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9 ATTORNEYS FOR PLAINTIFF

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF ORANGE**

12 **Assigned for All Purposes**

13 **Judge Scott Steiner**

14 SANDRA ASSAREH

15 Plaintiff,

16 vs.

17 E & H, INC.; and DOES 1-100, inclusive

18 Defendants

CASE NO.: 30-2023-01363178-CU-NP-CJC

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

Cal. Health & Safety Cod §§ 25249.5, *et seq.*

19 Plaintiff Sandra Assareh, in the public interest, by and through her undersigned counsel, alleges
20 the following based on information and belief, or where she lacks personal knowledge, upon
21 information and belief including the investigation of her counsel.

22 **INTRODUCTION & FACTUAL ALLEGATIONS**

- 23 1. Plaintiff brings this representative action on behalf of all California citizens to remedy
24 Defendant E & H, Inc. (“E & H” or “Defendant”) failure to warn California
25 consumers that they are being exposed to Unleaded Gasoline, a substance known to the
26 State of California to cause cancer and birth defects or other reproductive harm
27 (hereinafter, the “Listed Chemical”).
28 2. Such exposures have occurred and continue to occur when consumers enter E & H
Gas station. Such exposures have occurred and continue to occur through inhalation of

1 Listed Chemical’s vapors, ingestion and dermal absorption through the skin.

- 2 3. California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health &
3 Safety Code §§ 25249.5, *et seq.* (“Proposition 65”) requires a “clear and reasonable
4 warning” for exposure to such Listed Chemicals.
- 5 4. E & H has failed to provide a clear and reasonable warning to consumers on each gas
6 pump, printed in no smaller than 22-point type, and enclosed in a box. E & H’s failure to
7 post required warnings causes individuals to be involuntarily and unwittingly exposed to
8 the Listed Chemicals in violation of Proposition 65.
- 9 5. Plaintiff seeks an injunctive order compelling E & H to bring its business practices into
10 compliance with Proposition 65 by providing a clear and reasonable warning to each
11 individual who in the future may be exposed to the Listed Chemical at its service station.
- 12 6. In addition to injunctive relief, Plaintiff seeks civil penalties authorized by
13 Proposition 65 to remedy E & H’s failure to provide clear and reasonable warnings
14 regarding the Listed Chemicals.

14 **PARTIES**

- 15 7. Plaintiff Sandra Assareh is a citizen of the State of California acting in the public interest
16 to promote awareness of toxic chemicals in products sold in California and to improve
17 public health through the reduction of hazardous substances contained in such items or to
18 inform consumers of their presence. She brings this action in the public interest pursuant
19 to Cal. Health & Safety Code § 25249.7(d).
- 20 8. Plaintiff is informed and believes that Defendant E & H is doing business as a gas station
21 in the State of California.
- 22 9. Plaintiff is informed and believes that E & H is a person doing business within the
23 meaning of California Health & Safety Code § 25249.11(a).
- 24 10. Plaintiff is informed and believes, and alleges thereon, that E & H employs ten or more
25 people.

25 **JURISDICTION AND VENUE**

- 26 11. This Court has jurisdiction over this action pursuant to California Constitution Article VI,
27 Section 10, which grants the Superior Court “original jurisdiction in all causes except
28

1 those given by statute or other trial courts.” The statute under which this action is brought
2 does not specify any other basis for jurisdiction.

3 12. This court has jurisdiction over E & H because, based on information and belief, E & H
4 has sufficient minimum contacts with California, or has otherwise intentionally availed
5 itself of the California market through doing business in the State of California. Such
6 purposeful availment has rendered the exercise of jurisdiction by California courts
7 consistent and permissible with traditional notions of fair play and substantial justice.

8 13. The California Superior Court also has jurisdiction in this matter because there is no
9 federal question at issue, as the issues herein are based solely on California statutes and
10 law.

11 14. Venue in this action is proper in the Orange County Superior Court because E & H has
12 violated California law in the County of Orange.

13 **CAUSE OF ACTION**

14 **VIOILATIONS OF CALIFORNIA**

15 **HEALTH AND SAFETY CODE §§ 25249.5 *ET SEQ.***

16 15. Plaintiff realleges and incorporates all preceding paragraphs as if fully set forth herein.

17 16. The Citizens of California have expressly stated in the Safe Drinking Water and Toxic
18 Enforcement Act of 1986, California Health & Safety Code §§ 25249.5, *et seq.*
19 (Proposition 65), that they must be informed “about exposures to chemicals that cause
20 cancer, birth defects and other reproductive harm.” Cal. Health & Safety Code § 25249.6.

21 17. E & H, at all times relevant to this action has violated Cal. Health & Safety Code §
22 25249.6 by, in the course of doing business, knowingly and intentionally exposing
23 individuals to the Listed Chemicals, without first providing a clear and reasonable warning
24 to such individuals pursuant to Health & Safety Code § 25249.6.

25 18. E & H at all time relevant to this action was required to provide a clear and reasonable
26 warning on each gas pump, printed in no smaller than 22-point type, and enclosed in a
27 box. E & H’s failure to post required warnings causes individuals to be involuntarily and
28 unwittingly exposes to the Listed Chemical in violation of Proposition 65.

- 1 19. On or about August 22, 2023, Plaintiff sent a 60-day Notice and Certificate of Merit to E
2 & H, as well as the State Attorney General and additional district and city attorney
3 generals, pursuant to Cal. Health & Safety Code § 25249.7(a) & (d)(1) (“Notice”).
- 4 20. After receipt of Plaintiff’s Notice, the appropriate public enforcement agencies have not
5 commenced and diligently prosecuted a cause of action against E & H under Proposition
6 65.
- 7 21. E & H knew or should have known that conducting business as a gas station in the State of
8 California would lead to the exposure of individuals to the Listed Chemical through
9 typical usage, including inhalation of its vapor.
- 10 22. E & H knew that typical and reasonably foreseeable presence of individuals at its gas
11 station would expose them to the Listed Chemical and failed to provide a “clear and
12 reasonable warning” to those individuals.
- 13 23. By the above-described acts, E & H is liable, pursuant to Cal. Health & Safety Code §
14 25249.7(b), for a civil penalty for each unlawful exposure to the Listed Chemical.

15 **PRAYER FOR RELIEF**

- 16 24. Wherefore, Plaintiff accordingly prays for the following relief:
- 17 a. An assessment of civil penalties pursuant to Cal. Health & Safety Code § 25249.7(b),
18 against E & H for each violation alleged herein;
 - 19 b. A preliminary and permanent injunction, pursuant to Cal. Health & Safety Code §
20 25249.7(b), enjoining E & H from doing business without first providing a clear and
21 reasonable warning to the individuals who are exposed to the Listed Chemical;
 - 22 c. An award to Plaintiff of her reasonable attorney’s fees and costs of suit;
 - 23 d. Such other and further relief as may be just and proper.

24 Dated: November 14, 2023

Gilbert Alvandi, Esq.
Nooshin Didarmorshedi, Esq.

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