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FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAY 31 2007

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Deputy

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9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN BERNARDINO

12 **THE PEOPLE OF THE STATE OF**
13 **CALIFORNIA,**

Plaintiff,

14 v.
15

16 **AUTOZONE, INC., a Nevada corporation;**
17 **AUTOZONE STORES, INC., Nevada corporation;**
18 **AUTOZONE WEST, INC., a Delaware**
corporation;
AUTOZONE PARTS, INC. a Nevada corporation;
and DOES 1-10,

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20 Defendants.
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No. SCVSS 127459

**AMENDED COMPLAINT FOR
INJUNCTION, CIVIL
PENALTIES, RECOVERY OF
INVESTIGATIVE COSTS, AND
OTHER**

1 [ADDITIONAL LIST OF PLAINTIFF'S COUNSEL BY ASSOCIATION]

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27 Plaintiff, the People of the State of California, by and through EDMUND G. BROWN Jr.,
28 Attorney General of the State of California; MICHAEL A. RAMOS, District Attorney of San

1 Bernardino County; BONNIE M. DUMANIS, San Diego District Attorney; DEAN FLIPPO,
2 District Attorney of Monterey County; and JAMES P. WILLETT, District Attorney of San
3 Joaquin County, alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. EDMUND G. BROWN Jr., Attorney General of the State of California,
6 MICHAEL A. RAMOS, District Attorney of San Bernardino County, BONNIE M. DUMANIS,
7 District Attorney for the County of San Diego, DEAN FLIPPO, District Attorney of Monterey
8 County, and JAMES WILLETT, District Attorney of San Joaquin County bring this action on
9 behalf of the People of the State of California and to protect consumers and the environment,
10 pursuant to Business and Professions Code sections 17203, 17206 17535 and 17536.

11 2. This Court has jurisdiction pursuant to Article VI, Section 10 of the California
12 Constitution and Health and Safety Code sections 25181 and 25182. Venue is proper in this
13 Court pursuant to Health and Safety Code section 25183 because the processing or disposal of
14 hazardous waste is made or is proposed to be made in San Bernardino County.

15 3. Defendants at all times mentioned in this Complaint, have transacted business
16 within the County of San Bernardino and State of California. The violations of law described in
17 this Complaint have been committed within the County of San Bernardino and State of
18 California. California Code of Civil Procedure § 393 mandates that venue of this case be in the
19 County of San Bernardino.

20 **THE PARTIES AND THEIR RELATIONSHIPS**

21 4. Defendants, AUTOZONE, INC., AUTOAONE STORES, INC., AUTOZONE
22 WEST, INC., and AUTOZONE PARTS, INC., operate AutoZone stores in California, which
23 engage in the business of retail sales of automobile parts. Defendants control the activities of
24 employees of AutoZone stores in California that are the subject of this Complaint.

25 5. The true names of Defendants sued in this Complaint under the fictitious names
26 of DOES 1 through 10, inclusive, are unknown to Plaintiff, who therefore sues those Defendants
27 by such fictitious names under the provisions of section 474 of the Code of Civil Procedure.
28

1 Defendants DOES 1 through 10 are in some manner responsible for the events alleged herein.
2 Plaintiff will amend this Complaint to show their true names when they have been ascertained.

3 6. Whenever in this Complaint reference is made to any act or omission of a
4 corporate Defendant, that allegation shall mean that corporation did the acts alleged in this
5 Complaint through its officers, directors, agents, employees, and/or representatives while they
6 were acting within the actual or ostensible scope of their authority.

7 7. Defendants engaged in a conspiracy, the purpose of which was to make the untrue
8 or misleading statements and to commit the unfair competition alleged in the First and Second
9 Causes of Action.

10 8. Each Defendant is and at all times relevant herein was a "person" as that term is
11 defined in Health and Safety Code section 25118.

12 **STATUTORY AND REGULATORY BACKGROUND**

13 9. The California Hazardous Waste Control Law, California Health and Safety Code
14 section 25100 *et seq.* ("HWCL") is a "cradle to grave" regulatory scheme that protects public
15 health and safety and the environment from threats posed by the improper handling, storage, use
16 and disposal of hazardous wastes. Regulations implementing the HWCL that impose numerous
17 and extensive requirements for the management of hazardous waste are set forth in Title 22,
18 California Code of Regulations, section 66001 *et seq.* ("hazardous waste regulations").

19 10. Section 25189.2(b) of the Health and Safety Code makes any person who non-
20 intentionally or non-negligently violates any provision of the HWCL, or any permit, rule,
21 regulation, standard or requirement issued or promulgated pursuant to the HWCL liable for a
22 civil penalty not to exceed \$25,000 for each violation of a separate provision or, for continuing
23 violations, \$25,000 for each day that a violation continues.

24 11. Health and Safety Code section 25181 provides that the Attorney General or a
25 District Attorney may apply to the superior court for an order enjoining acts or practices which
26 constitute or will constitute a violation of the HWCL, or for any order directing compliance, or
27 a permanent or temporary injunction, restraining order, or other order that may be granted.
28

1 12. Health and Safety Code section 25184 provides that in civil actions brought
2 pursuant to the HWCL in which an injunction or temporary restraining order is sought:

3 “it shall not be necessary to allege or prove at any stage of the proceeding that
4 irreparable damage will occur should the temporary restraining order, preliminary
5 injunction, or permanent injunction not be issued; or that the remedy at law is
inadequate, and the temporary restraining order, preliminary injunction, or
6 permanent injunction shall issue without such allegations and without such proof.”

7 13. Chapter 6.95 of Division 20 of the California Health and Safety Code, codified at
8 section 25500 *et seq.* contains certain requirements for businesses relating to hazardous
9 materials, known as the Hazardous Materials Release and Response Plans and Inventory
10 statutes. This regulatory scheme protects public health and safety and the environment by
11 requiring handlers of hazardous materials to establish basic information on the location, type,
12 quantity and the health risk of materials stored or used in the state and to prepare plans for
13 response to any release of those materials so that firefighters or other responders have such
14 information available. In addition, business plans required to be prepared under the Hazardous
15 Materials Release and Response Plans and Inventory statutes must include training for
16 employees in safety procedures and for response to releases of hazardous materials. Any
17 business subject to these requirements must file updates whenever certain changes occur, and in
18 any event annually. The penalties for failure to file updated or modify a business plan or carry
19 out the requirements of the statutes is \$2,000.00 for each day in which each violation occurs. If
20 the business’ failure to act was willful, and with reasonable notice of the requirements, the
penalties can be \$5,000.00 per day per location.

21 14. Water Code section 13350 forbids any intentional or negligent discharge of waste
22 in violation of an order of the Regional Water Quality Control Board. Violators face penalties
23 of up to \$15,000.00 per day of discharge or \$20.00 for each gallon of waste discharged. In
24 addition, Water Code section 13385 forbids any violation of section 301 of the Federal Water
25 Pollution Control Act (33 U.S.C. § 1311). Persons violating Water Code section 13385 are
26 liable for civil penalties of \$25,000.00 for each day in which the violation occurs.

27 15. The State of California prohibits the discharge or threatened discharge of any
28 industrial refuse and waste, whether liquid or solid, and substances deleterious to fish, plant life,

1 or bird life, unless that substance is expressly authorized pursuant to, and in compliance with the
2 terms and conditions of a waste discharge requirement. (Fish & Game Code § 5650(a)). The
3 State of California prohibits the deposit or placement of garbage and rubbish where such waste
4 can pass into waters of the state. (Fish and Game Code § 5652). Persons violating Fish and
5 Game Code sections 5650 are subject to civil penalties of up to \$25,000.00 for each violation, as
6 set forth in Fish and Game Code section 5650.1.

7 **FACTUAL BACKGROUND**

8 16. Plaintiff realleges and incorporates by reference, as though set forth in full herein
9 the allegations contained in Paragraphs 1 through 15, inclusive, of this Complaint.

10 17. At all times relevant herein, Defendants own and operate and continue to own and
11 operate, over 390 stores in California selling auto parts, motor oil and engine additives, and
12 providing some repair services, including 36 stores in San Bernardino County. Defendants
13 handle used oil, used oil filters, and other hazardous waste, and Defendants store and sell large
14 amounts of hazardous materials. Several county environmental health departments and Certified
15 Unified Program Agencies (“CUPAs”) have discovered improper storage and disposal of waste
16 oil and filters, a variety of violations of laws governing hazardous materials management,
17 failures to update and complete business plans and training requirements, and the dumping of
18 hazardous materials into storm drains on Defendants’ property.

19 18. On or about February 2004, the County of San Bernardino Fire
20 Department/Hazardous materials Division inspected an AutoZone retail facility located at 1050
21 Kendell Avenue, San Bernardino, California to determine compliance with the HWCL and the
22 hazardous waste and hazardous materials regulations, and to determine compliance with the
23 Hazardous Materials Release and Response Plans and Inventory statutes. During the
24 investigation, investigators for the County and/or Plaintiff observed that the Defendants
25 improperly stored and/or disposed of hazardous waste at the Site and off-site, and failed to
26 update and adequately complete business plans. As a result of the investigation, the County
27 issued a Notice of Violation and Order to Comply citing the Defendants for numerous violations
28 of the statutes and the hazardous waste regulations, including California Health and Safety Code

1 Sections 25503.5 and 25154, and California Code of Regulations Sections 66262.34(f)(3) and
2 66262.35(f)(2).

3 19. On numerous other dates, which are unknown to Plaintiff at this time but when
4 discovered will be identified more clearly in an Amended Complaint, Plaintiff inspected other
5 AutoZone retail facilities located throughout California to determine compliance with the HWCL
6 and the hazardous waste and hazardous materials regulations, and to determine compliance with
7 the Hazardous Materials Release and Response Plans and Inventory statutes. During these
8 inspections, investigators for the Plaintiff observed that the Defendants improperly stored and/or
9 disposed of hazardous waste at the Site and off-site, and failed to update and adequately
10 complete business plans. During the inspections, the Plaintiff observed additional and/or
11 continuing violations of the statutes and hazardous waste regulations occurring at the
12 Defendants' facilities. Defendants were issued Notices of Violation for each of these
13 substandard inspections.

14 20. To date, the Defendants have not corrected all of the violations of the statutes and the
15 hazardous waste regulations observed by Plaintiff at their facilities.

16 21. Plaintiff has determined that Defendants have engaged in, and unless enjoined and
17 restrained by this Court will continue to engage in, acts and practices which constitute violations
18 of the HWCL and the hazardous waste regulations.

19 22. Each violation renders Defendants liable for civil penalties pursuant to Health and
20 Safety Code section 25189(b), or alternatively, pursuant to health and Safety Code section
21 25189.2(b) according to proof. Each continuing violation subjects Defendants to injunctive
22 relief pursuant to Health and Safety Code sections 25181 and 25184.

23 23. Plaintiff has incurred investigation costs to determine whether Defendants have
24 been in compliance with the HWCL and the hazardous waste regulations. Plaintiff has expended
25 and will continue to expend funds for such costs of investigation in order to determine whether
26 Defendants are in compliance with the HWCL and the hazardous waste regulations. Defendants
27 are therefore liable to Plaintiff for the costs of such investigation.
28

1 **FIRST CAUSE OF ACTION**

2 **(Violations of Health & Safety Code sections 25189 and 25189.2)**

3 24. Plaintiff realleges and incorporates by reference, as though set forth in full
4 herein, the allegations contained in paragraphs 1 through 23, inclusive, of this Complaint.

5 25. Health and Safety Code section 25189(b) states that: "Any person who violates any
6 provision of [the HWCL and its regulations] is liable for a civil penalty not to exceed twenty-
7 five thousand dollars (\$25,000) for each separate violation or for continuing violations for each
8 day that the violation continues." Section 25189(b) contains an identical provision for any
9 intentional or negligent violation of the HWCL statutes, regulations, permits, rules,
10 requirements or standards.

11 26. Plaintiff is informed and believes and, based upon such information and belief,
12 alleges that beginning at an exact date that is unknown to Plaintiff, but prior to June 3, 2005,
13 and within five (5) years prior to the filing of this complaint, Defendants engaged in acts in
14 violation of the HWCL statutes, regulations, permits, rules, requirements or standards issued or
15 promulgated pursuant to the HWCL.

16 **SECOND CAUSE OF ACTION**

17 **(Violations of Health & Safety Code sections 25500 et seq.)**

18 27. Plaintiff realleges and incorporates by reference, as though set forth in full
19 herein, the allegations contained in paragraphs 1-24, inclusive, of this Complaint.

20 28. Health and Safety Code section 25503.5 states that: "any business, that handles
21 hazardous material that has a quantity at any one time during the reporting year equal to or
22 greater than, a total volume of 55 gallons, shall establish and implement a business plan for
23 emergency response to a release or threatened release of hazardous materials in accordance with
24 the standards proscribed in the regulations adopted by Section 25503." Section 25504 requires
25 business plans to include an inventory of information about the hazardous materials, emergency
26 response plans and procedures, and training for all new employees and annual training,
27 including refresher courses, for all employees in safety.

1 Procedure section 731, the Office of the District Attorney is authorized to abate public nuisances
2 related to matters within its jurisdiction.

3 36. The maintenance of a business which allows the improper storage and disposal of
4 hazardous materials and wastes, and which fails to properly inventory hazardous materials and
5 plan for responses to any release of those materials, inevitably results in a threat to the public
6 health and safety and to the environment, and to the citizens of California, and constitutes a
7 continuing nuisance to the surrounding environs pursuant to sections 3479 and 3480 of the
8 California Civil Code.

9 37. Defendants will, unless restrained and enjoined by this Court, continue to
10 maintain the public nuisance and the acts complained of herein, which will continue to pose a
11 threat to public health and safety and to the environment.

12 38. Unless and until Defendants are restrained by order of this Court, it will be
13 necessary for the District Attorney to commence successive actions against Defendants after
14 each discharge to secure remediation and to abate the threat to the public health and safety and
15 the environment that will be sustained, thus requiring a multiplicity of suits.

16 39. The People have no plain, speedy, or adequate remedy at law to address the
17 public nuisance. Injunctive relief is expressly authorized pursuant to California Civil Code
18 section 526. The People are entitled to an order requiring Defendants to undertake any
19 additional work necessary to abate the public nuisance. Such must be performed in conformance
20 with each and every applicable law and under the supervision of all appropriate regulatory
21 authorities.

22 **FIFTH CAUSE OF ACTION**

23 **(Violations of Business and Professions Code sections 17200 *et seq.*)**

24 40. Plaintiff realleges and incorporates by reference as though set forth in full herein,
25 the allegations contained in paragraphs 1 through 40, inclusive of this Complaint.

26 41. Defendants, and each of them, committed unfair competition as defined in
27 Business and Professions Code section 17200. These acts include but are not limited to:
28

1 requirements and orders issued, promulgated and executed thereunder. Specifically, Plaintiff
2 requests that the Court issue an order:

3 A. Ordering the Defendants to correct the violations of the HWCL and
4 hazardous waste regulations which exist at their facilities;

5 B. Enjoining and restraining the Defendants from accepting, storing, and
6 disposing of hazardous waste at their facilities, unless and until Defendants have applied for and
7 obtained a valid hazardous waste facility permit from the State of California;

8 C. Enjoining and restraining Defendants from depositing any additional waste
9 whether such waste is hazardous or non-hazardous, on or into unauthorized hazardous waste
10 streams or sites;

11 D. Ordering Defendants to containerize all hazardous waste at their facilities,
12 label hazardous waste containers, and keep the hazardous waste containers of hazardous waste
13 closed, unless adding or removing waste from the containers;

14 E. Enjoining Defendants to remove all hazardous waste from their facilities,
15 and legally transport and dispose of such waste at an authorized hazardous waste disposal
16 facility; and

17 F. Ordering Defendants to take all appropriate actions to operate their
18 facilities in a manner that minimizes the possibility of a fire, explosion or releases or threatened
19 releases of hazardous waste or hazardous waste constituents to air, soil, or surface water.

20 2. Pursuant to Business and Professions Code sections 17203 and 17535, and the
21 Court's inherent equity powers, that the court permanently enjoin and restrain Defendants, their
22 officers, directors, employees, agents, representatives, successors, assignees, and all natural
23 persons, corporations, or other entities acting under, by through, on behalf of, or in concert
24 with Defendants, with actual or constructive notice of this injunction, from making untrue or
25 misleading statements and engaging in acts and practices of unfair competition.

26 3. Grant or impose other terms as part of an injunction against Defendants as
27 appropriate.

28 4. Order that Defendants pay a civil penalty of up to \$25,000.00 for each violation

1 of the HWCL and the California Code of Regulations pleaded herein, in an amount according to
2 proof, but not less than \$1,000,000.00.

3 5. Order that Defendants pay a civil penalty of \$5,000.00 for each violation of the
4 Health and Safety Code section 25503.5 pleaded herein, in an amount according to proof, but
5 not less than \$1,000,000.00.

6 6. Order that Defendants pay a civil penalty of \$2,500.00 for each violation of the
7 Business and Professions Code section 17200 *et seq.* pleaded herein, in an amount according to
8 proof, but not less than \$1,000,000.00.

9 7. Order that Defendants pay a civil penalty of \$2,500.00 for each and every
10 violation of Business and Professions Code section 17500, as proved at trial.

11 8. Order that Defendants pay a civil penalty of up to \$25,000.00 for each violation
12 of Fish and Game Code section 5650 pleaded herein, in an amount according to proof, but not
13 less than \$1,000,000.00.

14 9. Order that Defendants pay a civil penalty of up to \$25,000.00 for each day of
15 violation of Water Code Section 13376 pleaded herein, in an amount according to proof, but not
16 less than \$1,000,000.00.

17 10. Order that Defendants abate the nuisance.

18 11. Grant Plaintiff its costs of investigation.

19 12. Grant Plaintiff its costs of suit, and

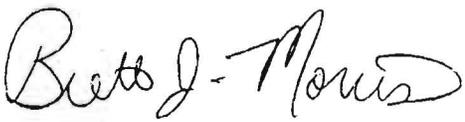
20 13. Grant such other and further relief as the Court deems just and proper.

21 DATED: May 31, 2007

22 Respectfully submitted,

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24 EDMUND G. BROWN JR.
Attorney General

25
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27 By:



28 BRETT J. MORRIS
Deputy Attorney General

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See Code of Civil Procedure section 446 regarding verification of the Answer