		lifornia, County of Riverside on 03/26/2024 02:51 PM . Galkin, Executive Officer/Clerk of the Court By Dallas Vitito, Clerk	
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9	Attorneys for Plaintiff RAMY KAUFLER EDEN		
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11	SUPERIOR COURT OF THE STATE OF CALIFORNIA		
12	COUNTY OF RIVERSIDE		
13	COUNTIONNVERSIDE		
14	RAMY KAUFLER EDEN	Case No.: CVRI 2401613	
15	Plaintiff,		
16	V.	COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES	
17	APRO, LLC, UP2 HOLDINGS, LLC, and	(Violation of Health & Safety Code section	
18	DOES 1 through 50, inclusive,	25249.5, et seq.)	
19	Defendants.		
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	Complaint for Civil Penalties and Injunctive Relief		

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

**INTRODUCTION** 

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

2. Unleaded Gasoline (Wholly Vaporized) (herein, "Gasoline") is known to the State of
California to cause cancer.

3. Defendant Apro, LLC ("Apro") and UP2 Holdings, LLC ("UP2" and, together with
Apro, "Defendants") own and operate the service station located at 510 N. Main St., Lake Elsinore,
California ("Subject Service Station").

4. Defendants expose individuals who come onto the Subject Service Station's premises
to Gasoline without first warning of such exposure.

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

6. This Complaint ("Complaint") seeks to remedy Defendants' failure to warn of these
toxic exposures and hold Defendants accountable for violating California's Proposition 65.

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## PARTIES

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

8. Defendant Apro is incorporated or organized in the State of Delaware, has its principal
place of business in the State of California, and is a "person in the course of doing business" within
the meaning of Health & Safety Code section 25249.11. Apro owns and operates the Subject Service
Station and exposes individuals there to Gasoline without first providing any warnings of the
carcinogenic hazards associated with such exposure.

9. Defendant UP2 is incorporated or organized in the State of Delaware, has its principal place of business in the State of California, and is a "person in the course of doing business" within the meaning of Health & Safety Code section 25249.11. UP2 owns and operates the Subject Service Station and exposes individuals there to Gasoline without first providing any warnings of the carcinogenic hazards associated with such exposure.

DOES 1 through 50 are each a "person in the course of doing business" within the 10. 6 meaning of Health & Safety Code section 25249.11.

8 11. The true names of DOES 1 through 50 are either unknown to Plaintiff at this time or the applicable time period before which Plaintiff may file a Proposition 65 action against them has not 9 10 yet run. When their identities are ascertained or the applicable time period before which Plaintiff may 11 file a Proposition 65 action against them has run, the Complaint shall be amended to reflect their true 12 names. Defendants and DOES 1 through 50 are collectively referred to herein as "Defendants."

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## JURISDICTION AND VENUE

12. 14 The Court has jurisdiction over this action pursuant to Health & Safety Code section 15 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to California 16 Constitution Article VI, Section 10, because this case is a cause not given by statute to other trial 17 courts.

13. 18 This Court has jurisdiction over Defendants because each is either a citizen of the State 19 of California, has sufficient minimum contacts with the State of California, and/or intentionally avails 20 itself of the California market through operation of the Subject Service Station in California or by 21 having such other contacts with California so as to render the exercise of jurisdiction over it by the 22 California courts consistent with traditional notions of fair play and substantial justice.

23 14. Venue is proper in Riverside County Superior Court because the violations alleged 24 herein arise in the County of Riverside.

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## STATUTORY BACKGROUND

15. 26 The People of the State of California have declared by initiative under Proposition 65 27 their right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other 28 reproductive harm." Proposition 65, § 1(b).

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

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

WARNING: Breathing the air in this area or skin contact with petroleum products can expose you to chemicals including benzene, motor vehicle exhaust and carbon monoxide, which are known to the State of California to cause cancer and birth defects or other reproductive harm. Do not stay in this area longer than necessary. For more information go to www.P65Warnings.ca.gov/service-station

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

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

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

#### FACTUAL BACKGROUND

21. At all relevant times—including the period from at least one year preceding the filing of this Complaint and continuing through the filing of this Complaint—Defendants knowingly and intentionally exposed individuals who came onto the premises of the Subject Service Station to Gasoline without first providing a "clear and reasonable" warning of such exposure. The primary route of exposure to Gasoline at the Subject Service Station is through inhalation.

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

## SATISFACTION OF NOTICE REQUIREMENTS

23. More than sixty days prior to naming Defendants in this lawsuit, Plaintiff served a 60-Day Notice of Violation of Proposition 65 ("Notice") concerning the Subject Service Station upon the named Defendants, the California Attorney General, the Riverside County District Attorney.

24. The Notice complied with all procedural requirements of Proposition 65, including the attachment of a Certificate of Merit.

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

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

## (Against Defendants for Violations of Health & Safety Code Section 25249.6)

FIRST CAUSE OF ACTION

27. Plaintiff hereby repeats and incorporates by reference the preceding paragraphs of this

1 2 3 Complaint as though fully set forth herein.

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

4 29. Defendants, through their ownership and operation of the Subject Service Station, have
5 exposed individuals who come onto the station's premises to Gasoline, a hazardous chemical known
6 to the State of California to cause cancer.

7 30. Defendants know that individuals will be exposed to Gasoline when those individuals
8 come onto the station's premises.

9 31. Defendants failed to provide such individuals with any clear or reasonable warnings
10 concerning Gasoline exposure on the Subject Service Station's premises.

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

15 33. Plaintiff has engaged in good faith efforts to resolve the claims set forth in this Cause
16 of Action prior to filing this Complaint.

17 34. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the above18 described acts at the Subject Service Station, Defendants are each liable for a maximum civil penalty
19 of \$2,500 per day.

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

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# PRAYER FOR RELIEF

Plaintiff prays for judgment against Defendants as follows:

That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and
 permanently enjoin Defendants from exposing individuals to Gasoline at each of the Subject Service
 Station without providing prior clear and reasonable warnings as to such exposure;

27 2. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil penalties
28 against each Defendant in the amount of \$2,500 per day for each violation of Proposition 65 according

1	to proof;	
2	3. That the Court, pursuant to Health & Safety Code §25249.7(a), order Defendants to	
3	take action to stop ongoing unwarned exposures to Gasoline at the Subject Service Station;	
4	4. That the Court, pursuant to Code of Civil Procedure §1021.5 or any other applicable	
5	theory, grant Plaintiff his reasonable attorneys' fees and costs of suit; and	
6	5. That the Court grant such other and further relief as may be just and proper.	
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8	Dated: March 26, 2024 JARRETT CHARO APC	
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10	By:	
11	Jarrett S. Charo, Esq. Attorneys for Plaintiff	
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13	MANNING LAW APC	
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15	And By:	
16 17	Joseph Manning, Jr., Esq. Attorneys for Plaintiff	
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