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19 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

20

IN AND FOR THE COUNTY OF SAN FRANCISCO

21

UNLIMITED JURISDICTION

22

PEOPLE OF THE STATE OF
CALIFORNIA,

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Plaintiff,

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v.

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26 ATLANTIC RICHFIELD COMPANY,
PRESTIGE STATIONS, INC., and DOES
27 1- 500,

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Defendants,

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No. CGC-02-409327

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES
FOR VIOLATIONS OF
UNDERGROUND TANK SYSTEM
UPGRADE REQUIREMENTS IN
CHAPTER 6.7 OF THE
CALIFORNIA HEALTH AND
SAFETY CODE AND FOR UNFAIR
COMPETITION**

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PLAINTIFF, PEOPLE OF THE STATE OF CALIFORNIA, allege as follows:

PLAINTIFF

1. Plaintiff, PEOPLE OF THE STATE OF CALIFORNIA (“People”), brings its actions by and through Bill Lockyer, Attorney General of the State of California (“Attorney General”), and at the request of the California State Water Resources Control Board and the California Environmental Protection Agency, and by and through Dennis Herrera, San Francisco City Attorney (“City Attorney”) at the request of the San Francisco Department of Public Health.

2. Pursuant to California Health and Safety Code Section 25299.02, the Attorney General and the City Attorney may bring a civil action in the name of the People of the State of California for violations of state law dealing with the underground storage of hazardous substances, as set forth in Chapter 6.7 of the California Health and Safety Code (hereinafter “Chapter 6.7”).

3. Pursuant to California Health and Safety Code Section 25299.01, the Attorney General and the City Attorney may apply to a superior court for an injunction or an order directing compliance against any person who has engaged in, is engaged in, or is about to engage in any acts or practices which violate Chapter 6.7. Pursuant to California Health and Safety Code Section 25299, defendants, and each of them, are liable for civil penalties for violations of Chapter 6.7.

4. Pursuant to California Business and Professions Code Sections 17203, 17204, and 17206, the Attorney General and the City Attorney may bring actions in the name of the People of the State of California in a superior court for an injunction against any person who engages, had engaged, or proposes to engage in unfair competition and for civil penalties for each act of unfair competition.

5. The Attorney General brings this action following a referral by the State Water Resources Control Board (hereinafter “State Board”) and the California Environmental Protection Agency (hereinafter “Cal/EPA”). Pursuant to California Health and Safety Code Sections 25299.3 and 25299.7, the State Board has the responsibility to adopt regulations which

1 implement Chapter 6.7. Pursuant to California Government Code Section 12812.2, Cal/EPA is
2 authorized to refer the violations alleged herein to the Attorney General. The City Attorney
3 brings this action following a referral from the San Francisco Department of Public Health.
4 Pursuant to San Francisco Health Code Section 1106(3), the San Francisco Department of
5 Health is the certified unified program agency for the City and County of San Francisco and is
6 responsible for the administration of the requirements of California Health and Safety Code,
7 Chapter 6.7. The Attorney General and the City Attorney are co-counsel for claims related to
8 underground tank systems located in the City and County of San Francisco (ARCO facility
9 #566, 763, and 6136 which are hereinafter collectively referred to as the “San Francisco
10 Facilities”). For all other claims related to underground tank systems in the State of California
11 outside the City and County of San Francisco, the Attorney General is sole counsel for the
12 People of the State of California.

13 6. For the purposes of this Complaint, the definitions applicable to terms set forth in Health
14 and Safety Code Sections 25281 and 25281.5 shall apply. For the purposes of this Complaint,
15 the term “non-upgraded underground tank system” means a tank system which required an
16 upgrade compliance certificate pursuant to Health and Safety Code Section 25284 and did not
17 meet the applicable requirements for upgrade or any applicable exceptions thereto.

18 **DEFENDANTS**

19 7. Defendant, Atlantic Richfield Company is a Delaware Corporation. Atlantic Richfield
20 Company owns and/or operates underground tank systems in the State of California that are
21 used to store motor vehicle fuel for retail sale. Atlantic Richfield Company also refines and
22 delivers motor vehicle fuel to service stations for retail sales to the public.

23 8. Defendant, Prestige Stations, Inc. (hereinafter “Prestige”) is a Delaware corporation.
24 Prestige is a wholly-owned subsidiary of Atlantic Richfield Company. Prestige operates certain
25 underground tank systems in the State of California for or on behalf of Atlantic Richfield
26 Company.

27 9. For the purposes of this complaint, the term “ARCO” shall collectively refer to the
28 Atlantic Richfield Company, ARCO Products Company, and Prestige.

1 10. In this complaint, when reference is made to any act of ARCO, such allegations shall
2 mean that the owners, officers, directors, agents, employees or representatives of ARCO
3 authorized or ratified such acts, or negligently failed and omitted to adequately or properly
4 supervise, control or direct its employees and agents while engaged in the management,
5 direction, operation or control of the affairs of the business organization and did so while acting
6 within the course and scope of its employment or agency.

7 11. Plaintiff is ignorant of the names of those defendants identified as Does 1 through 500,
8 who are therefore sued under fictitious names. When the true names of these defendants have
9 been ascertained, plaintiff will amend the complaint to substitute the true names of each Doe
10 defendant in place of the fictitious names.

11 **VENUE**

12 12. Venue is proper in this county pursuant to California Health and Safety Code Section
13 25299.03 in that violations alleged in the Complaint occurred in the County of San Francisco
14 and that the other statewide violations alleged in the complaint are related to such violations.

15 **STATEMENT OF THE ACTION**

16 13. This action arises out of ARCO's violations of state law regarding the upgrading of
17 underground tank systems in the State of California, additional operational violations at
18 ARCO's underground tank systems located in the City and County of San Francisco, and the
19 delivery of motor vehicle fuel by Atlantic Richfield Company to non-upgraded underground
20 tank systems. Each underground tank system identified in this complaint, stored and dispensed
21 motor vehicle fuel during the times pertinent to this complaint.

22 14. Pursuant to the California Health and Safety Code, including but not limited to Sections
23 25284, 25291 and 25292, ARCO, as an owner or operator of an underground tank system, was
24 required to upgrade certain of its underground tank systems by December 22, 1998 to meet
25 standards for corrosion protection, leak detection, and spill prevention, and other environmental
26 protection measures. The purpose of these upgrade requirements was to reduce the possibility
27 of undetected releases or discharges from underground tank systems and thereby protect the
28 underlying environment and water supplies. The December 22, 1998, deadline for upgrade

1 requirements has been known or should have been known to ARCO since 1988.

2 15. Pursuant to California Health and Safety Code Section 25292.3(a), fuel delivery is
3 prohibited to any underground tank system on or after January 1, 1999 which did not display a
4 certificate indicating that the system had been upgraded to meet the requirements imposed by
5 state law.

6 16. Prior to the December 22, 1998 deadline, the State Board and other entities with
7 regulatory responsibilities over underground tank systems engaged in an extensive public
8 information campaign which alerted motor vehicle fuel retailers such as ARCO of the
9 impending deadline and the steps necessary to bring previously installed underground tank
10 systems into compliance with the new requirements.

11 17. In order to meet the December 22, 1998 deadline, other owners and operators of motor
12 vehicle fuel retail facilities throughout the State of California were forced to suspend retail sales
13 of gasoline and suffer consequential loss of sales at associated markets while improvements
14 were made to their underground tank systems.

15 18. Due to the demand for improvements to underground tank systems prior to December
16 22, 1998 and the limited number of contractors who could perform the upgrade work, the cost of
17 making the improvements to meet the upgrade requirements was significant. Those owners and
18 operators, such as ARCO, who did not undertake improvements to their underground tank
19 systems prior to December 22, 1998 and who delayed compliance were able to later employ
20 contractors to do upgrade work in a less competitive environment and may have realized
21 significant savings due to increased contractor availability and the postponement of facility
22 improvement expenditures.

23 19. ARCO failed to upgrade certain of its underground tank systems as required by
24 California Health and Safety Code, Chapter 6.7, including but not limited to Section 25292, and
25 the implementing regulations. The noncomplying underground tank systems are at the locations
26 set forth in Exhibit "A" to the Complaint which is incorporated herein by reference. ARCO's
27 non-compliance was widespread and statewide. At those facilities in which ARCO failed meet
28 the upgrade requirements, ARCO, nevertheless, obtained upgrade certificates from local

1 agencies thus allowing ARCO to continue to receive motor vehicle fuel at its underground tank
2 systems. These upgrade certificates were issued by the local agencies based upon erroneous,
3 incorrect, or incomplete information supplied to the local agencies by or on behalf of ARCO
4 regarding the construction or condition of the underground tank system, including piping
5 associated with the system. This erroneous, incorrect, or incomplete information was contained
6 in applications, reports, records or other documents submitted or required to be maintained by
7 ARCO pursuant to California Health and Safety Code, Chapter 6.7.

8 20. Although ARCO did not comply with the upgrade requirements, ARCO continued to
9 operate underground tank systems and to sell motor vehicle fuel from the non-complying
10 underground tank systems beyond the upgrade deadline of December 22, 1998.

11 21. After January 1, 1999, Atlantic Richfield Company delivered motor vehicle fuel to non-
12 upgraded underground tank systems which did not have legitimate upgrade certificates in
13 violation of Health and Safety Code Section 25292.3.

14 22. Not only did ARCO receive revenue from the sale of motor vehicle fuels to and from the
15 non-compliant tank systems, ARCO also received revenues from retail markets which were
16 operated in conjunction with the sale of motor vehicle fuels from the non-upgraded underground
17 tank systems.

18 23. As a result of ARCO's statewide noncompliance, it operated underground tank systems
19 which were not protected against the potential release of motor vehicle fuels to the environment
20 under and around the non-compliant underground tank systems. ARCO's continued operation
21 of these non-compliant systems endangered public health and safety and the environment,
22 including but not limited to, soil and groundwater under and around these underground tank
23 systems.

24 24. The retail service stations listed on Exhibit "A" were in violation of the upgrade
25 requirements (hereinafter "ARCO Facilities"). The Exhibit identifies the ARCO number and
26 locations of underground tank systems at the retail service stations that were in violation of the
27 upgrade requirements.

28 25. Except for the San Francisco Facilities, this action does not address any other violations

1 of Chapter 6.7 except for the upgrade violations,, improper certifications related to upgrade
2 violations, and fuel delivery to non-upgraded underground tank systems. Plaintiff brings this
3 action without prejudice to any other action or claims which it may have based on separate,
4 independent and unrelated violations of Chapter 6.7 by ARCO and/or on facts which are not
5 alleged in this Complaint.

6 **FIRST CAUSE OF ACTION**

7 **(Failure to Upgrade Underground Tank Systems)**

8 26. People reallege Paragraphs 1 through 25, inclusive.

9 27. Since December 22, 1998, ARCO has owned and/or operated the underground tank
10 systems set forth in Exhibit "A" in violation of the upgrade requirements of California Health
11 and Safety Code Sections 25291 and 25292(e).

12 28. Pursuant to California Health and Safety Code Section 25299(a)(6), ARCO is liable for
13 civil penalties in an amount from FIVE HUNDRED DOLLARS (\$500.00) to FIVE
14 THOUSAND DOLLARS (\$5,000.00) for each day of violation at each underground tank system
15 owned or operated by ARCO. Where a retail station contains multiple underground storage tank
16 systems in violation of the upgrade requirements, each underground tank system is a separate
17 underground tank system for the purposes of determining and assessing civil penalties.

18 29. ARCO must be immediately and permanently enjoined from operating any underground
19 tank system which has not been upgraded in accordance with the applicable provisions of
20 California Health and Safety Code, Chapter 6.7, including but not limited to Section 25292.

21 30. ARCO must be required to abate and remedy, under the supervision of and to the
22 satisfaction of appropriate regulatory entities, any release of motor vehicle fuels, or any
23 chemical component thereof, occurring after December 22, 1998 from any non-upgraded
24 component of an underground tank system.

25 **SECOND CAUSE OF ACTION**

26 **(Illegal Delivery of Motor Vehicle Fuel to Underground Tank Systems Which**
27 **Did Not Comply with Upgrade Requirements)**

28 31. People reallege Paragraphs 1 through 25, inclusive.

1 32. Since January 1, 1999, the Atlantic Richfield Company delivered motor vehicle fuel to
2 underground tank systems that did not comply with the upgrade requirements in violation of
3 California Health and Safety Code Section 25292.3.

4 33. Pursuant to California Health and Safety Code Section 25299(a)(6), Atlantic Richfield
5 Company is liable for civil penalties in an amount from FIVE HUNDRED DOLLARS
6 (\$500.00) to FIVE THOUSAND DOLLARS (\$5,000.00) for each delivery of fuel to a non-
7 upgraded underground tank system which occurred on or after January 1, 1999.

8 34. Atlantic Richfield Company must be immediately and permanently enjoined from
9 delivering fuel to any underground tank system which does not have a legitimate upgrade
10 certificate issued by an appropriate agency based upon actual compliance with the upgrade
11 requirements for underground tank systems.

12 **THIRD CAUSE OF ACTION**

13 **(Violations of Underground Tank System Requirements at San Francisco Facilities)**

14 35. The People reallege Paragraphs 1 through 25, inclusive.

15 36. ARCO has maintained, operated, and dispensed motor vehicle fuel from the
16 underground tank systems at the San Francisco Facilities at least since December 22, 1998, until
17 the tanks were closed.

18 37. At least since December 22, 1998, up to the time of closure of the underground tank
19 system, ARCO engaged in daily violations of California Health and Safety Code, Chapter 6.7
20 and San Francisco Health Code Sections 1106(3) and 1130, including but not limited to:

21 a. Violation of the applicable requirements of the permit issued for the operation of
22 the underground tank systems at each of the San Francisco Facilities pursuant to California
23 Health and Safety Code Section 25299(a)(2);

24 b. Failure to maintain records, as required by California Health and Safety Code,
25 Chapter 6.7, pursuant to California Health and Safety Code Section 25299(a)(3);

26 c. Violations of the applicable requirements of California Health and Safety Code
27 Chapter 6.7 or the requirements of that chapter or regulations adopted by the State Board
28 pursuant to California Health and Safety Code Section 25299.3;

1 d. Violation of applicable requirements of the permit issued for operation of the
2 underground tank systems;

3 38. By the conduct described above, ARCO has violated, disobeyed, omitted, neglected, and
4 refused to comply with California Health and Safety Code, Chapter 6.7. This conduct subjects
5 ARCO to penalties for each separate violation for each day of violation at each non-complying
6 underground tank system.

7 39. ARCO must be immediately and permanently enjoined from violating the laws and
8 regulations pertaining to the operation of underground tank systems.

9 **FOURTH CAUSE OF ACTION**

10 **(Unfair Competition Through Use of Non-upgraded**
11 **and Non-compliant Underground Tank Systems)**

12 40. The People reallege Paragraphs 1 through 25, inclusive.

13 41. Since on or about December 22, 1998, by the acts described herein, ARCO has engaged
14 in daily acts of unlawful and/or unfair competition prohibited by California Business and
15 Professions Code Sections 17200 -17208. Each act constitutes an unlawful and/or unfair
16 business practice. ARCO gained an unfair competitive advantage over its competitors by selling
17 motor vehicle fuel from underground tank systems which had not been upgraded and by
18 operating its non-compliant underground tank systems during a period of time in which they
19 should have been non-operational.

20 42. The continued and daily operation of underground tank systems in violation of
21 California Health and Safety Code, Chapter 6.7, and in violation of the upgrade requirements of
22 California Health and Safety Code, Chapter 6.7, including but not limited to 25292, as described
23 herein, constitutes unfair competition within the meaning of California Business and Professions
24 Code Section 17200. Pursuant to California Business and Professions Code Section 17206,
25 ARCO is liable for civil penalties for each violation.

26 43. Plaintiff is informed and believes and based on such information and belief alleges that
27 ARCO obtained revenues and profits from the sales of motor vehicle fuels from the non-
28 upgraded tank systems at the ARCO Facilities.

1 44. Plaintiff is informed and believes and based on such information and belief alleges that
2 ARCO obtained revenues and profits from the sales of motor vehicle fuels from the operation of
3 the underground tank systems at the San Francisco Facilities which were in violation of
4 California Health and Safety Code, Chapter 6.7.

5 45. Plaintiff is informed and believes and based on such information and belief alleges that
6 ARCO obtained revenues and profits from the sales of merchandise from retail facilities
7 associated with the sales of motor vehicle fuels. If the non-upgraded underground tank systems
8 at the ARCO Facilities had not been illegally operating, the retail facilities would have had
9 substantially fewer customers for such retail merchandise.

10 46. The Court should immediately and permanently enjoin ARCO from operating any
11 underground tank system which has not been upgraded in accordance with the requirements of
12 California Health and Safety Code, Chapter 6.7, including but not limited to Section 25292, and
13 whose operation constitutes unfair competition within the meaning of California Business and
14 Professions Code Section 17200.

15 47. The Court should immediately and permanently enjoin ARCO from operating any
16 underground tank system at the San Francisco Facilities which is in violation of the
17 requirements of California Health and Safety Code, Chapter 6.7, and whose operation
18 constitutes unfair competition within the meaning of California Business and Professions Code
19 Section 17200.

20 48. The Court should compel ARCO to disgorge any and all profits resulting from the
21 operation of any non-upgraded underground tank systems or the operation of non-compliant
22 underground tank systems at the San Francisco Facilities, including profits from the sale of
23 motor vehicle fuels and profits from the sales of merchandise from retail facilities operated in
24 conjunction with the noncomplying underground tank systems.

25 **FIFTH CAUSE OF ACTION**

26 **(Unfair Competition Through Delivery of Fuel to**
27 **Non-upgraded Underground Tank Systems)**

28 49. The People reallege Paragraphs 1 through 25, inclusive.

1 50. The continued and regular delivery of motor vehicle fuel to underground tank systems in
2 violation of California Health and Safety Code Sections 25291 and 25292, as described herein,
3 constitutes an act of unfair competition within the meaning of California Business and
4 Professions Code Section 17200. By the acts described herein, Atlantic Richfield Company
5 engaged in daily acts of unlawful and/or unfair competition prohibited by California Business
6 and Professions Code Sections 17200-17208. Each act constitutes an unlawful and/or unfair
7 business practice.

8 51. Pursuant to California Business and Professions Code Section 17206, Atlantic Richfield
9 Company is liable for civil penalties for each violation.

10 52. The Court should immediately and permanently enjoin Atlantic Richfield Company from
11 delivering motor vehicle fuel to any underground tank system which has not been upgraded in
12 accordance with the requirements of California Health and Safety Code, Chapter 6.7, including
13 but not limited to Section 25292, and whose delivery of motor vehicle fuel constitutes unfair
14 competition within the meaning of California Business and Professions Code Section 17200.

15 53. Atlantic Richfield Company gained an unfair competitive advantage over its competitors
16 by delivering and selling gasoline to underground tank systems which had not been upgraded
17 and, therefore, which should not have been operating retail gasoline sales after December 22,
18 1998.

19 54. The Court should compel Atlantic Richfield Company to disgorge any and all profits
20 resulting from the delivery and sale of motor vehicle fuels by Atlantic Richfield Company to any
21 non-upgraded underground tank system.

22 WHEREFORE, PLAINTIFFS PRAY FOR THE FOLLOWING RELIEF:

23 1. A permanent injunction prohibiting ARCO, and any other defendants, from
24 operating or using any underground tank system in the State of California which is not in
25 compliance with the applicable upgrade requirements of California Health and Safety Code,
26 Chapter 6.7, including but not limited to Section 25292;

27 2. A permanent injunction prohibiting ARCO, and any other defendants, from
28 delivering any motor vehicle fuel to any underground tank system which is in violation of the

1 applicable upgrade requirements of California Health and Safety Code, Chapter 6.7, for
2 underground tank systems;

3 3. A permanent injunction prohibiting ARCO, and any other defendants, from
4 engaging in any acts of unfair competition based on noncompliance with the applicable upgrade
5 requirements set forth in California Health and Safety Code, Chapter 6.7, including but not
6 limited to Section 25292;

7 4. A permanent injunction requiring ARCO, and any other defendants, to abate and
8 remedy, under the supervision of and to the satisfaction of appropriate regulatory entities, any
9 release of motor vehicle fuels, or any chemical component thereof, occurring after December 22,
10 1998 from any non-upgraded component of an underground tank system;

11 5. Civil penalties according to proof against ARCO, and any other defendants,
12 pursuant to California Health and Safety Code Section 25299, for ownership or operation of
13 non-upgraded underground tank systems after December 22, 1998;

14 6. Civil penalties according to proof against Atlantic Richfield Company, and any
15 other defendants, pursuant to California Health and Safety Code Section 25299, for delivery of
16 motor vehicle fuel to non-upgraded underground tank systems after January 1, 1999;

17 7. Civil penalties according to proof against ARCO, and any other defendants,
18 pursuant to California Business and Professions Code Section 17206 for each act of unfair
19 competition engaged in by ARCO arising out of the ownership or operation of an underground
20 tank system which was not in compliance with the upgrade requirements of California Health
21 and Safety Code, Chapter 6.7;

22 8. Civil penalties according to proof against Atlantic Richfield Company, and any
23 other defendants, pursuant to California Business and Professions Code Section 17206 for each
24 act of unfair competition engaged in by Atlantic Richfield Company for the delivery of motor
25 vehicle fuel to underground tank systems which did not comply with the upgrade requirements
26 of California Health and Safety Code, Chapter 6.7;

27 9. Disgorgement of any and all profits resulting from the ownership or operation of
28 any non-upgraded underground tank systems by ARCO, including profits from the sales of

- 1 merchandise from retail facilities operated in conjunction with the underground tank systems;
- 2 10. Disgorgement of any and all profits resulting from the delivery of motor vehicle
- 3 fuels by Atlantic Richfield to all non-upgraded underground tank systems;
- 4 11. Grant the plaintiff its cost of inspection, investigation, attorneys fees,
- 5 enforcement, prosecution, and suit, herein; and
- 6 12. Grant such other and further relief as the Court deems just and proper.
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8 RESPECTFULLY REQUESTED:

9 Dated: June 12, 2002

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19 Dated: June 14, 2002

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