

SETTLEMENT AGREEMENT

BETWEEN

CONSUMER ADVOCACY GROUP, INC.

AND

ATLANTIC RICHFIELD COMPANY

Consumer Advocacy Group, Inc., ("CAG") on behalf of itself and suing in the public interest pursuant to California Health and Safety Code section 25249.7(d) and in the interest of the general public pursuant to Business and Professions Code section 17204 (hereinafter collectively "Plaintiffs") and Atlantic Richfield Company (hereinafter "Atlantic Richfield") enter into this agreement (hereinafter "Settlement Agreement") to settle the case entitled *Consumer Advocacy Group, Inc. v. Atlantic Richfield Co., et al.*, filed on August 17, 1999, and pending in the Superior Court of California, County of Los Angeles, Case No. BC 240465 (hereinafter the "Lawsuit"), as follows:

1.0

Introduction

1.1 The Plaintiffs and Atlantic Richfield (hereinafter "Parties" or "Party")

enter into this Settlement Agreement to settle disputed claims between the Parties as set forth hereafter.

1.2 The Lawsuit alleges, *inter alia*, violations of the Safe Drinking Water and

Toxic Enforcement Act of 1986, Health and Safety Code sections 25249.5, *et seq.* ("Proposition 65") and Business and Professions Code sections 17200, *et seq.* ("Unfair Competition Act"). Atlantic Richfield denies the material allegations of the Lawsuit, and denies liability for the causes of action alleged in the complaint, and in connection with the Lawsuit.

1.3 By execution of this Settlement Agreement, the Parties do not admit any

facts or conclusions of law, including, but not limited to, any facts or conclusions of law regarding any violation of Proposition 65, the Unfair Competition Act, or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by the Parties of any fact, conclusion of law,

Plaintiffs filed their original complaint and a first amended complaint dated February 17, 2000, in the San Francisco Superior Court. The action was transferred to Los Angeles Superior Court by order dated October 5, 2000.

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issue of law, or violation of law, including, but not limited to, any admission concerning the meaning of the terms "knowing discharge" or "knowing release" as used in Health & Safety Code section 25249.5. Nothing contained in this Settlement Agreement, nor compliance with the terms of this Settlement Agreement, shall constitute or be construed, considered, offered or admitted, in whole or in part, as evidence of an admission or evidence of fault, wrongdoing, liability or violative conduct by Atlantic Richfield, its officers, directors, employees, or parent, subsidiary or affiliated corporations, in any administrative or judicial proceeding or litigation in any court, agency or forum whatsoever. Except for the causes of action and allegations settled and compromised, nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that CAG and Atlantic Richfield may have against one another in any other pending legal proceeding.

1.4 It is the position of Atlantic Richfield that, among other defenses, all claims in the Lawsuit are barred by the judgment entered by the San Francisco Superior Court in an action titled *Communities For a Better Environment, et al v. Tosco Corporation*, San Francisco Superior Court Action No. 300595 ("the CBE Action"), and that Plaintiffs are entitled to no relief or remedy of any kind by reason of the Lawsuit. Plaintiffs disagree with this position and maintain that even if all claims in the Lawsuit are barred by the judgment entered in the CBE Action, CAG is entitled to some amount of attorneys' fees and costs under California Civil Code § 1021.5 and the "catalyst" theory of recovery. Plaintiffs enter this Settlement Agreement to compromise their claims regarding attorneys' fees and all Claims Covered as defined in Section 3.0 below.

2.0 Release

2.1 As of the Effective Date of this Settlement Agreement (as defined in

Section 14.0 below), Plaintiffs hereby fully release and forever discharge Atlantic Richfield and its officers, directors, agents, servants, partners, stockholders, attorneys, employees, representatives, affiliates, subsidiary and parent corporations (including but not limited to BP West Coast Products LLC), and dealers and resellers of products manufactured or sold by Atlantic Richfield, BP West Coast Products LLC and/or their affiliated companies, and each of their respective successors and assigns (hereafter collectively "the Released Parties") from any and all and known and unknown rights, claims, causes of action, damages, suits, penalties, liabilities, injunctive relief, declaratory relief, and attorneys' fees, costs and expenses related to or arising out of the facts and claims alleged in the Lawsuit. Without limiting the foregoing, the scope of this release is intended to cover any and all Claims Covered (as defined in Section 3.0

below) as to the Released Parties for each and every site alleged and/or put in controversy by the Lawsuit. Plaintiffs have been fully advised of the contents of Section 1542 of the Civil Code of the State of California. Plaintiffs acknowledge that the claims released in section 2.1 above may include unknown claims and waive Section 1542 as to any such unknown claims. Section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS **SETTLEMENT WITH THE DEBTOR.**

Plaintiffs acknowledge and understand the significance and consequences of this specific waiver of Civil Code Section 1542.

3.0 Claims Covered

3.1 This Settlement Agreement is a final and binding resolution between the

Plaintiffs and the Released Parties of the following claims and causes of action:

3.1.1 Any and all Proposition 65 claims that were or could have been asserted in the Lawsuit arising out of any alleged discharge or release of petroleum and/or petroleum products, including without limitation any chemicals and elements contained therein which have been listed or may be listed under California Health & Safety Code Section 25249.8 (collectively "Covered Products") that spilled, leaked or otherwise emanated from the sites put in controversy by the Lawsuit at any time up to the Effective Date of this Settlement Agreement, including, without limitation, all claims with respect to the continued presence or migration of Covered Products in soil and/or water, at the Sites put in controversy by the Lawsuit, after the Effective Date of this Settlement Agreement that are present in soil and/or water as the result of a release or discharge at any time up to the Effective Date of this Settlement Agreement.

3.1.2 Any and all Unfair Competition Act claims based upon the alleged violation of any statute or common law duty that were or could have been asserted in the Lawsuit arising out of any alleged discharge or release of Covered Products from the sites put in controversy in the Lawsuit at any time up to the Effective Date of this Settlement Agreement, including, without limitation, all claims

with respect to the continued presence or migration of Covered Products in soil and/or water, at the Sites put in controversy by the Lawsuit, after the Effective Date of this Settlement Agreement that are present in soil or water as the result of a release or discharge at any time up to the Effective Date of this Settlement Agreement.

4.0

Payment of Fees and Costs

4.1 Within fifteen (15) business days after the Effective Date of this

Settlement Agreement, Atlantic Richfield will pay \$80,000 to Plaintiffs for attorneys' fees and costs, subject to approval by the Court as stated in the [Proposed] Judgment attached hereto as Exhibit 2. The check shall be made payable to Yeroshalmi & Associates in trust for CAG. CAG represents and warrants that the payment of attorneys' fees and costs pursuant to this Section 4.1 is authorized by CAG. CAG further represents and warrants that the payment of attorneys' fees and costs pursuant to this Section 4.1 and any application and/or distribution of such payments will not violate any agreement between CAG and/or its attorneys with any other person or entity. CAG releases the Released Parties with regard to any issue concerning the allocation and/or distribution of the amount paid under this Section 4. 1.

5.0

Projects In Lieu Of Payment Of A Penalty

5.1 Atlantic Richfield has entered an agreement to perform those projects

identified in the settlement agreement attached hereto as Exhibit I (the "CBE Settlement Agreement") with respect to the sites identified in the CBE Settlement Agreement, and has paid civil penalties with respect to those sites under that settlement. The San Francisco Superior Court entered judgment approving the CBE Settlement Agreement under California Health & Safety Code §25249.7 on September 23, 2004. Every site put in controversy in the Lawsuit with regard to Atlantic Richfield is within the scope of the Judgment entered by the San Francisco Superior Court in the CBE Action and all remedies implemented by that Judgment, and the payment of civil penalties, were specifically approved as meeting the standards of Health & Safety Code §25249.7. Therefore, for purposes of settlement, Plaintiffs agree that no further projects, or any penalties, are necessary or appropriate at the sites in controversy in the Lawsuit to meet the requirements of Health & Safety Code §25249.7. If for any reason, this Settlement Agreement is not approved by the Court and entered as a Judgment pursuant to Section 9.0 below, each Party reserves all arguments with regard to the other Party that existed prior to entering this Settlement Agreement. Nothing in this Settlement Agreement is intended to make CAG and/or Yeroushalmi & Associates or their agents, attorneys,

employees, partners, successors or assigns (collectively "CAG Entities") third party beneficiaries of the CBE Settlement Agreement. Nothing in this Settlement Agreement shall confer on the CAG Entities, or any of them, any right or privilege with respect to the CBE Settlement Agreement. Nothing in this Settlement Agreement is intended to modify, change, or affect the terms of the CBE Settlement Agreement. Therefore, for purposes of settlement, plaintiffs agree that no further projects are necessary.

6.0 **Authority To Enter Into Settlement Agreement**

6.1 Plaintiffs represent that the signatory to this Settlement Agreement is fully authorized to enter into this Settlement Agreement on behalf of Plaintiffs and to legally bind Plaintiffs. Atlantic Richfield represents that the signatory to this Settlement Agreement is fully authorized to enter into this Settlement Agreement on behalf of Atlantic Richfield and to legally bind Atlantic Richfield.

7.0 **Attorney General Review**

7.1 Settlement of this case is contingent on submittal of this Settlement Agreement to the California Attorney General's Office for review. If the Attorney General's Office disapproves of the Settlement Agreement in writing or orally on the record in Court, the Parties are not obligated by this Settlement Agreement to finally submit the Settlement Agreement to the Court for approval under Health & Safety Code §25249.7(f).

7.2 Consistent with Section 3003(a) of Title II of the California Code of Regulations, this Settlement Agreement shall be submitted to the Attorney General's Office by Plaintiffs for review within five (5) days of the Parties' execution of this Settlement Agreement.

7.3 Following submittal to the Attorney General, the Parties shall proceed as set forth in Section 9.0 of this Settlement Agreement.

8.0 **Execution In Counterparts**

8.1 This Settlement Agreement may be executed in counterparts, which taken together shall be deemed to constitute one and the same document.

9.0 **Entry of Judgment Pursuant to Settlement Agreement Required**

9.1 Unless a Party determines that it does not want this Settlement Agreement submitted to the Court for approval and entry of judgment because of disapproval of all or any portion of the Settlement Agreement by the

Attorney General's Office, Plaintiffs shall submit this Settlement Agreement to the Court for consideration as required by Health and Safety Code section 25249.7(f)(4). Plaintiffs will provide the Court with the necessary information to allow the Court to make the findings required by Health and Safety Code section 25249.7(f)(4)(A)-(C).

9.2 If a Party determines, consistent with Section 9.1 above, not to submit this Settlement Agreement to the Court for approval, that Party shall provide written notice of that fact to all Parties.

9.3 This Settlement Agreement shall be null and void, and be without any force or effect, unless approved by the Court as required by Health and Safety Code section 25249.7(f)(4)(A)-(C) and substantially in the form attached as Exhibit 2.

9.4 An agreed form of the [Proposed] Judgment adopting and approving this Settlement Agreement is attached as Exhibit 2.

10.0 Entire Agreement

10.1 This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No other agreements, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

11.0 Modification of Settlement Agreement

11.1 This Settlement Agreement may only be modified in writing by all Parties hereto.

12.0 Application of Settlement Agreement

12.1 This Settlement Agreement shall apply to, be binding upon, and inure to the benefit of, the Plaintiffs and the Released Parties identified in Section 2.1 above.

13.0 Notification Requirements

13.1 Any notice required or permitted hereunder shall be effective only if in writing and delivered in person or sent by telecopy, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For Plaintiffs:

Reuben Yeroshalmi, Esq.
Yeroshalmi & Associates
3700 Wilshire Blvd., Suite 480
Los Angeles, CA 90010
Fax: (213) 382-3430

For Atlantic Richfield:

Deborah P. Felt
BP America, Inc.
Legal Western Region
6 Centerpointe Drive, Room 548
La Palma, CA 90623
Fax: (714) 228-6570

and

Matthew S. Covington, Esq.
DLA Piper Rudnick Gray Cary US LLP
153 Townsend Street, Suite 800
San Francisco, CA 94107-1957
Fax: (415) 836-2501

Any party may change its designee(s) for purposes of notification by providing notice of such change pursuant to this section.

14.0 Effective Date

14.1 The "Effective Date" specified in this Settlement Agreement is the date that a judgment substantially in the form attached hereto as Exhibit 2 is entered by the Court as the judgment in the Lawsuit pursuant to the terms of this Settlement Agreement (hereinafter, "Judgment") and has become final and non-appealable.

14.2 For purposes of Section 14. 1, the Judgment shall be final and nonappealable on the date that all rights to challenge the Judgment on appeal have expired, or, if an appeal of the Judgment is properly filed, on the date when all rights to seek review of an appellate decision upholding the Judgment have expired.

Dated

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CONSUMER ADVOCACY GROUP, INC.

By:

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