

1 HOBSON, BERNARDINO & DAVIS, LLP  
2 RAFAEL BERNARDINO, JR. (118690)  
3 JASON A. HOBSON (184134)  
4 725 South Figueroa Street, Suite 3230  
5 Los Angeles, CA 90017  
6 Telephone: 213/235-9190  
7 213/235-9197 (fax)  
8 rbernardino@hbdlegal.com  
9 jhobson@hbdlegal.com

10 ROBBINS GELLER RUDMAN  
11 & DOWD LLP  
12 PATRICK W. DANIELS (190715)  
13 655 West Broadway, Suite 1900  
14 San Diego, CA 92101  
15 Telephone: 619/231-1058  
16 619/231-7423 (fax)  
17 patrickd@rgrdlaw.com

18 Attorneys for Plaintiff and the Proposed Class

19 [Additional counsel appear on signature page.]

20 UNITED STATES DISTRICT COURT  
21 NORTHERN DISTRICT OF CALIFORNIA  
22 SAN FRANCISCO DIVISION

23 FAITH BAUTISTA, Individually and on ) Case No.  
24 Behalf of All Others Similarly Situated, )  
25 ) CLASS ACTION  
26 Plaintiff, )  
27 ) COMPLAINT FOR INJUNCTIVE RELIEF,  
28 v. ) DECLARATORY RELIEF, DAMAGES  
AND RESTITUTION  
VALERO ENERGY CORPORATION, CST )  
BRANDS, INC., VALERO MARKETING )  
AND SUPPLY COMPANY and CST )  
MARKETING AND SUPPLY COMPANY, )  
Defendants. )  
\_\_\_\_\_) DEMAND FOR JURY TRIAL

1 Plaintiff Faith Bautista (“Plaintiff”), individually and on behalf of all others similarly  
2 situated, brings this class action Complaint for Injunctive Relief, Declaratory Relief, Damages and  
3 Restitution against defendants Valero Energy Corporation (“Valero Energy”), Valero Marketing and  
4 Supply Company (“Valero M&S”), CST Brands, Inc. (“CST Brands”) and CST Marketing and  
5 Supply Company (“CST M&S”) (collectively, “Defendants” or “Valero”) and, upon information and  
6 belief, except as to the allegations within Plaintiff’s personal knowledge, alleges as follows:

## **SUMMARY OF THE ACTION**

8       1.     Defendant Valero Energy is a Fortune 500 international manufacturer and marketer of  
9 transportation fuels, other petrochemical products and power based in San Antonio, Texas.

10        2. Before 2013, Valero Energy was one of the United States' largest retail operators  
11 with approximately 6,800 retail and branded wholesale outlets worldwide. In May 2013, Valero  
12 Energy completed the spinoff of its retail operations into its subsidiary, CST Brands, which now  
13 owns retail operations using the Valero, Diamond Shamrock, Shamrock, Beacon, Ultramar and  
14 Texaco brands. Valero Energy continues to supply Valero-branded fuel to CST Brands retail  
15 locations.

16       3.     For more than the previous four years, each of the Defendants named herein has  
17 induced consumers, including Plaintiff and the members of the proposed class (the “Class,” as  
18 defined below), to buy gasoline from one of Defendants’ many wholly-owned, leased, franchised or  
19 contractually branded retail gas stations through the use of deceptive, unfair and false advertisements  
20 and misrepresentations, in violation of California law.

21       4.     Like most gas stations, Defendants' Valero-branded stations advertise the price of  
22 gasoline on large signs that are visible to passing motorists. In order to lure motorists into Valero-  
23 branded gas stations, which can be located directly across the street from one or more competing  
24 stations, Defendants generally advertise two different prices for gasoline: a "credit" price for  
25 purchases made with a credit card and a lower "cash" price for purchases made with cash.

26 5. Defendants' advertised "cash" price is false and misleading to reasonable consumers  
27 like Plaintiff and the members of the Class in violation of the Consumers Legal Remedies Act,  
28 California Civil Code §1750, *et seq.* (the "CLRA"), the False Advertising Law, California Business

1 & Professions Code §17500, *et seq.* (the “FAL”), and California’s Unfair Competition Law,  
2 California Business & Professions Code §17200, *et seq.* (the “UCL”), because Defendants charge  
3 the “credit” price for purchases made by California consumers using a debit card, which is the  
4 equivalent of cash and which reasonable consumers believe is the equivalent of cash.

5       6. In contrast to a credit card payment that is charged to the cardholder’s line of credit  
6 and paid at a later date, a debit card payment results in an immediate cash withdrawal from the  
7 cardholder’s bank account. This is especially true of “prepaid” debit cards, which function as a debit  
8 card except that the cardholder prepay a specific amount of money that can later be spent using the  
9 prepaid debit card. Therefore, reasonable consumers, including Plaintiff and the members of the  
10 Class, reasonably and correctly believe that a debit card is the equivalent of cash and not a credit  
11 card.

12       7. Debit cards are frequently used as a safer cash-equivalent by lower income  
13 Americans who lack sufficient positive credit history to obtain a credit card or who perhaps cannot  
14 afford the annual fees and interest rates charged by credit card companies. Indeed, the number of  
15 debit card transactions have overtaken the number of cash, check and credit card transactions  
16 combined and now account for more than **50%** of all gasoline purchases in the State of California.

17       8. In light of the ever-increasing price of gasoline, consumers, including Plaintiff and  
18 the members of the Class, many of whom are lower income Americans seeking to save money on  
19 high-priced gasoline, are lured into Valero-branded gas stations over other competing stations by  
20 Defendants’ promise of a lower price for gasoline purchased with cash. Based on their reasonable  
21 and accurate belief that a debit card is the equivalent of cash, reasonable consumers, including  
22 Plaintiff and the members of the Class, believe that they will be charged the cash price on gasoline  
23 purchased with a debit card.

24       9. Contrary to Defendants’ advertised cash price, which constitutes a legal offer to enter  
25 into a contract for the sale of gasoline at the specifically advertised price that Plaintiff accepted by  
26 entering a Valero-branded gas station over competing gas stations, consumers who choose to  
27 purchase gasoline with a debit card are charged the higher ***credit*** price.  
28

1        10. Defendants' practice of advertising a lower cash price but charging debit cards  
2 customers the higher credit price is misleading to reasonable consumers, including Plaintiff and the  
3 members of the Class, who reasonably and correctly believe that a debit card is the equivalent of  
4 cash, and therefore, Defendants' practice violates the CLRA, FAL and UCL.

5        11. Defendants have also breached a legally binding contract that they entered into with  
6 consumers, including Plaintiff and the members of the Class, by failing to sell gasoline at the  
7 advertised cash price to consumers who accepted Defendants' offer by entering a Valero-branded  
8 gas station to purchase gasoline with a debit card – a cash equivalent.

9           12. By this action, Plaintiff respectfully seeks injunctive relief and damages, individually  
10 and on behalf of the members of the Class, in order to remedy Defendants' misleading, deceptive  
11 and unfair business practices as alleged herein.

## PARTIES

13 | Plaintiff

13. Plaintiff Faith Bautista is an individual consumer residing in San Mateo County,  
14 California and is a citizen of the State of California. At all relevant times, Plaintiff reasonably  
15 believed that a debit card was the equivalent of cash. Throughout the proposed class period, Plaintiff  
16 purchased gasoline at Valero-branded gas stations with a MasterCard-branded debit card in reliance  
17 on Defendants' advertised "cash" price for gasoline that was lower than the advertised "credit" price.  
18 Despite Defendants' advertised "cash" price, Defendants charged Plaintiff the higher "credit" price  
19 on gasoline purchased with Plaintiff's debit card. Plaintiff would not have entered Valero-branded  
20 gas stations to purchase gasoline were it not for Defendants' false advertisement and contractual  
21 offer of a lower "cash" price for gasoline.  
22

23 | Valero Energy Defendants

24       14. Defendant Valero Energy is a Fortune 500 international manufacturer and marketer of  
25 transportation fuels, other petrochemical products and power. Valero Energy is based in San  
26 Antonio, Texas and does substantial business within this District. Before May 2013, Valero Energy  
27 was one of the United States' largest retail operators with approximately 6,800 retail and branded

1 wholesale outlets in the United States, Canada, the United Kingdom and the Caribbean under the  
2 Valero, Diamond Shamrock, Shamrock, Ultramar, Beacon and Texaco brands.

3       15.     Defendant Valero M&S is a subsidiary of defendant Valero Energy founded in 1981  
4 and based in San Antonio, Texas. Defendant Valero M&S refines and markets crude oil in the  
5 United States and internationally, including within this District. Its activities include refining  
6 operations, wholesale marketing, product supply and distribution, and transportation operations,  
7 primarily in the Gulf Coast, Mid-Continent, West Coast and northeast regions.

8       16.     At all relevant times prior to May 2013, defendant Valero Energy committed the acts  
9 complained of herein individually and/or acting through its subsidiary, defendant Valero M&S.

10      17.     Defendant Valero Energy is responsible for its own acts, as well as the acts of its  
11 subsidiary, defendant Valero M&S.

12      18.     Defendants Valero Energy and Valero M&S are collectively referred to herein as  
13 "Valero Energy."

14      19.     At all relevant times prior to May 2013, Valero Energy owned, franchised, leased or  
15 entered into contractual relationships with gas stations in California that sold Valero-branded  
16 gasoline.

17      20.     At all relevant times prior to May 2013, Valero Energy controlled the signage,  
18 including the advertised "credit" and "cash" prices, at all Valero-branded gas stations, regardless of  
19 the station's ownership structure. At all relevant times prior to May 2013, Valero Energy advertised  
20 a "credit" price and a "lower" cash price at Valero-branded gas stations.

21      21.     At all relevant times prior to May 2013, Valero Energy owned the gasoline dispensers  
22 at Valero-branded gas stations, which, like the signage controlled by Valero Energy, also advertised  
23 the "credit" price and the "lower" cash price.

24      22.     At all relevant times prior to May 2013, Valero Energy owned the payment  
25 processing hardware and software utilized by Valero-branded gas stations to collect credit card and  
26 debit card payments and, therefore, Valero Energy had actual knowledge that debit card purchases  
27 were charged at the higher "credit" price.

28

1       23. At all relevant times prior to May 2013, Valero Energy (individually or through a  
2 subsidiary) provided the payment processing service for credit and debit card payments at most if not  
3 all of its Valero-branded gas stations. Through its payment processing service, Valero Energy  
4 (individually or through a subsidiary) collected credit card and debit card payments on behalf of  
5 station owners. Valero Energy retained the cost of its gasoline, as well the processing fee charged to  
6 both credit cards **and** debit cards, and then remitted the remainder back to the individual Valero-  
7 branded gas station owner. Valero Energy, therefore, had actual knowledge that debit card  
8 purchases were charged at the higher “credit” price.

9       24. At all relevant times prior to May 2013, Valero Energy had access to all of its  
10 Valero-branded gas stations’ bank records, as well as real-time access to all of the financial  
11 transactions at Valero-branded gas stations and, therefore, had actual knowledge that debit card  
12 purchases were charged at the higher “credit” price.

13       25. At all relevant times prior to May 2013, Valero Energy routinely had representatives  
14 on-site at its Valero-branded gas stations who observed the prices advertised and charged and  
15 discussed pricing policies and specific information regarding actual gasoline sales with managers of  
16 the individual Valero-branded gas stations and, therefore, had actual knowledge that debit card  
17 purchases were charged at the higher “credit” price.

18 **CST Brands Defendants**

19       26. Defendant CST Brands is a subsidiary of Valero Energy based in San Antonio, Texas  
20 that was created on or about May 1, 2013 as a spinoff of Valero Energy’s retail operations. CST  
21 Brands is now the second-largest publicly traded fuel and convenience retailer in North America,  
22 with 1,900 outlets in the United States and Canada. CST Brands sells fuel under the Valero brand  
23 within this District.

24       27. Defendant CST M&S was incorporated in or about May 2013 and operates as a  
25 subsidiary of defendant CST Brands. CST M&S is headquartered in San Antonio, Texas and  
26 distributes Valero-branded gasoline and diesel products in the United States, including within this  
27 District.

28

1       28. At all relevant times after May 2013, defendant CST Brands committed the acts  
2 complained of herein individually and/or acting through its subsidiary, defendant CST M&S.

3       29. Defendant CST Brands is responsible for its own acts, as well as the acts of its  
4 subsidiary, defendant CST M&S.<sup>1</sup>

5       30. Defendants CST Brands and CST M&S are collectively referred to herein as "CST  
6 Brands."

7       31. At all relevant times after May 2013, CST Brands owned, franchised, leased or  
8 entered into contractual relationships with gas stations in California that sold Valero-branded  
9 gasoline.

10      32. At all relevant times after May 2013, CST Brands controlled the signage, including  
11 the advertised "credit" and "cash" prices, at all Valero-branded gas stations, regardless of the  
12 station's ownership structure. At all relevant times after May 2013, CST Brands advertised a  
13 "credit" price and a "lower" cash price at Valero-branded gas stations.

14      33. At all relevant times subsequent to May 2013, CST Brands owned the gasoline  
15 dispensers at Valero-branded gas stations, which, like the signage controlled by CST Brands, also  
16 advertised the "credit" price and the "lower" cash price.

17      34. At all relevant times after May 2013, CST Brands owned the payment processing  
18 hardware and software utilized by Valero-branded gas stations to collect credit card and debit card  
19 payments and, therefore, CST Brands had actual knowledge that debit card purchases were charged  
20 at the higher "credit" price.

21      35. At all relevant times after May 2013, CST Brands (individually or through a  
22 subsidiary) provided the payment processing service for credit and debit card payments at most if not  
23 all of its Valero-branded gas stations. Through its payment processing service, CST Brands  
24 (individually or through a subsidiary) collected credit card and debit card payments on behalf of  
25 station owners. CST Brands retained the cost of its gasoline, as well the processing fee charged to  
26 both credit cards *and* debit cards, and then remitted the remainder back to the individual Valero-

27      <sup>1</sup> Defendant Valero Energy is responsible for all acts of its subsidiaries, including defendants  
28 Valero M&S, CST Brands and CST M&S.

1 branded gas station owner. CST Brands, therefore, had actual knowledge that debit card purchases  
2 were charged at the higher “credit” price.

3       36.      At all relevant times after May 2013, CST Brands had access to all of its Valero-  
4 branded gas stations’ bank records, as well as real-time access to all of the financial transactions at  
5 Valero-branded gas stations and, therefore, had actual knowledge that debit card purchases were  
6 charged at the higher “credit” price.

7       37.      At all relevant times after May 2013, CST Brands routinely had representatives on-  
8 site at its Valero-branded gas stations who observed the prices advertised and charged and discussed  
9 pricing policies and specific information regarding actual gasoline sales with managers of the  
10 individual Valero-branded gas stations and, therefore, had actual knowledge that debit card  
11 purchases were charged at the higher “credit” price.

#### **INTRADISTRICT ASSIGNMENT**

13       38.      A substantial part of the events or omissions which give rise to the claims in this  
14 action occurred in the county of San Mateo, and as such this action is properly assigned to the San  
15 Francisco division of this Court.

#### **JURISDICTION AND VENUE**

17       39.      This Court has jurisdiction pursuant to 28 U.S.C. §1332(d)(2)(A) as modified by the  
18 Class Action Fairness Act of 2005 because at least one member of the Class is a citizen of a different  
19 state than Defendants, there are more than 100 members of the Class, and the aggregate amount in  
20 controversy exceeds \$5 million exclusive of interest and costs.

21       40.      Venue is proper before this Court pursuant to 28 U.S.C. §13391 in that many of the  
22 acts and transactions giving rise to this action occurred in this District and because: (a) Defendants  
23 are authorized to conduct business in this District and have intentionally availed themselves of the  
24 laws and markets within this District through the promotion, marketing, distribution and sale of  
25 Valero-branded gasoline; (b) Defendants conduct substantial business in this District; and (c)  
26 Defendants are subject to personal jurisdiction in this District.

## **SUBSTANTIVE ALLEGATIONS**

## **Reasonable Consumers Believe That a Debit Card Is the Equivalent of Cash**

41. Due to high interest rates and the difficulty of building positive credit history for many Americans, the use of debit cards has increased dramatically over the past several years. Indeed, the number of debit card transactions have overtaken the number of cash, check and credit card transactions combined and now account for more than **50%** of all gasoline purchases in the State of California.

42. Debit cards and credit cards function differently and are used differently by consumers. The fundamental difference between a debit card and a credit card is in how the cardholder's funds are obtained and transferred to merchants.

43. In contrast to a credit card payment that is charged to the cardholder's line of credit based on the cardholder's promise to pay at a later date, a debit card payment results in an immediate cash withdrawal from the cardholder's bank account. This is especially true of "prepaid" debit cards, which function like a debit card except that the cardholder prepays a specific amount of money that can later be spent using the prepaid debit card. Therefore, reasonable consumers, including Plaintiff and the members of the Class, reasonably and correctly believe that a debit card is the equivalent of cash. Indeed, consumer surveys reveal that as many as **75%** of California consumers believe that a debit card is the equivalent of cash.

44. To be sure, virtually all Visa and MasterCard debit card applications and cardholder agreements contain express language stating that "*this is not a credit card.*"

## **Defendants Deceive Reasonable Consumers Regarding the True Price of Gasoline In Violation of California Law**

45. Defendants are major suppliers of gasoline throughout the United States and the State of California. Like most gas stations, Defendants' Valero-branded gas stations advertise the price of gasoline on large signs that are visible to passing motorists. In order to lure motorists into Valero-branded gas stations, which can be located directly across the street from one or more competing gas stations, Defendants advertise two different prices for gasoline: a "credit" price for purchases made with a credit card and a lower "cash" price for purchases made with cash. As an example, attached

1 hereto as **Exhibit A** is a photograph of a street sign displaying Defendants' trademark and the prices  
2 for all grades of gasoline and diesel fuel sold by Defendants, advertising a lower "cash" and higher  
3 "credit" price.

4       46. Gasoline purchases by consumers are a significant part of the California economy.  
5 The cost of gasoline is a substantial economic burden, and the steady and oftentimes dramatic and  
6 unprecedented increase in the price of gasoline has made consumers especially cost-conscious.  
7 Indeed, consumers, including Plaintiff and the members of the Class, many of whom are lower  
8 income Americans seeking to save money on high-priced gasoline, are lured into Valero-branded gas  
9 stations over other competing stations by Defendants' promise of a lower price for gasoline  
10 purchased with cash.

11       47. Based on their reasonable and accurate belief that a debit card is the equivalent of  
12 cash, reasonable consumers, including Plaintiff and the members of the Class, believe that  
13 Defendants will charge them the lower cash price on gasoline purchased with a debit card. In fact,  
14 Defendants' advertised "cash" price constitutes a legal offer to enter into a contract for the sale of  
15 gasoline at the specifically advertised "cash" price without further negotiation. By entering a  
16 Valero-branded gas station over competing stations to purchase gasoline at the advertised cash price,  
17 Plaintiff and other members of the Class accepted Defendants' offer, thereby creating a legally  
18 binding contract for the sale of gasoline by Defendants *at that same advertised cash price*.

19       48. Contrary to Defendants' advertised "cash" price, which forms part of the terms of the  
20 contract for the sale of gasoline between Defendants and Plaintiff and the members of the Class,  
21 Defendants actually charge the higher "*credit*" price to consumers who pay for Valero-branded  
22 gasoline with a debit card.

23       49. Defendants' practice of advertising a lower cash price but charging debit cards  
24 customers the higher credit price is misleading to reasonable consumers, including Plaintiff and the  
25 members of the Class, who reasonably and correctly believe that a debit card is the equivalent of  
26 cash. Therefore, Defendants' practice violates the CLRA, FAL and UCL. Defendants' failure to sell  
27 gasoline to Plaintiff and the other members of the Class at the agreed "cash" price is also a breach of  
28

1 the contract for the sale of gasoline at a specific price entered into between Defendants and Plaintiff  
 2 and the other members of the Class.

3       50. Plaintiff and the other members of the Class would not have entered Valero-branded  
 4 gas stations to purchase gasoline over competing gas stations were it not for Defendants' false,  
 5 deceptive and misleading offer and advertisement of a lower "cash" price for gasoline.

6 **Defendants Are Prohibited from Charging  
 a "Surcharge" on Debit Card Transactions**

7       51. Due to transaction fees charged by financial institutions, some merchants choose to  
 8 pass on the amount of the fee to consumers who make purchases on credit.

9       52. Credit card issuers typically charge merchants like Defendants a fee for each credit  
 10 card transaction of approximately 1%-4% of the transaction's value.

11       53. By contrast, the maximum amount of a transaction fee on debit card transactions is  
 12 capped by federal law.

13       54. Pursuant to the Durbin Amendment to the Dodd-Frank Wall Street Reform and  
 14 Consumer Protection Act of 2010 (the "Dodd-Frank Act"), 15 U.S.C. §1693o-2, the Federal Reserve  
 15 Board capped debit card transaction fees at \$0.21 per transaction, plus five basis points multiplied by  
 16 the value of the entire transaction.

17       55. The "credit" price that Defendants charge to consumers who purchase gasoline with a  
 18 debit card, including Plaintiff and the members of the Class, results in a surcharge on their debit card  
 19 transactions that is substantially more than the amount allowed by federal law.

20       56. Furthermore, both Visa and MasterCard prohibit *any* surcharge on debit card  
 21 transactions, *i.e.*, anything over the cash price, unless the merchant clearly discloses the surcharge,  
 22 the amount of which, of course, is capped by federal law. Attached hereto as **Exhibit B** is a true and  
 23 correct copy of MasterCard's policy prohibiting surcharges on debit cards. Attached hereto as  
 24 **Exhibit C** is a true and correct copy of a "Q&A" by Visa to its network of merchants informing  
 25 them that they may not charge consumers any additional fee or surcharge on debit card purchases.  
 26 Attached hereto as **Exhibit D** is a true and correct copy of Visa infographic informing merchants  
 27  
 28

1 that they may not charge any additional fee or surcharge on debit card purchases. The overwhelming  
 2 majority of debit cards are issued by Visa and MasterCard.

3       57. Notably, in December 2013, United States District Court Judge John Gleeson  
 4 approved a settlement in the largest antitrust class action lawsuit in American history, *In re Payment*  
 5 *Card Interchange Fee and Merchant Discount Antitrust Litig.*, MDL No. 1720 (E.D.N.Y.), which  
 6 resulted in a **\$5.7 billion** payment to consumers who were overcharged fees on debit card purchases.  
 7 As part of the settlement, Visa and MasterCard also agreed not to charge additional fees on debit  
 8 card purchases. Attached hereto as **Exhibit E** is a true and correct copy of correspondence from  
 9 Visa to its network of merchants informing them of the aforementioned settlement and instructing  
 10 them not to charge additional fees or surcharges on debit card purchases.

11 **Plaintiff's Experiences**

12       58. Plaintiff is a resident of South San Francisco, California.

13       59. Plaintiff regularly purchases \$30 to \$40 of gasoline per week.

14       60. Plaintiff is sensitive to the price of gasoline and regularly purchases gasoline from  
 15 stations advertising the lowest price.

16       61. At various times throughout the class period, Plaintiff was exposed to Defendants'  
 17 Valero-branded advertisements of a "credit" price and a lower "cash" price for gasoline, including at  
 18 a specific Valero-branded gas station located at 6989 Mission Street, Daly City, California.  
 19 Attached hereto as **Exhibit A** is a true and correct example of the advertisements to which Plaintiff  
 20 was exposed.

21       62. Plaintiff understood Defendants' advertised "cash" price to be an offer to purchase  
 22 gasoline with cash at the specifically advertised price.

23       63. Like all reasonable consumers, Plaintiff considers her MasterCard-branded debit card  
 24 the equivalent of cash because a charge on her debit card results in an immediate cash withdrawal  
 25 from cash available in Plaintiff's bank account.

26       64. Based on Defendants' advertised offer to purchase gasoline with cash at the  
 27 specifically advertised price, Plaintiff entered Valero-branded gas stations at various times  
 28

1 throughout the class period in order to purchase gasoline with her debit card at the advertised lower  
 2 “cash” price.

3       65.     At each Valero-branded gas station, Plaintiff paid with her MasterCard-branded debit  
 4 card and was charged the higher “*credit*” price for gasoline. Attached hereto as **Exhibit F** is true and  
 5 correct copy of receipt for gasoline purchased by Plaintiff from a Valero-branded gas station.

6       66.     Plaintiff would not have entered Valero-branded gas stations to purchase gasoline  
 7 over competing gas stations were it not for Defendants’ falsely advertised “cash” price.

8       67.     As a result of Defendants’ false and misleading practices, Plaintiff suffered damages  
 9 in an amount to be proved at trial, but no less than the jurisdictional minimum of this Court.

#### 10                   **CLASS ACTION ALLEGATIONS**

11       68.     Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of Civil  
 12 Procedure on behalf the following proposed Class:

13                   *All persons who paid for Valero-branded gasoline with a debit card in California  
 14 between July 2011 and the present.*

15       69.     Subject to additional information obtained through further investigation and  
 16 discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or  
 17 amended complaint.

18       70.     Specifically excluded from the Class are Defendants, their officers, directors, agents,  
 19 trustees, parents, children, corporations, trusts, representatives, employees, principals, servants,  
 20 partners, joint venturers or entities controlled by Defendants, and their heirs, successors, assigns or  
 21 other persons or entities related to or affiliated with Defendants and/or their officers and/or directors,  
 22 the judge assigned to this action, and any member of the judge’s immediate family.

23       71.     *Numerosity.* The members of the Class are so numerous that individual joinder is  
 24 impracticable. Upon information and belief, Plaintiff alleges that the Class contains many hundreds  
 25 of thousands of members. The precise number of Class members is unknown to Plaintiff. The true  
 26 number of Class members is known by Defendants, however, and thus may be notified of the  
 27 pendency of this action by first class mail, electronic mail or published notice.

28

1       72.     *Existence and predominance of common questions of law and fact.* Common  
2 questions of law and fact exist as to all members of the Class and predominate over any questions  
3 affecting only individual Class members. These common legal and factual questions include, but  
4 are not limited to, the following:

- 5                 (a)     whether Defendants charged debit cards as credit cards;
- 6                 (b)     whether Defendants' advertised "cash" price is misleading to reasonable  
7 consumers;
- 8                 (c)     whether Defendants' advertised "cash" price is unlawful;
- 9                 (d)     whether Defendants advertised a "cash" price for gasoline with the intent to  
10 not sell it as advertised;
- 11                 (e)     whether Defendants' failure to inform consumers the amount charged as a  
12 debit card fee was unlawful;
- 13                 (f)     whether the amount Defendants' charged as a debit card fee was unlawful;
- 14                 (g)     whether Defendants violated the CLRA;
- 15                 (h)     whether Defendants violated the FAL;
- 16                 (i)     whether Defendants violated the UCL;
- 17                 (j)     whether Defendants' advertised "cash" price constitutes an offer to enter into  
18 a contract for the sale of gasoline at the advertised price;
- 19                 (k)     whether Defendants breached a contract for the sale of gasoline;
- 20                 (l)     whether Defendants' acts were committed knowingly;
- 21                 (m)     whether Plaintiff and the members of the Class are entitled to an accounting;
- 22                 (n)     whether Plaintiff and the members of the Class have sustained monetary loss  
23 and the proper measure of that loss;
- 24                 (o)     whether Plaintiff and the members of the Class are entitled to punitive  
25 damages; and
- 26                 (p)     whether Plaintiff and the members of the Class are entitled to declaratory and  
27 injunctive relief.

1       73.     *Typicality.* Plaintiff's claims are typical of the claims of the members of the Class in  
2 that Defendants deceived Plaintiff in the very same manner that they deceived each member of the  
3 Class.

4       74.     *Adequacy of representation.* Plaintiff will fairly and adequately protect the interests  
5 of the Class. Plaintiff has retained counsel highly experienced in complex consumer class action  
6 litigation, and Plaintiff intends to vigorously prosecute this action. Further, Plaintiff has no interests  
7 that are antagonistic to those of the members of the Class.

8       75.     *Superiority.* A class action is superior to all other available means for the fair and  
9 efficient adjudication of this controversy. The damages or other financial detriment suffered by  
10 individual Class members is relatively small compared to the burden and expense that would be  
11 involved in individual litigation of their claims against Defendants. It would, thus, be virtually  
12 impossible for the Class, on an individual basis, to obtain effective redress for the wrongs committed  
13 against them. Furthermore, even if Class members could afford such individualized litigation, the  
14 court system could not. Individualized litigation would create the danger of inconsistent or  
15 contradictory judgments arising from the same set of facts. Individualized litigation would also  
16 increase the delay and expense to all parties and the court system from the issues raised by this  
17 action. By contrast, the class action device provides the benefits of adjudication of these issues in a  
18 single proceeding, economies of scale, and comprehensive supervision by a single United States  
19 District Court, and presents no unusual management difficulties under the circumstances here.

20       76.     In the alternative, the Class may also be certified because:

21               (a)     the prosecution of separate actions by individual Class members would create  
22 a risk of inconsistent or varying adjudication with respect to individual Class members that would  
23 establish incompatible standards of conduct for the Defendants;

24               (b)     the prosecution of separate actions by individual Class members would create  
25 a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the  
26 interests of other Class members not parties to the adjudications, or substantially impair or impede  
27 their ability to protect their interests; and

1 (c) Defendants have acted or refused to act on grounds generally applicable to the  
2 Class as a whole, thereby making appropriate final declaratory and injunctive relief with respect to  
3 the members of the Class as a whole.

4       77. Moreover, certain issues relating to Defendants' liability may be certified pursuant to  
5 Rule 23(c)(4).

## COUNT I

### **Violation of the CLRA, Cal. Civ. Code §1750, *et seq.***

8       78. Plaintiff refers to and incorporates herein by reference the allegations in the preceding  
9 paragraphs as though fully set forth herein.

10        79. The CLRA “shall be liberally construed and applied to promote its underlying  
11 purposes, which are to protect consumers against unfair and deceptive business practices and to  
12 provide efficient and economical procedures to secure such protection.” California Civil Code  
13 §1760.

14       80. Plaintiff and the other Class members are consumers as defined by California Civil  
15 Code §1761(d).

16 || 81. Gasoline is a good as defined by California Civil Code §1761(a).

17       82. Defendants violated and continue to violate the CLRA by engaging in the following  
18 practices proscribed by California Civil Code §1770(a) in transactions that were intended to result in,  
19 and did result in, the sale of goods to consumers, including Plaintiff and members of the Class:

24        83. Specifically, Defendants advertised a lower “cash” price for gasoline sold at their  
25 Valero-branded gas stations when they knew, or should have known, that their representations and  
26 advertisements regarding the price of gasoline were false and misleading because Defendants  
27 charged a higher “credit” price to consumers who paid for gasoline with a debit card, which is a cash

1 equivalent and which Plaintiff and members of the Class reasonably and correctly believe is a cash  
2 equivalent.

3       84. Defendants' false and misleading advertisement regarding the price of gasoline is  
4 likely to deceive, and in fact, did deceive, reasonable members of the public, including Plaintiff and  
5 the other Class members, who reasonably and correctly believe that a debit card is the equivalent of  
6 cash and, thus, are induced to enter Defendants' Valero-branded gas stations through Defendants'  
7 false and misleading statements of fact concerning the existence of, or amounts of, price reductions  
8 on gasoline.

9       85. Pursuant to California Civil Code §1782(d), Plaintiff seeks an order enjoining the  
10 above-described wrongful acts and practices of Defendants and for restitution and disgorgement.

11       86. Pursuant to California Civil Code §1780(d), Plaintiff has prepared and attached an  
12 affidavit stating facts showing that this action has been commenced in a county described as a proper  
13 place for the trial. *See Exhibit G.*

14       87. Pursuant to California Civil Code §1782, on December 3, 2015, Plaintiff's counsel  
15 sent a notice and demand letter by certified mail to Valero Energy Corporation, c/o its Chief  
16 Executive Officer, Joseph W. Gorder, One Valero Way, San Antonio, TX 78249; Valero Marketing  
17 & Supply Co., c/o its General Counsel, Jay Browning, One Valero Way, San Antonio, TX 78249;  
18 and CST Brands, Inc. and CST Marketing & Supply Co., c/o their Chief Executive Officer,  
19 Kimberly S. Lubel, One Valero Way, Suite 200, Bldg. D, San Antonio, TX 78249-1616. *See*  
20 Demand Letter, attached as **Exhibit H.**

21       88. Pursuant to Plaintiff's Demand Letter, Defendants have 30 days from the date of the  
22 filing of this Complaint to rectify or agree to rectify their violations of the CLRA.

23       89. If Defendants fail to rectify or agree to correct, repair, replace or otherwise rectify  
24 their violations of the CLRA within 30 days, Plaintiff will seek to amend this Complaint to seek  
25 actual, punitive and statutory damages, as appropriate.

26       90. Plaintiff further seeks costs and attorney's fees pursuant to Cal. Civ. Code §1780(e)  
27 and Cal. Civ. Code §1021.5  
28

## COUNT II

**False and Misleading Advertising in Violation of the FAL,  
Cal. Bus. & Prof. Code §17500, et seq.**

91. Plaintiff refers to and incorporates herein by reference the allegations in ¶¶1-77 as though fully set forth herein.

92. The FAL makes it unlawful for:

(a) “any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real . . . property . . . or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this state, . . . in any . . . advertising device, or . . . in any other manner or means whatever, . . . any statement, concerning that real . . . property . . . , or concerning any circumstance or matter of fact connected with the proposed . . . disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading,” or for

(b) "any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that . . . property . . . , professional or otherwise, so advertised at the price stated therein, or as so advertised."

93. Through the conduct alleged herein, Defendants violated the FAL by advertising a lower “cash” price for gasoline sold at their Valero-branded gas stations with the intent of inducing the public to enter into an obligation with respect to the purchase of gasoline from Defendants. Defendants’ advertisement of a lower cash price was untrue and misleading, and Defendants knew, or through the exercise of reasonable care should have known, that such advertisement was untrue and misleading, because Defendants routinely charged a higher “credit” price to consumers who paid for gasoline with a debit card, which is a cash equivalent.

94. Moreover, Defendants made such false advertisements as part of a plan or scheme with the intent to sell gasoline at higher than the advertised price, in further violation of the FAL.

1       95. Defendants' false and misleading advertisements regarding the true "cash" price of  
2 gasoline are likely to deceive, and in fact, did deceive, members of the public, including Plaintiff and  
3 the other Class members, who reasonably and correctly believe that debit cards are the equivalent of  
4 cash and, thus, were induced to enter Defendants' gas stations through Defendants' false and  
5 misleading representations regarding the true price of gasoline sold at Defendants' Valero-branded  
6 gas stations.

7       96. Pursuant to Cal. Bus. & Prof. Code §17203, Plaintiff seeks an order enjoining the  
8 above-described wrongful acts and practices of Defendants and for restitution and disgorgement.

### COUNT III

## **Violations of the UCL, Cal. Bus. & Prof. Code §17200, et seq.**

11       97. Plaintiff refers to and incorporates by reference the allegations in ¶¶1-77 as though  
12 fully set forth herein.

13        98. The UCL prohibits unfair competition, which the statute defines as any business act  
14 or practice that is either: (1) unlawful, (2) unfair, or (3) fraudulent.

15        99. Defendants' business acts and practices alleged herein were unfair and fraudulent  
16 within the meaning of the UCL because Defendants' conduct is substantially injurious to consumers,  
17 offends public policy, and is immoral, unethical, oppressive, and unscrupulous, as the gravity of the  
18 conduct outweighs any alleged benefits attributable to such conduct, and there were reasonably  
19 available alternatives to further Defendants' legitimate business interests, other than the conduct  
20 described herein.

21       100. Defendants' business acts and practices as alleged herein were also unlawful, in  
22 further violation of the UCL, because Defendants' business acts and practices constituted the  
23 following:

- (a) violations of the CLRA;
  - (b) violations of the FAL;
  - (c) conversion; and
  - (d) breach of contract.

1       101. Plaintiff reserves the right to allege other violations of law by Defendants, which  
2 constitute other unlawful or unfair business acts or practices in violation of the UCL.

3           102. Defendants' unlawful, unfair and fraudulent business acts and practices in violation of  
4 the UCL were likely to deceive, and in fact, did deceive, members of the consuming public,  
5 including Plaintiff and the members of the Class.

6       103. Pursuant to the UCL, Plaintiff seeks an order enjoining Defendants' unlawful, unfair  
7 and fraudulent business acts and practices in violation of the UCL and for restitution and  
8 disgorgement of Defendants' ill-gotten proceeds.

## COUNT IV

## Breach of Contract

11       104. Plaintiff refers to and incorporates herein by reference the allegations in ¶¶1-77 as  
12 though fully set forth herein.

13        105. Defendants' advertisement of a specific "cash" price for gasoline sold at their Valero-  
14 branded gas stations constituted an offer to the public to purchase gasoline at the advertised price in  
15 exchange for the public's act of entering such Valero-branded gas stations.

16       106. Plaintiff and the members of the Class accepted Defendants' offer to purchase  
17 gasoline at the advertised price by entering Defendants' gas stations, and such action constitutes  
18 sufficient consideration, thereby forming a binding contract for the sale of gasoline at the price  
19 advertised by Defendants.

20        107. Defendants breached the contract for the sale of gasoline entered into between  
21 Defendants and Plaintiff and the other members of the Class by charging Plaintiff and the other  
22 members of the Class a higher price for gasoline than the price advertised and agreed to and Plaintiff  
23 and the other Class members were damaged thereby in an amount to be proven at trial but in no  
24 event less than the jurisdictional minimum of this Court.

25 108. Plaintiff seeks expectation damages arising from Defendants' breach of contract.

## COUNT V

# Accounting

109. Plaintiff refers to and incorporates herein by reference the allegations in ¶¶1-77 as though fully set forth herein.

110. A relationship exists between Plaintiff and the members of the Class on the one hand, and Defendants on the other hand, that requires an accounting.

111. Specifically, Defendants are merchants of gasoline and Plaintiff and the members of the Class are customers of Defendants.

9       112. Through the acts alleged herein, Defendants unlawfully overcharged Plaintiff and the  
10 members of the Class in the sale of gasoline.

11       113. Therefore, Defendants possess money belonging to Plaintiff and the members of the  
12 Class that Defendants must return.

13        114. The exact balance owed by Defendants to Plaintiff and the members of the Class is  
14 unknown to Plaintiff and cannot be ascertained without an accounting of the amounts paid to  
15 Defendants during the class period for all Debit Card charges and the amount of gasoline purchased  
16 with a debit card by Plaintiff and the members of the Class.

17        115. Such accounting will facilitate restitution to Plaintiff and the members of the Class of  
18 all funds obtained by Defendants' unlawful acts.

19       116. Therefore, Plaintiff seeks an accounting of Defendants' ill-gotten proceeds and to  
20 recover such sums owed to Plaintiff and the members of the Class.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for a judgment as follows:

23 A. Certifying the Class as requested herein, appointing Plaintiff as Class Representative,  
24 and appointing Robbins Geller Rudman & Dowd LLP and Hobson, Bernardino & Davis, LLP as  
25 Class counsel;

26 B. Declaring that Defendants committed the violations alleged herein;

27 C. Awarding Plaintiff and the members of the Class damages, including punitive  
28 damages and interest thereon;

D. Awarding restitution and disgorgement of Defendants' revenues to Plaintiff and the members of the Class;

3 E. Awarding declaratory, injunctive and other equitable relief as permitted by law or  
4 equity, including enjoining Defendants from continuing the unlawful practices described herein, and  
5 directing Defendants to identify, with this Court's supervision, victims of their conduct and pay them  
6 restitution and disgorge all monies Defendants acquired through any act or practice declared by this  
7 Court to be wrongful or unlawful;

**F. Awarding Plaintiff attorneys' fees and costs; and**

9           G.     Providing any and all further legal and equitable relief as this Court may deem just  
10 and proper.

## JURY DEMAND

12 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, and Local Rules of this  
13 Court, Plaintiff respectfully demands trial by jury on all issues so triable.

14 | DATED: December 3, 2015

HOBSON, BERNARDINO & DAVIS, LLP  
RAFAEL BERNARDINO, JR.  
JASON A. HOBSON

s/ Rafael Bernardino, Jr.  
RAFAEL BERNARDINO, JR.

725 South Figueroa Street, Suite 3230  
Los Angeles, CA 90017  
Telephone: 213/235-9190  
213/235-9197 (fax)

ROBBINS GELLER RUDMAN  
& DOWD LLP  
PATRICK W. DANIELS  
655 West Broadway, Suite 1900  
San Diego, CA 92101  
Telephone: 619/231-1058  
619/231-7423 (fax)

1 ROBBINS GELLER RUDMAN  
2 & DOWD LLP  
3 STUART A. DAVIDSON  
4 MARK J. DEARMAN  
5 CHRISTOPHER C. MARTINS  
6 120 East Palmetto Park Road, Suite 500  
7 Boca Raton, FL 33432  
8 Telephone: 561/750-3000  
9 561/750-3364 (fax)

10 ROBBINS GELLER RUDMAN  
11 & DOWD LLP  
12 ROXANA PIERCE  
13 1701 K Street NW, Suite 350  
14 Washington, DC 20036  
15 Telephone: 202/822-6762  
16 202/828-8528 (fax)

17 Attorneys for Plaintiff and the Proposed Class

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