

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Ramy Eden (“Eden”), Acacia K. Group, L.P. (“Acacia K”), Rancho Acacia, L.P. (“Rancho Acacia”), Acacia Gasoline & Car Wash of Encinitas, L.P. (“Acacia Encinitas”), and Monterey SD Partners, Inc. (“Monterey”). Together, Acacia K, Rancho Acacia, Acacia Encinitas, and Monterey are collectively referred to as the “Service Station Entities”. Eden and the Service Station Entities 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 the Service Station Entities 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:

- Acacia K and Monterey exposed individuals to the chemical unleaded gasoline at the service station located at 1355 Encinitas Blvd., Encinitas, California (“Encinitas Blvd. Location”) without first providing individuals the health hazard exposure warning required by Proposition 65; and
- Rancho Acacia, Acacia Encinitas, and Monterey exposed individuals to the chemical unleaded gasoline at the service station located at 1060 N. El Camino Real, Encinitas, California (“El Camino Real Location”) 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 Description of Subject Locations. The locations covered by this Settlement Agreement are the service stations located at the Encinitas Blvd. Location and the El Camino Real Location—which are collectively referred to as the “Subject Locations.”

1.4 Notices of Violation. On April 19, 2023, Eden served Acacia K, Monterey, and various public enforcement agencies with a notice of violation regarding the Encinitas Blvd. Location which was assigned Attorney General Number 2023-1051. Also on April 19, 2023, Eden served Rancho Acacia, Monterey, and

various public enforcement agencies with a notice of violation regarding the El Camino Real Location which was assigned Attorney General Number 2023-1047. Each of the above notices (collectively, “Notices”) alleged that the Service Station Entities were in violation of California Health & Safety Code § 25249.6, for failing to provide the requisite warnings to customers and other individuals who came onto the premises of the Subject Locations. To date, no public enforcer has diligently prosecuted the allegations set forth in the Notices.

1.5 No Admission. Service Station Entities each deny the material, factual, and legal allegations contained in the notices of violation and maintain that, to the best of their knowledge, the Subject Locations have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by any of the Service Station Entities 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 Service Station Entities of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Service Station Entities. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the notices of violation, each of the Service Station Entities 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 seven (7) days following the date this Settlement Agreement is executed by Eden and returned to Service Station Entities.

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 each of the Subject Locations so long as at least one of the Service Station Entities is “doing business” (as that term is used in California Health and Safety Code section 25249.6) at that 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

The word “**WARNING:**” shall be in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word “**WARNING:**” 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 word “**WARNING:**”.

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, the warning must be provided in English and that other language.

2.2 Compliance with Warning Regulations. The Parties agree that Service Station Entities 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, Service Station Entities shall collectively pay six thousand dollars (\$6,000.00) 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. The Service Station Entities shall be jointly and severally liable for payment of the Civil Penalty.

3.1 Date for Payment of Civil Penalty. Within seven (7) days of the Effective Date, the Service Station Entities shall collectively issue two separate checks for the Civil Penalty payment: one check made payable to “OEHHA” in the amount of four thousand five hundred dollars (\$4,500.00); and one check made payable to (b) “Ramy Eden” in the amount of one thousand five hundred dollars (\$1,500.00). 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 address set forth in Eden’s IRS Form W-9;

(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. Service Station Entities 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 § 8(a), as proof of payment to OEHHA.

(c) Tax Documentation. Service Station Entities 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 8(a); 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, Service Station Entities shall each reimburse Eden’s counsel for fees and costs incurred as a result of investigating and bringing this matter to Service Station Entities’ attention and negotiating a settlement in the public interest. Within seven (7) days of the Effective Date, Service Station Entities shall collectively issue one check payable to “Jarrett Charo

APC” in the amount of thirty two thousand dollars (\$32,000.00) and deliver it to the address identified in § 8(a), below. The Service Station Entities shall be jointly and severally liable for making this payment.

5. RELEASE OF ALL CLAIMS

5.1 Release of Service Station Entities and all affiliated entities. This Settlement Agreement is a full, final and binding resolution between Eden, acting on his own behalf, and Service Station Entities 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 Service Station Entities and each of their respective parents, subsidiaries, assigns, predecessors, successors, affiliated entities, directors, officers, members, marketplaces, employees, agents, landlords, franchisors, and attorneys (“Releasees”), based on the alleged failure to warn about exposures to unleaded gasoline or otherwise under Proposition 65 at the Subject Locations 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 Locations, as set forth in the notices of violation.

5.2 Service Station Entities’ Release of Eden. Service Station Entities, 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 Locations.

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 Service Station Entities, 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, and the Service Station Entities each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5.5. Public Benefit. It is the Service Station Entities' understanding that the commitments each has agreed to herein, and actions to be taken by them 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 Service Station Entities that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Service Station Entities' alleged failure to provide Proposition 65 service station warnings at the Subject Locations, such private party action would not confer a significant benefit on the general public as to the Subject Locations addressed in this Settlement Agreement, provided that Service Station Entities are in material compliance with this Settlement Agreement.

5.6. No Pending Claims. Other than the material, factual, and legal allegations contained in the notice of violation, Eden: (a) is not aware of any complaint, claim or action pending by him, or by any other person or entity, against the Service Station Entities in any federal, state or local court or government agency or before any arbitrator or other tribunal; (b) is not aware of any conduct by any of the Service Station Entities which Eden believes violated or currently violates any law, rule, regulation, or public policy; and (c) has no present intention of participating in any claim against the Service Station Entities for the material, factual, or legal allegations contained in the notice of violation.

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 Service Station Entities 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 Locations are 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) email; (ii) first-class registered or certified mail with return receipt requested; or (iii) overnight or two-day courier—at the following addresses:

(a). For Eden:

Jarrett S. Charo
Jarrett Charo APC
4079 Governor Drive, No. 1018
San Diego, CA 92122
jcharo@charolaw.com

(b). For Service Station Entities:

Travis M. Bray
NAVIGATO & BATTIN, LLP
755 West A Street, Suite 150
San Diego, California 92101
travis@navbat.com

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.

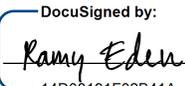
13. AUTHORIZATION

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

Agreed and accepted:

7/5/2023

Date:

By:  _____
14D08191F02B41A...
Ramy Eden

Agreed and accepted:

Jul 10, 2023

Date:

By:  _____
Lawrence Kourie (Jul 10, 2023 15:33 PDT)

Printed name and title: Lawrence Kourie owner

On behalf of Monterey SD Partners, Inc.

Agreed and accepted:

Jul 10, 2023

Date:

By:  _____
Lawrence Kourie (Jul 10, 2023 15:33 PDT)

Printed name and title: Lawrence Kourie owner

On behalf of Acacia K. Group, L.P.

Agreed and accepted:

Jul 10, 2023

Date:

By:  _____
Lawrence Kourie (Jul 10, 2023 15:33 PDT)

Printed name and title: Lawrence Kourie owner

On behalf of Rancho Acacia, L.P.

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Agreed and accepted:

Date: **Jul 10, 2023**

By: 
Lawrence Kourie (Jul 10, 2023 15:33 PDT)

Printed name and title: Lawrence Kourie. Owner

On behalf of Acacia Gasoline & Car Wash of Encinitas, L.P.

Acacia K Rancho Acacia Monterey SD Settlement Agreement (signed by claimant)

Final Audit Report

2023-07-10

Created:	2023-07-10
By:	davina gill (davina@navbat.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAIO-oJ-TtQ24akvKz2wgNJ4sl5zPQf-IF

"Acacia K Rancho Acacia Monterey SD Settlement Agreement (signed by claimant)" History

 Document digitally presigned by DocuSign\, Inc. (enterprisesupport@docusign.com)

2023-07-05 - 11:30:51 PM GMT- IP address: 75.80.12.172

 Document created by davina gill (davina@navbat.com)

2023-07-10 - 9:51:50 PM GMT- IP address: 75.80.12.172

 Document emailed to lpkourie@acaciagroup.com for signature

2023-07-10 - 9:55:07 PM GMT

 Email viewed by lpkourie@acaciagroup.com

2023-07-10 - 10:05:52 PM GMT- IP address: 104.28.85.115

 Signer lpkourie@acaciagroup.com entered name at signing as Lawrence Kourie

2023-07-10 - 10:33:30 PM GMT- IP address: 70.183.91.146

 Document e-signed by Lawrence Kourie (lpkourie@acaciagroup.com)

Signature Date: 2023-07-10 - 10:33:32 PM GMT - Time Source: server- IP address: 70.183.91.146

 Agreement completed.

2023-07-10 - 10:33:32 PM GMT