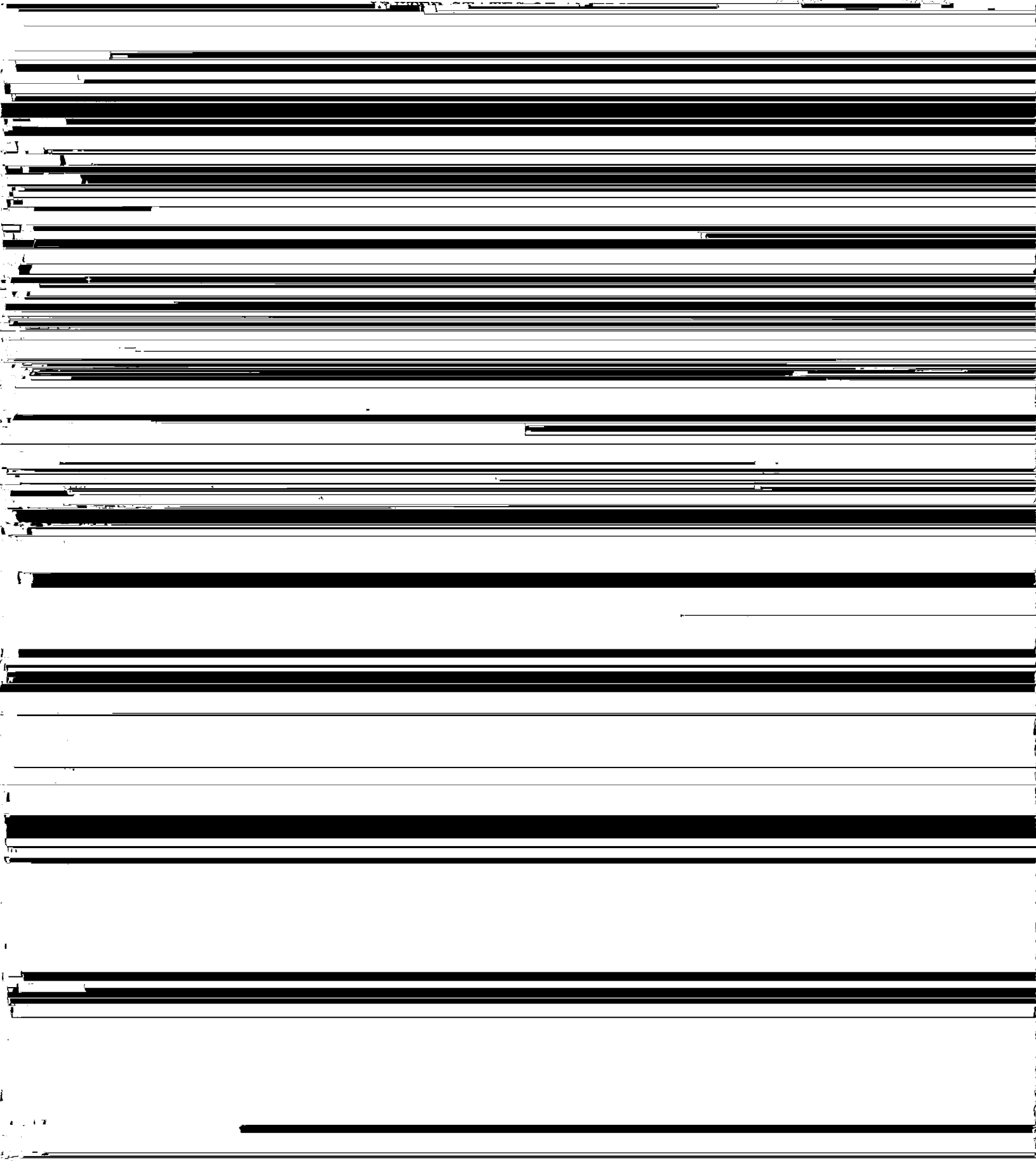
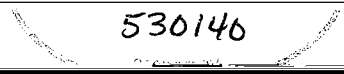


ORIGINAL

PUBLIC



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refined product, including gasoline, diesel, and other light petroleum products. Answering Defendants deny any remaining allegations in paragraph 4.

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

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

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

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

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

Answering Defendants deny any remaining allegations in paragraph 14.

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

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

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

[REDACTED]

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

Answering Defendants deny any remaining allegations in paragraph 20.

21. Answering Defendants admit on information and belief that the Plains pipeline originates at the Western refinery, and deny any remaining allegations in paragraph 20.

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

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

22. Answering Defendants admit that Western owns and operates a refinery complex

therefore denied.

28. Denied.

29. Answering Defendants admit that in certain circumstances Western can increase

to this paragraph.

41. Denied.

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

- 10) Answering Defendants reserve the right to assert other defenses as they become known to Answering Defendants.

WHEREFORE Answering Defendants respectfully requests that the ALJ (i) deny the

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*Attorneys for Defendants Paul L. Foster and  
Western Refining, Inc.*



# NOTICE OF APPEARANCE



CASE NAME  
In the Matter of Paul L. Foster, Western

FILE/DOCKET NUMBER  
No. D09323

► Pursuant to Section 4.1 of the Commission's Rule of Practice, enter in the above proceeding the appearance of

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

counsel supporting the complaint (Complete items 1, 3, 4, and 5 below)

### 1. COUNSEL OR REPRESENTATIVE

Include name, address and telephone of each

Marc G. Schildkraut

### 2. RESPONDENTS

Include address and telephone numbers of all persons, partnerships, corporations, or associations

Paul L. Foster

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

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

Docket No. D09323

PUBLIC

DECLARATION OF MARGO SCHNEIDERMAN

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

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

Docket No. D09323

PUBLIC

**DECLARATION OF MICHAEL P. A. COHEN**

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

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

2. I am a member of the Bar of the District of Columbia (Bar No. 435024) and the Commonwealth of Virginia (Bar No. 31584). I am admitted to practice before the United States Supreme Court, the United States Courts of Appeals for the D.C. Circuit, ~~the United States Court of Appeals for the Fourth Circuit, the United States District Court~~

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

In the Matter of

Paul L. Foster,

**Docket No. D09323**

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**DECLARATION OF KATHERINE E. WOOD**

I, Katherine Elizabeth Wood, declare as follows:

1. I am an attorney with the law firm of Heller Ehrman LLP, counsel for


**CERTIFICATE OF SERVICE AND COMPLIANCE**

I, Nara Neves, hereby certify that on May 23 2007 copies of the foregoing

were served as indicated:

**Tom D. Smith**  
**Jones Day**  
**51 Louisiana Avenue NW**  
**Washington, DC 20001**  
**Tel: 202-879-3971**  
tdsmith@jonesday.com  
(Via e-mail and hand delivery)

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

  
Nara Neves  
HELLER EHRMAN LLP  
202.912.2638