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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

JUL 01 2024

BY: 
Ariel Barajas Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNADINO**

RAMY KAUFLE EDEN
Plaintiff,
v.
FOOD N' FUEL; WILLIS ENTERPRISES
LLC; and DOES 1 through 50, inclusive,
Defendants.

Case No.: **CIV SB 2420619**

**COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES**

(Violation of Health & Safety Code section
25249.5, *et seq.*)

BY FAX

1 Plaintiff Ramy Kaufler Eden (“Plaintiff”), by and through his attorneys, alleges the following
2 based on information and belief and investigation of counsel:

3 **INTRODUCTION**

4 1. California’s Proposition 65, codified in California Health & Safety Code section
5 25249.5, *et seq.*, makes it unlawful for businesses to knowingly and intentionally expose individuals
6 in California to chemicals known to the State to cause cancer, birth defects or other reproductive harm
7 without first providing clear and reasonable warnings to the exposed individuals.

8 2. Unleaded Gasoline (Wholly Vaporized) (herein, “Gasoline”) is known to the State of
9 California to cause cancer.

10 3. Defendant Food N’ Fuel and defendant Willis Enterprises LLC (“Willis” and, together
11 with Food N’ Fuel, “Defendants”) own and operate a service station located at 3404 Del Rosa Ave.,
12 San Bernardino, California (“3404 Station”).

13 4. Defendant Food N’ Fuel also owns and operates service stations located at 2649 S.
14 Waterman Ave., San Bernardino, California (“S. Waterman Station”), 1055 N. Waterman Ave., San
15 Bernardino, California (“N. Waterman Station”), and 2735 Del Rosa Ave., San Bernardino, California
16 (“Del Rosa Station”).

17 5. The 3404 Station, the S. Waterman Station, the N. Waterman Station, and the Del Rosa
18 Station are collectively referred to herein as the “Subject Service Stations”.

19 6. Food N’ Fuel and Willis expose individuals who come onto the 3404 Station’s premises
20 to Gasoline without first warning of such exposure. Food N’ Fuel also exposes individuals who come
21 onto the premises of the S. Waterman Station, the N. Waterman Station, and the Del Rosa Station to
22 Gasoline without first warning of such exposure.

23 7. By exposing individuals to Gasoline at the Subject Service Stations without providing
24 any warnings whatsoever about the carcinogenic hazards associated with Gasoline exposure,
25 Defendants violate the warning provision of Proposition 65. *See* Health & Saf. Code § 25249.6.

26 8. This Complaint (“Complaint”) seeks to remedy Defendants’ failure to warn of these
27 toxic exposures and hold Defendants accountable for violating California’s Proposition 65.

28 **PARTIES**

1 9. Plaintiff is a citizen of the State of California acting in the interest of the general public
2 to promote awareness of exposures to toxic chemicals in California. He brings this action in the public
3 interest pursuant to Health & Safety Code section 25249.7(d).

4 10. Defendant Willis is incorporated or organized in the State of California, has its
5 principal place of business in the County of San Diego, State of California, and is a “person in the
6 course of doing business” within the meaning of Health & Safety Code section 25249.11. Willis owns
7 and operates the 3404 Station and exposes individuals there to Gasoline without first providing any
8 warnings of the carcinogenic hazards associated with such exposure.

9 11. Defendant Food N’ Fuel is incorporated or organized in the State of California, has its
10 principal place of business in the County of San Bernardino, State of California, and is a “person in
11 the course of doing business” within the meaning of Health & Safety Code section 25249.11. Food N’
12 Fuel owns and operates the Subject Service Stations and exposes individuals there to Gasoline without
13 first providing any warnings of the carcinogenic hazards associated with such exposure.

14 12. DOES 1 through 50 are each a “person in the course of doing business” within the
15 meaning of Health & Safety Code section 25249.11.

16 13. The true names of DOES 1 through 50 are either unknown to Plaintiff at this time or
17 the applicable time period before which Plaintiff may file a Proposition 65 action against them has not
18 yet run. When their identities are ascertained or the applicable time period before which Plaintiff may
19 file a Proposition 65 action against them has run, the Complaint shall be amended to reflect their true
20 names. Defendants and DOES 1 through 50 are collectively referred to herein as “Defendants.”

21 **JURISDICTION AND VENUE**

22 14. The Court has jurisdiction over this action pursuant to Health & Safety Code section
23 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to California
24 Constitution Article VI, Section 10, because this case is a cause not given by statute to other trial
25 courts.

26 15. This Court has jurisdiction over Defendants because each is either a citizen of the State
27 of California, has sufficient minimum contacts with the State of California, and/or intentionally avails
28 itself of the California market through operation of the Subject Service Stations in California or by

1 having such other contacts with California so as to render the exercise of jurisdiction over it by the
2 California courts consistent with traditional notions of fair play and substantial justice.


3 16. Venue is proper in San Bernadino County Superior Court because the violations alleged
4 herein arise in the County of San Bernadino.

5 **STATUTORY BACKGROUND**

6 17. The People of the State of California have declared by initiative under Proposition 65
7 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other
8 reproductive harm.” Proposition 65, § 1(b).

9 18. To effectuate this goal, Proposition 65 prohibits exposing people to chemicals listed by
10 the State of California as known to cause cancer, birth defects or other reproductive harm without a
11 “clear and reasonable warning” unless the business responsible for the exposure can prove that it fits
12 within a statutory exemption. Health & Safety Code section 25249.6 states, in pertinent part: “No
13 person in the course of doing business shall knowingly and intentionally expose any individual to a
14 chemical known to the state to cause cancer or reproductive toxicity without first giving clear and
15 reasonable warning to such individual” Health & Saf. Code § 25249.6

16 19. California Code of Regulations Title 27, sections 25607.26 and 25607.27 set forth
17 “clear and reasonable warnings” for environmental exposures from service stations. Such warnings
18 consist of the following content—printed in no smaller than 22-point type and enclosed in a box—
19 posted on a sign at each gas pump of the service station:

20  **WARNING:** Breathing the air in this area or skin contact with petroleum products
21 can expose you to chemicals including benzene, motor vehicle exhaust and carbon
22 monoxide, which are known to the State of California to cause cancer and birth
23 defects or other reproductive harm. Do not stay in this area longer than necessary.

24 For more information go to www.P65Warnings.ca.gov/service-station

25 20. Additionally, if other signage at the service station is provided for the public in a
26 language other than English, the warning content set forth above must be provided in both English and
27 that other language.

28 21. Proposition 65 provides that any “person who violates or threatens to violate” the

1 statute may be enjoined in a court of competent jurisdiction. Health & Saf. Code § 25249.7. Violators
2 are liable for civil penalties of up to \$2,500 per day for each violation of the Act. *See id.* Any person
3 acting in the public interest has standing to enforce violations of Proposition 65 provided that such
4 person has supplied the requisite public enforcers with a valid 60-Day Notice of Violation and such
5 public enforcers are not diligently prosecuting the action within such time. *See* Health & Saf. Code §
6 25249.7(d).

7 22. On April 1, 1988, the State of California officially listed Gasoline as a chemical known
8 to cause cancer and one year later, Gasoline became subject to the clear and reasonable warning
9 requirement under Proposition 65. Health & Saf. Code § 25249.10(b).

10 **FACTUAL BACKGROUND**

11 23. At all relevant times—including the period from at least one year preceding the filing
12 of this Complaint and continuing through the filing of this Complaint—Defendants knowingly and
13 intentionally exposed individuals who came onto the premises of the 3404 Station to Gasoline without
14 first providing a “clear and reasonable” warning of such exposure.

15 24. At all relevant times—including the period from at least one year preceding the filing
16 of this Complaint and continuing through the filing of this Complaint—Food N’ Fuel knowingly and
17 intentionally exposed individuals who came onto the premises of the Subject Service Stations to
18 Gasoline without first providing a “clear and reasonable” warning of such exposure.

19 25. The primary route of exposure to Gasoline at the Subject Service Stations is through
20 inhalation.

21 26. At all such times, each Defendant was a “person in the course of doing business” within
22 the meaning of Health & Safety Code section 25249.11. During such times, as a proximate result of
23 acts by Defendants, individuals have been exposed to Gasoline on the premises of the Subject Service
24 Stations without first being provided a clear and reasonable warning concerning such exposure.

25 **SATISFACTION OF NOTICE REQUIREMENTS**

26 27. More than sixty days prior to naming Defendants in this lawsuit, Plaintiff served a 60-
27 Day Notice of Violation of Proposition 65 (“Notice”) concerning each of the Subject Service Stations
28 upon Food N’ Fuel, the California Attorney General, and the San Bernadino County District Attorney.

1 During this time, Plaintiff also served the Notice concerning the 3404 Station upon Willis.

2 28. Each of the Notices complied with all procedural requirements of Proposition 65,
3 including the attachment of a Certificate of Merit.

4 29. After receiving the Notices, and to the best of Plaintiff's information and belief, as of
5 the filing of this Complaint, none of the noticed public enforcement agencies have commenced and
6 diligently prosecuted a cause of action against Defendants under Proposition 65 to enforce the alleged
7 violations set forth in the Notices.

8 30. Plaintiff is commencing this action more than sixty days from the date of the Notices
9 to Defendants.

10 **FIRST CAUSE OF ACTION**

11 **(Against Defendants for Violations of Health & Safety Code Section 25249.6 at the 3404**
12 **Station)**

13 31. Plaintiff hereby repeats and incorporates by reference the preceding paragraphs of this
14 Complaint as though fully set forth herein.

15 32. Defendants have, at all times mentioned herein, acted as a person in the course of doing
16 business within the meaning of Health & Safety Code section 25249.11.

17 33. Defendants, through their ownership and operation of the 3404 Station, have exposed
18 individuals who come onto that station's premises to Gasoline, a hazardous chemical known to the
19 State of California to cause cancer.

20 34. Defendants know that individuals will be exposed to Gasoline when those individuals
21 come onto that station's premises.

22 35. Defendants failed to provide such individuals with any clear or reasonable warnings
23 concerning Gasoline exposure on the 3404 Station's premises.

24 36. Plaintiff is informed and believes that at all relevant times herein, and at least as of one
25 year preceding the filing of this Complaint, Defendants knowingly and intentionally exposed
26 individuals who came onto the premises of the 3404 Station to Gasoline without providing the
27 warnings required by Proposition 65—and Defendants continue to do so.

28 37. Plaintiff has engaged in good faith efforts to resolve the claims set forth in this Cause

1 of Action prior to filing this Complaint.

2 38. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the above-
3 described acts at the 3404 Station, Defendants are each liable for a maximum civil penalty of \$2,500
4 per day.

5 39. Pursuant to Health and Safety Code section 25249.7(a), this Court is specifically
6 authorized to grant injunctive relief in favor of Plaintiff and against Defendants.

7 **SECOND CAUSE OF ACTION**

8 **(Against Food N’ Fuel for Violations of Health & Safety Code Section 25249.6 at the S.
9 Waterman Station)**

10 40. Plaintiff hereby repeats, and incorporates by reference, paragraphs 1 through 30 of this
11 Complaint as though fully set forth herein.

12 41. Food N’ Fuel has, at all times mentioned herein, acted as a person in the course of doing
13 business within the meaning of Health & Safety Code section 25249.11.

14 42. Food N’ Fuel has, through its ownership and operation of the S. Waterman Station,
15 exposed individuals who come onto that station’s premises to Gasoline, a hazardous chemical known
16 to the State of California to cause cancer.

17 43. Food N’ Fuel knows that individuals will be exposed to Gasoline when those
18 individuals come onto that station’s premises.

19 44. Food N’ Fuel failed to provide such individuals with any clear or reasonable warnings
20 concerning Gasoline exposure on the S. Waterman Station’s premises.

21 45. Plaintiff is informed and believes that at all relevant times herein, and at least as of one
22 year preceding the filing of this Complaint, Food N’ Fuel knowingly and intentionally exposed
23 individuals who came onto the premises of the S. Waterman Station to Gasoline without providing the
24 warnings required by Proposition 65—and Food N’ Fuel continues to do so.

25 46. Plaintiff has engaged in good faith efforts to resolve the claims set forth in this Cause
26 of Action prior to filing this Complaint.

27 47. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the above-
28 described acts at the S. Waterman Station, Food N’ Fuel is liable for an additional maximum civil

1 penalty of \$2,500 per day.

2 48. Pursuant to Health and Safety Code section 25249.7(a), this Court is specifically
3 authorized to grant injunctive relief in favor of Plaintiff and against Food N' Fuel.

4 **THIRD CAUSE OF ACTION**

5 **(Against Food N' Fuel for Violations of Health & Safety Code Section 25249.6 at the N.
6 Waterman Station)**

7 1. Plaintiff hereby repeats, and incorporates by reference, paragraphs 1 through 30 of this
8 Complaint as though fully set forth herein.

9 2. Food N' Fuel has, at all times mentioned herein, acted as a person in the course of doing
10 business within the meaning of Health & Safety Code section 25249.11.

11 3. Food N' Fuel has, through its ownership and operation of the N. Waterman Station,
12 exposed individuals who come onto that station's premises to Gasoline, a hazardous chemical known
13 to the State of California to cause cancer.

14 4. Food N' Fuel knows that individuals will be exposed to Gasoline when those
15 individuals come onto that station's premises.

16 5. Food N' Fuel failed to provide such individuals with any clear or reasonable warnings
17 concerning Gasoline exposure on the N. Waterman Station's premises.

18 6. Plaintiff is informed and believes that at all relevant times herein, and at least as of one
19 year preceding the filing of this Complaint, Food N' Fuel knowingly and intentionally exposed
20 individuals who came onto the premises of the N. Waterman Station to Gasoline without providing
21 the warnings required by Proposition 65—and Food N' Fuel continues to do so.

22 7. Plaintiff has engaged in good faith efforts to resolve the claims set forth in this Cause
23 of Action prior to filing this Complaint.

24 8. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the above-
25 described acts at the N. Waterman Station, Food N' Fuel is liable for an additional maximum civil
26 penalty of \$2,500 per day.

27 9. Pursuant to Health and Safety Code section 25249.7(a), this Court is specifically
28 authorized to grant injunctive relief in favor of Plaintiff and against Food N' Fuel.

1 **FOURTH CAUSE OF ACTION**

2 **(Against Food N’ Fuel for Violations of Health & Safety Code Section 25249.6 at the Del Rosa**
3 **Station)**

4 1. Plaintiff hereby repeats, and incorporates by reference, paragraphs 1 through 30 of this
5 Complaint as though fully set forth herein.

6 2. Food N’ Fuel has, at all times mentioned herein, acted as a person in the course of doing
7 business within the meaning of Health & Safety Code section 25249.11.

8 3. Food N’ Fuel has, through its ownership and operation of the Del Rosa Station, exposed
9 individuals who come onto that station’s premises to Gasoline, a hazardous chemical known to the
10 State of California to cause cancer.

11 4. Food N’ Fuel knows that individuals will be exposed to Gasoline when those
12 individuals come onto that station’s premises.

13 5. Food N’ Fuel failed to provide such individuals with any clear or reasonable warnings
14 concerning Gasoline exposure on the Del Rosa Station’s premises.

15 6. Plaintiff is informed and believes that at all relevant times herein, and at least as of one
16 year preceding the filing of this Complaint, Food N’ Fuel knowingly and intentionally exposed
17 individuals who came onto the premises of the Del Rosa Station to Gasoline without providing the
18 warnings required by Proposition 65—and Food N’ Fuel continues to do so.

19 7. Plaintiff has engaged in good faith efforts to resolve the claims set forth in this Cause
20 of Action prior to filing this Complaint.

21 8. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the above-
22 described acts at the Del Rosa Station, Food N’ Fuel is liable for an additional maximum civil penalty
23 of \$2,500 per day.

24 Pursuant to Health and Safety Code section 25249.7(a), this Court is specifically authorized to grant
25 injunctive relief in favor of Plaintiff and against Food N’ Fuel.

26 **PRAYER FOR RELIEF**

27 Plaintiff prays for judgment against Defendants as follows:

28 1. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and

1 permanently enjoin Food N’ Fuel from exposing individuals to Gasoline at each of the Subject Service
2 Stations—and preliminarily and permanently enjoin Willis from exposing individuals to Gasoline at
3 the 3404 Station—without providing prior clear and reasonable warnings as to such exposures;

4 2. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil penalties
5 against Food N’ Fuel in the amount of \$2,500 per day per Subject Service Station for each violation
6 of Proposition 65 according to proof;

7 3. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil penalties
8 against Willis in the amount of \$2,500 per day for its violation of Proposition 65 at the 3404 Station
9 according to proof;

10 4. That the Court, pursuant to Health & Safety Code §25249.7(a), order Defendants to
11 take action to stop ongoing unwarned exposures to Gasoline at their respective Subject Service
12 Stations;

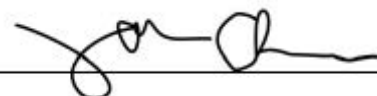
13 4. That the Court, pursuant to Code of Civil Procedure §1021.5 or any other applicable
14 theory, grant Plaintiff his reasonable attorneys’ fees and costs of suit; and

15 5. That the Court grant such other and further relief as may be just and proper.

16
17 Dated: June 6, 2024

JARRETT CHARO APC

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19 By: _____



Jarrett S. Charo, Esq.
Attorneys for Plaintiff

22 MANNING LAW APC

23
24 And By: _____



Joseph Manning, Jr., Esq.
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