

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1501
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF SETTLEMENT

Please print or type required information Original Filing Supplemental Filing Corrected Filing

| | | | | |
|------------------------------|--|---|---|--|
| PARTIES TO THE ACTION | PLAINTIFF(S) Ramy Eden | | | |
| | DEFENDANT(S) INVOLVED IN SETTLEMENT Tesoro Refining & Marketing Company LLC; Stram, Inc. | | | |
| CASE INFO | COURT DOCKET NUMBER N/A | | COURT NAME | |
| | SHORT CASE NAME | | | |
| REPORT INFO | INJUNCTIVE RELIEF Posting of Prop. 65 warnings for service stations per 27 CCR sections 25607.26 and 25607.27. | | | |
| | PAYMENT: CIVIL PENALTY \$3,000.00 | PAYMENT: ATTORNEYS FEES \$16,000.00 | PAYMENT: OTHER N/A | For Internal Use Only |
| | WILL SETTLEMENT BE SUBMITTED TO COURT? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | IF YES, AFTER ENTRY OF JUDGMENT BY COURT, REPORT OF ENTRY OF JUDGMENT MUST BE SUBMITTED TO ATTORNEY GENERAL | DATE SETTLEMENT SIGNED 03 / 15 / 2023 | |
| | COPY OF SETTLEMENT MUST BE ATTACHED | | | |
| FILER INFO | NAME OF CONTACT Jarrett Charo | | | |
| | ORGANIZATION Jarrett Charo APC | | TELEPHONE NUMBER (619) 350-3334 | |
| | ADDRESS 4079 Governor Dr., No. 1018 | | FAX NUMBER () | |
| | CITY San Diego | STATE CA | ZIP 92122 | E-MAIL ADDRESS jcharo@charolaw.com |

FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the settlement to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

Clear Form

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Ramy Eden (“Eden”), Tesoro Refining & Marketing Company LLC (“Tesoro”), and Stram, Inc. (“Stram”). Together, Eden, Tesoro, and Stram are collectively referred to as the “Parties.” Eden is an individual who resides in the State of California and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances present at commercial establishments as well as those contained in consumer products. Eden alleges that Tesoro and Stram are persons in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, et seq. (“Proposition 65”).

1.2 General Allegations. Eden alleges that Tesoro and Stram have exposed individuals to the chemical unleaded gasoline at the service station located at 1330 Morena Boulevard, San Diego, California without first providing individuals the health hazard exposure warning required by Proposition 65. Unleaded gasoline is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

1.3 Subject Location Description. The location covered by this Settlement Agreement is the service station located at 1330 Morena Boulevard in San Diego, California (“Subject Location”).

1.4 Notices of Violation. On December 22, 2022, Eden served Tesoro, Stram, other alleged violators, and various public enforcement agencies with an initial notice of violation which was assigned Attorney General Number 2022-03087 (“Initial Notice”). On January 12, 2023, Eden served Tesoro, Stram, and various public enforcement agencies with an amended notice of violation which was assigned Attorney General Number 2023-00107 (“Amended Notice”) which amended the Initial Notice (collectively, “Notices”). The Amended Notice provided Tesoro, Stram and such others, including public enforcers, with notice that alleged that Tesoro and Stram were in violation of California Health & Safety Code § 25249.6, for failing to provide the “safe harbor” warnings described in California Code of Regulations Title 27, sections 25607.26 and 25607.27 to customers and other individuals who came onto the premises of the Subject Location. No public enforcer has diligently prosecuted the allegations set forth in the Notices.


1.5 No Admission. Tesoro and Stram each deny the material, factual, and legal allegations contained in the Notices and maintain that, to the best of their knowledge, the Subject Location has been and is in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Tesoro


and/or Stram of any fact, finding, conclusion, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Tesoro and/or Stram of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Tesoro and Stram. However, this section 1.6 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notices, Tesoro and Stram each maintain that they have not violated Proposition 65.

1.6 Effective Date. For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date fourteen (14) days following the date this Settlement Agreement is last executed by the Parties.

2. INJUNCTIVE RELIEF: WARNINGS

2.1 Clear and Reasonable Warning. As of the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this § 2.1 must be provided at the Subject Location so long as at least one of Tesoro or Stram is “doing business” (as that term is used in California Health and Safety Code section 25249.6) at the Subject Location. The warning shall consist of the following text:

 **WARNING:** Breathing the air in this area or skin contact with petroleum products can expose you to chemicals including benzene, motor vehicle exhaust and carbon monoxide, which are known to the State of California to cause cancer and birth defects or other reproductive harm. Do not stay in this area longer than necessary. For more information go to www.P65Warnings.ca.gov/service-station

 **ADVERTENCIA:** Respirar el aire en esta área o el contacto dérmico con derivados del petróleo puede exponerle a químicos incluyendo benceno, gases de escape de motores y monóxido de carbono los cuales son conocidos por el Estado de California como causantes de cáncer y defectos de nacimiento u otros daños reproductivos. No permanezca en esta área por más tiempo del necesario. Para mayor información visite www.P65Warnings.ca.gov/service-station

The words “**WARNING:**” and “**ADVERTENCIA:**” shall be in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the words “**WARNING:**” and “**ADVERTENCIA:**” shall be a black exclamation point in a yellow equilateral triangle with a black outline. The symbol must be in a size no smaller than the height of the words “**WARNING:**” and “**ADVERTENCIA:**”.

The warning shall be posted on a sign at each gas pump at the Subject Location and the warning must be printed in no smaller than 22-point type and be enclosed in a box. If other signage at the Subject Location is provided for the public in a language other than English and Spanish, the warning must be provided in

English, Spanish, and that other language.

2.2 Compliance with Warning Regulations. The Parties agree that Tesoro and Stram shall be deemed to be in compliance with this Settlement Agreement by either adhering to § 2.1 of this Settlement Agreement or by providing warnings that comply with Health and Safety Code § 25249.6 or by complying with warning requirements adopted by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”) after the Effective Date.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

Pursuant to California Health and Safety Code § 25249.7(b)(2), and in settlement of all the claims alleged in the Notices or referred to in this Settlement Agreement, Tesoro and Stram shall each pay **\$1,500.00** as a Civil Penalty in accordance with this Section. The Civil Penalty payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the Penalty remitted to OEHHA and the remaining 25% of the Penalty remitted to Eden. The Civil Penalty payments shall be delivered to the addresses identified in § 3.2, below.

3.1 Date for Payment of Civil Penalty. Within thirty (30) days of the Effective Date, Tesoro and Stram shall each issue two separate checks for the Civil Penalty payment: one check made payable to “OEHHA” in the amount of **\$1,125.00**; and one check made payable to (b) “Ramy Eden” in the amount of **\$ 375.00**. The Civil Penalty payment(s) shall be delivered to the addresses identified in § 3.2, below.

3.2 Payment Procedures.

(a) Issuance of Payments. Payments shall be delivered as follows:

(i) All payments owed to Eden, pursuant to § 3 shall be delivered to the following payment address:

Jarrett S. Charo
Jarrett Charo APC
4079 Governor Dr., No. 1018
San Diego, CA 92122

(ii) All payments owed to OEHHA pursuant to § 3 shall be delivered directly to OEHHA (Memo Line “Prop 65 Penalties”) at the following addresses:

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment

P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

(b) Copy of Payments to OEHHA. Tesoro and Stram each agree to provide Eden's counsel with a copy of checks payable to OEHHA, simultaneous with its penalty payments to Eden, which copy shall be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHA.

(c) Tax Documentation. Tesoro and Stram each agree to provide a completed IRS 1099 for its payments to, and Eden agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

- (i) "Ramy Eden" whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is fully executed by the Parties;
- (ii) "Jarrett Charo APC" (EIN: 84-2408511) at the address provided in Section 3.2(a)(i); and
- (iii) "Office of Environmental Health Hazard Assessment" (EIN: 68-0284486) 1001 I Street, Sacramento, CA 95814.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that Eden and his counsel offered to reach preliminary agreement on the material terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to them. The Parties thereafter reached an accord on the compensation due to Eden and his counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure § 1021.5, for all work performed through the settlement of this matter. Under these legal principles, Tesoro and Stram shall each reimburse Eden's counsel for fees and costs incurred as a result of investigating and bringing this matter to Tesoro and Stram's attention, and negotiating a settlement in the public interest. Within thirty (30) days of the Effective Date, Tesoro and Stram shall each issue one check payable to "Jarrett Charo APC" in the amount of **\$8,000.00** and deliver it to the address identified in § 3.2(a)(i), above. For the avoidance of doubt, Tesoro and

Stram are each independently responsible for their respective penalty and reimbursement of fees and costs payments.

5. RELEASE OF ALL CLAIMS

5.1 Release of Tesoro, Stram and all affiliated entities. This Settlement Agreement is a full, final and binding resolution between Eden, acting on his own behalf and in the public interest, and Tesoro, and Stram of any violation of Proposition 65 that was or could have been asserted by Eden or on behalf of his past and current agents, representatives, attorneys, successors, and/or assigns (“Releasers”) against Tesoro and Stram and each of their respective parents, subsidiaries, assigns, predecessors, successors, affiliated entities, directors, officers, members, marketplaces, employees, agents, and attorneys (“Releasees”), based on the alleged failure to warn about exposures to unleaded gasoline under Proposition 65 at the Subject Location up through the Effective Date, as alleged in the Notices. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to unleaded gasoline at the Subject Location, as set forth in the Notices.

In further consideration of the promises and agreements herein contained, Eden, on behalf of his past and current agents, representatives, attorneys, successors, and/or assigns, hereby waives any and all rights he may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims against Tesoro, Stram, and Releasees -- including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not exclusively, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65 -- with respect to the alleged or actual failure to warn about exposures to unleaded gasoline required under Proposition 65 distributed, sold, or offered for sale by Tesoro or Stram at the Subject Location, up through the Effective Date.

5.2 Tesoro and Stram’s Release of Eden. Tesoro and Stram, on behalf of themselves, their past and current agents, representatives, attorneys, successors and/or assignees, hereby waive any and all claims against Eden, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Eden and/or his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against them in this matter, or with respect to the Subject Location.

5.3 California Civil Code § 1542. It is possible that other claims not known to the Parties arising out of the facts alleged in the Notices and relating to alleged violations of Proposition 65 at the Subject Location will

develop or be discovered. Eden on behalf of himself only, on one hand, and Tesoro and Stram, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Eden, Tesoro, and Stram each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5.5. Public Benefit. It is Tesoro and Stram's understanding that the commitments each has agreed to herein, and actions to be taken by Tesoro and Stram under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in California Code of Civil Procedure § 1021.5 and California Code of Regulations tit. 11, § 3201. As such, it is the intent of Tesoro and Stram that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Tesoro's and/or Stram's alleged failure to provide Proposition 65 service station warnings at the Subject Location, such private party action would not confer a significant benefit on the general public as to the Subject Location addressed in this Settlement Agreement, provided that Tesoro and Stram are in material compliance with this Settlement Agreement.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

7. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the law of the State of California and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable or limited by reason of law generally, or as to unleaded gasoline, then Tesoro and Stram may

provide written notice to Eden of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Subject Location is so affected.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement to any Party shall be in writing and personally delivered or sent to that Party—via: (i) first-class registered or certified mail with return receipt requested; or (ii) overnight or two-day courier—at the following addresses:

For Eden:

Jarrett S. Charo
Jarrett Charo APC
4079 Governor Drive, No. 1018
San Diego, CA 92122

For Tesoro:

Malcolm Weiss
Jennifer MikoLevine
Hunton Andrews Kurth LLP
550 South Hope Street, Suite 2000
Los Angeles, CA 90071

For Stram:

William B. Treitler
Treitler & Hager, LLP
3737 Camino del Rio South, Suite 109
San Diego, CA 92108

Either party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

9. COUNTERPARTS: SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile, .pdf signature, or DocuSign signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Eden agrees to comply with the reporting requirements referenced in California Health & Safety Code

§ 25249.7(f).

11. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties.

12. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood, and agree to all of the terms and conditions contained of this Settlement Agreement.

Agreed and accepted:

Date:

By: _____

Ramy Eden

Agreed and accepted:

Date: March 14, 2023

By: Lisa D. Wilson

Printed name and title: Lisa Wilson VP, West Division Clean Products

On behalf of Tesoro Refining & Marketing Company LLC

Approved as to Form

JPW
JPW

Agreed and accepted:

Date:

By: _____

Print name and title: _____

On behalf of Stram, Inc.

§ 25249.7(f).

11. MODIFICATION

This Settlement Agreement may be modified only by a written agreement of the Parties.

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13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood, and agree to all of the terms and conditions contained of this Settlement Agreement.

Agreed and accepted:

3/15/2023

Date:

By:

DocuSigned by
Ramy Eden

14001P0103141A
Ramy Eden

Approved as to Form

JPW
JPW

Agreed and accepted:

Date: March 14, 2023

By:

Lisa Wilson

Printed name and title: Lisa Wilson VP, West Division Clean Products

On behalf of Tesoro Refining & Marketing Company LLC

Agreed and accepted:

Date:

By:

Print name and title: _____

On behalf of Stram, Inc.

§ 25249.7(f).

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13. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood, and agree to all of the terms and conditions contained of this Settlement Agreement.

Agreed and accepted:

Date:

By: _____

Ramy Eden

Agreed and accepted:

Date:

By: _____

Printed name and title: _____

On behalf of Tesoro Refining & Marketing Company LLC

Agreed and accepted:

Date: 3/13/2023

By:  _____

Print name and title: YVONNE BOYER PRES.

On behalf of Stram, Inc.