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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

SAFEWAY INC., a Delaware Corporation,

Defendants.

Case No.: **22CV015135**
COMPLAINT FOR INJUNCTION, CIVIL PENALTIES, AND OTHER RELIEF

[Health & Saf. Code, Div. 20, Chapter 6.7; and Bus. & Prof. Code, §17200 *et seq.*]

Exempt from fees per Gov. Code, §6103

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Superior Court of California,
County of Alameda
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By: Cheryl Clark,
Deputy Clerk

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1 **DEFENDANT**

2 6. Defendant Safeway Inc., is a Delaware corporation duly registered with the
3 California Secretary of State. Safeway Inc., is a wholly owned subsidiary of Albertsons
4 Companies, Inc. Safeway’s principal business address is 11555 Dublin Canyon Rd., Pleasanton,
5 California 94588 and includes The Vons Companies, Inc., a wholly owned subsidiary of Safeway
6 Inc., a Michigan corporation duly registered with the California Secretary of State.

7 7. At all times herein relevant, Defendant owned, operated, leased, franchised,
8 contractually controlled or otherwise controlled underground storage tanks and underground
9 storage tank systems used to store motor vehicle fuel for retail sale or fleet use at no less than 70
10 sites or facilities throughout California;

11 8. In this Complaint when reference is made to any act or omission of Defendant,
12 such allegations shall include the acts and omissions of officers, directors, agents, employees,
13 contractors, vendors, affiliates, and representatives of Defendant while acting within the course
14 and scope of the employment or agency on behalf of Defendant.

15 9. At all times relevant to the facts alleged herein, the Defendant was legally
16 responsible for compliance with the provisions of the Health and Safety Code including Chapter
17 6.7 of Division 20, and the corresponding implementing regulations, at Defendants’ sites located
18 in California in connection with the ownership and operation of the facilities.

19 **VENUE AND JURISDICTION**

20 10. Defendant at all times mentioned herein has transacted business within, *inter alia*,
21 the Counties of Solano, San Joaquin, Sacramento, Placer and Contra Costa and the violations of
22 law hereinafter described have been committed within said counties. Defendant has its principal
23 office in Alameda County.

24 11. Venue is proper in Alameda County pursuant to Health and Safety Code section
25 25280 *et seq.*, in that certain of the violations alleged in the Complaint occurred in this County,
26 and that the other violations alleged in the Complaint, which occurred at locations outside this
27 County, are related to such violations and the penalties and injunctive relieve sought by Plaintiff
28

1 in this action. This court has jurisdiction pursuant to Article 6, section 10 of the California
2 Constitution.

3 **STATUTORY AND REGULATORY BACKGROUND**

4 **Enforcement Authority Under the Underground Storage of Hazardous Substances Law**

5 12. The State of California has enacted a comprehensive statutory and regulatory
6 framework to prevent contamination from, and improper storage of, Hazardous Substances stored
7 underground. This framework is referred to as the Underground Storage of Hazardous
8 Substances Law, Chapter 6.7 of Division 20 of the Health and Safety Code, codified at Health
9 and Safety Code section 25280 et seq. (“USHSL”). The USHSL’s implementing regulations are
10 set forth in California Code of Regulations, title 23, Division 3, Chapter 16, section 2610 et seq.
11 (“Title 23”). Except where otherwise expressly defined in this Complaint, all terms pertaining to
12 HWCL violations alleged herein shall be interpreted consistent with the USHSL and Title 23.

13 13. Pursuant to Health and Safety Code section 25299.02, the Attorney General and
14 the District Attorneys may bring a civil action in the name of the People of the State of California
15 for violations of the USHSL and Title 23, and may apply to a superior court for an injunction or
16 an order directing compliance against any person who has engaged in, is engaged in, or is about
17 to engage in any acts or practices which violate the USHSL or Title 23, and to obtain civil
18 penalties for violations of the USHSL or Title 23 against Owners and Operators of an
19 Underground Tank System pursuant to Health and Safety Code section 25299.

20 14. Defendant is an Owner and/or an Operator.

21 **GENERAL ALLEGATIONS**

22 15. Plaintiff is informed and believes and thereupon alleges that on and after March 3,
23 2015 and continuing through the present, Defendant has engaged in actions and omissions
24 involving: (a) the operation and maintenance of underground storage tanks (“USTs”) and UST
25 systems, and, (b) the handling of hazardous wastes and hazardous substances generated by
26 operation of USTs and UST Systems at Defendant’s facilities in California in violation of Health
27 and Safety Code, Division 20, Chapter 6.7, and the corresponding implementing regulations.

28 16. Defendant’s acts or omissions include but are not limited to the following:

1 a. Failed to equip all secondary containment, including under-dispenser
2 containment, and under-dispenser spill control or containment systems, with a continuous
3 monitoring system that either activates an audible and visual alarm or stops the flow of product
4 when it detects a leak, in violation of Title 23 of the California Code of Regulations, section
5 2636, subdivision (f)(1).

6 b. Failed to install and place all leak-detecting sensors so that each is capable
7 of detecting a leak at the earliest possible opportunity in violation of Title 23 of the California
8 Code of Regulations, sections 2630, subdivision (d), and 2641, subdivision (a).

9 c. Tampered with or otherwise disabled leak detection devices or alarms in
10 violation of Health and Safety Code section 25299, and Title 23 of the California Code of
11 Regulations, section 2630 and 2641.

12 d. Failed to install, calibrate, operate and maintain all monitoring and leak-
13 detecting equipment in accordance with the manufacturer's instructions in violation of the
14 California Code Regulations, title 23, Section 2638, subdivision (a).

15 e. Failed to monitor UST systems using the method specified in its operating
16 permit in violation of Health and Safety Code section 25293 and Title 23 of the California Code
17 of Regulations, sections 2632, subdivision (b), and 2641, subdivision (g).

18 f. Failed to keep UST monitoring systems powered on, in the proper
19 operating mode (i.e., functional and not bypassed) and in good repair in violation of Title 23 of
20 the California Code of Regulations, sections 2630, subdivision (d), and 2641, subdivision (j).

21 g. Failed to respond as required by law when the UST monitoring system
22 registers an alarm, including promptly recording the alarm and taking any other required action in
23 violation of Title 23 of the California Code of Regulations, section 2716.

24 h. Failed to have the continuous monitoring system connected to an audible
25 and visual alarm approved by the Local Agency (as that term is defined in Health and Safety
26 Code section 25281) in violation of Title 23 of the California Code of Regulations, section 2632,
27 subdivision (c)(2)(B).

28 i. Failed to ensure that all underground piping with secondary containment is

1 equipped with a continuous monitoring system that either activates an audible or visual alarm or
2 stops the flow of product at the dispenser when it detects a leak in violation of Title 23 of the
3 California Code of Regulations, section 2636, subdivision (f)(1).

4 j. Failed to complete the required work to address the cause of an alarm in
5 the UST system in violation of Title 23 of the California Code of Regulations, section 2661.

6 k. Failed to give at least 48 hours' notice to the relevant CUPA before
7 conducting any monitoring or testing in violation of title 23 of the California Code of Regulations
8 section 2643, subdivision (g).

9 l. Failed to operate their underground storage tank systems in a manner to
10 prevent an unauthorized release in violation of Health and Safety Code section 25292.1.

11 m. Failed to conduct the spill containment structure testing in violation of
12 Health and Safety Code section 25284.2;

13 n. Failed to conduct the secondary containment testing in violation of Title 23
14 of the California Code of Regulations, section 2637 and Health and Safety Code section 25284.1,
15 subdivision (a)(4)(B);

16 o. Failed to conduct the line tightness testing in violation of Title 23 of the
17 California Code of Regulations, section 2636, subdivision (f)(4)

18 p. Failed to conduct the testing required for UST monitoring equipment
19 certification in violation of Title 23 of the California Code of Regulations, section 2638

20 q. Failed to conduct and monitoring or testing in violation of Title 23 of the
21 California Code of Regulations, section 2643.

22 r. Failed to keep the sumps free of liquid and debris in violation of Title 23 of
23 the California Code of Regulations, section 2631, subdivision (e)(4).

24 s. Failed to submit a complete copy of the test report for secondary
25 containment system testing for any facility it owns or operates to the relevant CUPA within the
26 time required in violation of Title 23 of the California Code of Regulations, section 2637,
27 subdivision (e).

28 t. Failed to at all times have a qualified designated UST operator for its tanks

1 and identify the designated UST operator to the relevant CUPA in violation of Title 23 of the
2 California Code of Regulations, sections 2715, subdivisions (a) and (b).

3 u. Failed to conduct monthly inspections in violation of Title 23 of the
4 California Code of Regulations, section 2715 subdivision (c).

5 v. Failed to ensure and document that employees completed training on the
6 proper operation and maintenance of the underground storage tanks systems in violation of Title
7 23 of the California Code of Regulations, section 2715, subdivision (f), and 2716.

8 w. Failed to ensure that the designated UST operator has access to all
9 materials (including, but not limited to, alarm history reports and logs), all areas of the facility
10 and all employees necessary for the designated UST operator to complete the tasks required in
11 violation of Title 23 of the California Code of Regulations, sections 2715 and 2716.

12 x. Failed to address any maintenance, repair or testing issues identified by the
13 designated UST operator during the monthly inspection as required by law in violation of Title 23
14 of the California Code of Regulations, section 2661.

15 y. Failed to maintain copies of monthly inspection reports and attachments
16 onsite for a minimum of thirty-six (36) months in violation of Title 23 of the California Code of
17 Regulations, sections 2715, subdivision (e), and 2716.

18 z. Failed to obtain, keep current and retain at its facilities, a permit to operate
19 each UST in violation of Title 23 of the California Code of Regulations, section 2712 subdivision
20 (i) and Health and Safety Code section 25284.

21 aa. Failed to maintain on-site at its facilities, or off-site at a readily available
22 location approved by the CUPA, written monitoring and maintenance records and make the
23 records available to the CUPA or State Water Board in violation of Title 23 of the California
24 Code of Regulations, section 2712, subdivision (b).

25 bb. Failed to comply with the terms of its UST permits, including, but not
26 limited to, timely notifying the Local Agency of any changes to the information provided in
27 violation of Health and Safety Code section 25286, subdivision (a), and Title 23 of the California
28 Code of Regulations, section 2712.

1 cc. Failed to submit proposed upgrade or repair of a UST system to the CUPA
2 for its approval in violation of Title 23 of the California Code of Regulations, section 2660

3 dd. Failed to obtain the CUPA's approval before proceeding with upgrade or
4 repair of UST, in violation of Title 23 of the California Code of Regulations, section 2662,
5 subdivision (a).

6 ee. Operated a UST system without having in place a monitoring and response
7 plan approved by the CUPA and specified in the UST operating permit in violation of Title 23 of
8 the California Code of Regulations, sections 2632, subdivision (b), and 2641, subdivision (g).

9 ff. Failed to ensure all UST systems meet the applicable operational
10 requirements in violation of Health and Safety Code sections 25292.1, subdivision (a), 25290.2,
11 25291 and 25292.

12 gg. Failed to record unauthorized release, timely notify the Local Agency of an
13 unauthorized release and timely provide to the Local Agency a full written report of the
14 unauthorized release in violation of Health and Safety Code sections 25294 and 25295,
15 subdivision (a)(1) and Title 23 of the California Code of Regulations, sections 2650 through
16 2652.

17 hh. Failed to maintain and make available for review by the Local Agency or
18 CUPA, all written monitoring and maintenance records in violation of Title 23 of the California
19 Code of Regulations, section 2712, subdivision (b).

20 ii. Failed to maintain evidence of financial responsibility current and present
21 at their station sites in violation of Health and Safety Code section 25292.2, subdivision (a).

22 jj. Failed to have a means for monitoring water intrusion by precipitation or
23 infiltration into the secondary containment in violation of Title 23 of the California Code of
24 Regulations, section 2630, subdivision (d) and Health and Safety Code section 25291,
25 subdivision (e).

26 kk. Failed to remove liquid or debris upon discovery that accumulated in the
27 secondary containment system in violation of Title 23 of the California Code of Regulations,
28 sections 2630, subdivision (d), 2631, subdivision (d)(4), 2632, subdivision (d)(2), and 2635,

1 subdivision (c)(6).

2 **TOLLING OF STATUTES OF LIMITATION**

3 17. Plaintiff has entered into a series of tolling agreements with Defendant preserving
4 Plaintiff's right to pursue violations beyond the typical limitations period provided by statute.
5 The parties have agreed that the time period from March 10, 2020 to May 19, 2022, inclusive,
6 shall be tolled ("Tolling Period"), and that any claim or cause of action that would expire or
7 would otherwise cease to be actionable shall not expire and that the time between March 10, 2020
8 to May 19, 2022, will not be included in computing the time limits created by any statutory
9 limitation period for pursuing causes of action against Defendants.

10 **FIRST CAUSE OF ACTION**

11 **Underground Storage of Hazardous Substances
12 (Health and Safety Code §25280 et seq.)**

13 18. Plaintiff realleges and incorporates by reference paragraphs 1 through 17,
14 inclusive, as though fully set forth herein.

15 19. Defendant violated the requirements of Chapter 6.7 and its implementing
16 regulations applicable to the Facility, by committing the acts and omissions alleged in paragraph
17 16.

18 20. Each violation discovered within five (5) years of commencing this action,
19 exclusive of any applicable tolling periods and those set forth in paragraph 17 above subjects the
20 Defendant to a separate and additional civil penalty.

21 21. Based on the above, the People request injunctive relief against Defendant and
22 civil penalties as described in the People's prayer for relief.

23 **SECOND CAUSE OF ACTION**

24 **Unfair Competition Law
25 (Business and Professions Code §17200 et seq.)**

26 22. Plaintiff realleges all previous Paragraphs.

27 23. Plaintiff is informed and believes, and thereupon alleges the acts or practices of
28 Defendant, as set forth in the preceding paragraphs, are violations of the California Health and

1 Safety Code and Title 23 of the California Code of Regulations constitute unlawful business
2 practices pursuant to Business and Profession Code § 17200 et. seq.

3 24. Within four (4) years of commencing this action, Defendants have engaged in
4 unlawful acts, omissions, and practices that constitute unfair competition within the meaning of
5 Business and Professions Code §§17200 through 17208, including but not limited to, the acts or
6 omissions and practices alleged in paragraphs 1-17.

7 25. Each and every separate act constitutes an unlawful act and/or unlawful business
8 practice. Each day that Defendants engaged in each separate unlawful act, omission, or practice,
9 is a separate and distinct violation of Business and Profession Code §17200.

10 26. Pursuant to Business and Professions Codes §17206, Defendants are liable for
11 civil penalties for each separate act of unfair competition as alleged herein.

12 27. Unless enjoined by the Court, Defendants will continue the unlawful acts and
13 practices as alleged in this Complaint.

14 28. Based on the above, the Plaintiff requests injunctive relief against Defendants
15 under Business and Professions Code §17203 and civil penalties under Business and Professions
16 Code §17206, as described in the Plaintiff's prayer for relief.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, the People respectfully request that the Court grant the following relief:

19 1. Injunctive relief, including but not limited to, a permanent injunction requiring the
20 liable Defendant to comply with the applicable requirements of Health and Safety Code, Division
21 20, Chapter 6.7;

22 2. Injunctive relief, including but not limited to, a permanent injunction prohibiting
23 the liable Defendant from engaging in activity that violates Chapter 6.7 of Division 20 of the
24 Health and Safety Code, which would thereby constitute unfair competition within the meaning
25 of Business and Professions Code Section 17200;

26 3. Civil penalties according to proof against Defendant pursuant to Health and Safety
27 Code section 25299, subdivision (a), for each violation of the provisions of Chapter 6.7 of the
28 Health & Safety Code and its implementing regulations;

1 4. Civil penalties according to proof against Defendant pursuant to Health and Safety
2 Code section 25299, subdivision (b), for each violation of the provisions of Chapter 6.7 of the
3 Health & Safety Code and its implementing regulations;

4 5. Civil penalties according to proof against Defendant pursuant to Business and
5 Professions Code section 17206 for each act of unfair competition engaged in by each Defendant;

6 6. Grant the Plaintiff its cost of inspection, investigation, attorney's fees,
7 enforcement, prosecution, and suit, herein, as provided by law including but not limited to Code
8 of Civil Procedure section 1021.8;

9 7. Grant such other and further relief as the Court deems just and proper.

10 Dated: July 26, 2022

Respectfully Submitted,

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Attorney General of California



DAVID ZONANA
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*Attorneys for Plaintiff People of the State of
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17 Dated: _____, 2022

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*Attorneys for Plaintiff People of the State of
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1 4. Civil penalties according to proof against Defendant pursuant to Health and Safety
2 Code section 25299, subdivision (b), for each violation of the provisions of Chapter 6.7 of the
3 Health & Safety Code and its implementing regulations;

4 5. Civil penalties according to proof against Defendant pursuant to Business and
5 Professions Code section 17206 for each act of unfair competition engaged in by each Defendant;

6 6. Grant the Plaintiff its cost of inspection, investigation, attorney's fees,
7 enforcement, prosecution, and suit, herein, as provided by law including but not limited to Code
8 of Civil Procedure section 1021.8;

9 7. Grant such other and further relief as the Court deems just and proper.

10 Dated: _____, 2022

Respectfully Submitted,

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12 Attorney General of California

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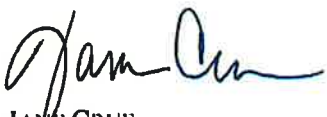
18 Dated: 7-21, 2022

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