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12

13 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 IN AND FOR THE COUNTY OF SAN JOAQUIN

15 PEOPLE OF THE STATE OF
16 CALIFORNIA,
17 Plaintiff,
18 v.
19 FLYING J, INC., a Utah Corporation, and
DOES 1 through 100,
20
21 Defendants,

No.
**COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF**

(Health & Saf. Code, Div. 20, Chapters
6.5, 6.7 and 6.95; Bus. & Prof. Code,
§17200 et seq.)

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

2 **PLAINTIFF**

3 1. Plaintiff, PEOPLE OF THE STATE OF CALIFORNIA (“People”), brings its actions by
4 and through Bill Lockyer, Attorney General of the State of California (“Attorney General”), by
5 and through Edward R. Jagels, District Attorney of Kern County (“Kern County D.A.”), by and
6 through Steve Cooley, District Attorney of Los Angeles County (“Los Angeles D.A.”), by and
7 through Gordon Trask II, District Attorney of Riverside County (“Riverside D.A.”), by and
8 through Michael A. Ramos, District Attorney of San Bernardino County (“San Bernardino
9 D.A.”) and by and through James P. Willett, District Attorney of San Joaquin County (“San
10 Joaquin D.A.”). The District Attorneys are collectively referred to as “Local Prosecutors”.

11 2. Pursuant to California Health and Safety Code section 25145.4, the Attorney General
12 may bring a civil action in the name of the People of the State of California to enjoin any
13 violation of Chapter 6.5 of Division 20 of the California Health and Safety Code (hereinafter
14 “Chapter 6.5”) and seek civil penalties for violations of the provisions of Chapter 6.5.

15 3. Pursuant to California Health and Safety Code section 25182, the Local Prosecutors at a
16 request of a unified program agency may bring a civil action in the name of the People of the
17 State of California to enjoin any violation of Chapter 6.5 and to seek civil penalties for
18 violations of the provisions of Chapter 6.5 which are under the jurisdiction of the unified
19 program agency.

20 4. Pursuant to California Health and Safety Code section 25299.02, the Attorney General
21 and the Local Prosecutors may bring a civil action in the name of the People of the State of
22 California for violations of state law dealing with the underground storage of hazardous
23 substances, as set forth in Chapter 6.7 of Division 20 of the California Health and Safety Code
24 (hereinafter “Chapter 6.7”).

25 5. Pursuant to California Health and Safety Code section 25299.01, the Attorney General
26 and the Local Prosecutors may apply to a superior court for an injunction or an order directing
27 compliance against any person who has engaged in, is engaged in, or is about to engage in any
28 acts or practices which violate Chapter 6.7.

1 6. Pursuant to the California Health and Safety Code section 25514, the Local Prosecutors
2 may bring an action for civil penalties for violations of California Health and Safety Code
3 sections 25503.5 to 25505, inclusive, or sections 25508 to 25520, inclusive. Pursuant to
4 California Health and Safety Code section 25516, the Local Prosecutors, when requested by an
5 administering agency, may bring an action to enjoin a violation of Chapter 6.95 of Division 20
6 of the California Health and Safety Code (hereinafter "Chapter 6.95").

7 7. Pursuant to California Business and Professions Code sections 17203, 17204, and
8 17206, the Attorney General and the Local Prosecutors may bring actions in the name of the
9 People of the State of California in a superior court for an injunction against any person who
10 engages, had engaged, or proposes to engage in unfair competition and for civil penalties for
11 each act of unfair competition.

12 8. Plaintiff brings this action without prejudice to any other action or claims which it may
13 have based on separate, independent and unrelated violations of Chapters 6.5, 6.7, or 6.95 of
14 Division 20 of the California Health and Safety Code by Flying J and/or on facts which are not
15 alleged in this Complaint.

16 **DEFENDANTS**

17 9. Defendant Flying J, Inc. ("Flying J") is a Utah corporation which does business in the
18 State of California at the facilities identified in Exhibit "A" which are incorporated herein by
19 reference (hereinafter collectively referred to as "Covered Facilities"). Flying J owns and/or
20 operates underground tank systems at the Covered Facilities that are used to store motor vehicle
21 fuel, including gasoline and diesel, for retail sale. Additionally, it uses hazardous materials and
22 manages waste products, including but not limited to waste motor oil and waste oil filters, that
23 are generated by its operation of these underground tank systems and from vehicle maintenance
24 services that it provides at the Covered Facilities. Flying J's principal business address is 1104
25 Country Hills Drive, Ogden, Utah.

26 10. Flying J is, or at all times relevant to the claims in this complaint was, legally
27 responsible for compliance with the provisions of the California Health and Safety Code
28 including Chapters 6.5, 6.7, and 6.95 of Division 20 at its Covered Facilities.

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

8 12. Plaintiff is ignorant of the names of those defendants identified as Does 1 through 100,
9 who are therefore sued under fictitious names. When the true names of these defendants have
10 been ascertained, Plaintiff will amend the complaint to substitute the true names of each Doe
11 defendant in place of the fictitious names.

12 **VENUE**

13 13. Venue is proper in this county pursuant to California Health and Safety Code section
14 25299.03 in that violations of Chapter 6.7 alleged in the Complaint occurred in the County of
15 San Joaquin and that the other violations alleged in the complaint which occur at locations
16 outside this county are related to such violations. Venue would also be proper in this county
17 pursuant to California Health and Safety Code section 25183 in that violations of Chapter 6.5
18 alleged in the Complaint occurred in the County of San Joaquin and that the other violations
19 alleged in the Complaint which occur at locations outside this county are related to such
20 violations.

21 **GENERAL ALLEGATIONS**

22 14. Plaintiff is informed and believes and thereupon alleges that Flying J has engaged in the
23 following actions at one or more of the Covered Facilities:

- 24 a. Performed work on underground storage tank (UST) systems without permits or
25 authorization from the appropriate permitting agencies.
- 26 b. Changed monitoring procedures, such as replacing the leak sensor detection
27 equipment and/or monitoring system without notification of the appropriate
28

1 authority so as to ensure that only leak detection equipment approved by the
2 California State Water Resources Control Board was installed.

- 3 c. Improperly raised, altered the position of, tampered with, disabled or otherwise
4 rendered nonfunctional, sensors in spill boxes, under dispenser containment, and
5 sumps which prevented the sensors from providing continuous monitoring for
6 leak detection in violation of California Code of Regulations, title 23, section
7 2636(f)(1).
- 8 d. Improperly raised, altered the position of, tampered with, disabled or otherwise
9 rendered nonfunctional, the sensors in spill boxes, under dispenser containment
10 and sumps so that the sensors were unable to detect a leak at the earliest possible
11 opportunity in violation of California Code of Regulations, title 23, section
12 2630(d).
- 13 e. Failed to submit a Monitoring Response Plan pursuant to California Code of
14 Regulations, title 23, section 2632.
- 15 f. Failed to test secondary containment systems installed prior to January 1, 2001,
16 by January 1, 2003, in accordance with California Code Regulations, title 23,
17 section 2637(a).
- 18 g. Failed to test every thirty-six months secondary containment systems installed
19 prior to January 1, 2001, in accordance with California Code of Regulations, title
20 23, section 2637(a).
- 21 h. Failed to test secondary containment systems installed on or after January 1,
22 2001, in accordance with the schedule required by California Code of
23 Regulations, title 23, section 2637(a).
- 24 i. Failed to repair UST systems within a reasonable time after the systems were
25 found to have failed a secondary containment test performed pursuant to
26 California Code of Regulations, title 23, section 2637 thus disabling the integrity
27 of the tank systems ability to comply with Health and Safety Code section
28 25291(b) by being an UST system that is no longer designed and constructed

1 with a monitoring system capable of detecting the entry of the hazardous
2 substance stored in the primary containment into the secondary containment.

3 j. Failed to have documentation regarding monitoring system alarms and corrective
4 action taken in response to alarms, if any, available for review in violation of
5 California Code of Regulations, title 23, section 2712.

6 k. Failed to have secondary containment systems for product lines constructed so
7 that any releases to the secondary containment system will flow to a collection
8 sump in violation of California Code of Regulations, title 23, section 2636(c)(1).

9 l. Failed to annually perform on-line leak detection tests in violation of California
10 Code of Regulation, title 23, section 2636(f)(2).

11 m. Failed to annually perform pipeline integrity tests in violation of California Code
12 of Regulation, title 23, section 2636(f)(4).

13 n. Failed to annually perform tightness test on pressurized piping and be equipped
14 with an automatic line leak detector in violation of Health and Safety Code
15 section 25291(f).

16 o. Failed to annually test and certify UST monitoring systems in accordance with
17 California Code of Regulations, title 23, section 2638.

18 p. Failed to notify appropriate local agencies of upgrades of UST systems,
19 including but not limited to replacement of spill containers, which prevented the
20 local agency from determining whether the requirements of California Code of
21 Regulations, title 23, section 2660(k) were satisfied and thereby violated
22 California Code of Regulations, title 23, section 2662.

23 q. Improperly allowed liquid and debris to accumulate in containment sumps in
24 violation of California Code of Regulations, title 23, sections 2630, 2631, 2632,
25 and 2635.

26 r. Failed to maintain monitoring and maintenance records pursuant to California
27 Code of Regulations, title 23, section 2712(b).

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- 1 s. Failed to provide adequate training of all employees to respond to a hazardous
2 material spill or release from a UST system, including the failure to familiarize
3 employees with the UST monitoring plan and release report procedures in the
4 business response plan pursuant to California Health and Safety Code section
5 25504.
- 6 t. Failed to provide adequate training to employees pursuant to California Code of
7 Regulations, title 22, section 66265.16.
- 8 u. Failed to maintain documentation of training of employees pursuant to California
9 Code of Regulations, title 22, section 66265.16.
- 10 v. Failed to have a means of monitoring for water intrusion by precipitation or
11 infiltration into secondary containment in violation of California Code of
12 Regulations, title 23, section 2630(d) and California Health and Safety Code
13 section 25291(e).
- 14 w. Failed to label or properly label containers of hazardous waste in violation of
15 California Code of Regulations, title 22, section 66262.34
- 16 x. Failed to keep containers of hazardous waste closed except when removing or
17 adding hazardous waste in violation of California Code of Regulations, title 22,
18 section 66265.173.
- 19 y. Failed to maintain adequate aisle space in hazardous waste accumulation areas in
20 violation of California Code of Regulations, title 22, section 66265.35.
- 21 z. Failed to notify the local permitting authority of changes in the usage of the
22 UST, including a change in the storage of new hazardous substances, in violation
23 of California Health and Safety Code section 25286.
- 24 aa. Failed to maintain UST components and systems in proper working order and
25 conditions at all times in violation of California Health and Safety Code section
26 25292.1(a).
- 27 bb. Failed to timely notify local authorities of unauthorized releases from a diesel
28 vent line and to provide a report describing the release and the corrective actions

1 in violation of California Health and Safety Code section 25295 and California
2 Code of Regulations, title 23, sections 2650 and 2652.

3 cc. Failed to comply with the applicable requirements of Health and Safety Code
4 section 25294 or 25295 upon notification of an unauthorized release in violation
5 of Health and Safety Code section 25295.5.

6 dd. Failed to have an overfill prevention system for its UST systems which did not
7 allow for manual override in violation of California Code of Regulations, title
8 23, section 2635(b)(2).

9 ee. Failed to submit accurate as-built drawings for variations to the approved plans
10 including but not limited to remote monitoring sumps, remote fill lines for waste
11 oil tanks, remote alarm panels, and monitoring sensors in violation of California
12 Code of Regulations, title 23, section 2711(a)(8).

13 ff. Failed to submit documentation to show compliance with state and federal
14 financial responsibility requirements applicable to underground storage tanks
15 containing petroleum in violation of California Code of Regulations, title 23,
16 section 2711(a)(11).

17 gg. Failed to designate a designated underground storage tank operator by January 1,
18 2005 in violation of California Code of Regulations, title 23, section 2715(a).

19 hh. Failed to inform local authorities of changes to designated underground storage
20 tank operator in violation of California Code of Regulations, title 23, section
21 2715 (a) - (f).

22 ii. Failed to provide facility employee training in violation of California Code of
23 Regulations, title 23, section 2715(f).

24 jj. Failed to maintain a list of facility employees who have been trained by the
25 designated underground storage tank operator and failed to provide a list of
26 facility employees who have been trained to the local agency upon request in
27 violation of California Code of Regulations, title 23, section 2715(f)(3).

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- 1 kk. Failed to provide to the local authorities the bi-annual line integrity test results
2 for the J Care waste oil and the Oil Water Separator remote fill lines in violation
3 of California Code of Regulations, title 23, section 2643(e).
- 4 ll. Failed to submit UST permit application-Form A and UST application-Form B
5 to the local agency in violation of California Code of Regulations, title 23,
6 sections 2711(e) and 2711©.
- 7 mm. Failed to submit documentation showing compliance with financial
8 responsibility in violation of California Code of Regulations, title 23, section
9 2711(e).
- 10 nn. Failed to correct previous violations within 30 days after receiving an inspection
11 report in violation of California Code of Regulations, title 23, section 2712(f).
- 12 oo. Failed to establish/implement a business emergency plan in violation of Health
13 and Safety Code section 25503.5.
- 14 pp. Failed to submit/update a business emergency plan in violation of Health and
15 Safety Code section 25505.
- 16 qq. Failed to have an operational audible/visual alarm system connected for
17 continuous monitoring in violation of California Code of Regulations, title 23,
18 sections 2632 (c)(2)(B) and 2636(f)(1).
- 19 rr. Failed to have an overfill device installed and operational in violation of
20 California Code of Regulations, title 23, section 2635(b)(2).
- 21 ss. Failed to monitor the UST system as specified on the permit in violation of
22 Health and Safety Code section 25293.
- 23 tt. Failed to determine if a waste is a hazardous waste in violation of California
24 Code of Regulations, title 23, section 66262.11.
- 25 uu. Failed to have an emergency coordinator in violation of California Code of
26 Regulations, title 23, section 66265.55.
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1 vv. Managed hazardous waste without an Environmental Protection Agency
2 Identification number in violation of California Code of Regulations, title 23,
3 section 66262.12(a).

4 ww. Failed to keep required copies of a consolidated manifest for three (3) years in
5 violation of California Health and Safety Code section 25160.2(b)(3).

6 xx. Stored hazardous waste on-site longer than ninety (90) days without a permit in
7 violation of California Health and Safety Code section 25201(a).

8 Flying J's noncompliance threatened and continues to threaten public health and safety,
9 and the environment.

10 **FIRST CAUSE OF ACTION**

11 15. Plaintiff realleges Paragraphs 1 through 14, inclusive.

12 16. Flying J is liable for civil penalties as set forth in California Health and Safety Code
13 section 25189(b) for each intentional or negligent violation of rules, regulations, standards, or
14 requirements regarding hazardous waste set forth above which occurred within five years after
15 the discovery of the facts constituting the grounds for commencing the action on these claims.

16 17. Flying J must immediately and permanently be enjoined from further violations of
17 Chapter 6.5.

18 **SECOND CAUSE OF ACTION**

19 18. Plaintiff realleges Paragraphs 1 through 14, inclusive.

20 19. Flying J is liable for civil penalties as set forth in California Health and Safety Code
21 section 25189.2 (b) for each violation of the rules, regulations, standards or requirements
22 regarding hazardous waste set forth above which occurred within five years after the discovery
23 of the facts constituting the grounds for commencing the action on these claims.

24 20. Flying J is liable for civil penalties as set forth in California Health and Safety Code
25 section 25189.2 (b) for each violation of the rules, regulations, standards or requirements set
26 forth above.

27 21. Flying J must immediately and permanently be enjoined from further violations of
28 Chapter 6.5.

1 **THIRD CAUSE OF ACTION**

2 22. Plaintiff realleges Paragraphs 1 through 14, inclusive.

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4 23. To the extent that Flying J is the operator of the underground tank systems at the
5 Covered Facilities, Flying J is liable for civil penalties as set forth in California Health and
6 Safety Code section 25299(a) for each violation of the rules, regulations, standards or
7 requirements applicable to each underground storage tank as set forth above which occurred
8 within five years after the discovery of the facts constituting the grounds for commencing the
9 action on these claims.

10 24. Flying J, as the operator of the underground tank systems, must immediately and
11 permanently be enjoined from further violations of Chapter 6.7.

12 **FOURTH CAUSE OF ACTION**

13 25. Plaintiff realleges Paragraphs 1 through 14, inclusive.

14 26. To the extent that Flying J is the owner of the underground tank systems at the Covered
15 Facilities, Flying J is liable for civil penalties as set forth in California Health and Safety Code
16 section 25299(b) for each violation of the rules, regulations, standards or requirements
17 applicable to each underground storage tank as set forth above which occurred within five years
18 after the discovery of the facts constituting the grounds for commencing the action on these
19 claims.

20 27. Flying J, as the owner of underground tank systems, must immediately and permanently
21 be enjoined from further violations of Chapter 6.7.

22 **FIFTH CAUSE OF ACTION**

23 28. Plaintiff realleges Paragraphs 1 through 14, inclusive.

24 29. Pursuant to Health and Safety Code section 25516, the district attorney, at the request of
25 an administering agency, or on the district attorney’s own motion, may apply to the superior
26 court for an order directing compliance with Chapter 6.95.

27 30. The district attorneys and the Attorney General are authorized to bring this cause of
28 action pursuant to California Health and Safety Code section 25516.1.

1 31. Flying J is liable for civil penalties as set forth in California Health and Safety Code
2 section 25514 for each violation of the California Health and Safety Code section 25504© as set
3 forth above.

4 32. Flying J must immediately and permanently be enjoined from further violations of
5 Chapter 6.95.

6 **SIXTH CAUSE OF ACTION**

7 33. Plaintiff realleges Paragraphs 1 through 32, inclusive.

8 34. By the acts described herein, Flying J engaged in daily acts of unlawful and/or unfair
9 competition prohibited by California Business and Professions Code sections 17200-17208.
10 Each act constitutes an unlawful and/or unfair business practice.

11 35. Pursuant to California Business and Professions Code section 17206, Flying J is liable
12 for civil penalties for each violation which accrued within four years of the filing of this
13 complaint.

14 36. Flying J must immediately and permanently be enjoined from engaging in activity that
15 violates Chapters 6.5, 6.7 and 6.95 of Division 20 of the California Health and Safety Code
16 which thereby constitutes unfair competition within the meaning of California Business and
17 Professions Code section 17200.

18 WHEREFORE, PLAINTIFF PRAYS FOR THE FOLLOWING RELIEF:

19 1. A preliminary and permanent injunction requiring Flying J to comply with the
20 specific requirements of California Health and Safety Code, Division 20, Chapter 6.5 alleged in
21 the Complaint;

22 2. A preliminary and permanent injunction requiring Flying J to comply with the
23 specific requirements of California Health and Safety Code, Division 20, Chapter 6.7 alleged in
24 the Complaint;

25 3. A preliminary and permanent injunction requiring Flying J to comply with the
26 specific requirements of California Health and Safety Code, Division 20, Chapter 6.95 alleged
27 in the Complaint;

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1 4. A preliminary and permanent injunction prohibiting Flying J from engaging in
2 activity that violates Chapters 6.5, 6.7 and 6.95 of Division 20 of the California Health and
3 Safety Code and the Uniform Fire Code which thereby constitutes unfair competition within the
4 meaning of California Business and Professions Code section 17200;

5 5. Civil penalties according to proof against Flying J pursuant to California Health
6 and Safety Code section 25189 in an amount no less than ONE MILLION DOLLARS
7 (\$1,000,000);

8 6. Civil penalties according to proof against Flying J pursuant to California Health
9 and Safety Code section 25299 in an amount no less than ONE MILLION DOLLARS
10 (\$1,000,000);

11 7. Civil penalties according to proof against Flying J pursuant to California Health
12 and Safety Code section 25514 in an amount no less than ONE MILLION DOLLARS
13 (\$1,000,000);

14 8. Civil penalties according to proof against Flying J pursuant to California
15 Business and Professions Code section 17206 for each act of unfair competition engaged in by
16 Flying J in an amount no less than ONE MILLION DOLLARS (\$1,000,000);

17 9. Grant the Plaintiff its cost of inspection, investigation, attorneys fees,
18 enforcement, prosecution, and suit, herein pursuant to Code of Civil Procedure section 1021.8,
19 and all other authority; and

20 10. Grant such other and further relief as the Court deems just and proper.

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22 RESPECTFULLY REQUESTED:

23 Dated: April __, 2006

BILL LOCKYER, Attorney General
of the State of California
THOMAS M. GREENE
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Attorneys for Plaintiff, People of the State
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1 Dated: April ____, 2006

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7 Dated: April ____, 2006

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13 Dated: April ____, 2006

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18 Dated: April ____, 2006

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