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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STATE OF CALIFORNIA, Plaintiff, v. VALERO ENERGY CORPORATION, VALERO ENERGY PARTNERS LP, and PLAINS ALL AMERICAN PIPELINE, L.P., Defendants.	Civil Action No. 17-cv-3786 (WAH) **REDACTED VERSION OF DOCUMENT FILED UNDER SEAL**

AMENDED COMPLAINT FOR INJUNCTIVE RELIEF FOR VIOLATIONS OF THE CLAYTON ACT AND SUPPLEMENTAL STATE CLAIMS

Plaintiff, the State of California, on its own behalf and as *parens patriae* on behalf of its residents, acting by and through its Attorney General, Xavier Becerra, bring this action to obtain equitable and other relief, maintain the status quo, and preliminarily and permanently enjoin enjoin Valero Energy Corporation, Valero Energy Partners LP (collectively "Valero"), and Plains

All American Pipeline, L.P. ("Plains") from (1) consummating their proposed transaction, under which Valero would acquire Plains' petroleum terminals in Martinez and Richmond, California (the "Transaction") and (2) sharing competitively sensitive business information with one another. Plaintiff seeks this provisional relief pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26. Absent such provisional relief, Valero and Plains (collectively, "Defendants") would be free to consummate the Transaction after 5:00 p.m. PDT on July 10, 2017.

The purpose of the preliminary injunction is to maintain the status quo and to prevent interim harm to competition during the pendency of an adjudication of the legality of the proposed merger in this court.

NATURE OF THE CASE

1. This is an action under Sections 16 of the Clayton Act, 15 U.S.C. § 26, to restrain and enjoin violation of Section 7 of the Clayton Act, 15 U.S.C. §§ 18, by the consummation of a transaction under which Valero would acquire two San Francisco Bay Area petroleum terminals in Martinez and Richmond, California from Plains. If allowed to proceed, the Transaction would eliminate the only independent terminal owner in the Bay Area with unconstrained access to the region's key trading hub. This trading hub, Kinder-Morgan's Concord Station ("Concord"), performs a critical role in setting prices for gasoline, diesel fuel and other refined, light petroleum products ("LPPs") in much of Northern California and Northern Nevada.

2. The antitrust concern created by the Transaction largely arises from the different incentives of independent terminal operators and vertically integrated refiners in markets like the one at issue here. Independent terminal operators like Plains have no economic interest in the prevailing prices of the products they handle, they are pure logistics companies providing a service to the refiners and marketers that use their facility in exchange for a fee. Because the storage and

terminal service fees are their only source of revenue, they generally want to encourage customers to use their facility as much as possible. By contrast, vertically integrated refiners like Valero have to consider the effect of their actions on both fuel prices *and* terminal fees when they operate a terminal.

3. Today, if Plains moved to reduce access into the trading hub at Concord, it would likely lose money as the quantity of product moving through its facility declines. On the other hand, if Valero engages in the same conduct, it may potentially earn substantially more money by driving up prevailing fuel prices across the region than it would lose in terminal service fees. An increase in prevailing spot prices at Concord could be enormously valuable to Valero, far more valuable than the losses it would suffer from reducing utilization of the Plains terminal.

4. The Transaction significantly increases the risk that Valero and a very small group of similarly situated refiners can collectively reduce supply into the trading hub at Concord. When supply is constricted, prices normally rise, so cutting supply into Concord Station can raise fuel prices across the region.

5. Today, the lone independent, unconstrained terminal with access to Concord Station keeps the other market participants honest, by eliminating the opportunity to engage in strategic or coordinated behavior to boost prices. If the local refiners tried to reduce product flowing into Concord today, outside parties could simply barge more product into the Plains terminal and send it into Concord Station. By eliminating this independent route into Concord, the Transaction removes an important impediment to strategic behavior that could enrich Valero and the other refiners, all while harming millions of ordinary consumers across Northern California and Northern Nevada and increasing revenues by hundreds of millions of dollars.

6. Plains is a "maverick" competitor with different incentives than the other market

participants, and the removal of maverick can increase the risk of anticompetitive behavior, by removing a disruptive force in the market while bringing all the remaining competitors into strategic alignment.

7. Valero attempted to acquire the same terminals in 2005 as part of a larger transaction but agreed to divest them (among other assets) pursuant to a Federal Trade Commission and California order to rectify competition concerns. Valero remained bound by the Federal Trade Commission order until its expiration in July, 2015. Now, just more than a year after the consent order expired, Valero is again attempting to acquire the terminals it was previously required to divest to protect competition in the region. This matter presents issues very similar to the ones evaluated by the FTC and the State of California over a decade ago.

8. Critically, the energy infrastructure in the region has not expanded or changed in any material way since 2005. Nobody has built a new terminal, and nobody has built a major new pipeline system or greatly expanded their existing facilities. Given the high cost and regulatory impediments to building new petroleum infrastructure, the loss of the one remaining, unconstrained terminal to the Kinder Morgan Service Area has the potential to inflict significant competitive harm on consumers in Northern California and Northern Nevada for many years to come.

9. If not enjoined by this Court, the Transaction is likely to substantially lessen competition in one or more relevant markets for LPPs in this region, in violation of Section 7 of the Clayton Act and the California Unfair Competition Law, California Bus. & Prof. Code §§ 17200 et seq.

JURISDICTION AND VENUE

10. This Court's jurisdiction arises under 28 U.S.C. §§ 1331, 1337, 1391. This is a

civil action arising under Acts of Congress protecting trade and commerce against restraints and monopolies. This Court has supplemental jurisdiction over the claims of Plaintiff arising out of the California Unfair Competition Act, California Bus. & Prof. Code § 17200 et seq.

11. The State of California brings this action for a temporary restraining order and preliminary and permanent injunction under Section 16 of the Clayton Act, 15 U.S.C. § 26, and to prevent and restrain Valero and Plains from violating Section 7 of the Clayton Act, 15 U.S.C. § 18, pending the trial in this action. The State of California has the requisite standing to bring this action because the Transaction would cause antitrust injury in several markets in the state, namely, LPP terminaling services to access Concord Station and the bulk supply of LPPs into the Kinder Morgan Service Area.

12. Defendants are, and at all relevant times have been, engaged in activities in or affecting "commerce" as defined in Section 1 of the Clayton Act, 15 U.S.C. § 12. Defendants also are, and at all relevant times have been, engaged in commerce in the State of California.

13. Defendants transact substantial business in the San Francisco Bay Area and are subject to personal jurisdiction therein. Venue, therefore, is proper in this district under Section 12 of the Clayton Act, 15 U.S.C. § 22, and under 28 U.S.C. § 1391 (b) and (c).

14. This Court has supplemental jurisdiction over the claims of Plaintiff arising out of the California Unfair Competition Act, California Bus. & Prof. Code § 17200 et seq. The California Attorney General has jurisdiction to bring such claims pursuant to California Bus. & Prof. Code §§ 17204 and 17206.

INTRADISTRICT ASSIGNMENT

15. The assets that form the basis for the Transaction are located in Contra Costa County, California. Accordingly, assignment to the San Francisco Division or the Oakland Division of this Court is proper pursuant to Civil Local Rule 3-2(c) and (d).

THE PARTIES

16. Plaintiff, the State of California, by and through its Attorney General, brings this action pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, in its sovereign or quasi-sovereign capacities as *parens patriae* on behalf of the citizens, general welfare, and economy of the state. The Attorney General of the State of California is the chief law enforcement officer of the state and as such is empowered to being this suit on behalf of the state and its general economy and natural persons residing in the state.

17. Defendant Valero Energy Corporation ("Valero Energy") is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at One Valero Way, San Antonio, Texas 78249. Defendant Valero Energy is, and at all times relevant herein has been, a diversified energy company engaged, either directly or through affiliates, in the refining of crude oil into refined petroleum products, including gasoline, diesel fuel, and other light petroleum products; the transportation, terminaling, and marketing of gasoline and diesel fuel; and other related businesses.

18. Defendant Valero Energy Partners LP ("VLP") is a Delaware limited partnership organized, existing, and doing business under the laws of the state of Delaware, with its office and principal place of business located at One Valero Way, San Antonio, Texas 78249. Valero Energy controls VLP in all material respects. As of February 27, 2017, Valero Energy owned 100 percent

of VLP's general partner, Valero Energy Partners GP LLC, which operates VLP; Valero Energy also holds a 66.3 percent limited partner interest in VLP. All of VLP's assets are integrated with Valero Energy's refining system, and substantially all of VLP's revenues are derived from providing services to Valero Energy. VLP's growth strategy is driven by Valero Energy's dropping its assets down to VLP and by third-party infrastructure acquisitions that are strategic to Valero Energy's core business. VLP has no employees; all personnel that conduct VLP's business are employed by a wholly-owned Valero Energy subsidiary. All of the executive officers and a majority of the directors of VLP are Valero Energy employees.

19. Defendant Plains All American Pipeline, L.P. ("Plains") is a publicly traded master limited partnership with its office and principal place of business located at 333 Clay Street, Houston, Texas 77002. Defendant Plains is, and at all times relevant herein has been, engaged in operating midstream energy infrastructure and providing logistics services including pipeline transportation, terminaling, and storage and gathering, for crude oil, natural gas liquids, natural gas, and LPPs.

THE PROPOSED TRANSACTION

20. Pursuant to a September 29, 2016, Asset Purchase Agreement, a wholly owned and controlled Valero subsidiary proposes to purchase two bulk petroleum terminals in Martinez and Richmond, California from a Plains subsidiary. The value of the Transaction at the time of the agreement was approximately [redacted]

21. Pursuant to a timing agreement, unless temporarily restrained and preliminarily enjoined by this Court, Defendants would be free to consummate the Transaction after 5:00 p.m. PDT on July 10, 2017.

22. The State of California has reason to believe that the Transaction would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. In relevant part, Section 7 of the Clayton Act states,

> No person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or any part of the assets of another person engaged also in commerce or in any activity affecting commerce, where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly.

15 U.S.C. § 18.

23. The State of California believes that (1) it has reason to believe the Transaction would violate the Clayton Act by substantially lessening competition in one or more lines of commerce, and (2) a preliminary injunction of the Transaction pending the resolution of this action and any appeals will promote the public interest, so as to minimize the potential harm to customers and preserve the Court's ability to order an adequate remedy if it concludes, after trial, that the Transaction is unlawful.

INDUSTRY BACKGROUND

24. Petroleum terminals enable fuel suppliers to store, handle, and distribute crude oil, LPPs, and renewable fuel products (i.e., ethanol, renewable diesel, and biodiesel). Depending on their individual features, terminals can receive bulk quantities of liquid products by pipeline, marine vessel, truck, or railcar. Depending on the configuration of the terminal, customers can deliver bulk volumes of product into pipelines, marine vessels, or railcars; customers can have

smaller volumes delivered directly into trucks if the terminal has truck loading facilities, known as "truck racks." The receipt, temporary storage, and delivery of product into some method of transport is called "throughputting."

25. Terminaling services comprise a cluster of services related to throughputting. These include storage, product blending, inter-tank product transfers, product heating, pipeline delivery and receipt, and the unloading and loading of marine vessels, railcars, and tanker trucks. Customers can pick and choose from the menu of services to satisfy their needs.

26. In Northern California, Plains Martinez customers demand waterborne import and export capability, storage, and, most importantly, unconstrained access to the critical Kinder Morgan Inc. ("KMI") pipeline system, which carries LPPs to downstream fuel markets throughout Northern California and Northern Nevada.

27. Both independent energy infrastructure firms and refiners own and operate terminals. Independent operators sell terminaling services to third parties and generally do not take title to or sell any of the products stored or throughput at their terminals. The customers of such "independent" commercial terminals can include refiners, energy traders, and wholesale fuel marketers. By contrast, vertically integrated refiners typically use their proprietary terminals to support their own refining and marketing operations, essentially meeting their terminaling needs internally. Proprietary terminals are often part of or adjacent to the owner's refinery, and the cost of terminaling services are implicit in the total delivered cost of LPPs sold by refiners to third-party customers.

28. The Bay Area is home to five petroleum refineries, owned and operated by Chevron Corporation ("Chevron"), Phillips 66 Company ("Phillips 66"), Shell Oil Company, Tesoro Corporation, and Valero. Together, these five refineries produce LPPs primarily to supply

Bay Area markets and inland markets in Northern California and Northern Nevada.

29. Marketers distribute LPPs to inland markets in Northern California and Northern Nevada via pipeline because trucking and other means of transporting to these locations are significantly more expensive. KMI operates the only common-carrier, refined-products pipeline system in the region, which transports LPPs from refinery terminals and independent marine terminals in the Bay Area to inland distribution terminals in Northern California and Northern Nevada. As such, KMI's pipeline system is a critical link between terminals, which receive local refinery production and any imports of LPPs into the region, and inland LPP markets in Sacramento, Fresno, Stockton, Chico, and San Jose, California and Reno, Nevada.

30. KMI stages bulk volumes of LPPs on behalf of pipeline customers at its Concord Station facility, a logistical hub and staging point for the KMI pipeline system in the Northern California and Northern Nevada region. Fuel suppliers seeking to serve inland LPP customers via the KMI pipeline system must have the ability either to deliver their products to Concord Station or to purchase products at Concord Station. Because of its central position, Concord Station also functions as a trading hub for bulk supplies of LPPs, where market participants deliver and take delivery of bulk LPP volumes for shipment to outlying terminals.

31. Refiners, traders, and fuel marketers often designate Concord Station as the delivery point in LPP transactions. Market participants buy and sell a number of specifications of LPPs at Concord Station, including California Air Resources Board ("CARB") reformulated gasoline for oxygenate blending ("CARBOB"), conventional gasoline for oxygenate blending ("CBOB"), CARB diesel, and ultra-low sulfur diesel (also known as "EPA diesel").

32. LPP pricing at Concord plays a central role in setting LPP prices throughout the region. Assessors from the price reporting agency Oil Price Information Service ("OPIS") gather

price and volume information on spot trades to determine the daily San Francisco Bay spot price, which OPIS publishes in a daily report. OPIS publishes spot prices for Bay Area regular and premium CARBOB, CARB Diesel, EPA diesel, jet fuel, and other LPPs. Fuel marketers use these spot prices as references in commercial supply contracts throughout the region.

33. At present, nine Northern California terminals can deliver LPPs into Concord Station. Five are integrated refinery/terminals: [REDACTED] Four are independent commercial terminals: [REDACTED] Plains Martinez.

34. With the exception of [REDACTED] all of these terminals provide LPP throughputting services to allow customers to send LPPs to Concord Station for shipment to inland markets in Northern California and Northern Nevada.

35. These terminals, however, do not all have the same degree of competitive significance. Most of the independent terminals and refiners lack capacity into the Kinder Morgan pipeline system to transport excess product to Concord Station in the event of a price increase. This leaves only Plains Martinez and three refiner-owned terminals, [REDACTED] through which bulk suppliers can throughput significant additional LPP volumes to Concord Station.

RELEVANT MARKETS AND MARKET STRUCTURE

The market for LPP terminaling services to access Concord Station

36. A relevant product market in which to analyze the competitive effects of the

Transaction is LPP terminaling services to access Concord Station. Refiners, independent traders, and fuel marketers require a means to deliver LPPs into Concord Station for sale or downstream distribution, and no alternatives exist that serve these functions other than to buy LPPs from others at Concord Station.

37. Current terminaling services market participants include marine and refinery terminals that provide current terminaling services to throughput LPPs to Concord Station. These include the five proprietary refiner terminals – [REDACTED] – and three independent terminals – [REDACTED] and Plains Martinez. [REDACTED]

38. Post-Transaction, if Valero raised terminaling fees or restricted access at Plains, Plains customers requiring access to Concord would have few alternatives. The other potential independent terminaling service providers are [REDACTED] and thus do not provide a competitive check on the prices for these terminaling services at Plains Martinez today. Instead, Plains customers would have to look to refiners with the excess capacity to throughput additional LPP volumes to Concord Station sufficient to meet these customers' demands. [REDACTED]

39. The Kinder Morgan Service Area ("KMSA"), the area currently served by terminals downstream of Concord on the KMI pipeline system, is the relevant geographic market in which to assess the impact of the Transaction in the upstream market. All terminals that allow customers to access the KMSA are located in the San Francisco Bay Area.

40. Courts and antitrust agencies commonly use the Herfindahl-Hirschman Index ("HHI") to measure market concentration. The HHI is calculated by totaling the squares of the

market shares of every firm in the relevant market. Under relevant case law and the Horizontal Merger Guidelines, the market concentration levels in the market for LPP terminaling services to access Concord Station render the Transaction presumptively unlawful. A merger or acquisition is presumed likely to create or enhance market power—and is presumptively illegal—when the post-acquisition HHI exceeds 2,500 points and the merger or acquisition increases the HHI by more than 200 points. Here, post-Transaction market concentration levels far exceed these thresholds.

41. Of the eight market participants currently providing LPP terminaling services to access Concord Station, only four – – can provide additional output in response to a terminaling price increase or output shortage. As the constrained providers cannot discipline a price increase or output reduction, it is appropriate to exclude them from the market concentration calculation. The Transaction would significantly alter the competitive dynamics in the market. Combining Plains Martinez and Valero Benicia under common Valero ownership would transform a four-player market into a three-player market in which all three remaining players have the same incentive to keep LPP prices (and LPP margins) high. As measured by throughput capacity to Concord Station, the HHI calculated for unconstrained firms increases from an increase of

42. Even if one were to ignore their inability to defeat a price increase and include the constrained terminals – – in the concentration analysis, the Transaction would still result in a highly concentrated market. Accounting for all market participants, the Transaction would reduce the number of providers from a rise of , still exceeding the threshold of presumptive illegality.

43. As the only independent terminaling services provider in the market, Plains'

singular incentive to maximize terminaling profit provides it distinctly different incentives to provide terminaling services to access Concord Station than do the unconstrained refiners. The acquisition of Plains Martinez by a refiner that seeks to maximize profit in the sale of LPPs would remove a particularly disruptive market participant, leading to a greater effect on terminaling services prices (as a result of the change in incentives on the part of a refiner-owner) than the rise in market concentration alone would suggest.

The market for bulk supply of LPPs

44. The relevant downstream market in which to assess the competitive effects of the Transaction is the market for the bulk supply of LPPs into the Kinder Morgan Service Area (KMSA) which includes the bulk supply of LPPs at Concord Station, or at locations with unconstrained pipeline access to Concord Station.

45. The relevant product market is the bulk supply of LPPs. “Bulk” volumes are volumes that grossly exceed the size of a truckload. For example, OPIS reports trades of 10,000 barrels or greater into the Kinder Morgan pipeline system. A tanker truck, by comparison, carries approximately 200 barrels. Wholesale fuel marketers and traders that buy LPPs in bulk typically transport these volumes to a terminal to “break bulk” into truckload-sized portions for distribution to customers or end users that demand LPPs. Such bulk LPP purchasers would not switch to purchasing smaller volumes of LPPs or to other products in response to a small, but significant, non-transitory increase in price (“SSNIP”).

46. The relevant geographic market in which to assess the impact of the Transaction on the downstream bulk LPP supply market is the KMSA. Customers that wish to ship bulk LPPs to any terminal within the KMSA or spot trade LPPs at Concord would not substitute LPPs that are outside of KMSA in response to a small, but significant, non-transitory increase in price.

47. Market participants in the markets for bulk supply of LPPs include the Bay Area refiners (Chevron, Phillips 66, Shell, Tesoro, and Valero), BP, and two product traders. All market participants currently sell LPPs in the relevant market. In addition to current bulk supply participants, other traders may wish to sell LPPs in the relevant market in the future.

48. Today, in theory, all eight participants could access the KMSA through Plains Martinez and Concord Station. But by putting Plains Martinez in the hands of Valero, the Transaction would give Valero the power to limit the ability of [REDACTED] to supply into Concord Station. Valero could also prevent existing and prospective traders from reaching Concord Station altogether by denying them access to Plains Martinez or making it economically infeasible for them to use the facility. Such actions could preclude these suppliers from reacting to a price increase at Concord Station, not to mention any additional bulk suppliers that could use Plains Martinez today to enter the KMSA bulk LPP market. Moreover, Valero would have the incentive to deny access to these suppliers—because, unlike Plains, it competes with them in the downstream markets. Consequently, the Transaction could result in the reduction of unconstrained LPP suppliers throughputting into the KMSA from at least eight to three: [REDACTED]

49. Using LPP throughput volume to the KMSA and allocating Plains Martinez volume to [REDACTED] and Valero in proportion to their relative market shares, produces an increase in HHI from [REDACTED] a rise of [REDACTED] This HHI analysis, however, does not reflect accurately the potential for exercising market power in the relevant market as the Transaction would result in a decrease in the number of unconstrained suppliers from eight to three. Using LPP throughput volume to the KMSA and removing the volumes sold into the KMSA by the post-Transaction constrained suppliers, raises HHI from [REDACTED] an increase

of [REDACTED] This latter HHI analysis better reflects the potential for anticompetitive effects in the KSMA bulk supply market as a result of the Transaction.

50. The Transaction would grant Valero the ability to engage in exclusionary conduct. Plains' independence today guarantees that its customers have the opportunity to access a terminal to store product, export product, or inject additional product into the KMI system, regardless of the LPP price environment. This independence prevents Valero, [REDACTED] from using their [REDACTED] access to the KMI system to control incremental supply of LPPs into the KMI system. Valero's proposed acquisition of Plains Martinez would remove the constraint that an independent Plains Martinez provides, giving just three refiners control over the throughput of marginal LPP volume to Concord Station, and incentivizing Valero to exercise the market power in the relevant market for bulk LPP supply it would acquire as a result of the Transaction.

51. California consumers annually buy approximately 15.5 billion gallons of gasoline. A one cent increase in a gallon of gasoline at the terminal, once passed through, results in a $155 million increase in prices at the retail level.

ANTICOMPETITIVE EFFECTS

52. Valero's control over Plains Martinez would incentivize it to foreclose access to its downstream bulk supply rivals. [REDACTED] acknowledged that a new owner might have incentives to limit customers' access to Plaints Martinez. Upon hearing about the contemplated sale of Martinez, customers sought long-term contracts to secure their access.

53. Valero has the incentive to foreclose its bulk LPP supply rivals to increase their costs, while also benefiting through its own increased use of Plains Martinez. Bay Area refiners currently export gasoline from the Bay to destinations including Los Angeles, Mexico, and Latin

America. As the Plains Martinez dock can only accept at a time, third-party customers would be unable to use it at the same time as Valero. If Valero uses the Plains Martinez dock for increased LPP exports, other customers would have fewer opportunities to access the dock due to Valero's more intensive use.

54. Valero's own use of the terminal, in addition to its opportunity and incentive to raise prices, cause costly delays, or otherwise disrupt its downstream competitors' use of the terminal, can raise rivals' costs at Plains Martinez to the point that they substitute some, or all, volume away from the terminal to bulk LPP purchases at Concord Station. Valero can recover lost terminaling profits by selling more in the downstream bulk supply markets, either to the very rivals it foreclosed or to the customers those rivals would have served.

55. As an independent infrastructure company, Plains' sole motivation is to maximize terminaling services profits by increasing the throughput and storage of LPPs at the highest market price it can charge. Plains provides efficient, non-discriminatory service to Plains Martinez customers, allowing them to transport and store LPPs to meet commercial demand in downstream markets. Plains Martinez's independence hinders any attempted coordination among the refiners and marketers participating in Concord spot LPP transactions. The potential for effective coordination between the three refiners with excess capacity to supply Concord Station – – would increase substantially after Valero's purchase of the Plains Martinez terminal, making bulk LPP supply price increases more likely.

56. Post-Transaction, the LPP bulk supply market in the KMSA will be vulnerable to coordination. LPPs are homogeneous products. OPIS price reporting ensures a degree of pricing transparency. the only remaining players with excess pipeline capacity to Concord Station, will have a substantial share of the market, and will control incremental

capacity.

57. [REDACTED] would all benefit from increased terminaling service fees for access to Concord at Plains Martinez, if the price increase is sufficiently high to induce Plains Martinez customers to purchase directly at Concord. Valero, in particular, can easily expand its terminal throughput services into Concord.

58. Valero acts strategically when choosing where to sell its LPPs. In a Bay Area market with excess supply, sending refinery production out of the Northern California and Northern Nevada region would maintain or increase the prices Valero receives under its supply contracts for its California sales. If Valero controls Plains Martinez, it would have greater ability to control additional bulk LPP supply at Concord Station to maintain or increase LPP spot prices at Concord.

59. The potential for coordination with [REDACTED] would give Valero the incentive to foreclose, partially or completely, Plains Martinez customers from throughputting LPP volumes into Concord Station, through increased prices at the terminal or through diminished levels of service. Both frequent throughputters and traders could be affected. Potential customers, especially traders who have used Plains Martinez in the past, may be less likely to enter the KMSA bulk supply market. Less throughput and less liquidity at Concord Station would tend to raise Concord spot prices and result in higher and more volatile LPP prices throughout the region. The frequent price spikes and supply shortages that plague Northern California LPP markets would exacerbate Valero's incentives to engage in such exclusionary behavior.

60. These same incentives may also induce Valero to engage in such exclusionary behavior unilaterally.

LACK OF COUNTERVAILING FACTORS

61. Entry into the relevant markets would be difficult and would not be likely, timely, or sufficient to prevent the anticompetitive effects that are likely to result from the Transaction.

62. Defendants cannot demonstrate cognizable efficiencies that would rebut the strong presumption of harm to competition and the evidence that the Transaction would substantially lessen competition in the relevant markets.

LIKELIHOOD OF SUCCESS ON THE MERITS, BALANCE OF EQUITIES, AND NEED FOR RELIEF

63. In deciding whether to grant relief, the Court must balance the likelihood of the State of California's ultimate success on the merits against the public equities, using a sliding scale. The principal public equity weighing in favor of issuance of preliminary injunctive relief is the public's interest in effective enforcement of the antitrust laws.

64. California has reason to believe that the Transaction would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and is likely to succeed in demonstrating, among other things, that:

a. The Transaction would have anticompetitive effects in the market for LPP terminaling services to provide access to Concord Station in the San Francisco Bay Area, and the markets for bulk supply of various LPPs at Concord Station and locations with unconstrained pipeline access to Concord Station;

b. Substantial and effective entry or expansion into the relevant product and geographic markets is difficult and would not be timely, likely, or sufficient to offset the anticompetitive effects of the Transaction; and

c. Any efficiencies that Defendants may assert as resulting from the Transaction are speculative, not merger-specific, and are, in any event, insufficient as a matter of law to justify the Transaction.

65. Preliminary relief is warranted and necessary. Should the Court rule, after the full trial, that the Transaction is unlawful, reestablishing the *status quo ante* of competition would be difficult, if not impossible, without preliminary injunctive relief from this Court. The integration of the Plains Martinez and Richmond terminals into Valero's operations, including the sharing of information about Valero's competitors (i.e., volumes stored at the terminals), would substantially impair any attempt to restore competition to pre-Transaction levels.

66. Absent such provisional relief, Valero and Plains (collectively, "Defendants") would be free to consummate the Transaction after 5:00 p.m. PDT on July 10, 2017. Without relief from this Court, substantial harm to competition could occur immediately, including the sharing and use of competitively sensitive information. Because there are no procompetitive benefits of the Transaction to outweigh the significant interim harm to competition and to California consumers, the public equities weigh strongly in favor of Plaintiff's' request for preliminary injunctive relief.

67. Accordingly, the equitable relief requested here is in the public interest.

POTENTIALLY ANTICOMPETITIVE INFORMATION SHARING

68. Since the parties agreed to the Transaction, Valero and Plains have shared detailed confidential business information, the effect of which may be anticompetitive.

69. Valero has demanded and obtained detailed customer-specific information, including monthly revenue, throughput, and cost per barrel of product stored at Plains Martinez

and Richmond, as well as contract status and negotiation details. The gathering of competitively sensitive, nonpublic information about direct competitors may violate the antitrust laws.

70. Continued information sharing may undermine the Plaintiff's ability to achieve complete relief even in the event the Transaction is halted. Sharing sensitive customer throughput and cost information may decrease the independent competitiveness of the companies, particularly that of Valero, in the interim while the court is considering this motion. In the event that the Court grants California's request for relief and the Court determines that the acquisition is likely to harm competition, what was learned cannot be unlearned.

71. Immediate and temporary injunctive relief is requested to stop further information sharing and integration activities pending the completion of the ongoing administrative proceeding.

FIRST CLAIM FOR RELIEF

72. Plaintiff repeats and realleges paragraphs 1 through 71 hereof.

73. Plains provides services in the upstream market for terminaling for bulk LPP in Northern California through its terminals at Richmond and Martinez. No other independent terminals in Northern California can economically receive and distribute bulk supplies of LPPs.

74. Valero is a significant seller of LPPs in the downstream market in Northern California.

75. The effect of the proposed sale, if consummated, may be substantially to lessen competition in the terminaling of LPPs in Northern California, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and in the following ways, among others:

a. by eliminating Valero's incentive to maximize bulk LPP storage at current prices in Northern California; and

b. by increasing the likelihood that the sale of Plains' terminals to Valero will allow Valero to unilaterally exercise market power to increase the price of terminaling services through increased prices or reduced services which increases the likelihood that wholesale prices of LPP will increase in the relevant part of the country.

SECOND CLAIM FOR RELIEF

76. Plaintiff repeats and realleges paragraphs 1 through 71 and 72 through 75 hereof.

77. Valero and Plains are competitors in terminaling services for bulk suppliers of LPPs in Northern California.

78. The effect of the proposed transaction, if consummated, may be substantially to lessen competition in the provision of terminaling services for LPPs in Northern California, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, in the following ways, among others:

a. by eliminating direct competition between Valero and Plains in the provision of terminaling services for bulk suppliers of crude oil and LPPs;

b. by increasing the likelihood of, or facilitating, collusion or coordinated interaction between Valero and its competitors in the provision of terminaling services for bulk suppliers; and

c. by increasing the likelihood, or facilitating, collusion, or coordinated interaction between Valero and other bulk suppliers of LPPs; each of which increases the likelihood that wholesale prices of LPPs will increase in the relevant section of the country.

THIRD CLAIM FOR RELIEF

79. Plaintiff repeats and realleges paragraphs 1 through 71, 72 through 75, and 76 through 78.

80. By performing the acts alleged above, Defendants and each of them have engaged in and will continue to engage in unfair and unlawful trade practices in violation of California Unfair Competition Act, California Bus. & Prof. Code § 17200 et seq.

PRAYER FOR RELIEF

WHEREFORE, the State of California respectfully requests that the Court:

a. That pending the final adjudication of the merits of this complaint, a temporary restraining order and preliminary injunction be issued against the Defendants preventing and restraining each of them, and all persons acting on their behalf, from taking any action, either directly or indirectly, in furtherance of the proposed transaction and requiring the parties to maintain their companies as separate and independent business entities pending the final adjudication of this matter;

b. That the Valero/Plains proposed transaction be adjudged to be in violation of Section 7 of the Clayton Act and § 17200 et seq. of the California Business and Profession Code;

c. That a permanent injunction be issued against the Defendants ordering such relief as necessary to prevent irreparable harm to the State of California and its consumers:

d. Temporarily restrain and preliminarily enjoin Defendants from taking any further steps to consummate the Transaction, or any other acquisition of stock, assets, or other interests of one another, either directly or indirectly;

e. Temporarily restrain and preliminarily enjoin Defendants from sharing competitively sensitive business information with one another, either directly or indirectly;

f. Retain jurisdiction and maintain the *status quo* until the trial in this matter concludes;

g. That Plaintiff be awarded its costs of suit, including reasonable attorneys' fees; and

h. That Plaintiff have such other and further relief as the Court deems just and proper.

Dated: July 10, 2017

Respectfully submitted,

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