

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Ramy Eden (“Eden”) and Excaliber Fuels (“Excaliber”). Eden and Excaliber 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 Excaliber is a person 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 Excaliber:

- Exposed individuals to the chemical unleaded gasoline at the service station located at 1199 S. State College Blvd., Anaheim, CA (“State College Location”) without first providing individuals the health hazard exposure warning required by Proposition 65; and
- Exposed individuals to the chemical unleaded gasoline at the service station located at 1501 E. Edinger Ave., Santa Ana, CA (“Edinger 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 State College Location and the Edinger Location—which are collectively referred to as the “Subject Locations.”

1.4 Notices of Violation. On June 6, 2023, Eden served Excaliber and various public enforcement agencies with notices of violation regarding the State College Location and the Edinger Location which were assigned Attorney General Numbers 2023-01584 and 2023-01584, respectively. Both of the above notices (collectively, “Notices”) alleged that Excaliber was 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. Excaliber denies the material, factual, and legal allegations contained in the


notices of violation and maintains that, to the best of its 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 Excaliber 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 Excaliber of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Excaliber. 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, Excaliber maintains that it has not violated Proposition 65.

1.6 Effective Date. For purposes of this Settlement Agreement, the term “Effective Date” shall mean the later of: (a) the date this Settlement Agreement is executed by Eden and returned to Excaliber; or (b) the 66th day after the Notices in Section 1.4 were served so long as, by that date, no public enforcer has commenced prosecuting the allegations set forth in the Notices.

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 Excaliber 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

 **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 Excaliber 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, Excaliber shall pay \$6,000.00 (six thousand dollars) 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 seven (7) days of the Effective Date, Excaliber shall issue two separate checks for the Civil Penalty payment: one check made payable to "OEHHA" in the amount of \$4,500.00 (four thousand five hundred dollars); and one check made payable to (b) "Ramy Eden" in the amount of \$1,500.00 (one thousand five hundred dollars). 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.** Excaliber agrees 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.** Excaliber agrees 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, Excaliber shall each reimburse Eden's counsel for fees and costs incurred as a result of investigating and bringing this matter to Excaliber's attention and negotiating a settlement in the public interest. Within seven (7) days of the Effective Date, Excaliber shall issue one check payable to "Jarrett Charo APC" in the amount of \$18,000.00 (eighteen thousand dollars) and deliver it to the address identified in § 8(a), below.

5. **RELEASE OF ALL CLAIMS**

5.1 Release of Excaliber and affiliated entities. This Settlement Agreement is a full, final and binding resolution between Eden, acting solely on his own behalf, and Excaliber 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 Excaliber and each of its 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 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. The Parties acknowledge and understand that they are entering into this Settlement Agreement before the expiration of the 60-day notice period and that entry into this Settlement Agreement will not preclude a public enforcement agency from bringing a public enforcement action concerning the allegations set forth in the Notices.

5.2 Excaliber’s Release of Eden. Excaliber, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives 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 Locations will develop or be discovered. Eden on behalf of himself only, on one hand, and Excaliber, 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 Excaliber acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5.5. Public Benefit. It is Excaliber's understanding that the commitments it has agreed to herein, and actions to be taken by it 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 Excaliber that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Excaliber's 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 Excaliber is 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 Excaliber 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 Excaliber:

John Coates

The Law Firm of John Coates

555 E. Pacific Coast Hwy #218

Long Beach, CA 90806

john@adadefenseteam.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.

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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:

8/7/2023

Date:

By: DocuSigned by:
Ramy Eden
14D08191F02B41A... _____
Ramy Eden

Agreed and accepted:

Date: August 4, 2023

By:  _____

Printed name and title: Hussein Berri, President

On behalf of Excaliber Fuels