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 Attorney for Plaintiffs New Jersey
 Department of Environmental Protection
 and the Administrator of the New Jersey
 Spill Compensation Fund

By: A. Paul Stofa
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| NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION; and THE ADMINISTRATOR OF THE NEW JERSEY SPILL COMPENSATION FUND, | : | SUPERIOR COURT OF NEW JERSEY LAW DIVISION - MIDDLESEX COUNTY |
| | : | |
| | : | DOCKET NO. |
| | : | |
| Plaintiffs, | : | <u>Civil Action</u> |
| | : | |
| v. | : | COMPLAINT |
| | : | |
| CRUSADER SERVICING, CORP.; NJ PROPERTY ACQUISITIONS, L.L.C.; and ESTATE OF GARY ENGLISH, | : | |
| | : | |
| Defendants. | : | |

Plaintiffs, the New Jersey Department of Environmental Protection (the "Department" or "DEP") and the Administrator of the New Jersey Spill Compensation Fund (the "Administrator") (collectively, the "Plaintiffs"), having their principal offices at 401 East State Street in the City of Trenton, County of Mercer, State of New Jersey, by and through their attorney, file this

Complaint against the above-named Defendants, and allege as follows:

STATEMENT OF THE CASE

1. This is a civil action pursuant to the New Jersey Spill Compensation and Control Act (the "Spill Act"), N.J.S.A. 58:10-23.11 et seq., and the common law, for reimbursement of the costs Plaintiffs have incurred, and will incur, as a result of the discharge of hazardous substances at the Fords Mobil Site, also known as the Johnny's Service Center Site, in Woodbridge Township, Middlesex County, New Jersey.

2. From the 1940s to the early 1990s, several owners operated a retail gas station on King George's Post Road in the Fords section of Woodbridge Township, New Jersey. In the 1990s, the station was converted to an automobile repair service business. When four underground storage tanks were removed in 1998, it was discovered that gasoline-related compounds had leaked from the tanks and contaminated the soil and groundwater. After the owner failed to comply with enforcement actions brought by the Department, New Jersey sought and obtained court-ordered access to the site to begin soil and groundwater remediation. New Jersey is seeking to recover its costs from the responsible parties.

THE PARTIES

3. The Department is a principal department within the Executive Branch of the New Jersey State government vested with the authority to conserve and protect natural resources, protect the environment, prevent pollution, and protect the public health and safety. N.J.S.A. 13:1D-9.

4. The Administrator is the chief executive officer of the New Jersey Spill Compensation Fund (the "Spill Fund"). N.J.S.A. 58:10-23.11j. As the chief executive officer of the Spill Fund, the Administrator is authorized to approve and pay any cleanup and removal costs the Department incurs, N.J.S.A. 58:10-23.11f.c. and d., and to certify the amount of any claim to be paid from the Spill Fund. N.J.S.A. 58:10-23.11j.d.

5. Estate of Gary English (the "Estate" or "English") is the estate of Gary English, an individual whose last known residence was 58 Corey Street, Woodbridge Township, New Jersey, 07095. Gary English died in New Jersey on October 27, 2013.

6. Crusader Servicing, Corp. ("Crusader") is a corporation organized under the laws of the State of Pennsylvania with a principal place of business at 115 West Avenue, Suite #300, Jenkintown, Pennsylvania 19046.

7. NJ Property Acquisitions, L.L.C. ("NJ Property Acquisitions") is a now defunct limited liability corporation that

was organized under the laws of the State of New Jersey with a principal place of business at 1 Cathedral Drive, Lakewood, New Jersey 08701.

GENERAL ALLEGATIONS

8. The site that is the subject of this Complaint is located at 723 King George's Post Road in the Fords section of Woodbridge Township, Middlesex County, New Jersey, also known as Block 159, Lot 71 on the Tax Map of Woodbridge Township, Middlesex County (the "Property") (and formerly identified as Block 159, Lots 71, 72 and 73), and all other areas where any hazardous substances discharged there have come to be located (collectively, the "Site"), which the Department has also designated as Site Remediation Program Interest No. 033114.

9. The Property totals 0.11 acres, and historically was part of a larger parcel identified as 721-723 King George's Post Road, which also included the property located at 721 King George's Post Road, also identified as Block 159, Lot 68 on the Tax Map of Woodbridge Township (formerly identified as Block 159, Lots 68, 69 and 70) (the "721 King George's Parcel"), as well as an adjacent vacant parcel located on Izola Avenue, also identified as Block 159, Lot 74 on the Tax Map of Woodbridge Township (the "Vacant Parcel").

10. The Property is the former location of a Mobil-branded gasoline station, where four underground storage tanks ("USTs") were used to dispense gasoline, two of which were 2,000 gallon USTs, and two of which were 3,000 gallon USTs.

11. By deed dated September 14, 1990, defendant English purchased the Property, the Vacant Parcel, and the 721 King George's Parcel from Viola Ryan for the total purchase price of \$375,000.

12. On June 8, 2009, defendant Crusader filed a Notice of Lis Pendens, seeking possession of the Property by virtue of a tax sale certificate purchased on June 21, 2004, for \$67,902.01.

13. By Sheriff's Writ of Execution, dated April 20, 2011, referencing a Sheriff's sale that occurred on April 6, 2011, the Sheriff awarded possession of the Property to defendant Crusader for the bid of \$100.00.

14. By deed dated September 26, 2011, defendant Crusader sold the Property to defendant NJ Property Acquisitions for \$115,000.00.

15. Presently, defendant NJ Property Acquisitions remains the title owner of the Property.

OPERATION OF THE STATION AND CONTAMINATION

16. From approximately 1948 through 1990, a retail gasoline station, including a Mobil-branded gas station, operated on the Property.

17. In 1990, defendant English opened an automotive service garage, named Johnny's Service Center, at the Property.

18. On December 13, 1999, defendant English arranged for Geological Services Corporation ("GSC") to remove the four USTs at the Property, which were south of the garage building and were directly below the pump island.

19. During the removal, corrosion holes and pitting along the tank bottoms were noted, and petroleum-impacted soils were observed under the USTs. The incident was reported to the Department's Hotline and a case number (99-12-13-1710-41) was assigned.

20. During the time that defendant English owned the Property and/or operated there, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" there within the meaning of N.J.S.A. 58:10-23.11b., which substances included the gasoline-related compounds benzene, toluene, ethylbenzene, xylenes (collectively, "BTEX"), naphthalene, tertiary butyl alcohol ("TBA"), and lead.

21. Approximately 220 tons of petroleum-impacted soil were excavated and transported for off-site disposal. GSC took five post-excavation samples at that time and reported benzene at 3.1 parts per million ("ppm"), in exceedance of the Residential Direct Contact Soil Cleanup Criteria of 3.0 ppm, and total xylenes at 110 ppm, which exceeded the Impact to Groundwater Soil Cleanup Criteria of 67 ppm.

22. In November 2001, the Middlesex County Health Department conducted a site inspection and, in May 2002, issued a Field Notice of Violation to defendant English for failure to provide proof of the UST removal and other documentation as required by the Department's Underground Storage Tank regulations.

23. In August 2002, GSC submitted a UST Closure Report on behalf of English.

24. On May 17, 2004, the Department issued a deficiency letter to defendant English regarding the 2002 UST Closure Report, including the need to take soil samples under the centerline beneath each former UST location, complete a receptor evaluation and a baseline ecological evaluation, and submit a remedial action selection report. A remedial investigation was noted to be due by September 14, 2004.

25. The required remedial investigation was not completed by defendant English, nor were the other deficiencies in the May 2004 letter from the Department addressed.

26. In May 2007, a Notice of Violation ("2007 NOV") was issued to defendant English for failure to conduct a remedial investigation and the related activities set forth in the May 2004 letter.

27. On November 9, 2007, an Administrative Order and Notice of Civil Penalty Assessment ("2007 AONOCAPA") was issued for the same violation.

28. Because defendant English did not respond to the 2007 AONOCAPA, it became a Final Order on December 5, 2007.

29. By letter dated June 11, 2009, the Department issued a Spill Act Directive to defendant English to pay \$250,000.00 to the Department to undertake a remedial investigation and perform the remedial action ("2009 Directive").

30. Defendant English did not undertake the activities required by the 2009 Directive, and the matter was referred to the Department's Publicly Funded Response Element.

31. By order dated January 15, 2010, the Superior Court ordered English to provide the Department with immediate access to the Property to perform a remedial investigation and remedial action.

32. In 2011, the Louis Berger Group, Inc. ("Berger"), on behalf of the Department, conducted investigations on the Property and determined that there was residual soil contamination in the front of the Property between the location of the former USTs and pump island and King George's Road, which included the gasoline-related compounds BTEX, naphthalene, TBA, and lead.

33. Berger performed groundwater sampling at the Property and at the Vacant Parcel, which sampling revealed that the groundwater was contaminated with BTEX, methyl tertiary butyl ether ("MTBE"), and lead, above the Department's ground water quality criteria.

34. Berger also undertook a vapor intrusion study for three off-site properties, the results of which showed that levels were below the Department's indoor air screening levels.

35. The Department conducted a site visit on July 21, 2015.

36. Remediation remains to be completed at the Site. This includes, but is not limited to, groundwater sampling at 721 King George's Post Road (i.e., Block 159, Lot 68), groundwater delineation and the establishment of a Classification Exception Area ("CEA"), and the performance of a vapor intrusion study on the Property, as necessary.

37. The Department has incurred past cleanup and removal costs for the Site.

38. On February 1, 2017, the Department filed a lien of regular priority with respect to the Property against defendant NJ Property Acquisitions in the amount of \$184,504.74.

COUNT I

SPILL ACT

39. Plaintiffs repeat each allegation of Paragraphs Nos. 1 through 38 above as though fully set forth in their entirety herein.

40. Except as otherwise provided in N.J.S.A. 58:10-23.11g12, which is not applicable here, any person who discharges a hazardous substance, or is in any way responsible for any hazardous substance, shall be liable, jointly and severally, without regard to fault, for all cleanup and removal costs no matter by whom incurred. N.J.S.A. 58:10-23.11g.c.(1).

41. The costs that Plaintiffs have incurred, and will incur, for remediation of the Property are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b., and are recoverable pursuant to N.J.S.A. 58:10-23.11u.b.(2), (4), and (5).

42. Defendants are "persons" within the meaning of N.J.S.A. 58:10-23.11b.

43. Defendant English is a "discharger" as the owner of the USTs from which hazardous substances were discharged, and is a person "in any way responsible" as an owner of the Property at the

time hazardous substances were discharged, and is therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, and will incur, as a result of the discharge of hazardous substances at the Property. N.J.S.A. 58:10-23.11g.c.(1).

44. Defendant Crusader, as a purchaser of the previously contaminated Property that knew or should have known about the contamination at the time of its acquisition, is a person "in any way responsible" for hazardous substances, and is therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, and will incur, as a result of the discharge of hazardous substances at the Property. N.J.S.A. 58:10-23.11g.c.(1).

45. Defendant NJ Property Acquisitions, as the current owner of the Property and purchaser of previously-contaminated Property that knew or should have known about the contamination at the time of its acquisition, is a person "in any way responsible" for hazardous substances, and is therefore liable, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs have incurred, and will incur, as a result of the discharge of hazardous substances at the Site. N.J.S.A. 58:10-23.11g.c.(1).

46. By failing to comply with the Department's Directives and Notices to Insurers, defendant English is strictly liable, without regard to fault, in an amount up to three times the cleanup and removal costs that Plaintiffs have incurred, and will incur in the future, to remediate the discharge of hazardous substances at the Site. N.J.S.A. 58:10-23.11f.a.(1).

47. Pursuant to N.J.S.A. 58:10-23.11u.a.(1)(a) and N.J.S.A. 58:10-23.11u.b., the Department may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10-23.11u.b.(1); for its unreimbursed investigation, cleanup and removal costs, including the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2); and for any other unreimbursed costs the Department incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

48. Pursuant to N.J.S.A. 58:10-23.11q., the Administrator is authorized to bring an action in the Superior Court for any unreimbursed costs paid from the Spill Fund.

WHEREFORE, Plaintiffs request judgment in their favor:

- a) Ordering the Defendants, jointly and severally, without regard to fault, to reimburse Plaintiffs for all cleanup and removal costs Plaintiffs have incurred as a result of the discharge of hazardous

substances at the Property, with applicable interest;

- b) Ordering defendant English to reimburse Plaintiffs, without regard to fault, in an amount equal to three times all cleanup and removal costs Plaintiffs have incurred as a result of the discharge of hazardous substances at the Property, with applicable interest;
- c) Entering declaratory judgment against the Defendants, jointly and severally, without regard to fault, for all cleanup and removal costs Plaintiffs will incur as a result of the discharge of hazardous substances at and from the Property;
- d) Entering declaratory judgment against defendant English, without regard to fault, in an amount equal to three times all cleanup and removal costs Plaintiffs will incur as a result of the discharge of hazardous substances at the Property;
- e) Entering declaratory judgment against the Defendants, compelling them to perform any further cleanup of the Site in conformance with the Site Remediation Reform Act, N.J.S.A. 58:10C-1 to -29, and all other applicable laws and regulations;

- f) Awarding Plaintiffs their costs and fees incurred in this action; and
- g) Awarding Plaintiffs any other relief this Court deems appropriate.
- h) Plaintiffs are not seeking, and this Complaint should not be characterized as asserting a claim for, natural resource damages. Plaintiffs reserve the right to bring a claim in the future for natural resource damages arising out of the discharge of hazardous substances at the Property.

COUNT II

UNJUST ENRICHMENT

49. Plaintiffs repeat each allegation of Paragraphs Nos. 1 through 48 above as though fully set forth in their entirety herein.

50. To establish unjust enrichment, a plaintiff must show both that defendant received a benefit and that retention of that benefit without payment would be unjust.

51. Plaintiffs have used and will continue to use public funds to remediate the contamination at the Site.

52. Plaintiffs' expenditure of public funds for the remediation of the Site, which otherwise would have been

Defendants' obligation to fully fund or perform, has unjustly enriched the Defendants.

53. Defendants have failed to complete the remediation of the Site, causing the Plaintiffs to expend public funds. Therefore, Defendants are required by law and by equity to reimburse Plaintiffs accordingly.

WHEREFORE, Plaintiffs request judgment in their favor:

- a) Declaring that the Defendants have been unjustly enriched by the Plaintiffs' expenditure of public funds to remediate the Site;
- b) Ordering the Defendants to reimburse Plaintiffs for costs Plaintiffs have incurred, and will incur, to remediate the Site, with applicable interest;
- c) Entering judgment against the Defendants for all other compensatory and consequential damages; and
- d) Awarding the Plaintiffs such other relief as this Court deems appropriate.
- e) Plaintiffs are not seeking, and this Complaint should not be characterized as asserting a claim for, natural resource damages. Plaintiffs reserve the right to bring a claim in the future for natural resource damages arising out of the discharge of hazardous substances at the Property.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ A. Paul Stofa
A. Paul Stofa
Deputy Attorney General

Dated: August 1, 2018

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that A. Paul Stofa, Deputy Attorney General, is hereby designated as trial counsel for Plaintiffs in this action

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

The undersigned counsel further certifies that the matters in controversy in this action are not currently the subject of any other pending action in any court or arbitration proceeding known to the State at this time, nor is any non-party known to the State at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such matter or non-party later becomes known, an amended certification shall be filed and served on all other parties and with this Court in accordance with R. 4:5-1(b)(2).

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ A. Paul Stofa
A. Paul Stofa
Deputy Attorney General

Dated: August 1, 2018

August 1, 2018

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State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
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PHILIP D. MURPHY
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August 1, 2018

Submitted via eCourts

Deputy Clerk, Superior Court of New Jersey
Middlesex County - Law Division
Courthouse, 56 Paterson St.
P.O. Box 994
New Brunswick, NJ 08903-0964

Re: New Jersey Department of Environmental
Protection, et al. v. Crusader Servicing, Corp.,
et al.
Docket No.

Dear Sir/Madam:

My office represents plaintiffs New Jersey Department of Environmental Protection ("NJDEP"), the Commissioner of the DEP, and the Administrator of the Spill Compensation Fund (collectively, "Plaintiffs") in the above-captioned matter. Enclosed for filing, please see copies of Plaintiffs' complaint and CIS Form.

Please be advised that there is no filing fee as the Plaintiffs are entities of the State of New Jersey. Should you have any questions or require additional information, please do not hesitate to contact me.

August 1, 2018

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Thank you for your time and consideration.

Respectfully yours,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: /s/ A. Paul Stofa
A. Paul Stofa
Deputy Attorney General

Civil Case Information Statement

Case Details: MIDDLESEX | Civil Part Docket# L-004576-18

Case Caption: N.J. DEP'T OF ENV. P ROTECTION VS
CRUSADER SERVI

Case Initiation Date: 08/01/2018

Attorney Name: A PAUL STOFA

Firm Name: ATTORNEY GENERAL LAW

Address: 25 MARKET STREET PO BOX 93
TRENTON NJ 08625

Phone:

Name of Party: PLAINTIFF : N.J. Dep't of Env. Protection

Name of Defendant's Primary Insurance Company
(if known): None

Case Type: ENVIRONMENTAL/ENVIRONMENTAL COVERAGE
LITIGATION

Document Type: Complaint

Jury Demand: NONE

Hurricane Sandy related? NO

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

**Do you anticipate adding any parties (arising out of same
transaction or occurrence)?** NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

**Use this space to alert the court to any special case characteristics that may warrant individual
management or accelerated disposition:**

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

08/01/2018
Dated

/s/ A PAUL STOFA
Signed