the class period, or
17 whether any such decrease was caused by Unocal's patents. Unocal argues that Dr.
18 Netz's testimony "does not eliminate the significant issues that must be resolved on an
19 individual basis to determine at the threshold whether particular purchasers suffered
20 any injury at all." Opp'n at 17.

21 Plaintiffs respond, in their reply, that much of Unocal's opposition consists of
22 improper arguments regarding the factual merits of the case. Plaintiffs assert that Dr.
23 Netz proposes to account for changes in the market over time by utilizing regression
24 analysis. Reply at 11. Plaintiffs also contend that Unocal's expert economic witness in
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1 prior patent and FTC litigation, Dr. David Teece, made similar conclusions about the
2 RFG market as Dr. Netz, which conclusions Unocal now challenges.⁷

3 The Court concludes that, in light of Dr. Netz's testimony, plaintiffs have
4 satisfied their burden of showing an available method of providing impact by evidence
5 applicable on a classwide basis. The economic model for the RFG market proposed by
6 Dr. Netz depends upon classwide proof, rather than individual issues. Such economic
7 models have been accepted by other courts as evidence of common proof of impact for
8 purposes of class certification in antitrust cases involving allegations of overcharges.
9 See, e.g., In re Terazosin Hydrochloride Antitrust Litig., 220 F.R.D. 672, 697 (S.D. Fla.
10 2004); In re Cardizem CD Antitrust Litig., 200 F.R.D. 326, 340-41, 348 (E.D. Mich.
11 2001).⁸ Dr. Netz purports to account for variations in price by time and geographic
12 location in her regression analyses. Further, Dr. Netz contends that, although factors
13 like geographic location, channel of distribution, or grade of RFG have an effect upon

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15 ⁷Plaintiffs submitted the expert reports of Dr. David Teece under seal. See Tse
16 Decl., Exs. 1, 4. Dr. Teece testified on behalf of Unocal as an expert in economics in prior
17 patent litigation, Atlantic Richfield Co., et al., v. Unocal Corp. and Union Oil Co. of Cal.,
18 Case No. CV 95-2379 KMW (JRx), as well in the FTC's case against Unocal, FTC Docket
19 No. 9305. Plaintiffs also submit the expert report of Dr. Carl Shapiro, the FTC's expert
20 economist in the litigation with Unocal. Tse Decl., Ex. 3, at 32.

21 ⁸Unocal attempts to distinguish these and other cases, upon which plaintiffs rely,
22 as dealing with price-fixing conspiracies, as to which injury is more easily proved on a
23 classwide basis. See Opp'n at 9-10. Unocal may be correct that it is easier to prove
24 classwide harm in a price-fixing case. See In re Playmobil Antitrust Litig., 35 F. Supp. 2d
25 231 (E.D.N.Y. 1998) ("It is well established that class actions are particularly appropriate
26 for antitrust litigation concerning price-fixing schemes because price-fixing presumably
27 subjects purchasers in the market to common harm."). However, although Unocal
28 contends that consumers paid different prices depending upon the refiner, distribution
channel, location, and grade of RFG, plaintiffs have presented a method for proving the
existence of antitrust injury on a classwide basis that would take into account such
variations, and would apply despite such variations. Indeed, "in actions charging
conspiracy to monopolize, the same approach has been taken as in price-fixing cases" as
to whether the requirements of Rule 23 are satisfied. 6 Herbert B. Newberg and Alba
Conte on Class Actions § 18:29 (4th ed. 2006) (hereinafter "Newberg").

1 the price paid by individual consumers, Unocal's alleged antitrust conduct would have
2 increased costs, and therefore prices, across the board. See Netz Decl. ¶¶ 65-73.

3 Unocal's challenges to the evidence supporting Dr. Netz's conclusions go to the
4 merits, and not to the issue of whether plaintiffs' antitrust claim is susceptible to
5 classwide proof of impact. See In re Lorazepam & Clorazepate Antitrust Litig., 202
6 F.R.D. 12, 29 (D.D.C. 2001) ("The plaintiffs intend to prove that through the
7 defendants' monopolization, they were able to hike and sustain prices of lorazepam and
8 clorazepate at artificially high levels causing antitrust injury. Needless to say, the
9 plaintiffs do not have to actually prove the injury at this stage; rather, they must
10 demonstrate that their attempt to evidence impact will involve common issues that
11 predominate"); In re Polypropylene Carpet Antitrust Litig., 178 F.R.D. 603, 618 (N.D.
12 Ga. 1997) (observing that "at the class certification stage, Plaintiffs must show that
13 antitrust impact can be proven with common evidence on a classwide basis; Plaintiffs
14 need not show antitrust impact in fact occurred on a classwide basis."). In any event,
15 although Unocal asserts that Dr. Netz has little or no evidence that supply of RFG was
16 reduced during the class period, footnotes 75-78 to Dr. Netz's declaration cite
17 numerous articles, studies, and testing documenting a reduction in supply of RFG, and
18 opining that such reduction was caused by Unocal's conduct at issue in this case.
19 Further, the fact that Unocal's prior expert, Dr. Teece, came to similar conclusions
20 about the RFG market as Dr. Netz also lends support to Dr. Netz's opinion that impact
21 can be proven on a classwide basis.

22 Unocal's arguments regarding the complexity of the RFG market are also
23 unpersuasive. Other courts have rejected similar arguments by defendants in antitrust
24 cases. For example, in In re Commercial Tissue Products Antitrust Litig., 183 F.R.D.
25 589, 595 (N.D. Fla. 1998), the court rejected defendants' argument that "the individual
26 questions of fact and law predominate over the general questions of law and fact
27 because the price paid by each [class member] was determined through an elaborate
28 system of individualized negotiations, contracts and rebates. . . . Because pricing in the

1 industry is allegedly so individualized, the plaintiffs will be unable to show any
2 consistent classwide relationship between the acts of the defendants and the prices paid
3 by class members. Or at the very least, argue the defendants, proving such impact will
4 require infinite mini-trials concerning the price actually paid by each class member.”

5 As discussed by the court in In re Cardizem, “courts have routinely rejected similar
6 arguments, despite differences in prices paid by class members, where the plaintiffs
7 show that the minimum baseline for beginning negotiations, or the range of prices
8 which resulted from negotiations, was artificially raised (or slowed in its descent) by
9 the collusive actions of the defendants. 200 F.R.D. at 345 (internal quotations and
10 citation omitted). Similarly, in In re NASDAQ Market-Makers Antitrust Litig., the
11 court observed that “[n]either a variety of prices nor negotiated prices is an impediment
12 to class certification if it appears that plaintiffs may be able to prove at trial that ... the
13 price range was affected generally.” 169 F.R.D. 493, 523 (S.D.N.Y. 1996). Here,
14 plaintiffs assert that, although there were variations in prices paid by class members,
15 the overall price for RFG increased as a result of Unocal’s alleged illegal conduct.
16 Thus, plaintiffs have established that antitrust impact may be proven on a classwide
17 basis. To the extent that Unocal argues that complexities of the RFG market will
18 necessarily result in individualized inquiries, such individualized examinations “will
19 relate to the quantum of damages, not the fact of injury.” In re Terazosin, 220 F.R.D. at
20 697 (quoting In re Cardizem, 200 F.R.D. at 307).

21 (ii) Classwide Proof of Damages

22 Plaintiffs argue that Dr. Netz has proposed several methods to measure damages,
23 which consist of the overcharge caused by Unocal’s alleged illegal conduct, on a
24 common basis. According to Dr. Netz, the resulting overcharge is calculated by first
25 determining the price that would have been charged absent Unocal’s alleged conduct
26 (the “but for” or “counterfactual price”), and subtracting the counterfactual price from
27 the actual price paid by class members. Netz Decl. ¶ 74. The overcharge can also be
28 represented by a percentage of the actual price. Id. To calculate the counterfactual

1 price, Dr. Netz proposes various regression models that would measure the impact of
2 Unocal's alleged conduct on prices, and control for the part of price that is determined
3 by other variables. Id. ¶ 85. For example, Dr. Netz testifies that one could use
4 regression analysis to (1) isolate, controlling for other variables, that portion of the
5 price increase that is attributable to Unocal's alleged anticompetitive conduct; (2)
6 estimate the total change in price after March 1996 and reduce it by estimates of price
7 increases not due to Unocal's conduct; or (3) measure the impact of Unocal's conduct
8 using comparison markets as control groups in a "differences-in-differences"
9 regression. Id. ¶¶ 86-88, 92-96. Dr. Netz also proposes various "disaggregated
10 methods" that may be used to calculate the magnitude of price increases arising from
11 specific sources, and may be used in conjunction with a regression analysis to isolate
12 the portion of price increase due to Unocal's alleged illegal conduct. Id. ¶ 103.

13 Plaintiffs contend that Dr. Netz may use these methods to determine damages on a per
14 gallon basis at the wholesale level, and then employ standard regression techniques to
15 measure the amount of damages passed through to retail customers. Mot. at 18; Netz
16 Decl. ¶ 76. Dr. Netz also proposes an alternative method of calculating harm to the
17 retail market on a per gallon basis, without examining pass-through, by directly
18 determining the effect of Unocal's alleged conduct on retail prices. Netz Decl. ¶¶ 77,
19 140. Plaintiffs contend that these methods may be used to calculate aggregate
20 damages, as well as damages to individual class members.

21 Unocal argues that plaintiffs fail to identify a common formulaic method by
22 which damages may be calculated. Unocal again contends that the alleged reduction in
23 supply "did not occur at any one time or have effects that persisted over the entire class
24 period" and therefore "[s]eparate calculations will be required for each of these various
25 time periods, as well as for all the permutations in between." Opp'n at 18. Unocal
26 similarly asserts that the alleged increased costs depend on the particular date on which
27 a consumer purchased RFG because any increased costs were not constant. Unocal
28 further argues that other individual issues exist depending on the location and identity

1 of the refiner from whom the consumer purchased RFG. Unocal asserts that Dr. Netz's
2 testimony regarding available damages calculation methods "amounts to a request that
3 the court have faith [that] some solution will be found," rather than proposing a
4 particular appropriate formula for the instant case. *Id.* at 21.

5 "The individuation of damages in consumer class actions is rarely determinative
6 under Rule 23(b)(3). Where [] common questions predominate regarding liability, then
7 courts generally find the predominance requirement to be satisfied even if individual
8 damages issues remain." Smilow v. Southwestern Bell Mobile Sys., Inc., 323 F.3d 32,
9 40 (1st Cir. 2003) (citing Bogosian v. Gulf Oil Corp., 561 F.2d 434, 456 (3d Cir.
10 1977); Gold Strike Stamp Co. v. Christensen, 436 F.2d 791, 798 (10th Cir.1970); 5
11 James Wm. Moore, Moore's Federal Practice § 23.46[2][a], at 23-208 & n. 11 (3d ed.
12 1997 & Supp. 2006) (collecting additional cases); Blackie v. Barrack, 524 F.2d 891,
13 905 (9th Cir.1975) ("The amount of damages is invariably an individual question and
14 does not defeat class action treatment.")). In Klay v. Humana, Inc., the Eleventh
15 Circuit observed that, "[p]articularly where damages can be computed according to
16 some formula, statistical analysis, or other easy or essentially mechanical methods, the
17 fact that damages must be calculated on an individual basis is no impediment to class
18 certification." 382 F.3d 1241, 1259 -1260 (11th Cir. 2004); see also Smilow, 323 F.3d
19 at 40 (same); 5 Moore, *supra*, § 23.46[3], at 23-210 & n.18 (collecting cases holding
20 that class certification is appropriate where damages are calculable by mathematical
21 formula); In re Rubber Chems. Antitrust Litig., 232 F.R.D., at 354.

22 The Court concludes that plaintiffs have come forward with plausible economic
23 methodologies to calculate damages on a classwide basis. Courts routinely accept
24 regression and statistical analyses as providing a means for proving a classwide
25 measure of damages. See, e.g., In re Cardizem, 200 F.R.D. at 348. Plaintiffs need not
26 specify the particular method that will be used. See In re NASDAQ, 169 F.R.D. at 522
27 ("It is sufficient to note at this stage that there are methodologies available, and that
28 Rule 23(c)(1) and (d) allow ample flexibility" to deal with the individual damages

1 issues that may develop. . . . The Court need not decide at this juncture what approach
2 is best suited to the particularities of this case.”); In re Cardizem at 349-50
3 (“Defendants’ complaints that Plaintiffs’ methodology and its damage calculations are
4 too imprecise for class certification are to no avail. At the class certification stage, it is
5 not necessary to identify specific benchmarks or methodology to ascertain the amount
6 of damages.”); In re Lorazepam & Clorazepate, 202 F.R.D. at 30 (“The plaintiffs’
7 expert here has provided several reasonable approaches to calculating damages. . . .
8 For example, the plaintiffs propose that damages can be calculated in the aggregate for
9 the class as a whole, with allocation to particular class member to be accomplished
10 after trial through an administrative claims procedure.”); In re Domestic Air Transp.
11 Antitrust Litig., 137 F.R.D. 677, 693 (N.D. Ga. 1991) (“It is not necessary that
12 plaintiffs show that [their expert]’s methods will work with certainty at this time.
13 Rather, plaintiffs’ burden is to present the Court with a likely method for determining
14 class damages.”). Indeed, “if individual damage questions were a barrier to class
15 certification, there would be little if any place for the class action device in the
16 adjudication of antitrust claims.” In re NASDAQ, 169 F.R.D. at 524.

17 The Court concludes that plaintiffs have satisfied their burden of showing that
18 classwide methods for proving damages exist.

19 **b) Superiority**

20 In addition to a predominance of common questions, a class proponent must also
21 demonstrate that the class action is superior to other methods of adjudicating the
22 controversy. See Valentino, 97 F.3d at 1235 (explaining that the party seeking
23 certification needs to make a “showing [as to] why the class mechanism is superior to
24 alternative methods of adjudication”). A class action may be superior where “class-
25 wide litigation of common issues will reduce litigation costs and promote greater
26 efficiency.” Valentino, 97 F.3d at 1234. Rule 23(b)(3) provides the following non-
27 exhaustive list of four factors to consider in this assessment:
28

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1 (A) the interest of members of the class in individually controlling the
2 prosecution or defense of separate actions;

3 (B) the extent and nature of any litigation concerning the controversy
4 already commenced by or against members of the class;

5 (C) the desirability or undesirability of concentrating the litigation of
6 the claims in the particular forum;

7 (D) the difficulties likely to be encountered in the management of a
8 class action.

9 Fed. R. Civ. P. 23(b)(3).

10 The greater the number of individual issues to be litigated, the more difficult it
11 will be for the court to manage the class action. See, e.g., Dalkon Shield, 693 F.2d at
12 856. Thus, a class action is improper where an individual class member would be
13 compelled to try “numerous and substantial issues to establish his or her right to
14 recover individually, after liability to the class is established.” Schwarzer et al., supra,
15 at § 10:361. On the other hand, the fact that individual members seek separate
16 damages is not fatal to class treatment. Id.

17 Plaintiffs argue that each class member’s individual claim is likely so small that
18 class members have little interest in a costly individual action and that, because class
19 members’ claims are virtually identical, no one member of the class would have an
20 interesting in controlling the litigation. Mot. at 21. Plaintiffs contend that they are
21 aware of no other litigation concerning the instant controversy. Plaintiffs further argue
22 that it is desirable to concentrate litigation of these claims in this forum, selected by the
23 Judicial Panel on Multidistrict Litigation, in order to maximize efficiency. Id. at 22
24 (citing In re Compact Disc Minimum Advertised Price Antitrust Litig., 216 F.R.D. 197,
25 206 (D. Me. 2003)). Finally, plaintiffs contend that management difficulties are likely
26 to be lessened in this case because common issues predominate, and that, in any event,
27 courts generally should not deny class certification over manageability concerns. Id.
28 (citing In re Visa Check/MasterMoney Antitrust Litig., 280 F.3d 124, 140 (2d Cir.

1 2001) (“[F]ailure to certify an action under Rule 23(b)(3) on the sole ground that it
 2 would be unmanageable is disfavored and should be the exception rather than the
 3 rule.”) (internal quotation marks and citation omitted).⁹

4 Unocal argues that plaintiffs’ proposed class is inherently unmanageable because
 5 the case involves potentially thousands of transactions for each class member, and class
 6 members likely do not have adequate records of their purchases. Unocal contends that
 7 the named plaintiffs have only partial records of their own purchases for the most
 8 recent years of the class period, and these records do not show the number of gallons
 9 purchased or the price per gallon.¹⁰ Opp’n at 22 (citing In re Phenylpropanolamine
 10 (PPA) Products Liab. Litig., 214 F.R.D. 614, 619-20 (W.D. Wash. 2003) (“Because the
 11 vast majority of putative class members are unlikely to possess proof of purchase, and
 12 given the purportedly immense size of this class, the individualized inquiries
 13 surrounding class identification would be prodigious and would defy the court’s ability
 14 to effectively and efficiently manage the litigation.”). In their reply, plaintiffs respond
 15

16
 17 ⁹The Court notes that in In re Initial Public Offering Securities Litig., 471 F.3d 24
 18 (2d Cir. 2006), the Second Circuit disapproved of the standard of proof for class
 19 certification employed in In re Visa Check/MasterMoney Antitrust Litig.

20 ¹⁰Unocal further argues that these problems will not be resolved by the use of
 21 aggregate damages or fluid recovery. Regarding common proof of damages, plaintiffs
 22 contend in their motion that the Cartwright Act “specifically allows the utilization of
 23 aggregate, statistical, or sampling methods with a pro rata allocation of illegal overcharges
 24 or excess profits.” Mot. at 15 (citing Cal. Bus. & Prof. Code § 16760(d); Bruno v.
 25 Superior Court, 127 Cal. App. 3d 120, 135 n.9 (1981)). Unocal contests this point, and
 26 argues that, with the exception of price-fixing cases, under California law each class
 27 member must come forward and prove the amount of damages before recovery, and that
 28 fluid recovery is not a substitute for resolving individual claims. Opp’n at 24. In their
 reply, plaintiffs explain that they do not propose that aggregate damages or fluid recovery
 will replace individual claims of class members; rather, plaintiffs suggest the use of fluid
 recovery to distribute any funds that remain unclaimed after individual class members
 make claims. Reply at 23. In light of the Court’s conclusion that the action is
 manageable, the Court need not consider the permissibility of fluid recovery at this time.

1 that proofs of purchase are not required for certification, and that a well-designed
2 claims process will identify RFG purchases. Reply at 21-22.¹¹

3 The Court concludes that the action appears, at this time, to be sufficiently
4 manageable. Failure to certify an action under Rule 23(b)(3) on the sole ground that it
5 would be unmanageable is disfavored and “ ‘should be the exception rather than the
6 rule.’ ” In re S. Cent. States Bakery Prods. Antitrust Litig., 86 F.R.D. 407, 423 (M.D.
7 La. 1980) (quoting Manual for Complex Litigation, § 1.43 n. 72 (1977)); see also
8 Mitchell-Tracey v. United General Title Ins. Co., 237 F.R.D. 551, 560 (D. Md. 2006);
9 In re Workers' Compensation Ins. Antitrust Litig., 130 F.R.D. 99, 110 (D. Minn. 1990)
10 (stating that “dismissal for management reasons is never favored”). In re
11 Phenylpropanolamine (PPA) Products, upon which Unocal relies, does not counsel a
12 different result. In that case, the court found the plaintiffs’ proposed class action
13 unmanageable. The court noted that members of the class were not identifiable
14 because individuals would be required to show “purchase and possession of a
15 non-expired PPA-containing product as of November 6, 2000,” in order to qualify for
16 membership in the proposed class, but “only a quarter of the class, at most, would
17 likely possess any physical proof of purchase” and a “determination as to the remainder
18 of the class would rely on the memories of those individuals as to the types, amounts,
19 and expiration dates of medication they possessed over two years ago.” 214 F.R.D. at
20 617. Further, “[p]utative class members would be asked to distinguish, now over two
21 years after the fact, between defendants’ various products and the various formulations
22 of those products, many of which differed only slightly in name and packaging.” Id. at
23 618. However, unlike the product at issue in that case, RFG was the only gasoline
24 available in the summertime in California during the class period. As such,
25

26
27
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¹¹Plaintiffs submit the expert declaration of Tiffany A. Allen, a principal consultant
at Rust Consulting, who testifies that a well-designed claim form can assist in identifying
RFG purchases, in addition to those purchases identified through class members’ existing
purchase records.

1 identification of the class will be considerably easier. Further, at this stage, it is
2 speculative to assert that only a minority of class members will possess proof of
3 purchase or other evidence sufficient to establish individual proof of damages. Indeed,
4 plaintiffs contend that many class members are likely to have proof of RFG purchases,
5 and that Unocal may have records of such purchases made by use of purchase credit
6 cards. Reply at 20.

7 Further, the Court has at its disposal various methods to deal with case
8 management issues. As the Seventh Circuit in Carnegie v. Household Intern., Inc., 376
9 F.3d 656 (7th Cir. 2004), noted,

10 Rule 23 allows district courts to devise imaginative solutions to problems
11 created by the presence in a class action litigation of individual damages
12 issues. These solutions include “(1) bifurcating liability and damage trials
13 with the same or different juries; (2) appointing a magistrate judge or
14 special master to preside over individual damages proceedings; (3)
15 decertifying the class after the liability trial and providing notice to class
16 members concerning how they may proceed to prove damages; (4)
17 creating subclasses; or (5) altering or amending the class.”

18 Id. at 661 (quoting In re Visa Check/MasterMoney, 280 F.3d at 141); see also Newberg
19 on Class Actions § 10:12 (“When classwide damages are amenable to proof by the
20 class representative, a lump sum damage award is possible on behalf of the class. . . . If
21 the plaintiff prevails, individual damages may be distributed to class members on the
22 basis of the defendant's records or according to an apportionment plan based on public
23 data, thus eliminating the need for proof of claims by class members. Where such
24 distribution is not possible, per capita or average damage distribution may be made or
25 individual proof of claims may be necessary. Such individual claims may be processed
26 by a special master or by a committee of counsel appointed by the court.”). Further,
27 should complications in calculating damages for individual class members appear
28

1 evident, this Court has the option, under Rule 23(c)(1), to alter or amend its class
2 certification order before a decision is rendered on the merits.

3 **2. Plaintiffs' Unfair Competition Claim**

4 Plaintiffs assert that common impact and damages for their unfair competition
5 claim, pursuant to Cal. Bus. & Prof. Code § 17200 (the "UCL"), can be demonstrated
6 using virtually the same evidence that will be used regarding plaintiffs' antitrust
7 claims. Unocal responds that plaintiffs' UCL claims fail to meet the requirements of
8 Rule 23(b)(3) for the reasons already discussed regarding plaintiffs' antitrust claims.

9 The Court concludes that plaintiffs' unfair competition claim is based upon the
10 same alleged conduct giving rise to plaintiffs' antitrust claims and involves the same or
11 similar issues. As discussed above, these issues are susceptible to classwide proof. As
12 such, plaintiffs have satisfied their burden under Rule 23 as to their unfair competition
13 claim.

14 **3. Plaintiffs' Unjust Enrichment Claim**

15 To prove unjust enrichment, plaintiffs must prove the "receipt of a benefit and
16 unjust retention of the benefit at the expense of another." Hirsch v. Bank of America
17 N.A., 107 Cal. App. 4th 708, 717 (2003). Plaintiffs argue that Unocal's unjust
18 enrichment will be proved on a classwide basis, and that restitution will be measured
19 by the profits or overcharges received by Unocal. Mot. at 20 (citing In re Cardizem CD
20 Antitrust Litig., 200 F.R.D. at 352).

21 Unocal responds that the alleged benefit conferred upon Unocal, like plaintiffs'
22 other claims, turns upon "individual proof about whether and the degree to which
23 particular class members in fact incurred any such overcharge." Opp'n at 25 n.15.

24 The Court concludes that plaintiffs' unjust enrichment claim is based upon the
25 same or similar issues presented by plaintiffs' antitrust claim. As discussed above,
26 these issues are susceptible to classwide proof. As such, plaintiffs have satisfied their
27 burden under Rule 23 as to their unjust enrichment claim.

C. Appointment of Class Representatives and Lead Class Counsel

Plaintiffs request the appointment of Caleb Kleppner, Corrine Sealey, Christopher Sheppard, Stephen Buckser, Asher Rubin, Jeffrey Rubin, Corey Rosen, Gail Harper, and Michael Shames as class representatives. Plaintiffs also seek the appointment of their counsel of record as class counsel. Plaintiffs assert that proposed lead counsel “have extensive experience and expertise with the antitrust laws, as well as other complex civil litigation, including class actions, and have litigated such cases in courts throughout the country.” Mot. at 23. Plaintiffs also assert that counsel have devoted considerable resources to the prosecution of this case.

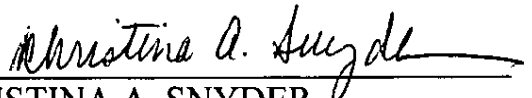
Unocal apparently does not object to the appointment of class representatives and co-lead class counsel. Accordingly, plaintiffs’ request is GRANTED. The Court appoints the following law firms as co-lead class counsel: Berman DeValerio Pease Tabacco Burt & Pucillo; Finkelstein Thompson LLP; Kirby McInerney & Squire LLP; and Pomerantz Haudek Block Grossman & Gross LLP. Milberg Weiss & Bershad LLP is appointed as Liaison Counsel.

IV. CONCLUSION

In accordance with the foregoing, plaintiffs’ motion for class certification is hereby GRANTED. Plaintiffs’ request to appoint class representatives and class counsel is GRANTED.

IT IS SO ORDERED.

Dated: March 27, 2007


CHRISTINA A. SNYDER
United States District Judge