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DISTRICT OF OREGON
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1 HARDY MYER S. Attorney General -
of the State of Oregon.
2 ANDREW E. AUBERTINE
Assistant Attorney General
3 Oregon Department of Justice
1162 Court Street NE
4 Salem, OR 97301-4096
Telephone: (503) 378-4732
5 Facsimile: (503) 378-5187
andrew.aubertine@doj.state.or.us
6 Oregon State Bar No. 83013

7 Attorneys for Plaintiff, State of Oregon

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10 IN THE UNITED STATES DISTRICT COURT

11 FOR THE DISTRICT OF OREGON

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CV 01 - 1830 KI

15 STATE OF OREGON,

Civil Case No.

16 Plaintiff,

17 v.

STIPULATED CONSENT DECREE AND
FINAL JUDGMENT

18 VALERO ENERGY CORPORATION, a
Delaware Corporation, and ULTRAMAR
19 DIAMOND SHAMROCK CORPORATION, a
Delaware Corporation,
20

(PUBLIC VERSION)

21 Defendants.

22 WHEREAS, Defendants were furnished with a copy of the Complaint that
23 Plaintiff intends to file in this matter, alleging violations of Section 7 of the Clayton Act as
24 amended, (15 U.S.C. § 18), Section 1 of the Sherman Act (15 U.S.C. § 1), and the Oregon
25 Antitrust Act, ORS 646.705, et seq.;

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1 WHEREAS, Defendants, by and through their attorneys, have consented to the
2 entry of this Consent Decree and Final Judgment without trial or adjudication of any issue of
3 fact or law herein and have waived notice of presentation of this Consent Decree and Final
4 Judgment and service of summons;

5 WHEREAS, this Consent Decree and Final Judgment does not constitute any
6 evidence against or an admission by any party with respect to any issue of law or fact herein;

7 WHEREAS, Defendants have agreed to be bound by the provisions of this
8 Consent Decree and Final Judgment and there is no just reason for delay in its entry;

9 WHEREAS, prompt and certain divestiture of assets and the assignment of
10 contracts are the essence of this agreement;

11 WHEREAS, Plaintiff intends to require Defendants to divest or assign, as viable
12 lines of business or contractual rights, certain assets so as to ensure that the assets will be
13 maintained as competitive, viable and ongoing and Defendants have represented to Plaintiff
14 that the divestitures and assignments required below can and will be made as provided in
15 this Consent Decree and Final Judgment; and

16 WHEREAS, Defendants have represented to Plaintiff that they can comply with
17 the obligations set forth in this Consent Decree and Final Judgment and that full relief as
18 provided in this Consent Decree and Final Judgment can be accomplished;

19 NOW, THEREFORE, before the taking of any testimony, and without trial or
20 adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is
21 hereby

22 ORDERED, ADJUDGED, AND DECREED as follows:

23 I.

24 **JURISDICTION AND VENUE**

25 This Court has jurisdiction over the subject matter of this action and over each of
26 the parties hereto. The Complaint states a claim upon which relief may be granted against
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1 the Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18), Section 1
2 of the Sherman Act (15 U.S.C. § 1), and the Oregon Antitrust Act, ORS 646.705, et seq.
3 The Attorney General of Oregon has authority to bring this action pursuant to Section 16 of
4 the Clayton Act (15 U.S.C. § 26) and ORS 646.730, ORS 646.760, and ORS 646.770.

5 Venue is proper in this Court under Section 12 of the Clayton Act, 15 U.S.C. §22
6 and under 28 U.S.C. §139(b). Defendant Valero Energy Corporation ("Valero") conducts
7 business in the District of Oregon including, but not limited to, the greater Portland
8 metropolitan area. Defendant Ultramar Diamond Shamrock Corporation ("UDS" or
9 "Ultramar") conducts business in the District of Oregon including, but not limited to, the
10 greater Portland metropolitan area.

11 II.

12 DEFINITIONS

13 As used in this Consent Decree and Final Judgment:

14 A. "Valero" means Valero Energy Corporation, its directors, officers, employees,
15 agents and representatives, predecessors, successors, and assigns; its joint ventures,
16 subsidiaries, divisions, groups and affiliates controlled by Valero, and the respective
17 directors, officers, employees, agents, representatives, successors, and assigns of each.

18 B. "Ultramar" or "UDS" means Ultramar Diamond Shamrock Corporation, its
19 directors, officers, employees, agents and representatives, predecessors, successors, and
20 assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by
21 Ultramar, and the respective directors, officers, employees, agents, representatives,
22 successors, and assigns of each.

23 C. "California CARB Refining and Marketing Assets" means the following assets:

24 (1) Ultramar's Golden Eagle refinery located at Avon, California and all of
25 Ultramar's interest in all tangible assets used in the operation of the refinery,
26 including but not limited to docks with associated tanks, and pipelines; all

1 licenses, agreements, contracts, and permits used in the operation of the
2 refinery; the non-exclusive right to use all patents, know-how, and other
3 intellectual property used by Ultramar in the operation of the refinery; all
4 agreements, contracts, and understandings listed in Appendix I, attached as a
5 confidential attachment and filed under seal; at the acquirer's option, all
6 contracts, agreements or understandings (other than those listed in Appendix I)
7 relating to the transportation, terminaling, storage or sale of the refinery's
8 petroleum product output; at the acquirer's option, all agreements (other than
9 those listed in Appendix I) under which Ultramar receives crude oil or other
10 inputs at or for the refinery; and, at the acquirer's option, all exchange
11 agreements involving the refinery; all plans (including proposed and tentative
12 plans, whether or not adopted), specifications, drawings, and others assets
13 (including the non-exclusive right to use patents, know-how, and other
14 intellectual property relating to such plans) related to the operation of, and
15 improvements, modifications, or upgrades to, the Golden Eagle refinery;
16 (2) Ultramar's refinery located at Wilmington, California, and all of Ultramar's
17 interest in all tangible assets used in the operation of the refinery; all licenses,
18 agreements, contracts, and permits used in the operation of the refinery,
19 including but not limited to docks with associated tanks, and pipelines; the
20 non-exclusive right to use all patents, know-how, and other intellectual
21 property used by Ultramar in the operation of the refinery; at the acquirer's
22 option, all contracts, agreements or understandings relating to the
23 transportation, terminaling, storage or sale of the refinery's petroleum product
24 output; at the acquirer's option, all agreements under which Ultramar receives
25 crude oil or other inputs at or for the refinery; and, at the acquirer's option, all
26 exchange agreements involving the refinery; all plans (including proposed and

1 tentative plans, whether or not adopted), specifications, drawings, and other
2 assets (including the non-exclusive right to use patents, know-how, and other
3 intellectual property relating to such plans) related to the operation of, and
4 improvements, modifications, or upgrades to, the Wilmington refinery; and

5 (3) Ultramar's California Retail Assets.

6 D. "CARB Gasoline" means motor fuel used in automobiles that meets the
7 specifications of the California Air Resources Board.

8 E. "Commission" means the Federal Trade Commission.

9 F. "Commission Consent Order" means any Agreement Containing Consent Orders
10 accepted by the Commission for public comment in connection with FTC File No. 011-
11 0141.

12 G. "Defendants" mean Valero and Ultramar (or UDS), individually and collectively,
13 and any other entity resulting from the merger involving Valero and Ultramar, its directors,
14 officers, employees, agents and representatives, predecessors, successors, and assigns; and
15 its joint ventures, subsidiaries, divisions, groups and affiliates controlled by the merged
16 entity.

17 H. "Effective Date of Divestiture" means the date on which the applicable divestiture
18 is consummated.

19 I. "Gasoline" means various grades of refined motor fuel products used as fuel for
20 motor vehicles.

21 J. "Golden Eagle CARB Refining Assets" means Ultramar's Golden Eagle refinery
22 located at Avon, California and all of Ultramar's interest in all tangible assets used in the
23 operation of the refinery, including but not limited to docks with associated tanks, and
24 pipelines; all licenses, agreements, contracts, and permits used in the operation of the
25 refinery; the non-exclusive right to use all patents, know-how, and other intellectual
26 property used by Ultramar in the operation of the refinery; all agreements, contracts and

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1 understandings listed in Appendix I; at the acquirer's option, all contracts, agreements or
2 understandings (other than those listed in Appendix I) relating to the transportation,
3 terminaling, storage or sale of the refinery's petroleum product output to the extent they
4 relate to the refinery's petroleum product output; at the acquirer's option, all agreements
5 (other than those listed in Appendix I) under which Ultramar receives crude oil or other
6 inputs at or for the refinery; and all exchange agreements involving the refinery (but only to
7 the extent the exchange agreements involve output of the refinery); all plans (including
8 proposed and tentative plans, whether or not adopted), specifications, drawings, and other
9 assets (including the non-exclusive right to use patents, know-how, and other intellectual
10 property relating to such plans) related to the operation of, and improvements,
11 modifications, or upgrades to, the Golden Eagle refinery.

12 K. "Golden Eagle CARB Refining and Marketing Assets" means: (1) Ultramar's
13 Golden Eagle refinery located at Avon, California and all of Ultramar's interest in all
14 tangible assets used in the operation of the refinery, including but not limited to docks with
15 associated tanks, and pipelines; all licenses, agreements, contracts, and permits used in the
16 operation of the refinery; the non-exclusive right to use all patents, know-how, and other
17 intellectual property used by Ultramar in the operation of the refinery; all agreements,
18 contracts and understandings listed in Appendix I; at the acquirer's option, all contracts,
19 agreements or understandings (other than those listed in Appendix I) relating to the
20 transportation, terminaling, storage or sale of the refinery's petroleum product output to the
21 extent they relate to the refinery's petroleum product output; at the acquirer's option, all
22 agreements (other than those listed in Appendix I) under which Ultramar receives crude oil
23 or other inputs at or for the refinery; and all exchange agreements involving the refinery (but
24 only to the extent the exchange agreements involve output of the refinery); all plans
25 (including proposed and tentative plans, whether or not adopted), specifications, drawings,
26 and other assets (including the non-exclusive right to use patents, know-how, and other

1 intellectual property relating to such plans) related to the operation of, and improvements,
2 modifications, or upgrades to, the Golden Eagle refinery; and (2) Ultramar's Divestiture
3 Retail Assets.

4 L. "Merger" means the proposed merger involving Valero and Ultramar.

5 M. "Plaintiff" means the State of Oregon by and through the Oregon Attorney
6 General.

7 N. "Retail Assets" means, for each Retail Site, all fee or leasehold interests of
8 Defendants in the Retail Site, and all of Defendants' interest in all assets, tangible or
9 intangible, that are used at that Retail Site, including, but not limited to, all permits, licenses,
10 consents, contracts, and agreements used in the operation of the Retail Site, and the non-
11 exclusive right to use all patents, know-how, and other intellectual property used by
12 Defendants in the operation of the Retail Sites. "Retail Assets" also includes all of
13 Defendants' interest in all assets relating to all ancillary businesses (including, but not
14 limited to, automobile mechanical service, convenience store, restaurant or car wash)
15 located at each Retail Site, including all permits, licenses, consents, contracts, and
16 agreements used in the operation of the ancillary businesses, and the non-exclusive right to
17 use all know-how, patents, and other intellectual property used the operation of the ancillary
18 businesses. "Retail Assets" does not include Defendants' proprietary trademarks, trade
19 names, logos, trade dress, and system-wide software and databases.

20 O. "Retail Site" means a business establishment from which gasoline is sold to the
21 general public.

22 P. "Ultramar's California Retail Assets" means all of Ultramar's Retail Assets
23 relating to all Retail Sites in California that Ultramar operates.

24 Q. "Ultramar's Divestiture Retail Assets" means all of Ultramar's Retail Assets
25 relating to the Retail Sites that are listed in Appendix II, Exhibit C.

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III.

APPLICABILITY

A. The provisions of this Consent Decree and Final Judgment apply to the Defendants, their successors and assigns, their subsidiaries, affiliates, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who have received actual notice of this Consent Decree and Final Judgment Decree by personal service or otherwise.

B. Nothing herein shall suggest that any portion of this Consent Decree and Final Judgment is or has been created for the benefit of any third party and nothing herein shall be construed to provide any rights to third parties.

IV.

DIVESTITURE OF ASSETS

A. On the condition that Defendants consummate the Merger and the Commission has not withdrawn its acceptance of the Commission's Consent Order, Defendants shall divest the Golden Eagle CARB Refining and Marketing Assets to a single acquirer that receives the prior approval of Plaintiff and only in a manner that receives the prior approval of Plaintiff, absolutely and in good faith and at no minimum price, within twelve (12) months from the date Defendants execute this Consent Decree and Final Judgment.

B. Defendants shall offer the acquirer of the Golden Eagle CARB Refining and Marketing Assets an indemnity, subject to the prior approval of Plaintiff and to be effective upon the Effective Date of Divestiture of the Golden Eagle CARB Refining and Marketing Assets, which indemnity shall allocate among Defendants and the acquirer, on such terms as the Defendants and the acquirer agree, responsibility with respect to potential claims and liabilities arising out of failure to comply with local, state, and federal environmental obligations in connection with the Golden Eagle refinery and the Retail Sites that are divested or assigned pursuant to this Paragraph.

1 C. In the event that Defendants are unable to satisfy all conditions necessary to divest
2 any intangible asset, Defendants shall:

3 (1) with respect to permits, licenses or other rights granted by governmental
4 authorities (other than patents), provide such assistance as the acquirer may
5 reasonably request in the acquirer's efforts to obtain comparable permits, licenses
6 or rights, and

7 (2) with respect to other intangible assets (including patents), substitute
8 equivalent assets, subject to Plaintiff's approval. A substituted asset will not be
9 deemed to be equivalent unless it enables the refinery to perform the same function
10 at the same or lower cost.

11 D. With respect to assets that are to be divested or agreements entered into pursuant to
12 this paragraph at the acquirer's option. Defendants need not divest such assets or enter into
13 such agreements provided:

14 (1) the acquirer chooses not to acquire such assets or enter into such agreements;
15 and

16 (2) Plaintiff approves the divestiture without such assets or agreements.

17 E. The purpose of the divestiture of the Golden Eagle CARB Refining and Marketing
18 Assets, and of the other provisions of this paragraph, is to ensure the continued use of the
19 Golden Eagle CARB Refining and Marketing Assets as viable, on-going businesses, in the
20 same businesses in which they were engaged at the time of the announcement of the Merger,
21 including the refining, bulk supply and wholesale marketing of Gasoline, CARB Gasoline,
22 and other petroleum products, by a firm that has a sufficient ability and an equivalent
23 incentive to invest and compete in the assets and businesses as Ultramar had before the
24 Merger, and to remedy the lessening of competition in the bulk supply and wholesale
25 marketing of Gasoline resulting from the proposed Merger as alleged in Plaintiff's
26 Complaint.

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1 F. Defendants shall take all reasonable steps to accomplish quickly the divestitures
2 contemplated by this Consent Decree and Final Judgment.

3 G. Beginning sixty (60) days from the date when this Consent Decree and Final
4 Judgment becomes final, and every sixty (60) days thereafter until the divestiture has been
5 completed or a trustee is appointed, Defendants shall deliver to Plaintiff a written report as
6 to the fact and manner of compliance with Paragraph IV of this Consent Decree and Final
7 Judgment. Each such report shall include, for each person who during the preceding sixty
8 (60) days made an offer, expressed an interest or desire to acquire, entered into negotiations
9 to acquire, or made an inquiry about acquiring any ownership interest in all or any portion of
10 the divestiture assets, the name, address, and telephone number of that person and a detailed
11 description of each contact with that person during that period, as well as written
12 communications to and from each person, and all internal memoranda and all reports and
13 recommendations concerning the divestiture, except such information subject to attorney-
14 client privilege or attorney work product immunity or other legally recognized privilege.
15 Defendants shall maintain full records of all efforts made to divest all or any portion of the
16 divestiture products.

17 H. From the time the Merger is consummated until the Effective Date of Divestiture
18 of the Golden Eagle CARB Refining and Marketing Assets or the California CARB
19 Refining and Marketing Assets, Defendants shall take such actions as are necessary to
20 maintain the viability and marketability of the California CARB Refining and Marketing
21 Assets and to prevent the destruction, removal, wasting, deterioration, or impairment of any
22 of the assets, except for ordinary wear and tear, including, but not limited to, continuing in
23 effect and maintaining proprietary trademarks, trade names, logos, trade dress, identification
24 signs, franchise agreements, and renewing or extending any base leases or ground leases that
25 expire or terminate prior to the Effective Date of the Divestiture.

1 I. Following divestiture, for a period of five years, Defendants, either individually or
2 jointly, shall not, without providing thirty (30) days advance written notice to the Plaintiff,
3 reacquire, directly or indirectly, through subsidiaries, partnerships or otherwise, the Golden
4 Eagle CARB Refining Assets or, in the event that the latter are divested, the California
5 CARB Refining and Marketing Assets. If, within thirty days after receiving such notice,
6 Plaintiff makes a reasonable written request for material additional information or
7 documentation, Defendants shall not consummate the transaction until twenty (20) days
8 after submitting such additional information or documentation.

9 V.

10 **APPOINTMENT OF TRUSTEE**

11 A. If Defendants have not, within the time periods required, complied with the
12 requirements of Section IV, absolutely and in good faith, Plaintiff, in consultation with the
13 Commission and the California Department of Justice, may appoint a trustee to effectuate
14 the divestiture required by Section IV.; provided, however, that the trustee may, subject to
15 the approval of Plaintiff, the California Department of Justice, and the Commission,
16 substitute the California CARB Refining and Marketing Assets for the Golden Eagle CARB
17 Refining and Marketing Assets.

18 B. In the event that Plaintiff brings an action to enforce this Consent Decree and Final
19 Judgment, Defendants shall, on request, consent to the appointment of a trustee in such
20 action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this
21 Paragraph shall preclude the Plaintiff from seeking civil penalties or any other relief
22 available to it for any failure by the Defendants to comply with this Consent Decree and
23 Final Judgment.

24 C. If a trustee is appointed by Plaintiff or a court pursuant to Paragraph V.A. of this
25 Consent Decree and Final Judgment, Defendants shall consent to the following terms and
26 conditions regarding the trustee's powers, duties, authority, and responsibilities:

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- 1 1. Plaintiff shall select, in consultation with the California Department of Justice
2 and the Commission, a person or persons as trustee, subject to the consent of
3 Defendants, which consent shall not be unreasonably withheld. The trustee
4 shall be a person with experience and expertise in acquisitions and divestitures.
5 If Defendants have not opposed, in writing, including the reasons for opposing,
6 the selection of any proposed trustee within ten (10) days after notice by
7 Plaintiff to Defendants of the identity of any proposed trustee, Defendants shall
8 be deemed to have consented to the selection of the proposed trustee.
- 9 2. Subject to the prior approval of Plaintiff, the trustee shall have the exclusive
10 power and authority to divest the assets to be divested, assign the agreements
11 required to be assigned, and enter into the required agreements, thereby binding
12 Defendants, all on such terms and conditions as are necessary to comply with
13 the requirements of the applicable paragraph, to comply with all applicable
14 laws, and to effectuate the remedial purposes of this Consent Decree and Final
15 Judgment. Subject to the prior approval of Plaintiff, the trustee shall have the
16 sole authority to divest the assets described in Paragraph V.A in smaller
17 packages as the trustee deems necessary to effectuate divestiture of the assets
18 and to effectuate the remedial purposes of this Consent Decree and Final
19 Judgment.
- 20 3. Within ten (10) days after appointment of the trustee, Defendants shall execute
21 a trust agreement that, subject to the prior approval of Plaintiff and, in the case
22 of a court-appointed trustee, of the court, transfers to the trustee all rights and
23 powers necessary to permit the trustee to effect the divestitures required by this
24 Consent Decree and Final Judgment.
- 25 4. The trustee shall have twelve (12) months from the date Plaintiff approves the
26 trust agreement described in Paragraph V.C.3. to accomplish the divestiture to

1 an acquirer that receives the prior approval of Plaintiff and in a manner that
2 receives the prior approval of Plaintiff. If, however, at the end of the twelve-
3 month period, the trustee has submitted a plan of divestiture or believes that
4 divestiture can be achieved within a reasonable time, the divestiture period may
5 be extended by Plaintiff, or, in the case of a court-appointed trustee, by the
6 court.

- 7 5. The trustee shall have full and complete access to the personnel, books, records
8 and facilities related to the assets to be divested or to any other relevant
9 information, as the trustee may request. Defendants shall develop such
10 financial or other information as such trustee may request and shall cooperate
11 with the trustee. Defendants shall take no action to interfere with or impede the
12 trustee's accomplishment of the divestiture. Any delays in divestiture caused
13 by Defendants shall extend the time for divestiture under this Paragraph in an
14 amount equal to the delay, as determined by Plaintiff or, for a court-appointed
15 trustee, by the court.
- 16 6. The trustee shall use his or her best efforts to negotiate the most favorable price
17 and terms available in each contract that is submitted to Plaintiff, subject to
18 Defendants' absolute and unconditional obligation to divest expeditiously at no
19 minimum price. The divestiture shall be made in the manner and to the
20 acquirer or acquirers as approved by Plaintiff, as applicable; provided,
21 however, if the trustee receives bona fide offers from more than one acquiring
22 entity for any package of assets, and if Plaintiff determines to approve more
23 than one such acquiring entity, the trustee shall divest to the acquiring entity or
24 entities selected by Defendants from among those approved by Plaintiff,
25 provided further, however, that Defendants shall select such entity within five
26 (5) days of receiving notification of Plaintiff's approval.

- 1 7. The trustee shall serve, without bond or other security, at the cost and expense
2 of Defendants, on such reasonable and customary terms and conditions as
3 Plaintiff or a court may set. The trustee shall have the authority to employ, at
4 the cost and expense of Defendants, such consultants, accountants, attorneys,
5 investment bankers, business brokers, appraisers, and other representatives and
6 assistants as are necessary to carry out the trustee's duties and responsibilities.
7 The trustee shall account for all monies derived from the divestiture and all
8 expenses incurred. After approval by Plaintiff and, in the case of a court-
9 appointed trustee, by the court, of the account of the trustee, including fees for
10 his or her services, all remaining monies shall be paid at the direction of
11 Defendants, and the trustee's power shall be terminated. The trustee's
12 compensation shall be based at least in significant part on a Plaintiff
13 arrangement contingent on the trustee's divesting the assets to be divested.
- 14 8. Defendants shall indemnify the trustee and hold the trustee harmless against
15 any losses, claims, damages, liabilities, or expenses arising out of, or in
16 connection with, the performance of the trustee's duties, including all
17 reasonable fees of counsel and other expenses incurred in connection with the
18 preparation for, or defense of any claim, whether or not resulting in any
19 liability, except to the extent that such liabilities, losses, damages, claims, or
20 expenses result from misfeasance, gross negligence, willful or wanton acts, or
21 bad faith by the trustee.
- 22 9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be
23 appointed in the same manner as provided in Paragraph V.A. of this Consent
24 Decree and Final Judgment.
- 25 10. Plaintiff or, in the case of a court-appointed trustee, the court, may on its own
26 initiative or at the request of the trustee issue such additional orders or

1 directions as may be necessary or appropriate to accomplish the divestitures
2 required by this Consent Decree and Final Judgment.

3 11. The trustee shall have no obligation or authority to operate or maintain the
4 assets to be divested.

5 12. The trustee shall report in writing to Defendants and Plaintiff every sixty (60)
6 days concerning the trustee's efforts to accomplish the divestitures.

7 **VI.**

8 **NOTIFICATION OF PROPOSED DIVESTITURE**

9 A. Within one (1) business day following execution of a letter of intent or a
10 definitive agreement for sale of the Golden Eagle CARB Refining and Marketing Assets,
11 Defendants or the trustee, whichever is then responsible for effecting the divestiture required
12 herein, shall notify Plaintiff of any proposed divestiture required by this Consent Decree and
13 Final Judgment.

14 B. If the trustee is responsible, he or she shall likewise notify Defendants. The notice
15 provided by the trustee shall set forth the details of the proposed transaction and list the
16 name, address, and telephone number of each person not previously identified who offered
17 or expressed an interest in or desire to acquire any ownership interest in the divestiture
18 assets, together with full details of the same.

19 C. Within ten (10) days after receipt of the notice, Plaintiff may request additional
20 information concerning the proposed divestiture, the proposed purchaser, and any other
21 potential purchaser. Defendants or the trustee shall furnish the additional information within
22 ten (10) days of the receipt of the request. Within twenty (20) days after receipt of the
23 notice or within fifteen (15) days after receipt of the additional information, whichever is
24 later, Plaintiff shall notify in writing Defendants and the trustee, if there is one, if it objects
25 to the proposed divestiture and set forth the reasons for such objection. If the Plaintiff fails
26 to object within the period specified, or if the Plaintiff notifies in writing Defendants and the

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1 trustee, if there is one, that it does not object, then the divestiture may be consummated.
2 Upon objection by the Plaintiff, or by Defendants in the case of a divestiture proposed by the
3 trustee, the proposed divestiture shall not be accomplished unless approved by the court.

4 **VII.**

5 **TOLLING OF TIME**

6 In the event that (1) Defendants enter into the Commission Consent Order; (2)
7 Defendants, within the time period required under this Consent Decree and Final Judgment,
8 have submitted a complete application for approval of the divestiture of the Golden Eagle
9 CARB Refining and Marketing Assets; (3) Plaintiff has approved the divestiture of the
10 Golden Eagle CARB Refining and Marketing Assets and has not withdrawn its approval; (4)
11 Defendants have submitted a timely and complete application for approval of the divestiture
12 of the Golden Eagle CARB Refining and Marketing Assets to the Commission; but (5) the
13 Commission has failed or refused to approve the proposed divestiture, then the time in
14 which the divestiture shall be completed shall be extended (a) for ninety (90) days or (b)
15 until the Commission has made a determination pertaining to the proposed divestiture or
16 other relief, whichever is later. During such period of extension, the Defendants shall
17 exercise the utmost good faith and best efforts to resolve the concerns of the Commission.

18 **VIII.**

19 **ORDER TO HOLD SEPARATE/MAINTAIN VIABILITY OF ASSETS**

20 On the condition that Defendants consummate the Merger and the Commission has not
21 withdrawn its acceptance of the Commission's Consent Order, and until the divestiture has
22 been accomplished, Defendants shall comply with all the terms of the State's Order to Hold
23 Separate and Maintain Assets ("Hold Separate Agreement"), attached to this Consent
24 Decree and Final Judgment and made a part hereof, as Appendix II (Exhibits A, B and D are
25 confidential and filed under seal). Defendants will comply with such terms of the Hold
26 ///

1 Separate Agreement regardless of whether the Commission enters an order finally approving
2 the merger, subject to the conditions set forth in the preceding sentence.

3 **IX.**

4 **COMPLIANCE INSPECTION**

5 For the purpose of determining or securing compliance with this Consent Decree
6 and Final Judgment, and subject to any legally recognized privilege, from time to time:

7 A. Duly authorized representatives of Plaintiff, including consultants and other
8 persons, shall, upon the written request of Plaintiff, and on reasonable notice to Defendants
9 made to its principal offices, be permitted:

10 1. access during office hours to all facilities and access to inspect and copy all
11 books, ledgers, accounts, correspondence, memoranda, and other records and
12 documents in the possession or under the control of Defendants, which may
13 have counsel present, relating to any matters contained in this Consent
14 Decree and Final Judgment; and

15 2. subject to the reasonable convenience of Defendants and without restraint or
16 interference from them, to interview directors, officers, employees, and
17 agents of Defendants, which may have counsel present, regarding any such
18 matters.

19 B. No information nor any documents obtained by the means provided in this Section
20 IX. shall be divulged by any representative of Plaintiff to any person other than a duly
21 authorized representative of the California Attorney General and the Commission, except in
22 the course of legal proceedings to which the Plaintiff is a party or for the purpose of securing
23 compliance with this Consent Decree and Final Judgment, or as otherwise required by law.

24 ///

25 ///

26 ///

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1 X.

2 **NOTICES**

3 Any notices required by this Consent Decree and Final Judgment shall be
4 delivered to the parties at the following addresses:

- 5 A. For Valero :
6 Greg King, Esq.
7 General Counsel
8 Valero Energy Company
9 1 Valero Place
10 San Antonio, Texas 78212
- 11 B. For UDS:
12 Peter Love, Esq.
13 Jones, Day, Reaves & Pogue
14 51 Louisiana Ave. NW
15 Washington, D.C. 20001
- 16 C. For Plaintiff:
17 Andrew E. Aubertine, Esq.
18 Assistant Attorney General
19 Oregon Department of Justice
20 1162 Court Street, NE
21 Salem, Oregon 97310

22 XI.

23 **RETENTION OF JURISDICTION**

24 Jurisdiction is retained by this Court for the purpose of enabling any of the parties
25 to this Consent Decree and Final Judgment to apply to this Court at any time for such further
26 orders and directions as may be necessary or appropriate for the construction,
implementation, or modification of any of the provisions of this Consent Decree and Final
Judgment, for the enforcement of compliance herewith, and for the punishment of any
violations hereof.

27 Defendants hereby further acknowledge that, solely for the purpose of this
28 Consent Decree and Final Judgment, they will not assert the Complaint and Consent Decree
29 filed by the State of Oregon in the District Court of Oregon concerning the Merger as a bar
30 Page 18- STIPULATED CONSENT DECREE AND FINAL JUDGMENT (PUBLIC
31 VERSION)
32 AEA/mkc/CED84582

1 to this action, under principles of res judicata, including the elements of claim preclusion
2 and issue preclusion.

3 **XII.**

4 **COMMISSION ORDER**

5 Any failure to divest as a result of the Commission's failure to approve an application
6 for divestiture shall not violate this Consent Decree and Final Judgment.

7 **XIII.**

8 **STATE-FEDERAL CONSULTATION**

9 Plaintiff will consult with attorneys for the California Department of Justice and the
10 Commission on all decisions relating to the divestiture of assets under this Consent Decree
11 and Final Judgment and the Hold Separate Agreement attached hereto and will exercise best
12 efforts to resolve any inconsistent enforcement positions among the three agencies relating
13 to such divestiture and the implementation of the Hold Separate Agreement.

14 **XIV.**

15 **ATTORNEYS FEES AND COSTS**

16 A. Plaintiff is awarded attorneys' fees and costs in the amount of \$69,478.86 for
17 reimbursement of fees and costs incurred by Plaintiff in this matter for all work performed
18 up to entry of this Consent Decree and Final Judgment. Defendants shall pay this sum to
19 Plaintiff within ten (10) business days of entry of this Consent Decree and Final Judgment.

20 B. Defendants shall pay to Plaintiff reimbursement of fees and costs incurred by
21 Plaintiff for work necessarily performed after entry of this Consent Decree and Final
22 Judgment in order to review, evaluate, and approve the acquirer of the assets to be divested,
23 upon ten (10) business days notice of presentment of an invoice for such costs and fees.
24 Provided, however, that Plaintiff will not submit a supplemental fees and costs bill pursuant
25 to this paragraph that exceeds \$20,000 (twenty thousand dollars).

26 ///

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1 C. All amounts recovered under paragraphs A and B of this Section shall be deposited
2 into the Oregon Department of Justice Consumer Protection and Education Revolving
3 Account and shall be used in accordance with ORS 180.095.

4 D. The costs for all materials returned to the defendants as required by ORS 646.836
5 shall be borne by Defendants and shall not be included in the fees and costs totals provided
6 to Defendants in accordance with Paragraphs A and B of this section.

7 E. If Plaintiff successfully brings an action to enforce the provisions of this Consent
8 Decree and Final Judgment, Defendants shall reimburse Plaintiff for all reasonable costs and
9 attorneys' fees associated with bringing such enforcement action. This paragraph is separate
10 and independent from paragraphs A and B of this Section.

11 **XV.**

12 **EFFECTIVE DATE AND TERMINATION**

13 This Consent Decree and Final Judgment shall become effective when the Merger
14 is consummated. This Consent Decree and Final Judgment will expire and terminate five (5)
15 years from the date of its entry.

16 **XVI.**

17 **PUBLIC INTEREST**

18 Entry of this Consent Decree and Final Judgment is in the public interest.

19
20 DATED this 18TH day of Dec., 2001.

21
22 
UNITED STATES DISTRICT JUDGE

23 ///

24 ///

25 ///

26 ///

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VERSION)

AEA/mkc/CED84582

1 Presented by:

2 THE STATE OF OREGON, by

3 

4 ANDREW E. AUBERTINE

OSB #83013

5 Assistant Attorney General

6 For Plaintiff, State of Oregon

7 VALERO ENERGY CORPORATION, by

8 

9 DEAN D. DECHAINE, Esq.

OSB#64025

10 JAMES F. DULCICH, Esq.

OSB #82243

11 Miller Nash LLP

12 111 SW 5th Ave., Suite 3500

Portland, Oregon 97204

13 Phone: 503-224-5858

Fax: 503-224-0155

14 Attorneys For Defendant Valero Energy Corporation

15

16

17

18 ULTRAMAR DIAMOND SHAMROCK CORPORATION by:

19 

20 DEAN D. DECHAINE, Esq.

OSB#64025

21 JAMES F. DULCICH, Esq.

OSB #82243

22 Miller Nash LLP

23 111 SW 5th Ave., Suite 3500

Portland, Oregon 97204

24 Phone: 503-224-5858

Fax: 503-224-0155

25 Attorneys For Defendant Ultramar Diamond Shamrock Corporation

26

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VERSION)

AEA/mkc/CED84582

DEPARTMENT OF JUSTICE

1162 Court Street NE

Salem, OR 97301-4096

PHONE: (503) 378-4732

APPENDIX I TO STIPULATED CONSENT DECREE AND FINAL JUDGMENT

INTENTIONALLY OMITTED
FILED UNDER SEAL

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS

I.

As used in this Hold Separate, the following definitions and provisions shall apply:

- A. “Valero” means Valero Energy Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Valero, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- B. “Ultramar” or “UDS” means Ultramar Diamond Shamrock Corporation, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by Ultramar, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
- C. “The State” means the State of Oregon through the Oregon Attorney General.
- D. “The Final Judgment” means the Consent Decree and Final Judgment executed by Defendants in this matter.
- E. “Effective Date of Divestiture” means the date on which the divestiture required by Paragraph IV of the Final Judgment is consummated.
- F. “Held Separate Business” means (1) Ultramar’s Golden Eagle refinery located at Avon, California and all of Ultramar’s interest in all tangible assets used in the operation of the refinery, including but not limited to docks with associated tanks, and pipelines; all licenses, agreements, contracts, and permits used in the operation of the refinery; the non-exclusive right to use all patents, know-how, and other intellectual property used by Ultramar in the operation of the refinery; all contracts, agreements or understandings relating to the transportation, terminaling, storage or sale of the refinery’s petroleum product output to the extent they relate to the refinery’s petroleum product output; all agreements under which Ultramar receives crude oil or other inputs at or for the refinery; and all exchange agreements involving the refinery (but only to the extent the exchange agreements involve output of the refinery); all plans (including proposed and tentative plans, whether or not adopted), specifications, drawings, and other assets (including the non-exclusive right to use patents, know-how, and other intellectual property relating to such plans) related to the operation of, and improvements, modifications, or upgrades to, the Golden Eagle refinery; (2) Ultramar’s

Divestiture Retail Assets; and (3) all Ultramar employees employed at the Golden Eagle refinery and the Ultramar's Divestiture Retail Assets and all other of Defendants' employees listed in Exhibit B attached as a confidential attachment.

- G. "Hold Separate Period" means the time period during which the Hold Separate is in effect, which shall begin no later than fifteen (15) days after the date the Merger is consummated.
- H. "Material Confidential Information" means competitively sensitive or proprietary information not independently known to an entity from sources other than the entity to which the information pertains, and includes, but is not limited to, all customer lists, price lists, marketing methods, patents, technologies, processes, or other trade secrets.
- I. "Merger" means the proposed merger involving Valero and Ultramar.
- J. "Defendants" means Valero and Ultramar, individually and collectively, and the successor corporation.
- K. "Retail Assets" means, for each Retail Site, all fee or leasehold interests of Defendants in the Retail Site, and all of Defendants' interest in all assets, tangible or intangible, that are used at that Retail Site, including, but not limited to, all permits, licenses, consents, contracts, and agreements used in the operation of the Retail Site, and the non-exclusive right to use all patents, know-how, and other intellectual property used by Defendants in the operation of the Retail Sites. "Retail Assets" also includes all of Defendants' interest in all assets relating to all ancillary businesses (including, but not limited to, automobile mechanical service, convenience store, restaurant or car wash) located at each Retail Site, including all permits, licenses, consents, contracts, and agreements used in the operation of the ancillary businesses, and the non-exclusive right to use all know-how, patents, and other intellectual property used in the operation of the ancillary businesses. For purposes of this Hold Separate, "Retail Assets" includes Defendants' proprietary trademarks, trade names, logos, trade dress, and system-wide software and databases.
- L. "Retail Site" means a business establishment from which gasoline is sold to the general public.
- M. "Ultramar's California Retail Assets" means all of Ultramar's Retail Assets relating to each and every Retail Site in California that Ultramar operates.
- N. "Ultramar's Divestiture Retail Assets" means all of Ultramar's Retail Assets relating to the Retail Sites that are listed in Exhibit C.

- O. "Ultramar's Non-divestiture Retail Assets" means all of Ultramar's California Retail Assets other than Ultramar's Divestiture Retail Assets.
- P. "Ultramar's Wilmington Refinery" means Ultramar's refinery located at Wilmington, California, and all of Ultramar's interest in all tangible assets used in the operation of the refinery; all licenses, agreements, contracts, and permits used in the operation of the refinery, including but not limited to docks, associated tanks, and pipelines; the non-exclusive right to use all patents, know-how, and other intellectual property used by Ultramar in the operation of the refinery; all contracts, agreements or understandings relating to the transportation, terminaling, storage or sale of the refinery's petroleum product output; all agreements under which Ultramar receives crude oil or other inputs at or for the refinery; and all exchange agreements involving the refinery; all plans (including proposed and tentative plans, whether or not adopted), specifications, drawings, and other assets (including the non-exclusive right to use patents, know-how, and other intellectual property relating to such plans) related to the operation of, and improvements, modifications, or upgrades to, the Wilmington refinery.

II.

IT IS HEREBY ORDERED that:

- A. During the Hold Separate Period, Defendants shall hold the Held Separate Business separate, apart, and independent as required by this Hold Separate and shall vest the Held Separate Business with all rights, powers, and authority necessary to conduct its business; Defendants shall not exercise direction or control over, or influence directly or indirectly, the Held Separate Business or any of its operations, or the Hold Separate Trustee, except to the extent that Defendants must exercise direction and control over the Held Separate Business as is necessary to assure compliance with this Hold Separate, the Final Judgment, and with all applicable laws, including, in consultation with the Hold Separate Trustee, continued oversight of the Held Separate Business' compliance with policies and standards concerning the safety, health, and environmental aspects of their operations and the integrity of their financial controls; and Defendants shall have the right to defend any legal claims, investigations or enforcement actions threatened or brought against any Held Separate Business.
- B. Until the Effective Date of Divestiture, and beginning immediately upon the date that the Merger is consummated, Defendants shall take such actions as are necessary to maintain the viability and marketability of the Held Separate Business, Ultramar's Wilmington Refinery Assets, and Ultramar's Non-divestiture Retail Assets to prevent the destruction, removal, wasting, deterioration, or impairment of any of the assets, except for ordinary wear and tear, including, but not limited to, continuing in effect and maintaining proprietary

trademarks, trade names, logos, trade dress, identification signs, franchise agreements, and renewing or extending any base leases or ground leases that expire or terminate prior to the Effective Date of Divestiture.

- C. The purpose of this Hold Separate is to: (1) preserve the Held Separate Business as a viable, competitive, and ongoing business independent of Defendants until the divestitures required by the Final Judgment are achieved; (2) assure that no Material Confidential Information is exchanged between Defendants and the Held Separate Business, except in accordance with the provisions of this Hold Separate; (3) prevent interim harm to competition pending the relevant divestitures and other relief; and (4) help remedy any anticompetitive effects of the proposed Merger.
- D. Defendant shall hold the Held Separate Business separate, apart, and independent on the following terms and conditions:
1. Richard Shermer of R. Shermer & Company, Inc., shall serve as Hold Separate Trustee, pursuant to the agreement executed by the Hold Separate Trustee and Defendants and attached as Confidential Exhibit A ("trustee agreement").
 - a. The trustee agreement shall require that, no later than five (5) days after the Hold Separate Period begins, Defendants transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Hold Separate and consistent with the purposes of the Final Judgment.
 - b. No later than five (5) days after the Hold Separate Period begins, Defendants shall, pursuant to the trustee agreement, transfer to the Hold Separate Trustee all rights, powers, and authorities necessary to permit the Hold Separate Trustee to perform his/her duties and responsibilities, pursuant to this Hold Separate and consistent with the purposes of the Final Judgment.
 - c. The Hold Separate Trustee shall have the responsibility, consistent with the terms of this Hold Separate and the Final Judgment, for monitoring the organization of the Held Separate Business; for managing the Held Separate Business through the Manager; for maintaining the independence of the Held Separate Business; and for monitoring Defendants' compliance with their obligations pursuant to this Hold Separate and the Final Judgment.
 - d. The Hold Separate Trustee shall have full and complete access to

all personnel, books, records, documents and facilities of the Held Separate Business or to any other relevant information as the Hold Separate Trustee may reasonably request, including, but not limited to, all documents and records kept by Defendants in the ordinary course of business that relate to the Held Separate Business. Defendants shall develop such financial or other information as the Hold Separate Trustee may request and shall cooperate with the Hold Separate Trustee. Defendants shall take no action to interfere with or impede the Hold Separate Trustee's ability to monitor Defendants' compliance with this Hold Separate and the Final Judgment or otherwise to perform his/her duties and responsibilities consistent with the terms of this Hold Separate.

- e. The Hold Separate Trustee shall have the authority to employ, at the cost and expense of Defendants, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Trustee's duties and responsibilities.
- f. The State may require the Hold Separate Trustee to sign an appropriate confidentiality agreement relating to State materials and information received in connection with performance of the Hold Separate Trustee's duties.
- g. Defendants may require the Hold Separate Trustee to sign a confidentiality agreement prohibiting the disclosure of any Material Confidential Information gained as a result of his or her role as Hold Separate Trustee to anyone other than the State.
- h. Thirty (30) days after the Order to Hold Separate and Maintain Assets issued by the Federal Trade Commission in connection with the Merger becomes final, and every thirty (30) days thereafter until the Hold Separate terminates, the Hold Separate Trustee shall report in writing to the State concerning the efforts to accomplish the purposes of this Hold Separate. Included within that report shall be the Hold Separate Trustee's assessment of the extent to which the businesses comprising the Held Separate Business are meeting (or exceeding) their projected goals as are reflected in operating plans, budgets, projections or any other regularly prepared financial statements.
- i. If the Hold Separate Trustee ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, the State in consultation with the California Department of Justice and the

Commission, may appoint a substitute Hold Separate Trustee consistent with the terms of this paragraph, subject to the consent of Defendants, which consent shall not be unreasonably withheld. If Defendants have not opposed, in writing, including the reasons for opposing, the selection of the substitute Hold Separate Trustee within five (5) days after notice by the staff of the State to Defendants of the identity of any substitute Hold Separate Trustee, Defendants shall be deemed to have consented to the selection of the proposed substitute trustee. Defendants and the substitute Hold Separate Trustee shall execute a trustee agreement, subject to the approval of the State, consistent with this paragraph.

2. No later than one (1) day after the Hold Separate Period begins, Defendants shall enter into a management agreement with, and transfer all rights, powers, and authorities necessary to manage and maintain the Held Separate Business to Bill Haywood.
 - a. In the event that Bill Haywood ceases to act as Manager, then Defendants shall select a substitute Manager, subject to the approval of the State, and transfer to the substitute Manager all rights, powers and authorities necessary to permit the substitute Manager to perform his/her duties and responsibilities, pursuant to this Hold Separate.
 - b. The Manager shall report directly and exclusively to the Hold Separate Trustee and shall manage the Held Separate Business independently of the management of Defendants. The Manager shall not be involved, in any way, in the operations of the other businesses of Defendants during the term of this Hold Separate.
 - c. The Manager shall have no financial interests affected by Defendants' revenues, profits or profit margins, except that the Manager's compensation for managing the Held Separate Business may include economic incentives dependent on the financial performance of the Held Separate Business if there are also sufficient incentives for the Manager to operate the Held Separate Business at no less than current rates of operation (including, but not limited to, current rates of production and sales) and to achieve the objectives of this Hold Separate.
 - d. The Manager shall make no material changes in the present operation of the Held Separate Business except with the approval of the Hold Separate Trustee, in consultation with the State staff.

- e. The Manager shall have the authority, with the approval of the Hold Separate Trustee, to remove employees and replace them with others of similar experience or skills. If any person ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate, the Manager, in consultation with the Hold Separate Trustee, may request Defendants to, and Defendants shall, appoint a substitute person, which person the Manager shall have the right to approve.
 - f. In addition to those employees within the Held Separate Business, the Manager may employ such employees as are reasonably necessary to assist the Manager in managing the Held Separate Business, including, without limitation, pricing services personnel, employee relations personnel, legal services personnel, public relations personnel, supply personnel, earnings consolidation and analysis personnel, business performance personnel (balanced scorecard, expense, volume, shared services reporting), customer relations personnel, and marketing administration personnel.
 - g. The Hold Separate Trustee shall be permitted, in consultation with the State of Oregon Department of Justice, the California Department of Justice and the Commission, to remove the Manager for cause. Within fifteen (15) days after such removal of the Manager, Defendants shall appoint a replacement Manager, subject to the approval of the State, on the same terms and conditions as provided in Paragraph II.D.2 of this Hold Separate.
3. The Held Separate Business shall be staffed with sufficient employees to maintain the viability and competitiveness of the Held Separate Business. Employees of the Held Separate Business shall include (i) all personnel performing responsibilities in connection with the Held Separate Business as of the date Defendants executed the Final Judgment, and (ii) any persons hired from other sources. To the extent that any employees of the Held Separate Business leave or have left the Held Separate Business prior to the Effective Date of Divestiture, the Manager, with the approval of the Hold Separate Trustee, may replace departing or departed employees with persons who have similar experience and expertise or determine not to replace such departing or departed employees.
4. In connection with support services or products not included within the Held Separate Business, Defendants shall continue to provide, or offer to provide, the same support services to the Held Separate Business as are being provided to such business by Defendants as of the date the Final Judgment is signed by Defendants. For services that Ultramar previously

provided to the Held Separate Business, Defendants may charge the same fees, if any, charged by Defendants for such support services as of the date this Final Judgment is signed by Defendants. For any other services or products that Defendants may provide the Held Separate Business, Defendants may charge no more than the same price they charge others for the same services or products. Defendants' personnel providing such services or products must retain and maintain all Material Confidential Information of the Held Separate Business on a confidential basis, and, except as is permitted by this Hold Separate Agreement, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of Defendants' businesses, other than the Held Separate Business. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of Held Separate Business.

- a. Defendants shall offer and the Held Separate Business shall obtain the following services and products only from Defendants:
 - (1) National brand advertising and promotion programs;
 - (2) Federal and state regulatory policy development and compliance;
 - (3) Human resources administrative services, including but not limited to labor relations support;
 - (4) Environmental health and safety services, which develops corporate policies and insures compliance with federal and state regulations and corporate policies;
 - (5) Preparation of tax returns; and
 - (6) Audit services.
- b. Defendants shall offer to the Held Separate Business any services and products that Defendants provide to their other businesses directly or through third party contracts, or that they have provided directly or through third party contracts to the businesses constituting the Held Separate Business at any time since January 1, 2001. The Held Separate Business may, at the option of the Manager with the approval of the Hold Separate Trustee, obtain such services and products from Defendants. The services and products that Defendants shall offer the Held Separate Business shall include, but shall not be limited to, the following:
 - (1) Refined fuels product trading and acquisition;
 - (2) Wholesale engineering services, including engineering, design, and maintenance of terminals;

- (3) Convenience store category management;
- (4) Credit card processing;
- (5) Information systems, which constructs, maintains, and supports all SAP and other computer systems;
- (6) Public affairs, which provides media and community relations services;
- (7) Processing of accounts payable;
- (8) Security services;
- (9) Technical support;
- (10) Financial accounting services;
- (11) Procurement of refinery supplies (*e.g.* catalysts, chemicals, repair services, maintenance);
- (12) Procurement of goods and services utilized in the ordinary course of business by the Held Separate Business;
- (13) Legal services;
- (14) Service station design, maintenance, and construction; and
- (15) Real estate services, including the identification and development of new sites.

c. In connection with services and products other than those listed in a. above, and including but not limited to those listed in b. above, the Held Separate Business shall have, at the option of the Manager with the approval of the Hold Separate Trustee, the ability to acquire services and products from third parties unaffiliated with Defendants.

5. Defendants shall cause the Hold Separate Trustee, the Manager, and each employee of the Held Separate Business having access to Material Confidential Information to submit to the State a signed statement that the individual will maintain the confidentiality required by the terms and conditions of this Hold Separate. These individuals must retain and maintain all Material Confidential Information relating to the Held Separate Business on a confidential basis and, except as is permitted by this Hold Separate, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of Defendants' businesses other than the Held Separate Business. These persons shall not be involved in any way in the management, production, distribution, sales, marketing, and financial operations of the competing products of Defendants.

6. No later than ten (10) days after the date the Hold Separate Period begins, Defendants shall establish written procedures, subject to the approval of the Hold Separate Trustee, covering the management, maintenance, and

independence of the Held Separate Business consistent with the provisions of this Hold Separate.

7. No later than five (5) days after the date the Hold Separate Period begins, Defendants shall circulate to employees of the Held Separate Business and to Defendants' employees who are responsible for the sale or distribution of motor fuels in the United States, a notice of this Hold Separate and Final Judgment, in the form attached as Exhibit E.
8. The Hold Separate Trustee and the Manager shall serve, without bond or other security, at the cost and expense of Defendants, on reasonable and customary terms commensurate with the person's experience and responsibilities.
9. Defendants shall indemnify the Hold Separate Trustee and Manager and hold each harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate Trustee's or the Manager's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Hold Separate Trustee or the Manager.
10. Defendants shall provide the Held Separate Business with sufficient financial resources:
 - a. as are appropriate in the judgment of the Hold Separate Trustee to operate the Held Separate Business at no less than current rates of operation (including, but not limited to, current rates of refinery production and product sales) and at no less than the rates of operation projected in the 2002 Golden Eagle Profit and Loss Budget, dated November 2001 (including, but not limited to, the rates of refinery production and product sales projected in such Profit and Loss Budget); provided that failure to achieve production or sales goals projected in Defendants' Profit and Loss Budget shall not be deemed to be a violation of this Hold Separate;
 - b. to perform all maintenance to, and replacements of, the assets of the Held Separate Business;
 - c. to carry on capital projects and business plans as reflected in the 2002 Golden Eagle Capital Expenditure Plan, dated November 2001, and

- d. to maintain the viability, competitive vigor, and marketability of the Held Separate Business.
 - e. Such financial resources to be provided to the Held Separate Business shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; provided, however, that, consistent with the purposes of the Final Judgment, the Manager may reduce in scale or pace any capital or research and development project, or substitute any capital or research and development project for another of the same cost.
11. Defendants shall not, during the Hold Separate Period, offer employees of the Held Separate Business positions with Defendants. The acquirer approved by the State pursuant to the Decision and Order shall have the option of offering employment to any employees of the Held Separate Business. Defendants shall not interfere with the employment, by the State-approved acquirer, of such employees; shall not offer any incentive to such employees to decline employment with the State-approved acquirer or to accept other employment with the Defendants; and shall remove any impediments that may deter such employees from accepting employment with the State-approved acquirer including, but not limited to, any non-compete or confidentiality provisions of employment or other contracts that would affect the ability of such employees to be employed by the State-approved acquirer, and the payment, or the transfer for the account of the employee, of all current and accrued bonuses, pensions and other current and accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of the Defendants. Provided, however, that Defendants may, if they determine to do so, make offers of employment to the employees listed in Exhibit D, attached as a confidential attachment, during the Hold Separate Period; provided further that, if the acquirer approved by the State also determines to make an offer to any of the employees listed in Exhibit D, Defendants may not convey the terms of Defendants' offer to such employee until such time as the State-approved acquirer makes its offer.
12. For a period of one (1) year commencing on the Effective Date of Divestiture, Defendants shall not employ or make offers of employment to employees of the Held Separate Business who have accepted offers of employment with the State-approved acquirer unless the individual has been terminated by the acquirer.
13. Notwithstanding the requirements of Paragraph II.D.11., Defendants shall offer a bonus or severance to employees included in the Held Separate

Business that continue their employment with the Held Separate Business until termination of the Hold Separate Period (in addition to any other bonus or severance to which the employees would otherwise be entitled).

14. Except for the Manager, employees of the Held Separate Business, and support services employees involved in providing services to the Held Separate Business pursuant to Paragraph II.D.4., and except to the extent provided in Paragraph II.A., Defendants shall not permit any other of its employees, officers, or directors to be involved in the operations of the Held Separate Business.
15. Defendants shall assure that employees of the Held Separate Business receive, during the Hold Separate Period, their salaries, all current and accrued bonuses, pensions and other current and accrued benefits to which those employees would otherwise have been entitled.
16. Except as required by law, and except to the extent that necessary information is exchanged in the course of consummating the Merger, negotiating agreements to divest assets pursuant to the Final Judgment and engaging in related due diligence; complying with this Hold Separate or the Final Judgment; overseeing compliance with policies and standards concerning the safety, health and environmental aspects of the operations of the Held Separate Business and the integrity of the Held Separate Business' financial controls; defending legal claims, investigations or enforcement actions threatened or brought against the Held Separate Business; or obtaining legal advice, Defendants' employees (excluding support services employees involved in providing support to the Held Separate Business pursuant to Paragraph II.D.4.) shall not receive, or have access to, or use or continue to use any Material Confidential Information, not in the public domain, of the Held Separate Business. Nor shall the Manager or employees of the Held Separate Business receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about Defendants and relating to Defendants' businesses, except such information as is necessary to maintain and operate the Held Separate Business. Defendants may receive aggregate financial and operational information relating to the Held Separate Business only to the extent necessary to allow Defendants to prepare United States consolidated financial reports, tax returns, reports required by securities laws, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph.
17. Defendants and the Held Separate Business shall jointly implement, and at all times during the Hold Separate Period maintain in operation, a system,

as approved by the Hold Separate Trustee, of access and data controls to prevent unauthorized access to or dissemination of Material Confidential Information of the Held Separate Business, including, but not limited to, the opportunity by the Hold Separate Trustee, on terms and conditions agreed to with Defendants, to audit Defendants' networks and systems to verify compliance with this Hold Separate.

III.

IT IS FURTHER ORDERED that:

Defendants shall notify the State at least thirty (30) days prior to any proposed change in the corporate Defendants such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Hold Separate.

IV.

IT IS FURTHER ORDERED that:

For the purposes of determining or securing compliance with this Hold Separate, and subject to any legally recognized privilege, and upon written request with reasonable notice to Defendants, Defendants shall permit any duly authorized representatives of the State:

- A. Access, during office hours of Defendants and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of the Defendants relating to compliance with this Hold Separate; and
- B. Upon five (5) days' notice to Defendants and without restraint or interference from Defendants, to interview officers, directors, or employees of Defendants, who may have counsel present, regarding such matters.

V.

IT IS FURTHER ORDERED that this Hold Separate shall terminate at the day after the divestiture required by the Final Judgment is completed.

APPENDIX II STIPULATED CONSENT DECREE AND FINAL JUDGMENT

PAGES 14-25 INTENTIONALLY OMITTED
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Exhibit C

<u>Store</u>	<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>	<u>Zone Number</u>
3674	851 N. Highway 49	Jackson	CA	95642	351
3609	1021 South St	Orland	CA	95963-1640	351
3621	18475 N Highway 1	Fort Bragg	CA	95437-8774	351
3622	1250 S Main St	Willits	CA	95490-4306	351
3623	1105 S State St	Ukiah	CA	95482-6410	351
3628	812 Main Street	Weaverville	CA	96093	351
3678	585 E Perkins St	Ukiah	CA	95482-4508	351
3679	440 S Main St	Red Bluff	CA	96080-4316	351
3680	506 6Th St	Orland	CA	95963-1229	351
3692	975 S Main St	Lakeport	CA	95453-5512	351
3693	15010 Lakeshore Dr	Clearlake	CA	95422	351
3544	7920 Brentwood Blvd	Brentwood	CA	94513-1004	351
3558	42245 Fremont Blvd	Fremont	CA	94538-4143	351
3594	40500 Fremont Blvd	Fremont	CA	94538-4304	351
3604	1619 1St St	Livermore	CA	94550-4303	351
3712	4321 Clayton Rd	Concord	CA	94521-2842	351
3713	2501 Pacheco Blvd	Martinez	CA	94553-2043	351
3714	3767 Alhambra Ave	Martinez	CA	94553-3803	351
3715	1616 Oak Park Blvd	Pleasant Hill	CA	94523-4410	351
3716	1990 San Ramon Valley Blvd	San Ramon	CA	94583-1204	351
3717	2098 Mt Diablo Blvd	Walnut Creek	CA	94596-4302	351
3720	1088 Marina Blvd	San Leandro	CA	94577-3437	351
3721	44 Lewelling Blvd	San Lorenzo	CA	94580-1628	351
3520	2998 Churn Creek Rd	Redding	CA	96002-1130	351
3521	2071 North St	Anderson	CA	96007-3456	351
3549	3212 S Market St	Redding	CA	96001-3530	351
3572	2700 Gateway Dr	Anderson	CA	96007-3531	351
3630	37303 State Highway 299 E	Burney	CA	96013-4371	351
3088	I-5 & Road 8	Dunnigan	CA	95937	351
3428	5040 El Camino Ave	Carmichael	CA	95608-4650	351
3447	3 Main St	Woodland	CA	95695-3123	351
3527	601 Sunrise Ave	Roseville	CA	95661-4109	351
3542	4250 Madison Ave	North Highlands	CA	95660-5403	351
3601	8070 N. Lake Blvd	Kings Beach	CA	95719	351
3603	10299 Folsom Blvd	Rancho Cordova	CA	95670-3516	351
3642	6990 Douglas Blvd	Granite Bay	CA	95746-6214	351
3683	8651 Folsom Blvd	Sacramento	CA	95826-3708	351
3684	1312 Broadway	Placerville	CA	95667-5902	351
3685	9301 Greenback Ln	Orangevale	CA	95662-4901	351
3686	3430 Taylor Rd	Loomis	CA	95650-9583	351
3687	1110 High St	Auburn	CA	95603-5110	351
3688	2304 Lake Tahoe Blvd	S. Lake Tahoe	CA	96150-7107	351
3694	1001 Sacramento Ave	Broderick	CA	95605-1902	351
3783	7550 Watt Ave	North Highlands	CA	95660-2609	351
3420	1370 Camden Ave	Campbell	CA	95008-6702	351
3586	929 Fremont Ave	Los Altos Hills	CA	94024-6013	351
3602	1885 N Milpitas Blvd	Milpitas	CA	95035-2505	351
3723	2790 Story Rd	San Jose	CA	95127-3922	351

<u>Store</u>	<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip</u>	<u>Zone Number</u>
3724	1365 Kooser Rd	San Jose	CA	95118-3814	351
3725	1598 Alum Rock Ave	San Jose	CA	95116-2425	351
3786	921 W Hamilton Ave	Campbell	CA	95008-0405	351
3489	921 Sebastopol Rd	Santa Rosa	CA	95407-6830	351
3645	300 College Ave	Santa Rosa	CA	95401-5118	351
3700	7898 Old Redwood Hwy	Cotati	CA	94931-5107	351
3701	219 Healdsburg Ave	Healdsburg	CA	95448-4103	351
3702	8850 Sonoma Hwy	Kenwood	CA	95452-9024	351
3703	2601 Lakeville Hwy	Petaluma	CA	94954-5654	351
3704	1080 Gravenstein	Sebastopol	CA	95472	351
3502	35 N Cherokee Ln	Lodi	CA	95240-2411	351
3513	401 W Kettleman Ln	Lodi	CA	95240-5741	351
3696	2448 W Kettleman Ln	Lodi	CA	95242-4123	351
3756	13975 E Highway 88	Lockeford	CA	95237-9549	351
3378	1800 W Imola Ave	Napa	CA	94559-4619	351
3416	1300 Trancas St	Napa	CA	94558-2912	351
3522	800 Merchant St	Vacaville	CA	95688-6912	351
3682	1105 N 1St St	Dixon	CA	95620-2404	351
3706	385 Silverado Trl	Napa	CA	94559-4013	351
3707	800 St. Helena Hwy	Saint Helena	CA	94574	351
3710	3438 Broadway St	Amer. Canyon	CA	94589-1254	351
3711	1295 Marine World Pkwy	Vallejo	CA	94589-3104	351

APPENDIX II TO STIPULATED CONSENT DECREE AND FINAL JUDGMENT

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Exhibit E

NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

Valero Energy Corporation and Ultramar Diamond Shamrock Corporation, hereinafter referred to as Defendants (which includes the entity resulting from the proposed merger of Valero and Ultramar), have entered into an Agreement Containing Consent Orders ("Final Judgment") with the State relating to the divestiture of certain assets and other relief.

As used herein, the term "Held Separate Business" means the businesses and personnel as defined in Paragraph I.F. of the Order to Hold Separate and Maintain Assets (the "Hold Separate Order") contained in the Final Judgment. Under the terms of the Decision and Order contained in the Final Judgment, Defendants must divest certain assets, which are included within the Held Separate Business, within 12 months of the date Defendants executed the Final Judgment.

During the Hold Separate Period (which begins after the Hold Separate Order becomes final and ends after Defendants have completed the required divestiture), the Held Separate Business shall be held separate, apart, and independent of Defendants' businesses. The Held Separate Business must be managed and maintained as a separate, ongoing business, independent of all other businesses of Defendants until Defendants have completed the required divestiture. All competitive information relating to the Held Separate Business must be retained and maintained by the persons involved in the operation of the Held Separate Business on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other of Defendants' businesses, except as otherwise provided in the Hold Separate Order. These persons involved in the operation of the Held Separate Business shall not be involved in any way in the management, production, distribution, sales, marketing, or financial operations of Defendants relating to competing products. Similarly, persons involved in similar activities in Defendants' businesses shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any similar information to or with any other person whose employment involves the Held Separate Business, except as otherwise provided in the Hold Separate Order.

Any violation of the Final Judgment may subject Defendants to civil penalties and other relief as provided by law.

CED84737

CERTIFICATE OF SERVICE

I certify that on December 17, 2001, I served the foregoing Consent Decree and Final Judgment (Public Version) upon the parties at the addresses and by the methods identified herein.

Hand Delivery on:

Dean DeChaine, Esq.
Miller Nash LLP
111 SW 5th Ave. Suite 3500
Portland, OR 97204

Attorney For Valero Energy Corporation and
Ultramar Diamond Shamrock Corporation

Federal Express Overnight Service on:

Kim Bowers, Esq.
Valero Energy Corporation
1 Valero Place
San Antonio, TX 78212

Attorney for Valero Energy Corporation

David Neill, Esq.
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Attorney for Valero Energy Corporation

1 Peter J. Love, Esq.
2 Jones, Day, Reavis & Pogue
3 51 Louisiana Avenue N.W.
4 Washington, D.C. 20001-2113

5 Attorney for Ultramar Diamond Shamrock Corporation

6 Margaret Spencer, Esq.
7 Deputy Attorney General
8 California Department of Justice
9 300 Spring Street, Suite 5001
10 Los Angeles, CA 90013

11 Attorney for the State of California in related matter
12 State of California v. Valero Energy Corporation, et al

13 Peter Richman, Esq.
14 Federal Trade Commission
15 600 Pennsylvania Avenue, NW
16 Room H
17 Washington, D.C. 20580

18 Attorney for the Federal Trade Commission in related matter
19 Federal Trade Commission v. Valero Energy Corporation, et al

20 DATED this ____ day of December , 2001

21 Andrew Aubertine #83013
22 Assistant Attorney General
23 Oregon Department of Justice
24 Of Attorneys for Plaintiff
25 1162 Court Street NE
26 Salem, OR 97301-4096
Telephone (503) 378-4732
Fax: (503) 378-5187

1 CERTIFICATE OF SERVICE

2 I certify that on December 17, 2001, I served the foregoing Consent Decree and Final
3 Judgment (Public Version) upon the parties at the addresses and by the methods identified
4 herein.

5
6 Hand Delivery on:

7
8 Dean DeChaine, Esq.
9 Miller Nash LLP
10 111 SW 5th Ave. Suite 3500
11 Portland, OR 97204

12 Attorney For Valero Energy Corporation and
13 Ultramar Diamond Shamrock Corporation

14
15 Federal Express Overnight Service on:

16
17 Kim Bowers, Esq.
18 Valero Energy Corporation
19 1 Valero Place
20 San Antonio, TX 78212

21 Attorney for Valero Energy Corporation

22
23 David Neill, Esq.
24 Wachtell, Lipton, Rosen & Katz
25 51 West 52nd Street
26 New York, NY 10019

Attorney for Valero Energy Corporation