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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FAITH BAUTISTA, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

vs.

VALERO MARKETING AND SUPPLY
COMPANY,

Defendant.

) Case No. 3:15-cv-05557-RS

) CLASS ACTION

) **CLASS ACTION SETTLEMENT**
) **AGREEMENT AND RELEASE**

1 Representative Plaintiff Faith Bautista (“Plaintiff”), on behalf of herself and all Settlement
2 Class members (defined below) and Defendant Valero Marketing and Supply Company (“Valero”
3 or “Defendant” and, with Plaintiff, the “Parties”), hereby enter into this Class Action Settlement
4 Agreement and Release (“Settlement Agreement”), subject to approval of the Court.

5 **I. LIMITATIONS OF THIS SETTLEMENT AGREEMENT**

6 1.1 This Settlement Agreement and its entire contents are governed by Rule 408 of the
7 Federal Rules of Evidence and the parallel provisions of the evidence codes of each of the 50 states
8 and the District of Columbia. Nothing in this Settlement Agreement is binding on either Party or
9 the Settlement Class members, whether by way of agreement, estoppel, or reliance, except as
10 necessary to seek approval of a binding and final class settlement and until the class settlement is
11 final (*i.e.*, approved by the district court and no longer subject to judicial review). The Parties
12 further agree that neither the existence of nor recitals of this Settlement Agreement may be cited
13 or relied upon by any tribunal, except as concerns the approval of and compliance with this
14 Settlement Agreement.

15 **II. BACKGROUND OF SETTLEMENT**

16 **A. History of the Litigation**

17 2.1 On December 4, 2015, Plaintiff filed an action in the United States District Court
18 for the Northern District of California against Valero bringing claims for violation of the Consumer
19 Legal Remedies Act, Cal. Civ. Code §1750, *et seq.*, false and misleading advertising in Violation
20 of the False Advertising Law, Cal. Bus. & Prof. Code §17500, *et seq.*, violations of the Unfair
21 Competition Law (“UCL”), Cal. Bus. & Prof. Code §17200, *et seq.*, breach of contract, and
22 accounting. Plaintiff generally alleged that Valero violated California’s consumer protection
23 statutes and California common law by advertising a discounted price for gasoline purchased with
24 “cash” and failing to disclose when debit card purchases of gasoline were not eligible for the
25 discounted “cash” price.

26 2.2 On February 26, 2016, Valero filed a motion to dismiss Plaintiff’s suit under Rule
27 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can
28 be granted.

1 2.3 On April 8, 2016, Plaintiff filed a First Amended Complaint alleging the same
2 claims as her initial complaint, except for breach of contract, thus mooted Valero's motion to
3 dismiss.

4 2.4 On April 29, 2016, Valero filed a motion to dismiss the First Amended Complaint
5 under Rule 12(b)(6) for failure to state a claim upon which relief can be granted, which the Court
6 granted on July 21, 2016, finding that the First Amended Complaint had failed to adequately plead
7 facts showing that Valero exercised sufficient control over Valero-branded stations to hold Valero
8 liable for the stations' pricing signage, and that Plaintiff failed to allege whether she entered a
9 personal identification number when purchasing gasoline for purposes of her UCL claim
10 predicated on a violation of Cal. Fin. Code §13081(b).

11 2.5 On September 23, 2016, Plaintiff filed a Second Amended Class Action Complaint
12 ("Second Amended Complaint") alleging the same claims, except for a claim for accounting, and
13 pleading additional facts obtained through discovery to allege that Valero exercised sufficient
14 control over Valero-branded stations to hold Valero liable for the stations' pricing signage.

15 2.6 On October 21, 2016, Valero filed a motion to dismiss one claim in the Second
16 Amended Complaint under Rule 12(b)(6) for failure to state a claim upon which relief can be
17 granted: Plaintiff's UCL claim predicated on violation of Cal. Fin. Code §13081(b), which the
18 Court granted on November 18, 2016.

19 2.7 On December 6, 2016, Plaintiff moved for reconsideration of the Court's Order
20 dismissing Plaintiff's UCL claim predicated on a violation of Cal. Fin. Code §13081(b), which the
21 Court denied on December 12, 2016.

22 2.8 The Parties conducted substantial discovery, which included the production and
23 review of over 18,000 pages of documents, including documents produced pursuant to a motion
24 to compel that was fully briefed and argued, and the taking of five hybrid Rule 30(b)(6) and Rule
25 30(b)(1) depositions of Valero employees, two third-party depositions (of a Valero distributor
26 representative and a Valero-branded station representative), Plaintiff's deposition, and two
27 depositions of Plaintiff's expert witnesses.
28

1 2.9 On May 26, 2017, Plaintiff moved for class certification and appointment of class
2 counsel, which the Court granted on October 4, 2017.

3 2.10 On August 3, 2018, Plaintiff filed a Renewed Motion for Approval of the Class
4 Notice Plan, which the Court granted on August 15, 2018.

5 2.11 On September 20, 2018, Valero moved to decertify the Class, and the Parties filed
6 cross-motions for summary judgement and motions to exclude each other's experts.

7 2.12 On October 26, 2018, the Court ordered further briefing on whether Plaintiff has
8 standing to seek injunctive relief at trial and whether class certification is proper under Rule
9 23(b)(2), which the Parties filed on November 9, 2018.

10 2.13 On December 4, 2018, the Court granted Valero's motion to decertify the class,
11 granted in part the Parties' cross-motions for summary judgment, and denied the Parties' motions
12 to exclude each side's expert witnesses.

13 2.14 On February 20, 2019, Plaintiff filed a petition with the United States Court of
14 Appeals for the Ninth Circuit under Fed. R. Civ. P. 23(f) seeking interlocutory review of the
15 Court's Order decertifying the Class, which the Ninth Circuit granted on June 26, 2019.

16 **B. Mediated Settlement Negotiations Between the Parties**

17 2.15 On March 27, 2018, following the Court's Order certifying the Class, the Parties
18 attended a private mediation session in San Francisco, California with mediator Cathy Yanni of
19 JAMS, Inc. to attempt to resolve this litigation, which was unsuccessful.

20 2.16 On November 29, 2018, shortly before trial was scheduled to commence, the Parties
21 again attempted to resolve this litigation through a second mediation session with Ms. Yanni,
22 which efforts were unsuccessful.

23 2.17 On October 29, 2019, shortly after the Ninth Circuit granted Plaintiff's Rule 23(f)
24 petition, the Parties again attempted to resolve this litigation through a third mediation session with
25 Ms. Yanni, making substantial progress toward a potential resolution of the litigation, but failing
26 to come to a final agreement.

27 2.18 In December 2019, following continued oversight of Ms. Yanni and a "mediator's
28 proposal," the Parties reached an agreement in principle providing for the settlement between and

1 among Plaintiff, on behalf of herself and the proposed Settlement Class, and Valero, on the terms
2 and subject to the conditions set forth in this Settlement Agreement, and the Parties entered into a
3 Term Sheet for the Proposed Class Settlement (“Term Sheet”).

4 2.19 This Settlement Agreement is a result of those significant, arms-length negotiations
5 and Ms. Yanni’s “mediator’s proposal.”

6 2.20 This Settlement Agreement supersedes and replaces the Term Sheet.

7 **C. Valero’s Denial of Wrongdoing or Liability and Plaintiff’s Belief in**
8 **the Merit of Her Claims**

9 2.21 The Parties recognize the tremendous time and expense that would be incurred by
10 further litigation in this matter and the uncertainties inherent in any such litigation, and that their
11 interests would be best served by a settlement of the litigation.

12 2.22 To avoid the costs, disruption, and distraction of further litigation, and without
13 admitting the validity of any allegations made by Plaintiff, or any liability with respect thereto,
14 Valero has concluded that it is desirable that the claims against it be settled and dismissed on the
15 terms reflected in this Settlement Agreement.

16 2.23 Valero denies and continues to deny any wrongdoing or legal liability for any
17 alleged wrongdoing, does not admit or concede any actual or potential fault, wrongdoing, or legal
18 liability in connection with any facts or claims that have been or could have been alleged by
19 Plaintiff, and contends that neither Plaintiff nor the proposed Class has been injured or is entitled
20 to any relief.

21 2.24 Valero denies that this case is suitable for class treatment other than in the context
22 of a settlement or that Plaintiff would be able to win her appeal of the Court’s Order decertifying
23 the Class.

24 2.25 Plaintiff believes all the claims alleged in the Action have merit and that the Ninth
25 Circuit would reverse the Court’s Order decertifying the Class.

26 2.26 The Parties reached this Settlement Agreement as a compromise of the disputed
27 matters described herein and due to the uncertainties, risks, expenses, and business disruptions of
28 continued litigation.

1 **D. The Settlement Is Fair, Adequate, and Reasonable**

2 2.27 Valero has consented to the conditional certification of a Class pursuant to Fed. R.
3 Civ. P. 23(b)(3), as defined herein, for settlement purposes only.

4 2.28 Based on the extensive discovery taken in this Action and the litigation history,
5 Plaintiff and Plaintiff's counsel remain of the view that a settlement of the Action on the terms
6 reflected in this Settlement Agreement is fair, reasonable, adequate, and in the best interests of
7 Plaintiff and the Class.

8 NOW THEREFORE, in consideration of the promises and mutual covenants set forth
9 herein, it is hereby STIPULATED AND AGREED, by and among the Parties to this Settlement
10 Agreement, through their respective attorneys, subject to approval of the Court pursuant to Fed.
11 R. Civ. P. 23 and satisfaction of all the terms and conditions set forth herein, that the Action and
12 all Released Claims shall be compromised, settled, released, and dismissed with prejudice, upon
13 and subject to the following terms.

14 **III. DEFINITIONS**

15 3.1 Action: *Bautista v. Valero Marketing & Supply Company*, Case No. 3:15-cv-
16 05557-RS, an action pending in the United States District Court for the Northern District of
17 California.

18 3.2 Class Counsel: The law firms of Robbins Geller Rudman & Dowd LLP (Stuart A.
19 Davidson and Christopher C. Gold) and Hobson, Bernardino + Davis LLP (Rafael Bernardino,
20 Jr.).

21 3.3 Class Member: A person who falls within the definition of the Class.

22 3.4 Class Notice: Court-directed appropriate notice pursuant to Fed. R. Civ. P. 23(e),
23 the form of which is in Exhibit B-1.

24 3.5 Class Period: The period from December 3, 2011 and the date of preliminary
25 approval.

26 3.6 Court: The United States District Court for the Northern District of California.

27 3.7 Defendant: Valero Marketing and Supply Company.
28

1 3.8 Defendant's Released Claims: Any and all claims against Plaintiff, each and all of
2 the Settlement Class members, and Plaintiff's Counsel including those for damages or injunctive
3 relief arising out of, relating to, or in connection with the institution, prosecution, assertion,
4 settlement, or resolution of the Action, including, but not limited to, Unknown Claims.

5 3.9 Defense Counsel: The law firm of Hawxhurst Harris LLP (Gerald E. Hawxhurst
6 and David S. Harris).

7 3.10 Effective Date: The date on which the order of the Court granting final approval
8 of the Settlement of the Action becomes final and no longer subject to further appeal or review,
9 whether by exhaustion of any possible appeal, writ of certiorari, lapse of time, or otherwise.

10 3.11 Fee and Expense Application: Class Counsel's application to the Court for an
11 award of Class Counsel's attorneys' fees and expenses in connection with the settlement of this
12 Action, as well as any interest thereon.

13 3.12 Fee and Expense Award: An order by the Court granting Class Counsel's Fee and
14 Expense Application in whole or in part.

15 3.13 Final Approval Hearing: The hearing at or after which the Court will make its
16 decision whether to finally approve the settlement as fair, reasonable, and adequate under Rule
17 23(e)(2).

18 3.14 Final Judgment: The order issued by the Court finally approving the Settlement
19 Agreement in all material respects and the judgment entered pursuant to that order after the Final
20 Approval Hearing. Attached hereto as Exhibit A.

21 3.15 Parties: The parties to the litigation, *i.e.*, Plaintiff and Defendant.

22 3.16 Preliminary Approval Order: A Court order, providing for, among other things,
23 preliminary approval of the Settlement. Attached hereto as Exhibit B.

24 3.17 Plaintiff: Faith Bautista.

25 3.18 Plaintiff Service Award: Valero's payment, subject to Court approval, of up to
26 \$2,000 to Plaintiff as a service award for her service as a Class Representative.

1 3.19 Plaintiff Expense Award: Class Counsel’s payment, subject to Court approval, of
2 up to \$2,000 in actual, out-of-pocket expenses incurred in connection with Plaintiff’s service as a
3 Class representative, to be paid out of Class Counsel’s Fee and Expense Award.

4 3.20 Plaintiff’s Released Claims: Any and all claims, including those for damages or
5 injunctive relief, that accrued during the Class Period and that arise from or relate to the claims
6 and allegations in Plaintiff’s Second Amended Complaint, including Unknown Claims, and the
7 acts, facts, or circumstances that were or could have been alleged by Plaintiff in the Action.

8 3.21 Publication Notice: Court-directed appropriate notice pursuant to Fed. R. Civ. P.
9 23(e), the form of which is in Exhibit B-2.

10 3.22 Releasing Parties: The parties granting a release, including Plaintiff, Valero, and all
11 Class members who do not timely exclude themselves from the Settlement.

12 3.23 Released Parties: The parties receiving a release, including Plaintiff, Plaintiff’s
13 Counsel, Valero, Valero’s Counsel, and all Class members who do not timely exclude themselves
14 from the Settlement

15 3.24 Relevant Valero-Branded Signage: “Main ID/price” signage, “Pump-A-Discount”
16 signage, and “portable” signage, as defined in Valero’s Wholesale Branding Manual.

17 3.25 Second Amended Complaint: The Second Amended Class Action Complaint filed
18 against Valero in the Action by Plaintiff on September 23, 2016.

19 3.26 Settlement: The terms of the settlement set forth in this Settlement Agreement.

20 3.27 Settlement Class: “All persons who, between December 3, 2011 and the date of
21 preliminary approval, purchased gasoline using a debit card at a Valero-branded station in
22 California that advertised a ‘cash’ price and ‘credit’ price on Relevant Valero-Branded Signage
23 but the Relevant Valero-Branded Signage did not affirmatively disclose how gasoline purchased
24 with a debit card was priced, and were charged more money per gallon than the advertised ‘cash’
25 price.”¹

26 _____
27 ¹ The Court previously certified a class consisting of “[a]ll persons who, between December 3,
28 2011, and the final disposition of this action, purchased gasoline using a debit card at a Valero-
branded station in California that does not disclose how gasoline purchased with a debit card is

1 3.28 Settling Parties: Plaintiff, Defendant, and all Class members.

2 3.29 Unknown Claims: Plaintiff's Released Claims and all of Defendant's Released
3 Claims that any of the Parties or Class members do not know or suspect to exist in his, her, or its
4 favor at the time of the release, which if known by him, her, or it, might have affected his, her, or
5 its decision not to object to, or opt-out of, this Settlement or release of the Released Parties,
6 Plaintiff, Class Counsel, or Class members. With respect to any and all Plaintiff's Released Claims
7 and Defendants' Released Claims, the Parties stipulate and agree that upon the Effective Date, the
8 Parties shall, to the fullest extent permitted by law, fully, finally, and forever expressly waive and
9 relinquish with respect to such claims, any and all provisions, rights, and benefits of Section 1542
10 of the California Civil Code and any and all similar provisions, rights, and benefits conferred by
11 any law of any state or territory of the United States or principle of common law that is similar,
12 comparable, or equivalent to Section 1542 of the California Civil Code, which provides:

13 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
14 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**
15 **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
16 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
17 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**
18 **DEBTOR OR RELEASED PARTY.**

19 3.30 The plural of any term defined herein includes the singular, and vice versa.

20 **IV. SETTLEMENT TERMS**

21 **A. Rule 23(b)(3) Class Certification**

22 4.1 The Parties consent to certification of the Settlement Class for the claims raised in
23 this Action pursuant to Fed. R. Civ. P. 23(b)(3).

24
25
26 _____
27 priced, and were charged more money per gallon than the advertised 'cash' price." ECF No. 152
28 at 6 (modifying class definition). The Parties intend for the Settlement Class to include the same
members and therefore use a similar Class definition, modified only for the sake of clarity, *not*
substance.

1 **B. Consideration to the Class: Injunctive Relief**

2 4.2 In consideration for the Releases (paragraphs 4.3 and 4.4 below), Valero has agreed
3 to be bound by the following permanent injunction in the Court’s Final Judgment approving the
4 Settlement in the Action:

5 (a) Valero shall be permanently enjoined from approving any Relevant Valero-
6 Branded Signage in California that advertises gasoline prices in “cash” and “credit,” but not the
7 “debit” price. No later than 90 calendar days after the Effective Date, Valero will include in its
8 Wholesale Branding Manual options for Relevant Valero-Branded Signage and marketing
9 materials, including fuel pump decals, that prominently show how debit cards will be charged (*i.e.*,
10 as “cash” or “credit”). Further, in the event Valero receives actual knowledge that a Valero-
11 branded station in California is in violation of its Wholesale Branding Manual with respect to how
12 debit card prices will be displayed, Valero shall promptly notify the owner of such station of its
13 violation and demand that it comply.

14 (b) No later than 90 calendar days after the Effective Date, Valero will
15 affirmatively state in the Wholesale Branding Manual that any Valero-branded station that
16 advertises discounted pricing for cash on Relevant Valero-Branded Signage must also show how
17 debit cards will be charged (*i.e.*, as “cash” or “credit”).

18 (c) No later than 90 calendar days after the Effective Date, Valero shall request
19 all distributors and direct dealers in California to inform Valero within 30 days whether their
20 stations advertise discount pricing for cash.

21 (d) Within one year of the Effective Date, Valero shall provide all Valero-
22 branded stations in California that inform Valero they advertise discounted pricing for cash with
23 fuel pump decals that state how debit cards will be charged.

24 (e) Within 18 months of the Effective Date, Valero shall provide all Valero-
25 branded stations in California that inform Valero they advertise discounted pricing for cash with
26 signage that prominently shows how debit cards will be charged.

27 (f) The Parties recognize that Valero does not own, operate, or manage the
28 Valero-branded stations and, beyond setting the standard in the Wholesale Branding Manual or

1 other branding documents, does not meaningfully control the branded stations' pricing and/or use
2 of their signage and point of sale systems. Valero shall not be considered in violation of the
3 permanent injunction if the owner and/or operator of a Valero-branded station, without Valero's
4 actual knowledge and consent, advertises gasoline prices for "cash" and "credit" but not "debit."
5 Should a Valero-branded station refuse or fail to comply upon being informed of its non-
6 compliance, Plaintiff and the Settlement Class' sole remedy shall be against such Valero-branded
7 station and not Valero.

8 (g) The Parties recognize that Valero's entire promise and obligations
9 regarding injunctive relief is outlined in paragraphs 4.2(a)-(f) above.

10 (h) In the event that any of the actions to be taken pursuant to the permanent
11 injunction violate any local, state, or federal laws or regulations, Valero shall be excused from
12 taking such actions that would conflict with or be violative of local, state, or federal laws or
13 regulations.

14 **C. Release by Plaintiff and the Settlement Class**

15 4.3 Upon the Effective Date, each Settlement Class member who has not timely opted
16 out, as well as Plaintiff, releases and discharges Valero and its parents, subsidiaries, affiliates, and
17 all of their respective officers and employees and Valero Counsel of and from all Plaintiff's
18 Released Claims, including Unknown Claims, provided, however, that Plaintiff's Released Claims
19 shall not include any claims to enforce the terms of this Settlement Agreement.

20 **D. Release by Valero**

21 4.4 On the Effective Date, Valero and its subsidiaries, affiliates, and all of their
22 respective officers and employees release and forever discharge Plaintiff, the Settlement Class
23 members, and Class Counsel from all claims arising from or relating to the institution, prosecution,
24 or settlement of the claims against Valero, including any defenses or compulsory counterclaims
25 Valero has or may have to the claims in the Second Amended Complaint or Plaintiff's and the
26 Settlement Class' settlement of the claims, except that Defendant's Released Claims shall not
27 include any claims to enforce the Settlement Agreement.

28

1 4.5 Subject to the order of the Court, pending determination of whether the Settlement
2 shall receive Final Approval, Plaintiff and all Settlement Class members, and any of them, are
3 barred and enjoined from commencing, prosecuting, instigating, assisting, or in any way
4 participating in the commencement or prosecution of any action asserting any Plaintiff's Released
5 Claims, either directly, representatively, derivatively, or in any other capacity, against any released
6 person.

7 **E. No Admission of Liability**

8 4.6 This Settlement Agreement is a compromise of disputed claims and the
9 consideration provided for herein is not to be construed as an admission on the part of any Party
10 hereto. Plaintiff believes her claims have substantial merit and that the appeal of the Court's Order
11 decertifying the Class would be successful, but is agreeing to settle her claims only because Valero
12 has agreed to cease the allegedly wrongful conduct and because the Settlement will provide
13 substantial relief to the Settlement Class. Valero denies any liability or wrongdoing of any kind
14 associated with the claims alleged in this Action and further denies, for any purpose other than that
15 of settling the Action, that this lawsuit is appropriate for class treatment, but it is entering into the
16 Settlement solely because it will eliminate the uncertainty, distraction, burden, and expense of
17 further litigation. Valero and its counsel shall not make any allegation that this lawsuit was filed
18 in bad faith or was frivolous. Plaintiff and Valero are settling this case voluntarily after
19 consultation with competent legal counsel. In the event the Settlement does not become final for
20 any reason, Valero reserves the right to oppose certification of any class in future proceedings.

21 **F. Payment of Class Counsel's Attorneys' Fees and Expenses**

22 4.7 If approved by the Court, Valero shall pay Class Counsel up to \$1,650,000 in
23 attorneys' fees and expenses, inclusive, as the Fee and Expense Award.

24 4.8 Valero shall pay the Fee and Expense Award to Class Counsel within 30 calendar
25 days from the expiration of time to appeal the Court's Order approving the Settlement or, if an
26 appeal is taken, within 30 calendar days of the final resolution of such appeal.

1 **G. Payment of Plaintiff's Service Award and Expenses**

2 4.9 Plaintiff has spent a significant amount of time, effort, and money participating and
3 assisting Class Counsel in the Action, including, by way of example, providing documentation
4 concerning her experiences at Valero-branded stations, communicating on numerous occasions
5 with Class Counsel regarding the Action, sitting for a deposition, and flying from Los Angeles to
6 San Jose, California to attend a private mediation session. Accordingly, if approved by the Court,
7 Valero shall pay a service award to Plaintiff of no more than \$2,000.

8 4.10 Valero shall pay Plaintiff any service award approved by the Court 30 calendar
9 days from the expiration of time to appeal the Court's Order approving the Settlement or, if an
10 appeal is taken, within 30 calendar days of the final resolution of such appeal.

11 4.11 In addition, if approved by the Court, Class Counsel shall pay Plaintiff \$2,000 in
12 actual, out-of-pocket expenses incurred in connection with Plaintiff's service as a Class
13 representative, to be paid out of Class Counsel's Fee and Expense Award.

14 **H. Settlement Administrator**

15 4.12 Subject to the Court's approval, the Parties shall utilize Epiq Class Action & Claims
16 Solutions, Inc., a neutral third-party, as the "Settlement Administrator." Valero was principally
17 responsible in selecting the Settlement Administrator. The Settlement Administrator shall be
18 responsible for disseminating notice to the Settlement Class (as further described below),
19 maintaining a settlement website (as to which Valero and Plaintiff shall agree in good faith on
20 form and substance), and receiving and reviewing any requests to be excluded from the Settlement
21 Class ("Requests for Exclusion"). All costs and expenses of providing Class Notice by the
22 Settlement Administrator shall be paid solely by Valero.

23 **I. Settlement Class Notice**

24 4.13 The Parties agree that Court-approved notice of the Settlement and its terms (based
25 on the Notice Plan previously approved by the Court) and the opportunity for Settlement Class
26 members to request exclusion from the Settlement will be provided to the Settlement Class by the
27 Settlement Administrator.

28

1 4.14 Notice that will be provided to the Settlement Class will be substantially identical
2 to the Renewed Notice Plan that the Court previously found “satisfie[d] the requirements of Rule
3 23 . . . and due process.” ECF No. 164 at 1. Like the Renewed Notice Plan, the Settlement Notice
4 Plan consists of: (a) an online banner ad campaign; (b) a social media campaign; (c) a print
5 campaign in six specific California newspapers; (d) a national press release in English and Spanish;
6 and (e) a dedicated informational website. The dedicated informational website will be established
7 by the same notice and administration firm previously approved by the Court (Garden City Group,
8 which has since merged with Epiq Class Action & Claims Solutions, Inc.). Notice will be in
9 English and Spanish

10 4.15 The Settlement Class Notice shall conform to all applicable requirements of the
11 Federal Rules of Civil Procedure, the United States Constitution (including the Due Process
12 Clause), and any other applicable law, and shall otherwise be in the manner and form agreed upon
13 by the Parties and approved by the Court. Like the previously approved Renewed Notice Plan, the
14 Settlement Notice Plan is designed to provide the Settlement Class with important information
15 regarding the proposed Settlement and their rights thereunder, including a description of the
16 material terms of the Settlement; a date by which Settlement Class members may exclude
17 themselves from, or “opt-out” of, the Settlement Class; a date by which Settlement Class members
18 may object to the Settlement; Class Counsel’s Fee and Expense Application and request for a
19 service award for Ms. Bautista; the date of the Final Approval Hearing; and information regarding
20 the Settlement website where Settlement Class members may access the Settlement Agreement
21 and other important documents.

22 4.16 Subject to Court approval, within ten business days of the order granting Plaintiff’s
23 motion for preliminary approval of the Settlement and to direct notice to the Settlement Class, the
24 Settlement Administrator will create and maintain a Settlement website and publish the Publication
25 Notice (attached as Exhibit B-2).

26 4.17 Within ten business days of the filing of Plaintiff’s motion for preliminary approval
27 of the Settlement and to direct notice to the Class, the Settlement Administrator will direct notice
28

1 of the proposed Settlement to the federal and state officials required to be notified by the Class
2 Action Fairness Act of 2005, 28 U.S.C. §1715.

3 **J. Settlement Website**

4 4.18 The contents of the Settlement Class Notice shall be reproduced on a website
5 maintained by the Settlement Administrator, with the input and oversight of Defense Counsel and
6 Class Counsel. The website shall include information regarding the nature of the Action, a
7 summary of the substance of the Settlement, the Settlement Class definition, the procedure and
8 time period to request exclusion from and/or object to the Settlement, the date set for the Final
9 Approval Hearing, and shall post all Settlement-related documents.

10 **K. Requests for Exclusion**

11 4.19 Settlement Class members who do not wish to participate in the Settlement may
12 opt-out of the Class by sending a written request to the Settlement Administrator at the address
13 designated in the Notice. Persons who timely opt-out preserve their existing rights to individually
14 pursue any claims they may have against Valero as alleged in the Second Amended Complaint,
15 including damages, subject to any defenses Valero may have. In accordance with the District's
16 guidance, the procedure for opting out requires only that Settlement Class members provide the
17 Settlement Administrator with their name, mailing address, and email address or telephone
18 number; an explanation of why they believe they are a Settlement Class member; the words
19 "Notification of Exclusion" or a statement that they want to be excluded from the Settlement; and
20 their signature. Exclusions must be signed by the Settlement Class member personally, and not
21 their lawyer or anyone else acting on their behalf. "Mass" or "class" opt-outs made on behalf of
22 multiple persons or classes of persons will be deemed invalid. The Settlement Administrator shall
23 promptly provide notice to Class Counsel and Defense Counsel of any Requests for Exclusion it
24 receives.

25 **L. Order Preliminarily Approving the Settlement and Directing Notice**
26 **to the Settlement Class; Final Fairness Hearing**

27 4.20 As soon as reasonably practicable after execution of this Settlement Agreement,
28 Class Counsel will move the Court for an order preliminarily approving the Settlement, *see* Exhibit

1 B, and for an order directing notice to the Settlement Class and for a stay of all proceedings in the
2 Action until the Court renders a final decision on approval of the Settlement.

3 4.21 The Parties will ask the Court to schedule a Fairness Hearing to determine whether
4 the Settlement should receive Final Approval, with that hearing to occur no earlier than 100
5 calendar days after the Court enters an order preliminarily approving the Settlement and directing
6 Notice to the Settlement Class. By no later than the dates ordered by the Court, Class Counsel will
7 move the Court for appropriate orders approving and effectuating the Settlement, including orders:

8 (a) certifying the Class for settlement purposes pursuant to Fed. R. Civ. P.
9 23(b)(3) and fully and finally approving the Settlement contemplated by this Settlement
10 Agreement and its terms as being fair, reasonable, and adequate within the meaning of Rule 23
11 and directing its consummation pursuant to its terms and conditions;

12 (b) directing that the Action be dismissed with prejudice;

13 (c) discharging and releasing the Released Parties from all of Plaintiff's
14 Released Claims;

15 (d) permanently barring and enjoining the institution and prosecution, by
16 Plaintiff and Settlement Class members, of any other action against the released persons, in any
17 court, asserting any Plaintiff's Released Claims;

18 (e) discharging and releasing Plaintiff, Class Counsel, and the Settlement Class
19 from all of Defendant's Released Claims;

20 (f) reserving continuing and exclusive jurisdiction over the Settlement,
21 including all future proceedings concerning the consummation and enforcement of this Settlement
22 Agreement;

23 (g) determining pursuant to Fed. R. Civ. P. 54(b) that there is no just reason for
24 delay and directing entry of a Final Judgment as to Valero in the Action;

25 (h) granting the Fee and Expense Application; and

26 (i) containing such other and further provisions consistent with the terms of
27 this Settlement Agreement to which the Parties expressly consent in writing.
28

1 **M. Miscellaneous Provisions**

2 4.22 If, for any reason, the Settlement is not approved by the Court, is terminated,
3 overturned, or materially modified on appeal or as a result of further proceedings on remand, or
4 otherwise does not become effective, unless the Parties shall agree otherwise, the Parties shall
5 revert to their litigation positions immediately prior to the execution of the Settlement Agreement,
6 without waiver of any rights, claims, or defenses; nothing in this Settlement Agreement, the motion
7 for preliminary approval of the Settlement, or the Term Sheet shall be cited by the Parties or relied
8 on by the Court for any purpose other than in connection with disputes concerning the Settlement.

9 4.23 If any action is filed in any court asserting any of Plaintiff's Released Claims prior
10 to final Court approval of the proposed Settlement, Plaintiff shall cooperate with Valero in
11 obtaining the dismissal or withdrawal of such related litigation, including, where appropriate,
12 joining in any motion to dismiss such litigation.

13 4.24 The Parties acknowledge and agree that this Settlement Agreement memorializes
14 the entire agreement among the Parties, that they have not executed this Settlement Agreement in
15 reliance on any promise, representation, inducement, covenant, or warranty except as expressly
16 set forth herein, and that this Settlement Agreement supersedes all other prior statements or
17 agreements, whether oral or written, to the extent any provision hereof is inconsistent with any
18 such prior oral or written statements or agreements.

19 4.25 This Settlement Agreement may not be amended except by a writing executed by
20 all Parties hereto or their respective successors-in-interest.

21 4.26 The Court will retain jurisdiction with respect to implementation and enforcement
22 of the terms of this Settlement Agreement and over any disputes arising under this Settlement
23 Agreement, and all Parties hereby submit to the jurisdiction of the Court for such purposes.

24 4.27 Each Party represents and warrants to all other Parties that such Party: (a) was
25 represented by attorneys of the Party's choosing in connection with the execution of this
26 Settlement Agreement; (b) has read and understood all aspects of this Settlement Agreement and
27 all of its effects; and (c) has executed this Settlement Agreement as a voluntary act of the Party's
28 own free will and without any threat, force, fraud, duress, or coercion of any kind.

1 4.28 If any provision of this Settlement Agreement is declared by the Court to be invalid,
2 void, or unenforceable, the remaining provisions of this Settlement Agreement will continue in
3 full force and effect, unless the provision declared to be invalid, void, or unenforceable is material,
4 at which point the Parties shall attempt to renegotiate the Settlement Agreement or, if that proves
5 unavailing, either Party can terminate the Settlement Agreement without prejudice to any Party.

6 4.29 This Settlement Agreement shall be binding upon, and inure to the benefit of, the
7 successors and assigns of the Parties hereto. Without limiting the generality of the foregoing, each
8 and every covenant and agreement herein by Plaintiff and Class Counsel shall be binding upon all
9 Settlement Class members who do not timely opt-out.

10 4.30 This Settlement shall be governed by and construed in accordance with the laws of
11 the State of California, without regard to California's principles governing choice of law. The
12 Parties agree that any dispute arising out of or relating in any way to the Settlement shall not be
13 litigated or otherwise pursued in any forum or venue other than the Court, and the Parties expressly
14 waive any right to demand a jury trial as to any such dispute.

15 4.31 The provisions contained in this Settlement Agreement shall not be deemed a
16 presumption, concession, or admission by Valero of any fault, liability, or wrongdoing as to any
17 facts or claims that have been or might be alleged or asserted in the Action, or any other action or
18 proceeding that has been, will be, or could be brought, and shall not be interpreted, construed,
19 deemed, invoked, offered, or received in evidence or otherwise used by any person in the Action,
20 or in any other action or proceeding, whether civil, criminal, or administrative, for any purpose
21 other than as provided expressly herein.

22 4.32 This Settlement Agreement will be construed as if the Parties jointly prepared it,
23 and any uncertainty or ambiguity will not be interpreted against any one Party because of the
24 manner in which this Settlement Agreement was drafted or prepared.

25 4.33 The headings used in this Settlement Agreement are for convenience only and will
26 not be used to construe its provisions.

27 4.34 The Settlement may be executed in any number of counterparts and by each of the
28 different Parties on several counterparts, each of which when so executed and delivered will be an

1 original. The executed signature page(s) from each counterpart may be joined together and
2 attached and will constitute one and the same instrument.

3 IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement effective
4 as of the date set forth below.

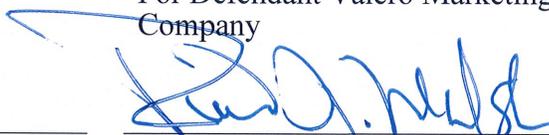
5 Dated: September 30, 2020

Dated: September 30, 2020

6 For Plaintiff Faith Bautista

For Defendant Valero Marketing and Supply
Company

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Richard J. Walsh
Senior Vice President and General Counsel



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