

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

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

Plaintiff,

vs.

VALERO MARKETING AND SUPPLY
COMPANY,

Defendant.

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

) CLASS ACTION

) **DECLARATION OF CATHY YANNI**

1 I, CATHY YANNI, declare pursuant to 28 U.S.C. §1746 as follows:

2 1. My name is Cathy Yanni. I am over the age of 18 and I am competent to give
3 testimony. The statements contained herein are based upon my own personal knowledge and are
4 true and correct.

5 2. I submit this Declaration in my capacity as the mediator in connection with the
6 proposed settlement of this case. While the mediation process is confidential, the parties have
7 authorized me to inform the Court of the procedural and substantive matters set forth herein in
8 support of approval of the Settlement. My statements and those of the parties during the mediation
9 process are subject to a confidentiality agreement and Federal Rule of Evidence 408, and there is
10 no intention on either my part or the parties' part to waive the agreement or the protections of Rule
11 408.

12 **I. BACKGROUND AND EXPERIENCE**

13 3. I have been appointed as a Special Master and/or Mediator in thousands of class
14 action and mass tort cases, including:

- 15 ■ Settlement Special Master for the *In Re: National Prescription Opiate Litigation*
16 by The Hon. Dan Polster, US District Court for the Northern District of Ohio
- 17 ■ Special Master for the *Abilify MDL* by The Hon. M. Casey Rodgers, US District
18 Court for the Northern District of Florida, following the joint recommendation of
the plaintiffs and defendants settlement committee
- 19 ■ Settlement Special Master for *Medtronic Infuse* by The Hon. John D. Minton,
20 Kentucky Supreme Court (2016)
- 21 ■ Special Master by The Hon. David A. Katz, US District Court for the Northern
22 District of Ohio, for *In re: DePuy Orthopaedics, Inc. ASR Hip Implant Products*
Liability Litigation
- 23 ■ Settlement and Discovery Special Master by The Hon. Dan Polster, US District
24 Court for the Northern District of Ohio, in *Gadolinium Contrast Dyes Product*
Liability Litigation
- 25 ■ Special Master by The Hon. Richard Kramer, Superior Court of California, San
26 Francisco County by agreement of the parties for the JCCP, *Gadolinium Contrast*
Dyes Product Liability Litigation
- 27
- 28

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

- Special Master by agreement of the parties for the *St. Jude Riata Lead Wire Medical Device Litigation*
- Special Master by agreement of the parties for *Kelly v. Xoft*, for claims arising out of alleged tungsten migration used in breast cancer treatment
- Special Master by The Hon. Wynne Carvill, Superior Court of California, Alameda County for the *Medtronic Infuse Litigation*
- Special Master in the JCCP, *PPA Consolidated Cases* by The Hon. Anthony Mohr, Superior Court of California, Los Angeles County
- Federal Mediator in the *Baycol MDL* by The Hon. Michael J. Davis, US District Court for the District of Minnesota
- Settlement Special Master by agreement of the parties in the *Bextra MDL* and the *Ortho Evra MDL*
- Settlement Special Master by agreement of the parties in the *Zicam I and II MDL*
- Settlement Special Master in the *Zyprexa I and II MDL* by The Hon. Jack Weinstein, US District Court for the Eastern District of New York
- Federal Mediator in *Silicon Gel Breast Implant Litigation* by The Hon. Denise Hood, US District Court for the Eastern District Michigan

II. FAMILIARITY WITH THE PRESENT LITIGATION

4. I was first contacted by the parties on December 20, 2017 regarding assisting with discussions concerning a potential resolution of this litigation, and I agreed to serve as mediator to facilitate such discussions. In my capacity as mediator, I consider myself to be a neutral, representing neither plaintiff nor defendant.

5. In preparing for this mediation, I asked that the parties provide me with a variety of information about the lawsuit and their respective positions.

6. We held our first in-person mediation session on March 27, 2018, at JAMS in San Francisco, California. During the session, Plaintiff provided Valero, and shared with me, her views on a possible framework for a proposed settlement of the case.

1 7. Because the parties discussed with me their legal and factual arguments in the
2 context of a confidential mediation process pursuant to Rule 408, I cannot reveal their content. I
3 can say, however, that the arguments and positions asserted by all involved were the product of
4 much hard work, and they were complex and highly adversarial.

5 8. Notwithstanding the parties' desire to try to reach a resolution, it was apparent to
6 me from the first mediation session on March 27 that both sides possessed strong, non-frivolous
7 arguments on the merits and the potential for class decertification, and that neither side was assured
8 of victory if the case was litigated to final judgment.

9 9. The March 27 mediation session concluded with the parties far apart in several
10 respects.

11 10. On November 9, 2018, I held a joint telephonic conference with the parties to
12 discuss whether the parties were at a point at which they believed it might make sense to discuss
13 a potential settlement of their litigation. Following the call, the parties scheduled a second in-
14 person mediation session to be held at JAMS in San Jose, California on November 29, 2018.

15 11. The parties attended the November 29 mediation session but, again, were not
16 successful in resolving all issues.

17 12. In September 2019, the parties contacted me to schedule a third in-person mediation
18 session. That third session was held on October 29, 2019 at JAMS in San Francisco, California.
19 The parties spent the better part of the day trying to negotiate a resolution of the case. The session
20 concluded with the parties having made substantial progress on a general framework for a
21 negotiated resolution.

22 13. Over the course of the next several days, the parties corresponded by email and held
23 telephone discussions to try to reach an agreement. To move the parties together, I made a
24 mediation proposal that reflected my opinions as to a fair settlement. Eventually, on December
25 18, 2019, the parties executed a Term Sheet setting forth the material terms of an agreement-in-
26 principle to be incorporated into a formal Settlement Agreement for the Court's approval.

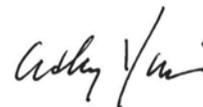
1 14. I never witnessed or sensed any collusiveness between the parties. To the contrary,
2 at each point during these negotiations, the settlement process was conducted at arm's-length and,
3 while professionally conducted, was quite adversarial. It was only upon reaching an agreement on
4 the substantive terms of a settlement and Class member relief that further and reasonable
5 consideration was given to a reasonable and appropriate amount of Plaintiffs' counsels' attorneys'
6 fees, Plaintiffs' counsels out-of-pocket costs incurred in prosecuting this case, and the named
7 Plaintiff's incentive awards, all of which the parties understood were subject to Court approval.

8 15. A review of my records shows that, in total, I personally spent in excess of 25 hours
9 coordinating, preparing, pre-mediating, and mediating the resolution of this case.

10 16. Based on my experience as a litigator and a mediator for over 38 years, I came away
11 from the mediation process in this case with two thoughts. *First*, I firmly believe that this
12 settlement represents a reasonable and fair outcome for the Class given the parties' strongly-held
13 positions throughout negotiations. As such, I strongly support the approval of the settlement in all
14 respects. *Second*, the advocacy on both sides of the case was outstanding. Plaintiffs' counsel,
15 Stuart Davidson and Christopher Gold, and Valero's counsel, Jerry Hawxhurst and Sharena
16 Shawrieh (In-house Counsel at Valero), represented their clients with tremendous effort, creativity,
17 and zeal. All counsel displayed the highest level of professionalism in carrying out their duties on
18 behalf of their respective clients and the settlement is the direct result of all counsel's experience,
19 reputation, and ability in complex class actions.

20 17. Should the Court have any questions of me or require any additional information
21 regarding the parties' negotiations of the proposed settlement, I am happy to answer and provide
22 the same (subject to the parties' approval of me providing any such information that would
23 otherwise be protected under the settlement or mediation privilege).

24 I declare under penalty of perjury under the laws of the United States that the foregoing
25 facts are true and correct and that this declaration was executed this 2nd day of September, 2020.

26
27 

28 _____
CATHY YANNI