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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF LOS ANGELES

10 CENTRAL DISTRICT

11 M. O. DION & SONS, INC., a California
corporation; and AMBER RESOURCES,
12 LLC, a California limited liability company,

13 Plaintiff,

14 v.

15 VP RACING FUELS, INC., a Texas
corporation; ALAN B. CERWICK, an
16 individual; SUSAN G. GRAY, an individual;
BRUCE HENDEL, an individual; and DOES
17 1-100, inclusive,

18 Defendants.

CASE NO.

COMPLAINT FOR:

- 19 (1) **BREACH OF CONTRACT;**
- (2) **BREACH OF WARRANTIES;**
- (3) **NEGLIGENCE;**
- (4) **VIOLATION OF CALIFORNIA
FALSE ADVERTISING LAW, BUS. &
PROF. CODE §§ 17500 ET SEQ.;**
- (5) **VIOLATION OF CALIFORNIA
UNFAIR COMPETITION LAW, BUS.
& PROF. CODE §§ 17200 ET SEQ.;**
- (6) **FRAUD;**
- (7) **NEGLIGENT
MISREPRESENTATION;**
- (8) **DECLARATORY RELIEF; AND**
- (9) **BREACH OF AGREEMENT TO
NEGOTIATE**

JURY TRIAL DEMANDED

1 Plaintiffs M. O. Dion & Sons, Inc. (“Dion”) and Amber Resources, LLC (Dion and Amber
2 Resources, LLC, collectively, “Dion” or “Plaintiff”) allege:

3 **NATURE OF CLAIM**

4 1. Defendants are (i) a Texas company that manufactures and sells racing fuels in
5 California and other states, (ii) its majority owner and President, (iii) its Chief Financial
6 Officer/General Counsel, and (iv) its Vice President in charge of North American sales. Plaintiff,
7 a California company, is a full service petroleum distributor that, until recently, distributed in
8 Southern California, among other places, the racing fuels manufactured by the Defendants. For
9 nearly 90 years, Plaintiff prided itself on its excellent business reputation, ethical standards,
10 integrity, and quality products and services to its customers. Plaintiff recently learned that, after
11 an ownership change of Defendant-company in about 2014, the Defendants—knowingly and
12 intentionally—implemented a fraudulent, unlawful, and unfair profit maximizing scheme, which
13 resulted in Defendants’ manufacture and sale to Plaintiff and others racing fuels with lower octane
14 ratings than the Defendants represented, Defendants’ surreptitious substitution of cheaper
15 components in its racing fuels which did not perform in place of its more expensive fuel
16 components that had performed, Defendants’ manufacture and sale of adulterated racing fuels,
17 Defendants’ false advertising to Plaintiff and others regarding its racing fuels, and Defendants’
18 other fraudulent, unlawful, and unfair acts as alleged below. On June 4, 2019, Plaintiff cancelled
19 and ended its distribution agreement with the Defendant-company, and now brings this action
20 against all Defendants for damages, injunctive relief, restitution, punitive damages, interest, costs,
21 and reasonable attorneys’ fees as allowed by law.

22 **THE PARTIES**

23 2. Plaintiff Dion is, and at all relevant times was, a corporation organized under the
24 laws of the State of California, with its principal place of business at 1543 W. 16th Street, Long
25 Beach, CA 90813. Dion and its division, Amber Racing Services (collectively referred to herein
26 as “Dion”), is engaged in the business of, among other things, selling a full line of petroleum
27 products, including racing fuels, in Southern California, among other places. Dion does not
28 distribute or sell racing fuels in Texas.

1 3. Plaintiff Amber Resources, LLC dba Sawyer Petroleum is, and at all relevant times
2 was, a limited liability company organized under the laws of the State of California, with its
3 principal place of business at 1543 W. 16th Street, Long Beach, CA 90813. Amber Resources,
4 LLC dba Sawyer Petroleum, along with Dion (collectively referred to herein as “Dion”), are
5 engaged in the business of, among other things, selling a full line of petroleum products, including
6 racing fuels, in Southern California, among other places. Amber Resources does not distribute or
7 sell racing fuels in Texas.

8 4. On information and belief, defendant VP Racing Fuels, Inc. (“VP” or “Defendant
9 VP”) is, and at all relevant times was, a corporation organized under the laws of the State of Texas
10 authorized to conduct and conducting business in California, with its principal place of business at
11 204 E. Rhapsody Drive, San Antonio, TX 78216. VP is engaged in the business of, among other
12 things, manufacturing and selling racing fuels in Southern California and elsewhere in the U.S.

13 5. On information and belief, Alan B. Cerwick (“Cerwick”) is, and at all relevant
14 times was, an individual residing in or around San Antonio, Texas, President of Defendant VP,
15 and, since about 2014, the majority owner of Defendant VP.

16 6. On information and belief, Susan G. Gray (“Gray”) is, and at all relevant times
17 was, an individual residing in or around San Antonio, Texas, and the Chief Financial Officer and
18 General Counsel (“CFO and GC”) of Defendant VP.

19 7. On information and belief, Bruce Hendel (“Hendel”) is, and at all relevant times
20 was, an individual residing in or around Riverside County, California and/or San Antonio, Texas,
21 and, since about 2017, Vice President in charge of VP’s North American sales (prior to 2017,
22 Hendel likewise was VP’s employee, but in a different role).

23 8. The true names and capacities, whether individual, corporate, or otherwise, of
24 defendants named herein as Does 1 through 100, inclusive, are presently unknown to Dion, who
25 therefore sues them under such fictitious names pursuant to California Code of Civil Procedure
26 section 474. Dion is informed and believes, and based thereon alleges, that Does 1 through 100,
27 inclusive, are in some way responsible for or participated in the wrongful conduct alleged herein
28 and are liable to Dion as alleged herein. Dion will amend the Complaint or, if necessary, seek

1 leave to amend the Complaint, to allege the true names and capacities of said Doe defendants
2 when the same are ascertained. VP, Cerwick, Gray, Hendel and Does 1 to 100, inclusive, are
3 hereinafter collectively referred to as “Defendants.”

4 9. At all relevant times, the wrongful actions alleged herein were taken by the owners,
5 executives, officers, directors, or employees of Defendant VP, were taken on behalf of all
6 Defendants, and were engaged in, authorized, ratified, and/or approved of by each Defendant.

7 10. Each Defendant is responsible for the damages and harm to Dion and subject to the
8 remedies as alleged herein, including but not limited to as an aider and abetter because each
9 Defendant knew that wrongful acts were going to be and/or were being committed by the other
10 Defendants against Dion, each Defendant gave substantial assistance or encouragement to the
11 other Defendant, and each Defendant’s conduct was a substantial factor in causing damages and
12 harm to Dion or in entitling Dion to the requested remedies. As a result, Dion is entitled to
13 damages in an amount to be proven at trial, including punitive damages, and the other requested
14 remedies, as against all Defendants.

15 11. Each Defendant is responsible for the damages and harm to Dion and subject to the
16 remedies as alleged herein because each Defendant was part of a conspiracy between and among
17 VP, Cerwick, Gray, Hendel, and other Defendants to commit the wrongful acts, each Defendant
18 was aware that the other coconspirator-Defendants planned to commit the wrongful acts, and each
19 Defendant agreed with the other coconspirator-Defendants and intended that wrongful acts as
20 alleged herein be committed. As a result, Dion is entitled to damages in an amount to be proven at
21 trial, including punitive damages, and the other requested remedies, against all Defendants.

22 12. Alternatively, all Defendants are responsible for the acts and damages alleged
23 herein on the following bases, among others: (a) Defendants committed the acts alleged; and/or
24 (b) at all relevant times, one or more of Defendants was the agent, representative, or employee,
25 and/or acted under the control or supervision, of one or more of the remaining Defendants and, in
26 committing the acts alleged, acted within the course and scope of such agency, representation,
27 and/or employment, and/or is or are otherwise liable for Dion’s damages.

1 **JURISDICTION AND VENUE**

2 13. This Court has jurisdiction over this action and all Defendants because all
3 Defendants, on information and belief, engage in significant business and other activities in the
4 State of California and the County of Los Angeles, including but not limited to the activities that
5 form the basis of this Complaint, and have conducted such business with knowledge that their acts
6 and omissions could affect, harm, and injure persons and/or entities in such jurisdiction.

7 14. Venue is proper in this judicial county pursuant to, *inter alia*, California Code of
8 Civil Procedure sections 392 and 395.5 because the contract at issue in the Complaint was entered
9 into, in part, in the County of Los Angeles, certain of Defendants’ obligations were to be
10 performed in this county, and certain of Defendants’ wrongful acts occurred in this county.

11 **FACTS COMMON TO ALL CAUSES OF ACTION**

12 **A. Plaintiff Dion**

13 15. Dion’s history goes back to around 1930 as a supplier of fuels and oils to Southern
14 California’s nascent oil well drilling industry. Today, Dion is, among other things, a full service
15 distributor of petroleum, including racing fuels, in Southern California. Dion specializes in,
16 among other things, providing unbranded fuel per customer requirements, racing fuels, lubricant
17 solutions and products (Shell, Petro-Canada and Safety-Kleen lubricants), mil-spec lubricants and
18 corrosion preventive products, and general purpose solvents. Dion is known for its excellent
19 business reputation, ethical standards, integrity, and quality products and services to its customers.
20 Dion’s reputation and its standards, painstakingly built over nearly 90 years, are extraordinarily
21 important and valuable to Dion and its customers. Dion does not distribute or sell racing fuels in
22 Texas.

23 16. At all relevant times prior to Dion’s June 4, 2019 cancellation of the contract with
24 VP, Dion marketed and sold racing fuels manufactured by VP that were labelled under Dion’s
25 own brand – “F&L Racing Fuels.” After the cancellation of VP’s contract, Dion will directly
26 compete with VP by marketing and selling racing fuels *not* manufactured by VP and labelled
27 under Dion’s own brand – “F&L Racing Fuels”:



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5 17. Until about June 4, 2019, Dion also marketed and sold VP-branded racing fuels,
6 pursuant to a distribution contract with VP as alleged below:



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9 **B. 2012 VP-Dion Distribution Agreement**

10 18. On May 21, 2012, Dion and VP entered into a “Distributor Agreement,” a true and
11 correct copy of which is attached hereto as Exhibit 1 (hereinafter, the “2012 Agreement”) and
12 incorporated herein.

13 19. The 2012 Agreement recognized the vital importance to both Dion and VP of VP’s
14 and Dion’s respective business reputations, integrity, and the quality of the products and services
15 they sell. *See e.g.*, 2012 Agreement, ¶ B (recognizing “that VP’s success depends upon financially
16 sound, responsible, efficient, vigorous and successful independent Distributors. Distributor’s
17 business conduct must be free of false, deceptive or misleading advertising, merchandising,
18 pricing and service practices. VP has entered into this agreement with confidence in Distributor’s
19 integrity and ability[.]”).

20 20. As Dion’s exclusive supplier of racing fuels, VP’s reputation, integrity, and the
21 quality of its products and services were equally important to Dion. Pursuant to the 2012
22 Agreement and subject to certain conditions, Dion was, among other things, obligated to purchase
23 racing fuels exclusively from VP whether such racing fuel was VP racing fuel rebranded as F&L
24 Racing Fuel (“F&L branded VP racing fuel”) or VP racing fuel branded as VP racing fuel (“VP
25 branded racing fuel”). Thus, Dion’s reputation and business success were inextricably tied to and
26 dependent on VP’s reputation, integrity, and the quality of its products and services.

27 21. Since about May 2012, Dion purchased racing fuels from VP worth millions of
28 dollars, including but not limited to racing fuels marketed and known as: MS109 (VP branded

1 racing fuel); MRX02 (VP branded racing fuel); Q16 (VP branded racing fuel); and SP-1 (F&L
2 branded VP racing fuel).

3 **C. Defendants' Fraudulent, Unlawful, and Unfair Scheme**

4 22. Dion is informed and believes that, in about 2014, VP underwent a change in
5 ownership, when Cerwick, VP's then and current President, acquired a majority ownership interest
6 in VP. At all relevant times, on information and belief, Cerwick's "second-in-command" at VP
7 was Gray, VP's CFO and GC. On information and belief, another of Cerwick's "lieutenants" was
8 Hendel, who moved up to the position of Vice President in charge of North American sales in
9 about 2017.

10 23. On information and belief, at all relevant times, Cerwick, Gray, and Hendel were in
11 charge of and had control over all VP's business decisions of any significance, including but not
12 limited to, the manner and method of how the racing fuels, including VP branded racing fuels, as
13 well as other VP products, were formulated, designed, manufactured, labeled, advertised,
14 marketed, stored, transported, and sold to Dion and others. Further, on information and belief, at
15 all relevant times, VP, Cerwick, Gray, and Hendel were in charge of and had sole control over the
16 manner and method of how F&L branded VP racing fuels were formulated, designed,
17 manufactured, stored, transported, and sold to Dion.

18 24. On information and belief, particularly after Cerwick became the majority owner of
19 VP, Defendants intentionally and knowingly made the decision to grow VP's revenue and profits
20 regardless of ethical constraints, and even if such growth included cutting corners and engaging in
21 fraudulent, unlawful, and unfair acts. Specifically, without limitations, Dion is informed and
22 believes as follows (paragraphs 25-41 are alleged on information and belief):

23 25. Methyl tert-butyl ether ("MTBE") is a volatile and flammable liquid used as one of
24 the components to manufacture racing fuels. Among other things, MTBE supplies high
25 oxygenation which, along with octane ratings, is essential for racing fuel. VP's original racing
26 fuel formulas (most or all of which were created before Cerwick's time at VP) called for the use of
27 MTBE, and the 2012 Agreement, along with VP's published product specifications, required VP
28 to use MTBE in manufacturing its racing fuels.

1 26. Ethyl tert-butyl ether (“ETBE”) can also be used as an oxygenate gasoline additive
2 in the manufacture of racing fuels. ETBE is considerably less expensive than MTBE, and ETBE
3 also provides less oxygenation than MTBE, which reduces the performance of racing fuels
4 containing it. At all relevant times alleged herein, neither VP’s original formulas for racing fuels
5 nor the 2012 Agreement provide for VP’s use of ETBE instead of MTBE. In addition, at all
6 relevant times alleged herein, VP’s published product specifications did not state that ETBE was
7 used in place of MTBE, and Dion was otherwise unaware of VP’s substitution of ETBE for
8 MTBE in the racing fuels VP sold to Dion.

9 27. In about 2016, VP, at the instruction and direction of Cerwick, Gray, and/or
10 Hendel, acquired a barge of ETBE at a bargain price. The barge contained tens of thousands of
11 gallons of ETBE. Thereafter, at the instruction and direction of Cerwick, Gray, Hendel and Does
12 1 to 10, VP secretly started using ETBE (instead of MTBE) in the manufacture of certain of its
13 racing fuels. They did so:

- 14 a. Without disclosing the switch from MTBE to ETBE to Dion (or to any of
15 VP’s distributors and customers as far as Dion is aware);
- 16 b. Without conducting appropriate testing to verify that the fuel properties,
17 such as octane rating, were consistent with what VP represented them to be
18 after the substitution of MTBE for ETBE;
- 19 c. Without making appropriate changes to, without limitation, VP’s published
20 product specifications and VP’s product Safety Data Sheets (“SDS”); and
- 21 d. Without appropriately documenting the changes and substitutions in
22 accordance with the requirements of, *inter alia*, ISO (International
23 Organization for Standardization) 9001, even though VP claims to be ISO-
24 certified.

25 28. VP, Cerwick, Gray, Hendel, and/or Does 1 to 10 secretly used ETBE instead of
26 MTBE in VP’s racing fuels to lower the costs of manufacturing racing fuels without reducing its
27 prices and thereby to increase VP’s profits. VP, Cerwick, Gray, Hendel, and Does 1 to 10 also

1 secretly directed and caused VP to use below grade manufacturing waste products, such as “return
2 fuel,” in commercial fuels that VP sold to Dion and other select customers and distributors.

3 29. When certain VP employees learned about the switch from MTBE to ETBE and its
4 purpose, they asked Cerwick, Gray, and Hendel, and/or Does 1 to 10 what the effect of the switch
5 was on the octane ratings. Duane Minazzi, a Senior Chemist at VP, admitted that, because the
6 chemical composition of the formulas changed (*i.e.*, the use of ETBE instead of MTBE) and
7 because VP did not conduct testing on the new chemical composition, VP did not know what the
8 actual octane ratings were for the fuels using ETBE. VP, Cerwick, Gray, Hendel, and Does 1 to
9 10 nevertheless authorized, ratified, and approved the continued manufacture and sale of racing
10 fuels secretly using ETBE.

11 30. Defendants actively concealed and refused to disclose the use of ETBE and lack of
12 testing to Dion and others. In addition, Defendants took steps to prevent others at VP from
13 disclosing to Dion and others the use of ETBE and lack of testing, including by bribing some
14 employees and threatening others with litigation. Further, Defendants actively refused to conduct
15 testing of whether the octane ratings of fuel using ETBE were as VP represented them to be, even
16 though Defendants knew VP used, *inter alia*, cheaper and under-performing ETBE (rather than
17 more expensive and better performing MTBE), and Defendants prevented others at VP from doing
18 so. For example, despite the requests from VP’s employees that VP do so, Defendants failed to
19 conduct appropriate testing and also failed to document the changes in the SDS/product
20 specifications or as part of ISO 9001. Indeed, several VP employees quit because Defendants
21 refused to change their fraudulent, unlawful, and unfair practices, and instead sought to conceal
22 the same by altering VP books and records and entering fraudulent data.

23 **D. Defendants’ Repeated Cover Ups**

24 31. Defendants manufactured, marketed, and sold defective and adulterated racing
25 fuels to Dion intentionally and with full knowledge that (a) the octane ratings were lower than VP
26 represented them to be and (b) ETBE and/or “return fuel” were used as fuel components.

27 32. Defendants failed to correct their fraudulent, unlawful, and unfair practices even
28 after they got caught several times in the act. For example, in about the end of 2016 or beginning

1 of 2017, VP's fuel at VP-branded gas stations in Massachusetts failed state agency testing. That
2 failure, in turn, required VP to conduct certain testing of its fuels, which testing confirmed that
3 VP's fuels did not meet the specifications as represented by VP. Defendants, however, failed to
4 correct their practices or disclose such information to Dion and others, and instead took steps to
5 actively conceal the same from Dion and other customers and distributors.

6 33. In about 2017, the fuel VP supplied to Home Service Oil Co. failed state agency
7 testing in Missouri. As tested, the VP-supplied fuel had lower than the represented octane rating.
8 Defendants failed to correct their wrongful conduct or disclose such information to Dion or others.

9 34. In about 2017, VP received complaints from certain customers to whom VP sold
10 VP racing fuel about its poor performance (caused by low octane and/or the use of ETBE and
11 "return fuel"). Defendants yet again failed to correct their wrongful conduct or disclose such
12 information to Dion and others.

13 35. In about the second half of 2017, Defendants designed a *VP-only-internal* labeling
14 system, to cover up their wrongful conduct and minimize the chances of VP getting caught red-
15 handed again. To that end, Defendants started surreptitiously labeling its racing fuels in at least
16 two different and misleading ways:

- 17 a. VP labeled the racing fuels it manufactured using MTBE by adding a small
18 and otherwise nondescript notation – "reg" – which signified to VP
19 employees that it was the original formula and that MTBE was used. The
20 label also stated that the fuel "contains MTBE."
21 b. VP continued labeling the racing fuels it manufactured using ETBE the
22 same way VP did before – to conceal the use of ETBE, Defendants did *not*
23 state on the label or otherwise that the racing fuels manufactured with
24 ETBE "contained ETBE."

25 36. The photograph below illustrates one of the VP labeling system scams:

- 26 • The can on the left is VP's racing fuel with ETBE; and
27 • The can on the right is VP's racing fuel with MTBE – both appearing nearly
28 identical, except for the "reg" and MTBE references on the can on the right.



37. Moreover, Defendants directed VP employees to sell and supply “reg” (with MTBE) racing fuels to those customer or places where fuel octane rating testing was planned or more likely to be conducted, such as at official races where testing is often conducted to validate the winners. Otherwise, Defendants directed VP employees to keep selling the racing fuels with ETBE.

38. Defendants manufactured at least the following, racing fuels using ETBE instead of MTBE:

- a. MS109 (VP branded racing fuel);
- b. MRX02 (VP branded racing fuel);
- c. Q16 (VP branded racing fuel); and
- d. SP-1 (F&L branded VP racing fuel).

39. In addition, VP also manufactured SP-1 using under-performing “return fuel” and/or other waste products from its manufacturing plant.

40. Prior to 2018, one of the racing sanctioning bodies wanted to test certain VP fuels including the F&L branded VP racing fuel with the represented octane rating of 110. In response, Duane Minazzi, a Senior Chemist at VP, wrote an internal memorandum which Cerwick, Gray,

1 and Hendel received, stating that the requested testing should not be permitted to be performed
2 because said fuel manufactured by VP did not in fact have an octane rating of 110. Defendants
3 authorized, ratified, and approved VP's said manufacture of F&L branded VP racing fuels at less
4 than 110 octane, with ETBE, and with "return fuel."

5 41. In about March 2018, Southern Nevada Offroad Enthusiasts, a non-profit
6 organization of off road desert racers, tested fuel from the racers' vehicles' tanks after the race.
7 The tested fuel included VP racing fuel. A number of testing results showed that VP's fuels did
8 not meet the specifications as represented by VP. However, yet again, Defendants failed to correct
9 their practices or disclose such information to Dion. Instead, Defendants actively sought to
10 conceal the same from Dion.

11 42. In about July 2018, still unaware of VP's wrongful machinations and schemes
12 alleged above, Dion received complaints from certain customers to whom Dion sold F&L branded
13 VP racing fuel that was supposed to have an octane rating of 110. Thereafter, concerned about its
14 customers, product quality, and reputation, Dion retained a nationally recognized testing company
15 to value test this F&L branded VP racing fuel. After receiving the initial test results, Dion had
16 additional testing conducted of the F&L branded VP racing fuel by a different nationally
17 recognized testing company. The testing results from both testing companies showed that the
18 octane rating of said VP-supplied F&L branded VP racing fuel was *not* 110, but, was 107.1 and
19 107.0.

20 43. Dion notified VP of the testing results and demanded an explanation. Neither VP,
21 Cerwick, Gray, Hendel, nor any other of VP employees or representatives, denied or disputed the
22 testing results alleged above. Representatives of VP and Dion met in person in Los Angeles on
23 January 17 and 18, 2019. VP was represented by Gray (CFO and GC), Hendel (VP, North
24 American sales), and Minazzi (Senior Chemist). Dion was represented by Matt Cullen (owner),
25 Bill Frank (CFO), and their outside counsel. These representatives of VP and Dion had extensive
26 discussions over the period of two days.

27 44. As a result of the January 17-18, 2019 meeting, VP and Dion entered into an
28 agreement to negotiate a new master distribution agreement between VP and Dion (the "New

1 Agreement”), in place of the 2012 Agreement. The New Agreement was to provide for, among
2 other things and without limitation, appropriate testing of the racing fuels manufactured by VP.

3 45. Further, during said meeting in January 2019 and at various subsequent times, to
4 induce Dion to refrain from filing suit against VP, Gray, Hendel, and Minazzi, on behalf of VP
5 and Cerwick, represented and warranted to Dion’s representatives, Messrs. Cullen and Frank that,
6 among other things, VP would “clean up” its act by eliminating all fraudulent, unlawful, and
7 unfair practices, and that all of VP’s future deliveries to Dion of VP racing fuels, including F&L
8 branded VP racing fuel, would fully comply with their respective specifications, including but not
9 limited to octane ratings.

10 46. In reliance on the foregoing agreement to negotiate the New Agreement and
11 Defendants’ representations and warranties, for several months, Dion refrained from cancelling
12 the 2012 Agreement and filing suit against VP, continued purchasing racing fuels from VP, and
13 expended significant time and money in negotiating and memorializing the New Agreement.

14 47. In about April 2019, VP abruptly and in bad faith refused to continue to negotiate
15 or to sign the New Agreement, even though the parties had exchanged multiple drafts of the New
16 Agreement, had agreed on all material terms, and the New Agreement was nearly signature ready.

17 48. Defendants’ refusal to continue to negotiate or to sign the New Agreement raised
18 concerns, and, therefore, Dion conducted additional testing of VP-supplied F&L branded VP
19 racing fuel that VP sold to Dion in about May 2019. Such testing revealed that the fuel VP
20 represented as having 110 octane rating in fact had an octane rating of only 107.5.

21 49. In addition to the above-alleged schemes, Dion is informed and believes, and based
22 thereon alleges, that Defendants have engaged and continue to engage in the illegal storing
23 loading, and unloading of fuels in California without required governmental permits and approval.

24 50. As a result of the foregoing, VP’s reputation, integrity, and products have been
25 irreparably compromised, and Defendants’ conduct threatened to irreparably compromise Dion’s
26 reputation, business, and products. Accordingly, to protect its reputation and business, among
27 other things, Dion had no choice but to cancel the 2012 Agreement and end its current relationship
28 with VP, which Dion did on June 4, 2019.

1 **FIRST CAUSE OF ACTION**

2 **(Breach of Contract—Against Defendant VP)**

3 51. Dion incorporates by reference each of the allegations set forth above as though set
4 forth fully herein.

5 52. Dion and VP entered into the 2012 Agreement dated and effective May 21, 2012;
6 certain of its material terms are set forth above and a copy of the 2012 Agreement is attached
7 hereto as Exhibit 1.

8 53. Dion performed all terms, conditions, and covenants required to be performed on
9 its part under the 2012 Agreement, except as such performance was excused, rendered impossible,
10 illegal, void, impracticable, and/or futile, by the operation of law or by the acts and omissions of
11 Defendants as illegal herein.

12 54. VP failed to perform material obligations imposed upon it by the 2012 Agreement
13 by, among other things: failing to supply fuel to Dion that complied with its published product
14 specifications and industry standards; failing to supply quality racing fuels to Dion that met the
15 stated published specifications and with the represented octane ratings; and engaging in wrongful
16 acts and omissions which jeopardized its reputation, integrity, or product quality and that might
17 tend to jeopardize Dion’s reputation, business, or product quality if Dion is required to remain an
18 exclusive VP distributor of racing fuels.

19 55. VP also failed to perform its obligations under the 2012 Agreement in good faith,
20 as required by the Uniform Commercial Code (“UCC”) and Texas Business & Commercial Code
21 section 1.304 which provides that “[e]very contract or duty within this title [the UCC] imposes an
22 obligation of good faith in its performance and enforcement.” “Good faith” “means honesty in
23 fact and the observance of reasonable commercial standards of fair dealing.” *Id.* § 1.201(b)(20).

24 56. As a direct and proximate result of VP’s acts and omissions in breach of the 2012
25 Agreement, Dion has been damaged in an amount to be proven at trial.

1 **SECOND CAUSE OF ACTION**

2 **(Breach of Express and Implied Warranties—Against Defendant VP)**

3 57. Dion incorporates by reference each of the allegations set forth above as though set
4 forth fully herein.

5 58. At all relevant times, VP was and currently is a merchant and seller of goods and
6 products.

7 59. VP provided express warranties to Dion in connection with the racing fuels
8 manufactured and supplied by VP to Dion, including but not limited to the warranties in the 2012
9 Agreement, and VP's labeling, marketing, and published product specification materials.

10 60. VP breached the foregoing express warranties by supplying Dion with racing fuels
11 that did not meet VP's published product specifications, did not meet VP's represented octane
12 ratings, contained "return fuel," and contained ETBE rather than MTBE as one of the fuel
13 components.

14 61. At all relevant times, VP knew or should have known that Dion was buying racing
15 fuels for a particular purpose – to resell to its customers for use in racing – with the octane rating
16 and the level of oxygenation, and customer confidence therein, being of the essence, and that Dion
17 relied on VP's skill and judgment to manufacture and supply the fuels for that purpose. The
18 racing fuels VP manufactured and supplied to Dion were not fit for this purpose because they did
19 not meet, and/or there was no confidence they met, the represented octane rating and otherwise did
20 not perform for the racing purpose. For the same reasons, the racing fuels supplied by VP were
21 unmerchantable at the time they left the location where VP manufactured them, and remained
22 unmerchantable thereafter. This unmerchantability is inherent in the product supplied by VP.

23 62. Upon discovery, Dion took reasonable steps to notify VP within a reasonable time
24 that the racing fuels VP supplied did not meet the express warranties and the implied warranties of
25 fitness for a particular purpose and merchantability, and VP failed to remedy its breach.

26 63. As a result of VP's breach of express and implied warranties, Dion has been
27 damaged in an amount to be proven at trial.

1 **THIRD CAUSE OF ACTION**

2 **(Negligence—Against All Defendants)**

3 64. Dion incorporates by reference each of the allegations set forth above as though set
4 forth fully herein.

5 65. VP and the other Defendants formulated, manufactured, marketed, labeled, and
6 supplied racing fuels to Dion.

7 66. Defendants were negligent in the formulation (including, without limitation,
8 without appropriate testing), manufacture (including, without limitation, without appropriate
9 testing), marketing, labeling, and supply of racing fuels to Dion.

10 67. Dion was harmed by Defendants’ negligence, which was a substantial factor in
11 causing Dion’s harm.

12 68. As a result, Dion is entitled to damages in an amount to be proven at trial.

13 **FOURTH CAUSE OF ACTION**

14 **(Violation of California False Advertising Law, Bus. & Prof. Code §§ 17500 *et seq.*—**

15 **Against All Defendants)**

16 69. Dion incorporates by reference each of the allegations set forth above as though set
17 forth fully herein.

18 70. Defendants violated California False Advertising Law (“FAL”), Bus. & Prof. Code
19 §§ 17500 *et seq.*, by publicly disseminating false, misleading, and unsubstantiated labeling,
20 marketing, and advertising regarding the racing fuels manufactured by VP.

21 71. Defendants’ false, misleading, and unsubstantiated labeling, marketing, and
22 advertising were disseminated to increase VP’s racing fuel sales and VP’s profits.

23 72. Defendants knew or should have known that their labeling, marketing, and
24 advertising of the racing fuels manufactured by VP were false, misleading, and unsubstantiated,
25 and that said labeling, marketing, and advertising would induce purchasers to purchase the racing
26 fuels manufactured by VP.

27 73. Defendants publicly disseminated the false, misleading, and unsubstantiated
28 labeling, marketing, and advertising as part of a scheme with the intent to sell the racing fuels

1 manufactured by VP, which Defendants knew did not have the represented octane ratings and
2 were otherwise not as represented.

3 74. As a result of these violations of the FAL by Defendants, Dion has suffered injury
4 in fact and has lost money or property because, among other things, Dion has incurred charges and
5 paid monies in connection with multiple tests of the racing fuel manufactured by VP, Dion has
6 incurred charges and paid monies for the racing fuels manufactured by VP that Dion otherwise
7 would not have incurred or paid, and Dion is continuing to be damaged because, after the
8 cancellation of the 2012 Agreement, Dion is in direct competition with VP in selling racing fuels.

9 75. As a result of Defendants' false advertising, this Court should enjoin Defendants
10 from continuing to publicly disseminate false, misleading, and unsubstantiated labeling,
11 marketing, and advertising regarding the racing fuels manufactured by VP.

12 76. As a result of Defendants' false advertising, this Court should require Defendants
13 to make full restitution for all monies wrongfully obtained from Dion, and disgorge all ill-gotten
14 revenues and/or profits.

15 77. Further, pursuant to, *inter alia*, California Code of Civil Procedure section 1021.5
16 and related common law doctrines, Dion seeks attorneys' fees and costs.

17 **FIFTH CAUSE OF ACTION**

18 **(Violation of California Unfair Competition Law, Bus. & Prof. Code §§ 17200 *et seq.*—**
19 **Against All Defendants)**

20 78. Dion incorporates by reference each of the allegations set forth above as though set
21 forth fully herein.

22 79. Defendants violated each of the three prongs of California Unfair Competition Law
23 (“UCL”), Bus. & Prof. Code §§ 17200 *et seq.*: (a) fraudulent/deceptive; (b) unlawful; and (c)
24 unfair.

25 80. Defendants violated the fraudulent/deceptive prong of the UCL by knowingly
26 disseminating false, misleading, and unsubstantiated labeling, marketing, and advertising
27 regarding the racing fuels manufactured by VP and selling such racing fuels to Dion and others, as
28 alleged above.

1 81. Defendants violated the unlawful prong of the UCL by violating, among other
2 things:

- 3 (a) Cal. Bus. & Prof Code § 17500 (prohibiting false advertising).
4 (b) Cal. Bus. & Prof Code § 17508(a) (similar).
5 (c) Cal. Bus. & Prof Code § 13413(a) (“It is unlawful for any person or other
6 legal entity to make any deceptive, false, or misleading statement by any
7 means whatever regarding quality, quantity, performance, price, discount,
8 or saving used in the sale or selling of any commodity [including petroleum
9 products] regulated pursuant to this chapter.”).
10 (d) Cal. Bus. & Prof Code § 13413(b) (“The following misleading, unfair, or
11 deceptive acts or practices committed or permitted by any person offering
12 for sale any product that is regulated by this chapter are also a violation of
13 this section: (1) Misrepresenting the brand, grade, quality, or price of a
14 motor vehicle fuel or lubricant. (2) Using false or deceptive
15 representations or designations in connection with the sale of motor vehicle
16 fuels or lubricants. (3) Advertising motor vehicle fuels or lubricants or
17 services and not selling them as advertised. (4) Advertising motor vehicle
18 fuels or lubricants of a designated brand, grade, trademark, or trade name
19 not actually sold or available for sale. (5) Making false, deceptive, or
20 misleading statements concerning conditions of sale or price reductions....
21 (9) Forging or falsifying any records or documents required by this chapter
22 or knowingly keeping, using, or displaying the false or forged records or
23 documents.”).
24 (e) 15 USC §§ 2801, *et seq.* (regulating petroleum marketing, including without
25 limitation, octane rating, its testing, and its disclosure, *id.* §§ 2821, *et seq.*).
26 (f) 16 C.F.R. §§ 306.5, *et seq.* (regulating octane rating, its testing, and its
27 disclosure).

- 1 (g) Cal. Bus. & Prof Code § 12024.6 (“No person, firm, corporation, or
2 association shall advertise, solicit, or represent by any means, a product for
3 sale or purchase if it is intended to entice a consumer into a transaction
4 different from that originally represented”).
- 5 (h) 29 CFR § 1910.1200 (regulating SDS and labeling).
- 6 (i) Cal. Labor Code § 6390, *et seq.* (regulating SDS and labeling).
- 7 (j) Statutory and regulatory requirements in ISO 9001: 2015.
- 8 (k) 40 CFR §§ 112.1, *et seq.* (regulating petroleum storage).
- 9 (l) Cal. Health & Saf. Code §§ 25270.2, *et seq.* (regulating petroleum storage).

10 82. Defendants’ conduct alleged herein violated the unfair prong of the UCL because
11 such conduct violated various laws and policies recognized by the California Legislature and the
12 California courts, including without limitation, the laws cited in the paragraph immediately above,
13 because the utility of Defendants’ conduct is significantly outweighed by the gravity of the harms
14 it imposed on consumers and competitors, and because Defendants’ business practices alleged
15 herein are oppressive, unscrupulous, or substantially injurious to consumers and competitors.

16 83. As a result of these violations of the UCL by Defendants, Dion has suffered injury
17 in fact and has lost money or property because, among other things, Dion has incurred charges and
18 paid monies in connection with multiple tests of the racing fuel manufactured by VP, Dion has
19 incurred charges and paid monies for the racing fuels manufactured by VP that Dion otherwise
20 would not have incurred or paid, and Dion is continuing to be damaged because, after the
21 cancellation of the 2012 Agreement, Dion is in direct competition with VP in selling racing fuels.

22 84. As a result of Defendants’ UCL violations, this Court should enjoin Defendants
23 from continuing to engage in their fraudulent/deceptive, unlawful, and unfair acts and practices
24 alleged herein.

25 85. As a result of Defendants’ UCL violations, this Court should require Defendants to
26 make full restitution for all monies wrongfully obtained from Dion, and disgorge all ill-gotten
27 revenues and/or profits.

1 86. Further, pursuant to, *inter alia*, California Code of Civil Procedure section 1021.5
2 and related common law doctrines, Dion seeks attorneys' fees and costs.

3 **SIXTH CAUSE OF ACTION**

4 **(Fraud—Against All Defendants)**

5 87. Dion incorporates by reference each of the allegations set forth above as though set
6 forth fully herein.

7 88. As alleged herein, Defendants made representations and promises to Dion
8 regarding VP's racing fuels, including but not limited to representations about the octane ratings
9 of the racing fuels manufactured by VP, and the quality, specifications, and components of VP's
10 racing fuels, and what Defendants would do to protect or improve VP's business reputation,
11 ethical standards, and integrity.

12 89. The foregoing representations and promises by Defendants were false at the time
13 they were made.

14 90. Defendants knew the foregoing representations and promises to be false when
15 Defendants made it, and/or Defendants made the representation and promises recklessly and
16 without regard for their truth.

17 91. Defendants intended that Dion rely on these representations and promises, and
18 Dion reasonably relied on them in purchasing and continuing to purchase racing fuel from VP.

19 92. As a result of Defendants' false representations and promises, Dion was damaged
20 and harmed, and Dion's reliance on Defendant's misrepresentations and promises was a
21 substantial factor in causing Dion harm and damages. As a result, Dion is entitled to damages, in
22 the amount to be proven at trial.

23 93. Defendants' conduct alleged above constitutes oppression, fraud, and/or malice
24 under California Civil Code section 3294 and, thus, entitles Dion to an award of exemplary and/or
25 punitive damages.

1 **SEVENTH CAUSE OF ACTION**

2 **(Negligent Misrepresentation—Against All Defendants)**

3 94. Dion incorporates by reference each of the allegations set forth above as though set
4 forth fully herein.

5 95. As alleged herein, Defendants made representations and promises to Dion
6 regarding VP’s racing fuel, including but not limited to representations about the octane ratings of
7 the racing fuels manufactured by VP, and the quality, specifications, and components of VP’s
8 racing fuels, and what Defendants would do to protect or improve VP’s business reputation,
9 ethical standards, and integrity.

10 96. The foregoing representations and promises by Defendants were false at the time
11 they were made.

12 97. Defendants made the foregoing representations and promises negligently and
13 without any reasonable basis for believing them to be true.

14 98. Defendants intended that Dion rely on these representations and promises, and
15 Dion reasonably relied on them in purchasing and continuing to purchase racing fuel from VP.

16 99. As a result of Defendants’ negligent representations and promises, Dion was
17 damaged and harmed, and Dion’s reliance on Defendant’s misrepresentations and promises was a
18 substantial factor in causing Dion harm and damages. As a result, Dion is entitled to damages, in
19 the amount to be proven at trial.

20 **EIGHTH CAUSE OF ACTION**

21 **(Declaratory Relief—Against Defendant VP)**

22 100. Dion incorporates by reference each of the allegations set forth above as though set
23 forth fully herein.

24 101. Under the circumstances, a genuine controversy exists as to whether the following
25 provision in the 2012 Agreement is void or otherwise unenforceable following Dion’s cancellation
26 of the 2012 Agreement: “If Distributor [Dion] ceases to sell VP [*sic*; products], Distributor will
27 not be allowed to sell other brands to VP customers for one year.” 2012 Agreement, § 1.2.

1 102. Under the circumstances, the above restriction in the 2012 Agreement is void and
2 otherwise unenforceable under both Texas and California laws, and Dion is entitled to such as a
3 declaration under, *inter alia*, California Code of Civil Procedure section 1060.

4 **NINTH CAUSE OF ACTION**

5 **(Breach of Agreement to Negotiate—Against Defendant VP)**

6 103. Dion incorporates by reference each of the allegations set forth above as though set
7 forth fully herein.

8 104. In or about January 2019, VP and Dion entered into an agreement (the “Agreement
9 to Negotiate”) whereby VP and Defendant agreed to negotiate in good faith for a New Agreement
10 to replace the 2012 Agreement (Exhibit 1).

11 105. Under the Agreement to Negotiate, VP and Dion were each obligated to negotiate
12 the terms of the New Agreement, and to negotiate them in good faith.

13 106. In reasonable reliance on the foregoing agreement to negotiate the New Agreement,
14 Dion continued purchasing racing fuels from VP, as well as expended significant time and money
15 in negotiating and memorializing the New Agreement over several months.

16 107. Dion performed all terms, conditions, and covenants required to be performed on
17 its part under the agreement to negotiate the New Agreement, except as such performance was
18 excused, rendered impossible, illegal, impracticable, and/or futile, by the operation of law or the
19 by acts and omissions of Defendants.

20 108. VP breached the Agreement to Negotiate by failing to negotiate in good faith and
21 by wrongfully terminating the negotiations in bad faith.

22 109. As a direct and proximate result of VP’s failure to perform the obligations imposed
23 upon it by the agreement to negotiate the New Agreement, Dion has been damaged in an amount
24 to be proven at trial, including without limitation Dion’s attorneys’ fees spent in connection with
25 the negotiation of the New Agreement.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs M. O. Dion & Sons, Inc. and Amber Resources, LLC pray for
28 judgment against Defendants, and each of them, as follows:

1 1. On the first, second, third, sixth, seventh, and ninth causes of action, for
2 compensatory damages in an amount to be proven at trial.

3 2. On the fourth cause of action, for preliminary and permanent injunctions, enjoining
4 Defendants from continuing to publicly disseminate false, misleading, and unsubstantiated
5 labeling, marketing, and advertising regarding the racing fuels manufactured by VP; for full
6 restitution of all monies Defendants wrongfully obtained from Dion; and for disgorgement by
7 Defendants of all ill-gotten revenues and/or profits.

8 3. On the fifth cause of action, for preliminary and permanent injunctions, enjoining
9 Defendants from continuing to engage in their fraudulent/deceptive, unlawful, and unfair acts and
10 practices alleged herein; for full restitution of all monies Defendants wrongfully obtained from
11 Dion; and for disgorgement by Defendants of all ill-gotten revenues and/or profits.

12 4. On the sixth cause of action, for an award of punitive and exemplary damages
13 according to proof sufficient to punish Defendants for their wrongful conduct and to deter similar
14 conduct on their part in the future.

15 5. On the eighth cause of action, for declaratory relief that the restriction in Section
16 1.2 of the 2012 Agreement is void and unenforceable.

17 6. For attorneys' fees if and to the extent allowed by contract or by law.

18 7. For pre-judgment and post-judgment interest according to law.

19 8. For costs of suit incurred herein.

20 9. For such other and further relief as the Court deems just, proper, and equitable.

21 DATED: June 5, 2019

Respectfully submitted,

22 MITCHELL SILBERBERG & KNUPP LLP
23 STEPHEN E. FOSTER
24 HAYWARD J. KAISER
25 VALENTINE A. SHALAMITSKI

26 By: 
27 Stephen E. Foster
28 Attorneys for Plaintiffs M. O. Dion & Sons, Inc.
and Amber Resources, LLC

EXHIBIT 1

DISTRIBUTOR AGREEMENT

This agreement is made effective the 21st day of May, 2012, between VP RACING FUELS, INC. ("VP") and M.O. DION & SONS, INC. ("Dion" or "Distributor"). VP and Dion collectively are referred to as "parties." The terms "Dion" and "Distributor" shall also include all affiliated and related companies of M.O. Dion & Sons, Inc., including, but not limited to, Sawyer Petroleum and Amber Racing Services.

A. The purpose of this agreement is to establish Distributor as a distributor for the sale and service of VP Products. This agreement will set forth the respective duties, obligations, and responsibilities of VP and Distributor in the sale of these products by VP to Distributor, and the sale and servicing of these products by Distributor.

B. VP has elected to enter into this agreement with Distributor with recognition that VP's success depends upon financially sound, responsible, efficient, vigorous and successful independent Distributors. Distributor's business conduct must be free of false, deceptive or misleading advertising, merchandising, pricing and service practices. VP has entered into this agreement with confidence in Distributor's integrity and ability, in Distributor's expressed intent to deal fairly with VP and its customers, and Distributor's ability to perform and carry out Distributor's duties, obligations and responsibilities as set forth in this agreement.

In consideration of their mutual covenants, the parties agree as follows:

Section 1. Agreement

1.1 Agreement to Purchase/Sell. VP hereby engages Distributor to sell, distribute and service fuels, oils, lubricants, chemicals, fuel handling products and VP catalogued products made, manufactured and/or distributed by VP (collectively herein "VP Products"). Distributor specifically agrees that it will not purchase any fuels from any person, entity or company other than VP, whether such fuel is sold by Distributor as VP branded fuel or another brand, if such fuel is to be used in the racing, competition, or high performance street fuel markets. Distributor may, however, purchase methanol and MTBE as a fuel component for use in blending with certain other products purchased from VP, provided such blended products are not identified, labeled, or sold at VP products.

Distributor accepts such appointment and agrees to utilize its best efforts to effectively and actively promote, sell and service VP Products, and to carry a full-line of VP Products in its inventory during the term of this Agreement. Distributor understands and agrees that this appointment is dependent upon Distributor's continued qualification and effective performance as a VP Distributor, and that VP can immediately terminate this agreement if Distributor fails to honor the material terms of this agreement, including the following.

1.2 Competing Products. During the term of this Agreement, Distributor agrees that it will not actively promote or sell any goods, products or fuels except VP and F&L. Distributor may sell Shell racing fuel as required under a master agreement with Shell that would cause Distributor substantial loss of business or profitability if not executed. Distributor agrees not to convert any customers to Shell from VP or F&L. Distributor agrees not to recommend or infer that any of its branded fuels are preferable over VP fuels. Distributor will not enter into an agreement with any tracks or series naming F&L or Shell as the spec or exclusive fuel unless such opportunity has first been presented as a VP product and VP has specifically

refused to participate in such opportunity. If Distributor ceases to sell VP, Distributor will not be allowed to sell other brands to VP customers for one year.

Under no circumstances shall Distributor represent, advertise, imply, infer or promote any fuel as VP fuel if such fuel is not purchased from VP as a VP branded fuel. Distributor agrees that any racing fuel that is sold under a brand other than VP shall be clearly marked and labeled so as not to confuse the purchaser or allow the customer to believe that such product is a VP product or is endorsed by VP.

At VP's request, when the use of VP fuel is in question, Distributor shall provide to VP, within five (5) business days of VP's request, copies of bills of lading, invoices, customer records, and other relevant records, at Distributor's expense to ensure that all fuels, whether branded VP or otherwise, have been purchased from VP.

1.3 No Modification of Product. Distributor will not modify any VP Products or Related Products without prior, express written permission from VP.

Section 2. Terms of Sale

2.1 Terms. All sales of VP's products to Distributor must be made under and subject to the provisions of this agreement, at such prices and on such terms as VP establishes from time to time. Distributor will be entitled to warehouse distributor (WD) pricing, with any volume discounts that Distributor may qualify for from time to time. Product is sold F.O.B. EX WRKS, Dock, Elmendorf, Texas, USA. Resale prices will be determined by Distributor. However, VP reserves the right to enter into fair trade agreements to the extent permitted by federal and state laws.

2.2 Payment. Distributor agrees to pay all invoices upon terms and conditions as agreed between Distributor and VP from time to time.

2.3 Territory. Distributor's primary marketing area will be Los Angeles County and Orange County, California, subject to the terms of this agreement. The parties understand, however, that Distributor's sale of F&L branded racing fuels in California, Arizona, Nevada and Mexico will not be a violation of this Agreement.

2.3.1 Distributor understands and agrees that VP has a place of business near Distributor's marketing area and that VP will continue to do business, including the sales of VP Products, in this area. Notwithstanding, VP agrees that it will not recognize any other company or individual of VP branded fuels for Distributor's primary marketing area except as in existence as of the execution of this Agreement. Distributor understands and agrees that it may be outside VP's ability to control the sale of VP Products into the area by other companies or individuals.

2.3.2 VP agrees that it will refer all dealer inquiry leads it receives in Distributor's primary marketing area to Distributor.

2.3.3 This agreement does not impose on VP any obligation to prevent other VP Distributors, dealers or retailers from selling in such area, and does not prohibit VP from selling racing fuel to distributors outside such area, even if such distributors ultimately sell in such area, and does not prohibit VP from recognizing distributors of products, including fuel, that does not carry the VP brand.

2.3.4 Notwithstanding anything contained in this Agreement to the contrary, VP reserves

the right to service and sell any VP Products and Related Products at any major sanctioning body race VP deems necessary or appropriate, in its sole and exclusive discretion. This reservation by VP applies to all forms of racing and includes, but is not limited to, NHRA national events.

- 2.3.5 This agreement does not prevent or prohibit, nor will Distributor be entitled to any compensation for, the sales and/or delivery of test fuel or fuel for research and development purposes into Distributor's area.

Section 3. Distributor Qualifications

3.1 Qualifications. Distributor agrees at all time to qualify and effectively perform as a "VP Distributor." For purposes of this Agreement, a VP Distributor is a person, firm, partnership or corporation actively engaged in the buying and reselling of VP Products; who has adequate capital resources; who maintains a regularly established place of business and stock point(s); who carries an inventory of VP Products sufficient to supply the reasonable demands of Distributor's customers; and who performs the recognized function of a VP Distributor in a manner acceptable to VP and Distributor's customers.

Section 4. Marketing

4.1 Responsibilities of Distributor. Distributor will at all times maintain adequate inventories of VP Products and will promote vigorously and effectively the sale of VP Products, in conformity with VP's established marketing policies and programs and good business practices.

4.2 Marketing and Sales Efforts. Distributor and VP will enter into such marketing and sales efforts as mutually agreed, and as set out in the attached Schedule A, which may be amended from time to time in writing, and signed by the parties.

Section 5. Merchandising Policies

5.1 Assistance. At VP's sole and absolute discretion, VP will provide Distributor with merchandising assistance, and Distributor agrees to make full use of such assistance in carrying out VP's merchandising and sales promotion policies.

Section 6. Use of VP Name, Logo and Trademark

6.1. Use of Name. Distributor will not use, authorize or permit the use of the name VP, "VP Racing Fuels" or any other trademark or logo owned by VP as part of its firm, corporate or business name or in any other way, except to designate products purchased from VP under the terms of this Agreement, unless specifically agreed to in writing by VP. Distributor may, however, use the VP trademarks and logo as follows as long as there are no representations or warranties as to quality, performance or characteristics of the VP Products, and as long as such use does not create the impression that Distributor has any affiliation with VP (such as a partner) other than as a retailer or distributor of VP Products:

- (1) in yellow page advertising,
- (2) on flyers, billboards or other written material advertising sale of the VP Product,
- (3) on its website, and
- (4) as an addition to existing letterhead, business cards and other professional stationary of Distributor.

Any use of the VP trademarks (as defined below) by Distributor outside the scope of this Agreement is an

infringement of VP's rights. Distributor agrees it will not infringe on the VP trademarks during or after the term of this Agreement. Distributor agrees the VP trademarks are valid and enforceable trademarks and VP has the sole right to use them. Any and all intangible rights and goodwill created for or by Distributor's use of the VP trademarks inure to VP's benefit and are always fully assigned by Distributor to VP when created and belong solely to VP.

6.2. No Assignment of Trademarks. Nothing herein shall be construed as an assignment of any of the VP trademarks or as authority to use VP trademarks, name or logo except as expressly allowed herein. Distributor agrees not to use VP trademarks, name, or logo, whether in advertising, brochures, promotional material or otherwise, unless such use has been approved by VP in writing prior to its publication. Distributor will not contest the right of VP to its exclusive use of any trademark or tradename used or claimed by VP. For purposes of this Agreement, VP trademarks include, but are not limited to the following: VP, VP Racing, VP Racing Fuels, VP Fuels, Fuels for Motorsports, any other trademarks owned or used by VP and the logos related to these name(s) and/or marks, and VP's slogans.

6.3. Use Upon Termination of Agreement. Upon termination of this Agreement, Distributor will cease to represent itself as being associated by VP, and will discontinue all use of the VP Trademarks and any similar marks, logos or indicia, slogans having like or substantially like messages or representations, VP's copyrights materials, and VP's proprietary information. This includes removal and ceasing use of any sign, banner, letterhead, trailers, promotional materials or any other medium or printed materials or items containing the name and trademark "VP" or "VP Racing Fuels", or any other trademark or logo owned by VP, and will immediately destroy all stationery, advertising matter and other printed materials in its possession or under its control containing the word "VP" or "VP Racing Fuels", or such other trademarks. You will cause your governing documents and all licenses, permits and contracts to be amended to delete all parts of the VP trademarks. Distributor will not at any time after such termination use or permit any such trademark or tradename to be used in any manner in connection with any business conducted by it or in which it may have an interest. Regardless of the cause of termination, Distributor will immediately take all appropriate steps to remove and cancel its listings in websites, telephone books and other directories and public records or elsewhere which contain the name "VP" or "VP Racing Fuels" or other such trademarks, logos or indicia, and slogans having like or substantially like messages or representations.

Section 7. Packaging/Repackaging

7.1 Bulk Sales. From time to time, Distributor may purchase VP Products in bulk from VP at a price and on terms and conditions to be agreed upon between VP and Distributor. VP expressly agrees that Distributor may package, label and sell all such product as VP Product provided that the terms of this Agreement are strictly complied with.

7.2 Packaging. Distributor agrees to use only those containers approved for storage and shipping of the VP Product being purchased in bulk. In this respect, Distributor agrees to (a) use packaging containers which meet the specifications provided to Distributor by VP, (b) only use new, clean containers, and (c) inspect containers prior to their use to ensure each such container is free from contamination. Should VP require a certain VP package to be used, Distributor must purchase that container from VP unless otherwise agreed to in writing.

7.3 Labeling. Distributor agrees to affix to each container all identifying and warning labels legally required and reasonably necessary. Whether such containers are purchased by the Distributor or Distributor uses cans provided by VP, Distributor agrees to clearly and conspicuously identify and label all

containers with Distributor's name, address and telephone number so that the general public can readily identify such product as being packaged and labeled by Distributor.

7.4 Quality Assurance. Distributor expressly agrees that it will not alter, dilute or change in any way any VP Products sold to it, and will keep such bulk products in clean storage tanks that will reasonably prevent any contamination of the fuel, it being expressly understood and agreed that this agreement, and VP's agreement to ship bulk product. VP's agreement to allow Distributor to use its trademarks and tradenames, is conditioned on such assurance by Distributor.

7.5 Limitation of Liability. Distributor understands and agrees that VP's sole responsibility with respect to the VP Product is limited to the VP Product shipped to Distributor. Once Distributor receives the product, Distributor agrees to be responsible and liable for its proper and legal storage, packaging, labeling and shipping.

7.6 Termination of Agreement. VP may immediately terminate this Agreement in its entirety should Distributor fail to strictly comply with any of the requirements of this Section 7.

Section 8. Order Processing and Shipment Policies

8.1 Orders. VP will employ its best efforts to fill Distributor's orders promptly upon acceptance, but reserves the right to allot available inventories as it deems best. VP will not be liable for failure to ship the products specified in any order it accepts from Distributor because of inability to secure transportation facilities, or other circumstances beyond its control.

8.2 Risk of Loss. The risk of loss of the products shipped under the terms of this agreement will remain with VP until title has passed to Distributor.

Section 9. Financial Policies

9.1 Payment. It is the intent and understanding of the parties, and the essence of this agreement that Distributor will pay promptly all amounts due VP in accordance with terms of sale extended by VP from time to time.

9.2 Financial Responsibility of Distributor. If VP shall have any doubt at any time as to Distributor's financial responsibility, VP may decline to make further shipments except upon receipt of cash or adequate security and upon Distributor making satisfactory arrangement for the payment of any past due indebtedness.

Section 10. Relationship of Parties

10.1 No Agency. During the term of this agreement, the relation between VP and Distributor is that of vendor and vendee. Distributor, its agents and employees will, under no circumstances, be deemed agents or representatives of VP. Neither Distributor nor VP will enter into any contract or commitment in the name of, or on behalf of the other, or be able to bind the other in any respect whatever. None of the terms or provisions of this Agreement shall be deemed to create a partnership between Distributor and VP.

Section 11. Term of Agreement

11.1 Term. The Term of this Agreement shall commence on the Effective Date of this Agreement, and shall continue for an initial five-year term thereafter ("Initial Term"). This Agreement shall be automatically extended for successive five-year terms after the Initial Term of this Agreement unless

Distributor or VP elects to terminate this Agreement prior to the expiration of the then-existing term by providing at least 60 days prior written notice to the other of its intent to terminate this Agreement.

Section 12. Termination

12.1 Early Termination. VP may terminate by notice given to Distributor, effective immediately, in any of the following events:

- (i) a material failure of Distributor or its Dealers to fulfill or perform any one or more of the duties, obligations, or responsibilities undertaken by Distributor pursuant to this Agreement, including the failure to timely pay any invoices as they become due; or
- (ii) any assignment or attempted assignment by Distributor of any interest in this agreement without VP's prior written consent; or
- (iii) any sale, transfer, or relinquishment, voluntary or involuntary, by operation of law or otherwise, of any material interest in the direct or indirect ownership (i.e., twenty percent or more) or any change in the management of the Distributor without VP's prior written consent; or
- (iv) failure of Distributor for any reason to function in the ordinary course of business; or
- (v) a disagreement between or among managers, principals, partners, officers or stockholders of Distributor that in the opinion of VP may affect adversely the ownership, operation, management, business or interests of Distributor or VP; or
- (vi) conviction in a court of competent jurisdiction of Distributor, or a manager, partner, principal officer or major stockholder for any violation of law tending, in VP's opinion, to affect adversely the operation or business of Distributor or the good name, good will, or reputation of VP, products of VP, or Distributor; or
- (vii) submission by Distributor to VP of false or fraudulent reports or statements, including, without limitation, claims for any refund, credit, rebate, incentive, allowance, discount, reimbursement or other payment by VP; or
- (viii) Any willful activity which impugns the reputation or business enterprise of VP or Distributor; or
- (ix) Any false, deceptive or misleading advertising, merchandising, pricing and service practices by Distributor.

Section 13. Obligations on Termination

13.1 Obligations of Distributor. Upon termination of this agreement, Distributor will cease to be an authorized Distributor of VP. Distributor agrees to the following upon termination of this agreement:

- (a) All amounts owing by Distributor to VP will, notwithstanding prior terms of sale, become immediately due and payable.
- (b) All unshipped orders will be canceled without liability of either party to the other.
- (c) Distributor will resell and deliver to VP on demand, free and clear of all liens and encumbrances, such of VP's Products and materials bearing VP's name as VP elects to repurchase, at a mutually agreed price but not in excess of VP's current Distributor price for such products and materials.
- (d) Neither party will be liable to the other because of the termination for compensation,

reimbursement or damages for loss of prospective profits or anticipated sales, or on account of expenditures, investments, leases, or commitments in connection with the business or good will of the other party or for any other reason whatever growing out of the termination.

Section 14. Indemnification

14.1 To the extent permitted by law, Distributor agrees to defend, indemnify and hold harmless VP from all claims, losses, liabilities, actions, proceedings, costs and fees (including reasonable attorneys' fees and costs of suit) incurred by VP in connection with any and all accidents, injuries, losses or damages whatsoever occurring to any person or to the property of any person arising out of or resulting from any activities performed or authorized by Distributor, or representations made by Distributor, provided however, that VP shall have no right to indemnity from Distributor in the event that (1) the claim, action or suit is the result of willful acts or omissions by VP, (2) the claim, action or suit is based on a breach of this Agreement, or (3) product liability (unless the product has been modified, altered, or improperly stored or packaged by Distributor).

14.2 Distributor will perform its obligations under this Agreement in compliance with all applicable laws, orders or regulations of all appropriate jurisdictions. Distributor warrants and represents that it is familiar with and in compliance with all applicable laws, ordinances, rules and regulations of the United States and of any jurisdiction in which it operates or does business in any way. In addition to the foregoing, and not in lieu thereof, Distributor agrees to comply with all applicable shipping and labeling laws, ordinances, rules and regulations (whether of the United States or any state or other jurisdiction) with respect to the packaging, repackaging, marketing, advertising, distribution and/or sale of VP Product. If VP reasonably believes that Distributor may be in violation of this paragraph, VP may withhold or suspend any shipments of product until Distributor is in compliance with all laws, ordinances, rules and regulations, and may terminate this Agreement immediately if Distributor does not cure this violation.

14.3 Distributor understands and agrees that Distributor shall be solely responsible for the payment of any taxes, compliance with all laws, ordinances, rules and regulations, and any reporting and labeling requirements, and for any fines, fees, assessments, penalties, or other costs or expenses, including interest, attorneys fees and court costs, resulted therefrom or associates therewith. Distributor will indemnify and hold VP harmless for any liability with respect to the payment of taxes, non-compliance with any laws, ordinances, rules or regulations, and any reporting or labeling requirements, including the amount of the fines, fees, assessment, penalties, interest, costs and attorneys' fees with respect thereto, which are attributable to Distributor's acts or omissions. VP will not be liable or responsible to any customers of Distributor or any other parties whatsoever, including Distributor, Distributor's employees or agents, for the acts, omissions and representations of Distributor, its employees or agents. Distributor will indemnify, defend and hold harmless VP from any and all liability whatsoever to customers and other parties, whether in tort or contract, and all claims, demands, suits, actions, costs, and expenses with respect to the payment of taxes, and other acts, omissions, or representations under this agreement.

Section 15. Acknowledgments

15.1 Acknowledgments. Each party acknowledges that no representation or statement, and no understanding or agreement, has been made or exists other than stated in this agreement. Each party also acknowledges that in entering into this agreement it has not relied upon anything done or said by the other party or upon any presumption in fact or in law:

- (i) with respect to this agreement, to the duration, termination, or renewal of this agreement, or to the relationship between the parties, other than as expressly set forth in this

- agreement; or
- (ii) that in any way tends to change or modify the terms, or any of them, of this agreement or to prevent this agreement's becoming effective; or
- (iii) that in any way affects or relates to the subject matter of this agreement.

Distributor also acknowledges that the terms and conditions of this agreement, and each of them, are reasonable, fair and equitable.

Section 16. Effect of Determination by VP

16.1 Determination by VP. Any determination to be made, opinion to be formed, or discretion to be exercised by VP as to any provision of this agreement must be made, formed or exercised by VP alone and will be final, conclusive and binding on the parties.

Section 17. Notices

17.1 Notices. Any notices required or permitted by this agreement, or given in connection with it, must be in writing and may be by personal delivery or by first-class certified mail, return receipt requested, postage prepaid. Notices shall be delivered:

If to VP: Mr. Alan B. Cerwick, President
 VP Racing Fuels, Inc.
 P. O. Box 47878
 San Antonio, Texas 78265

If to Distributor: Mr. Matt Cullen
 M.O. DION & SONS, INC.
 1543 West 16th Street
 Long Beach, CA. 90813

Section 18. Amendment

18.1 No Amendment. Notwithstanding anything in this agreement to the contrary, VP may amend, modify or change this agreement in the event that legislation, government regulation or changes in circumstances beyond the control of VP materially affect the relationship between VP and Distributor.

Section 19. Force Majeure

19.1 Force Majeure. In the event that either party shall be prevented from performing any of its obligations due under the terms of this Agreement by act of God, by acts of war, riot or civil commotion, by an act of State, by strikes, fire, flood, or by the occurrence of any other event beyond their control, such party may, at its option, either be excused from any further performance of its obligations under this Agreement, or for such amount of time as is necessary after such occurrence abates or for the effects thereof to have dissipated.

Section 20. Miscellaneous

20.1. Governing Law. The parties intend this agreement to be executed as an agreement of the State of Texas and to be construed in accordance with the laws of the State of Texas.

20.2. Severability. This Agreement shall be deemed separable and if any portion hereof shall

Initials: MC
 Initials: ABC

be held invalid for any reason, the remainder shall not be invalidated but shall remain in full force and effect.

20.3. Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the subject matters hereof and may not be amended or modified, in whole or in part, except by an instrument in writing duly executed by each of the parties hereto. This agreement terminates and supersedes all prior agreements, if any, between the parties.

20.4. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, executors, successors and assigns.

20.5. Assignability. Distributor cannot assign this agreement or any interest in this agreement, without prior written approval by the President of VP.

20.6. No Implied Waivers. Except as expressly provided in this agreement, waiver by either party or failure by either party to claim a breach of any provision of this agreement will not be a waiver of any breach or subsequent breach, or as affecting in any way the effectiveness of this provision.

20.7. Negation of Partnership. Nothing in this Agreement shall be deemed to create a partnership or joint venture between VP and Distributor. Distributor and VP are separate entities, and Distributor does not have the right to act as an agent for VP.

EXECUTED this 21st day of May, 2012, but effective as of the date first written above.

VP RACING FUELS, INC.

By: 

Alan B. Cerwick, President

M.O. DION & SONS, INC.

By: 

Matt Cullen, President

ATTACHMENT A
Marketing and Sales Efforts

1. Distributor will work with VP to market VP fuels to and through engine builders supported or serviced by Distributor and allow VP to pursue endorsements and recommendations from such engine builders.
2. Distributor agrees to include the VP logo prominently on its delivery trucks, website and promotional materials.
3. Distributor agrees to pay forty percent (40%) of the Best in the Desert and Pro Truck series official fuel sponsorship fees incurred by VP.
4. Distributor will service the Best in the Desert and SCORE off-road events on VP's behalf and represent VP as its own separate brand by having a separate VP trailer at these events.
5. Distributor will represent VP at the HDRA, MORE, and SNORE off-road race events, although not required to have a separate designated VP trailer for such events.
6. Distributor and VP will share the expense equally for the contingency program established for the CODE and RECORD series. Such contingency program will be administered through VP's Mexico distributor.
7. Distributor will commit to a volume growth requirement of 10% per calendar year for both VP and F&L fuels. Growth shall not include any gallons migrated from VP. Whether Distributor has met the increase shall be determined by multiplying 10% by the prior year's sales, and adding that to the total prior year's sales. For the initial year of this Agreement, the parties agree that the baseline shall be 273,275 gallons, representing the number of gallons sold in calendar year 2011. "Year" shall mean calendar year. The increase shall be calculated for each year separately, and multiple years shall not be cumulated to average an increase.