

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Ramy Eden (“Eden”) and Safeway Inc. (“Safeway”). Eden and Safeway are collectively referred to as the “Parties,” and each individually as a “Party.” Eden alleges that Safeway 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: Safeway exposed individuals to the chemical unleaded gasoline at the service station located at 501 Willie Stargell Ave. in Alameda, 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. Safeway denies these allegations.

1.3 Description of Subject Location. The location covered by this Settlement Agreement is the service station located at 501 Willie Stargell Ave. in Alameda, California (“Subject Location”).

1.4 Notice of Violation. On July 11, 2023, Eden served Safeway and various public enforcement agencies with a notice of violation regarding the Subject Location which was assigned Attorney General Number 2023-02032 (“Notice”). The Notice alleged that Safeway 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 Location. To date, no public enforcer has diligently prosecuted the allegations set forth in the Notice. Safeway denies the allegations contained in the Notice.


1.5 No Admission. As stated above, Safeway denies the material, factual, and legal allegations contained in the Notice and maintains that, to the best of its 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 Safeway 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 Safeway of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Safeway. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Safeway maintains that it has not violated Proposition 65.

1.6 Effective Date. The term “Effective Date” shall mean the date on which Eden executes and returns

this Settlement Agreement to Safeway.

2. INJUNCTIVE RELIEF: WARNINGS

2.1 Clear and Reasonable Warning. As of the Effective Date, and continuing thereafter, Safeway shall display a clear and reasonable exposure warning as set forth in this § 2.1. 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 words “**WARNING:**” shall be in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the words “**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 words “**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. Safeway’s obligations under this Section 2.1 shall be subject and subordinate to the current existing law and language of Proposition 65 and all other applicable law and regulations, and Safeway shall have the right to conform any warnings or labels consistent with such authority without violating this Agreement.

2.2 Compliance with Warning Regulations. The Parties agree that Safeway shall be deemed to be in compliance with this Settlement Agreement by either adhering to § 2.1 of this Settlement Agreement, providing warnings that comply with Health and Safety Code § 25249.6, or complying with any applicable requirements, rules, or regulations, including those 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 Notice or referred to in this Settlement Agreement, Safeway shall pay \$5,000.00 (five 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 fourteen(14) days of the later of the Effective Date or receipt of IRS W-9 forms for Eden and OEHHA, Safeway shall issue two separate payments for the Civil Penalty payment: one payment made by wire transfer to “OEHHA” in the amount of \$3,750.00 (three thousand seven hundred fifty dollars); and one check made payable to (b) “Ramy Eden” in the amount of \$1,250.00 (one thousand two hundred fifty dollars). Each of the Civil Penalty payments 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) The payment owed to Eden, pursuant to § 3, shall be delivered to address set forth in Eden’s IRS Form W-9;

(ii) The payment owed to OEHHA pursuant to § 3 shall be sent via wire to:

Account Name: OEHHA
Bank Name: Bank of America
Bank Address: 2000 Clayton Road, Bldg. D, 5th Fl., Concord, CA 94520
Account No.: 01482-80005
ABA No.: 026009593

Memo: “OEHHA beneficiary for purpose of Prop. 65”

(b) Tax Documentation. Safeway 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 one (1) business day 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, Safeway shall each reimburse Eden's counsel for fees and costs incurred as a result of investigating and bringing this matter to Safeway's attention and negotiating a settlement in the public interest in the total amount of ten thousand dollars (\$10,000.00). Within fourteen (14) days of the later of the Effective Date or receipt of the IRS W-9 form for Jarrett Charo APC, Safeway shall issue one check payable to "Jarrett Charo APC" in the amount of ten thousand dollars (\$10,000.00) and deliver it to the address identified in § 8(a), below.

5. RELEASE OF ALL CLAIMS

5.1 Release of Safeway and affiliated entities. This Settlement Agreement is a full, final and binding resolution between Eden, acting solely on his own behalf, and Safeway 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 ("Releasors") against Safeway 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 Location up through the Effective Date, as alleged in the Notice. 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 Notice. Releasors hereby waive any and all claims against Releasees, for any and all actions taken or statements made (or those that could have been taken or made) by Releasees, relating to enforcement of Proposition 65 concerning exposure to Unleaded Gasoline (Wholly Vaporized) at the Subject Location.

5.2 Safeway's Release of Eden. Safeway, 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 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 Notice 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 Safeway, 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 Safeway acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5.5. Public Benefit. It is Safeway'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 Safeway that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Safeway'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 Safeway 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 Safeway 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) 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 Safeway:

Litigation Counsel
Albertsons Companies
150 Pierce Rd.
Itasca, IL 60143
julia.emfinger@albertsons.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

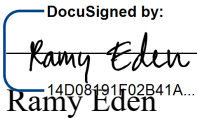
This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any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

Date: 4/10/2024

By:  _____
Ramy Eden

Agreed and accepted:

Date: 04-17-2024 | 07:43:16 PDT

By:  _____
Printed name and title: Adwoa Gharthey-Tagoe Seymour Litigation
On behalf of Safeway Inc.