

1 BILL LOCKYER, Attorney General  
 of the State of California  
 2 RICHARD M. FRANK  
 Chief Assistant Attorney General  
 3 KATHLEEN FOOTE  
 Acting Senior Assistant Attorney General  
 4 BARBARA M. MOTZ, State Bar No. 66933  
 Supervising Deputy Attorney General  
 5 MARGARET E. SPENCER, State Bar No. 62870  
 NATALIE S. MANZO, State Bar No. 155655  
 6 Deputies Attorney General  
 300 South Spring St., Suite 5000N  
 7 Los Angeles, CA 90013  
 Telephone: (213) 897-2685  
 8 Facsimile: (213) 620-6005

Attorneys for Plaintiff, State of California

FILED  
 CLERK, U.S. DISTRICT COURT  
 DEC 18 2001  
 CENTRAL DISTRICT OF CALIFORNIA  
 DEPUTY

- Priority
- Send
- Clsd
- Enter
- JS-5/JS-6
- JS-2/JS-3

ENTERED  
 CLERK, U.S. DISTRICT COURT  
 DEC 21 2001  
 CENTRAL DISTRICT OF CALIFORNIA  
 DEPUTY

1157  
 11A  
 LODGED  
 DEC 18 2001  
 CLERK, U.S. DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA  
 DEPUTY

IN THE UNITED STATES DISTRICT COURT  
 FOR THE CENTRAL DISTRICT OF CALIFORNIA

01-10895

NM VBKx

14 STATE OF CALIFORNIA,  
 15  
 16 Plaintiff,  
 17 v.  
 18 VALERO ENERGY CORPORATION, a  
 Delaware Corporation, and ULTRAMAR  
 19 DIAMOND SHAMROCK CORPORATION, a  
 Delaware Corporation,  
 20 Defendants.

CASE NO.  
 CONSENT DECREE AND  
 FINAL JUDGMENT

- Docketed
- Copies / NTC Sent
- JS - 5 JS - 6
- JS - 2 JS - 3
- CLSD

11

13  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28

SCANNED

1 BILL LOCKYER, Attorney General  
 of the State of California  
 2 RICHARD M. FRANK  
 Chief Assistant Attorney General  
 3 KATHLEEN FOOTE  
 Acting Senior Assistant Attorney General  
 4 BARBARA M. MOTZ, State Bar No. 66933  
 Supervising Deputy Attorney General  
 5 MARGARET E. SPENCER, State Bar No. 62870  
 NATALIE S. MANZO, State Bar No. 155655  
 6 Deputies Attorney General  
 300 South Spring St., Suite 5000N  
 7 Los Angeles, CA 90013  
 Telephone: (213) 897-2685  
 8 Facsimile: (213) 620-6005  
 9 Attorneys for Plaintiff, State of California

10  
 11 **IN THE UNITED STATES DISTRICT COURT**  
 12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

14 <b>STATE OF CALIFORNIA,</b>  15 16 <b>Plaintiff,</b>  17 <b>VALERO ENERGY CORPORATION</b> a Delaware Corporation, and <b>ULTRAMAR DIAMOND</b> 18 <b>SHAMROCK CORPORATION,</b> a Delaware Corporation, 19 20 <b>Defendants.</b>	CASE NO.  <b>CONSENT DECREE AND          FINAL JUDGMENT</b>
---	---

21 Defendants were furnished with a copy of the Complaint that Plaintiff intends to file  
 22 in this matter, alleging violations of Section 7 of the Clayton Act as amended, (15 U.S.C. §  
 23 18), Section 1 of the Sherman Act (15 U.S.C. § 1), and California Business and Professions  
 24 Code § 17200 et seq. Defendants, by and through their attorneys, have consented to the entry  
 25 of this Consent Decree and Final Judgment without trial or adjudication of any issue of fact or  
 26 law herein and have waived notice of presentation of this Consent Decree and Final Judgment  
 27 and service of summons. This Consent Decree and Final Judgment does not constitute any  
 28 evidence against or an admission by any party with respect to any issue of law or fact herein.

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

3 WHEREAS, prompt and certain divestiture of assets and the assignment of  
4 contracts are the essence of this agreement. Plaintiff intends to require Defendants to divest  
5 or assign, as viable lines of business or contractual rights, certain assets so as to ensure that  
6 the assets will be maintained as competitive, viable and ongoing. Defendants have represented  
7 to Plaintiff that the divestitures and assignments required below can and will be made as  
8 provided in this Consent Decree and Final Judgment; and

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

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

15 ORDERED, ADJUDGED, AND DECREED as follows:

16 I.

17 JURISDICTION

18 This Court has jurisdiction over the subject matter of this action and over each of  
19 the parties hereto. The Complaint states a claim upon which relief may be granted against the  
20 Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18), Section 1 of the  
21 Sherman Act (15 U.S.C. § 1), and California Business and Professions Code section 17200 et  
22 seq. The Attorney General for the State of California, Bill Lockyer, has authority to bring this  
23 action pursuant to Section 16 of the Clayton Act (15 U.S.C. § 26) and California Business and  
24 Professions Code sections 17204 and 17206.

25 II.

26 DEFINITIONS

27 As used in this Consent Decree and Final Judgment:

- 28 A. "Valero" means Valero Energy Corporation, its directors, officers, employees,  
agents and representatives, predecessors, successors, and assigns; its joint ventures,

FILED

*Handwritten signature*

*Handwritten mark*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

subsidiaries, divisions, groups and affiliates controlled by Valero, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

CONFIDENTIAL

- 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. "California CARB Refining and Marketing Assets" means the following assets:
  - (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 agreements, contracts, and understandings listed in Appendix I, attached as a confidential attachment; at the acquirer's option, all contracts, agreements or understandings (other than those listed in Appendix I) relating to the transportation, terminaling, storage or sale of the refinery's petroleum product output; at the acquirer's option, all agreements (other than those listed in Appendix I) under which Ultramar receives crude oil or other inputs at or for the refinery; and, at the acquirer's option, all exchange agreements involving the refinery; all plans (including proposed and tentative plans, whether or not adopted), specifications, drawings, and others 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 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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

the operation of the refinery, including but not limited to docks with 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; at the acquirer's option, all contracts, agreements or understandings relating to the transportation, terminaling, storage or sale of the refinery's petroleum product output; at the acquirer's option, all agreements under which Ultramar receives crude oil or other inputs at or for the refinery; and, at the acquirer's option, 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; and (3) Ultramar's California Retail Assets.

- D. "CARB Gasoline" means motor fuel used in automobiles that meets the specifications of the California Air Resources Board.
- E. "Commission" means the Federal Trade Commission.
- F. "Commission Consent Order" means any Agreement Containing Consent Orders accepted by the Commission for public comment in connection with FTC File No. 011-0141.
- G. "Effective Date of Divestiture" means the date on which the applicable divestiture is consummated.
- H. "Golden Eagle CARB Refining Assets" means: 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 agreements, contracts and understandings listed in Appendix I; at the acquirer's

option, all contracts, agreements or understandings (other than those listed in Appendix I) 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; at the acquirer's option, all agreements (other than those listed in Appendix I) 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.

- I. "Golden Eagle CARB Refining and Marketing Assets" 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 agreements, contracts and understandings listed in Appendix I; at the acquirer's option, all contracts, agreements or understandings (other than those listed in Appendix I) 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; at the acquirer's option, all agreements (other than those listed in Appendix I) 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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

the operation of, and improvements, modifications, or upgrades to, the Golden Eagle refinery; and (2) Ultramar's Divestiture Retail Assets.

- J. "Merger" means the proposed merger involving Valero and Ultramar.
- K. "Defendants" mean Valero and Ultramar, individually and collectively, and any other entity resulting from the merger involving Valero and Ultramar, its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by the merged entity.
- L. "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. "Retail Assets" does not include Defendants' proprietary trademarks, trade names, logos, trade dress, and system-wide software and databases.
- M. "Retail Site" means a business establishment from which gasoline is sold to the general public.
- N. "Ultramar's California Retail Assets" means all of Ultramar's Retail Assets relating to all Retail Sites in California that Ultramar operates.
- O. "Ultramar's Divestiture Retail Assets" means all of Ultramar's Retail Assets relating to the Retail Sites that are listed in Schedule B.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

SCANNED

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 that 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  
2 divest any intangible asset, Defendants shall: (1) with respect to permits, licenses or other  
3 rights granted by governmental authorities (other than patents), provide such assistance as the  
4 acquirer may reasonably request in the acquirer's efforts to obtain comparable permits,  
5 licenses or rights, and (2) with respect to other intangible assets (including patents), substitute  
6 equivalent assets, subject to Plaintiff's approval. A substituted asset will not be deemed to be  
7 equivalent unless it enables the refinery to perform the same function at the same or lower  
8 cost.

9 D. With respect to assets that are to be divested or agreements entered into  
10 pursuant to this paragraph at the acquirer's option, Defendants need not divest such assets or  
11 enter into such agreements provided: (1) the acquirer chooses not to acquire such assets or  
12 enter into such agreements; and (2) Plaintiff approves the divestiture without such assets or  
13 agreements.

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

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

26 G. Beginning sixty (60) days from the date when this Consent Decree and Final  
27 Judgment becomes final, and every sixty (60) days thereafter until the divestiture has been  
28 completed or a trustee is appointed, Defendants shall deliver to Plaintiff a written report as to

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

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

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

V.

APPOINTMENT OF TRUSTEE

CLANED

1  
2  
3 A. If Defendants have not, within the time periods required, complied with the  
4 requirements of Section IV., absolutely and in good faith, Plaintiff, in consultation with the  
5 Commission and the Oregon Department of Justice, may appoint a trustee to effectuate the  
6 divestiture required by Section IV.; provided, however, that the trustee may, subject to the  
7 approval of Plaintiff, the Oregon Department of Justice, and the Commission, substitute the  
8 California CARB Refining and Marketing Assets for the Golden Eagle CARB Refining and  
9 Marketing Assets.

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

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

18 1. Plaintiff shall select, in consultation with the Commission and the Oregon  
19 Department of Justice, a person or persons as trustee, subject to the consent of Defendants,  
20 which consent shall not be unreasonably withheld. The trustee shall be a person with  
21 experience and expertise in acquisitions and divestitures. If Defendants have not opposed, in  
22 writing, including the reasons for opposing, the selection of any proposed trustee within ten  
23 (10) days after notice by Plaintiff to Defendants of the identity of any proposed trustee,  
24 Defendants shall be deemed to have consented to the selection of the proposed trustee.

25 2. Subject to the prior approval of Plaintiff, the trustee shall have the  
26 exclusive power and authority to divest the assets to be divested, assign the agreements  
27 required to be assigned, and enter into the required agreements, thereby binding Defendants,  
28 all on such terms and conditions as are necessary to comply with the requirements of the

1 applicable paragraph, to comply with all applicable laws, and to effectuate the remedial  
2 purposes of this Consent Decree and Final Judgment. Subject to the prior approval of  
3 Plaintiff, the trustee shall have the sole authority to divest the assets described in Paragraph  
4 V.A in smaller packages as the trustee deems necessary to effectuate divestiture of the assets  
5 and to effectuate the remedial purposes of this Consent Decree and Final Judgment.

6 3. Within ten (10) days after appointment of the trustee, Defendants shall  
7 execute a trust agreement that, subject to the prior approval of Plaintiff and, in the case of a  
8 court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to  
9 permit the trustee to effect the divestitures required by this Consent Decree and Final  
10 Judgment.

11 4. The trustee shall have twelve (12) months from the date Plaintiff approves  
12 the trust agreement described in Paragraph V.C.3. to accomplish the divestiture to an acquirer  
13 that receives the prior approval of Plaintiff and in a manner that receives the prior approval of  
14 Plaintiff. If, however, at the end of the twelve-month period, the trustee has submitted a plan  
15 of divestiture or believes that divestiture can be achieved within a reasonable time, the  
16 divestiture period may be extended by Plaintiff, or, in the case of a court-appointed trustee, by  
17 the court.

18 5. The trustee shall have full and complete access to the personnel, books,  
19 records and facilities related to the assets to be divested or to any other relevant information,  
20 as the trustee may request. Defendants shall develop such financial or other information as  
21 such trustee may request and shall cooperate with the trustee. Defendants shall take no action  
22 to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in  
23 divestiture caused by Defendants shall extend the time for divestiture under this Paragraph in  
24 an amount equal to the delay, as determined by Plaintiff or, for a court-appointed trustee, by  
25 the court.

26 6. The trustee shall use his or her best efforts to negotiate the most favorable  
27 price and terms available in each contract that is submitted to Plaintiff, subject to Defendants'  
28 absolute and unconditional obligation to divest expeditiously at no minimum price. The

1 divestiture shall be made in the manner and to the acquirer or acquirers as approved by  
2 Plaintiff, as applicable; provided, however, if the trustee receives bona fide offers from more  
3 than one acquiring entity for any package of assets, and if Plaintiff determines to approve  
4 more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities  
5 selected by Defendants from among those approved by Plaintiff, provided further, however,  
6 that Defendants shall select such entity within five (5) days of receiving notification of  
7 Plaintiff's approval.

8           7. The trustee shall serve, without bond or other security, at the cost and  
9 expense of Defendants, on such reasonable and customary terms and conditions as Plaintiff or  
10 a court may set. The trustee shall have the authority to employ, at the cost and expense of  
11 Defendants, such consultants, accountants, attorneys, investment bankers, business brokers,  
12 appraisers, and other representatives and assistants as are necessary to carry out the trustee's  
13 duties and responsibilities. The trustee shall account for all monies derived from the  
14 divestiture and all expenses incurred. After approval by Plaintiff and, in the case of a court-  
15 appointed trustee, by the court, of the account of the trustee, including fees for his or her  
16 services, all remaining monies shall be paid at the direction of Defendants, and the trustee's  
17 power shall be terminated. The trustee's compensation shall be based at least in significant  
18 part on a Plaintiff arrangement contingent on the trustee's divesting the assets to be divested.

19           8. Defendants shall indemnify the trustee and hold the trustee harmless  
20 against any losses, claims, damages, liabilities, or expenses arising out of, or in connection  
21 with, the performance of the trustee's duties, including all reasonable fees of counsel and other  
22 expenses incurred in connection with the preparation for, or defense of any claim, whether or  
23 not resulting in any liability, except to the extent that such liabilities, losses, damages, claims,  
24 or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by  
25 the trustee.

26           9. If the trustee ceases to act or fails to act diligently, a substitute trustee  
27 shall be appointed in the same manner as provided in Paragraph V.A. of this Consent Decree  
28 and Final Judgment.

1 10. Plaintiff or, in the case of a court-appointed trustee, the court, may on its  
2 own initiative or at the request of the trustee issue such additional orders or directions as may  
3 be necessary or appropriate to accomplish the divestitures required by this Consent Decree  
4 and Final Judgment.

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

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

9 VI.

10 NOTIFICATION OF PROPOSED DIVESTITURE

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

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

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

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

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 which  
14 the divestiture shall be completed shall be extended (a) for ninety (90) days or (b) until the  
15 Commission has made a determination pertaining to the proposed divestiture or other relief,  
16 whichever is later. During such period of extension, the Defendants shall exercise the utmost  
17 good faith and best efforts to resolve the concerns of the Commission.

18 VIII.

19 ORDER TO HOLD SEPARATE

20 On the condition that Defendants consummate the Merger and that the Commission  
21 has not withdrawn its acceptance of the Commission's Consent Order, and until the  
22 divestiture has been accomplished, Defendants shall comply with all the terms of the State's  
23 Order to Hold Separate and Maintain Assets ("Hold Separate Agreement"), attached to this  
24 Consent Decree and Final Judgment and made a part hereof, as Appendix II. Defendants will  
25 comply with such terms of the Hold Separate Agreement regardless of whether the  
26 Commission enters an order finally approving the merger, subject to the conditions set forth in  
27 the preceding sentence.

28 //

1 IX.

2 COMPLIANCE INSPECTION

3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

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

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

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

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

X.

NOTICES

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

- A. For Valero :  
Greg King, Esq.  
General Counsel

//  
//



Valero Energy Corporation  
1 Valero Place  
San Antonio, Texas 78212

FILED  
2019

SCANNED

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

B. For UDS:  
Mr. Peter Love, Esq.  
Jones, Day, Reaves & Pogue  
51 Louisiana Ave. NW  
Washington, D.C. 20001

C. For Plaintiff:  
Margaret E. Spencer, Esq.  
Deputy Attorney General  
300 South Spring St., Suite 500N  
Los Angeles, CA 90013

Natalie S. Manzo, Esq.  
Deputy Attorney General  
300 South Spring St., Suite 500N  
Los Angeles, CA 90013

XI.

RETENTION OF JURISDICTION

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Consent Decree and Final Judgment to apply to this Court at any time for such further 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.

//

1 Defendants hereby further acknowledge that, solely for the purpose of this Consent  
2 Decree and Final Judgment, they will not assert the Complaint and Consent Decree filed by  
3 the State of Oregon in the District Court of Oregon concerning the Merger as a bar to this  
4 action, under principles of res judicata, including the elements of claim preclusion and issue  
5 preclusion.

6 **XII.**

7 **COMMISSION ORDER**

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

10 **XIII.**

11 **STATE-FEDERAL CONSULTATION**

12 Plaintiff will consult with attorneys for the Oregon Department of Justice and the  
13 Commission on all decisions relating to the divestiture of assets under this Consent Decree  
14 and Final Judgment and will further exercise best efforts to resolve any and all inconsistent  
15 enforcement positions among the three agencies relating to such divestiture, and the  
16 implementation of the Hold Separate Agreement.

17 **XIV.**

18 **ATTORNEYS FEES AND COSTS**

19 A. Plaintiff is awarded its attorneys' fees and costs in the amount of \$414,537.30  
20 for reimbursement of fees and costs incurred by Plaintiff in this matter for all work performed  
21 up to entry of this Consent Decree and Final Judgment. Defendants shall pay this sum to  
22 Plaintiff within ten (10) business days of entry of this Consent Decree and Final Judgment.

23 B. Defendants shall pay to Plaintiff reimbursement of fees and costs incurred by  
24 Plaintiff for work necessarily performed after entry of this Consent Decree and Final  
25 Judgment in order to review, evaluate, and approve the acquirer of the assets to be divested,  
26 upon ten (10) business days notice of presentment of a monthly invoice for such costs and  
27 fees, up to a maximum of \$40,000. The monthly invoice shall include a summary of the  
28

1 hours and fees billed for such month by Plaintiff, together with the hourly rates of the  
2 personnel involved in such work.

3 C. If Plaintiff successfully brings an action to enforce the provisions of this  
4 Consent Decree and Final Judgment, Defendants shall reimburse Plaintiff for all reasonable  
5 costs and attorneys' fees associated with bringing such enforcement action.

6 XV.

7 TERMINATION

8 This Consent Decree and Final Judgment shall become effective when the  
9 Merger becomes final. This Consent Decree and Final Judgment will expire and terminate  
10 five (5) years from the date of its entry.

11 XVI.

12 PUBLIC INTEREST

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

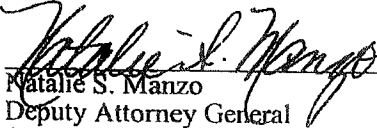
14 DATED this 18th day of December 2001.

15  
16   
17 UNITED STATES DISTRICT JUDGE

18 NORA M. MANELLA


19 Presented by:

20 BILL LOCKYER, Attorney General  
of the State of California  
21 RICHARD M. FRANK, Chief Assistant  
Attorney General  
22 KATHLEEN FOOTE, Acting Senior Assistant  
Attorney General  
23 BARBARA M. MOTZ,  
Supervising Deputy Attorney General  
24 MARGARET E. SPENCER,  
Deputy Attorney General  
25 NATALIE S. MANZO,  
Deputy Attorney General

26   
27 Natalie S. Manzo  
Deputy Attorney General  
for Plaintiff, State of  
28 California

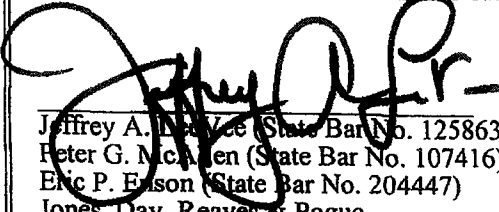
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

VALERO ENERGY CORPORATION by

 12/16/01  
John F. Cermak, Jr. (State Bar No. 146799)  
Scott E. Adamson (State Bar No. 138494)  
Jenkins & Gilchrist, LLP  
12100 Wilshire Boulevard, 15th Floor  
Los Angeles, CA 90025-8859

SCANNED

ULTRAMAR DIAMOND SHAMROCK CORPORATION by:

 12/14/01  
Jeffrey A. Lee (State Bar No. 125863)  
Peter G. McAllen (State Bar No. 107416)  
Eric P. Eason (State Bar No. 204447)  
Jones, Day, Reaves & Pogue  
555 West Fifth Street, Suite 4600  
Los Angeles, CA 90013-1025  
Attorneys for Defendant,  
Ultramar Diamond Shamrock Corporation