

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between Ramy Eden (“Eden”) and C.W. Brower, Inc. (“C.W. Brower”). Eden and C.W. Brower 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 C.W. Brower 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 C.W. Brower:

- Exposed individuals to the chemical unleaded gasoline at the service station located at 3702 Atchison St, Riverbank, CA (“Atchison St. Location”) without first providing individuals the health hazard exposure warning required by Proposition 65;
- Exposed individuals to the chemical unleaded gasoline at the service station located at 3460 Oakdale Rd., Modesto, CA (“Oakdale Rd. 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 2549 Yosemite Blvd., Modesto, CA (“Yosemite Blvd. 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 Atchison St. Location, the Oakdale Rd. Location, and the Yosemite Blvd. Location—which are collectively referred to as the “Subject Locations.”

1.4 Notices of Violation. On July 11, 2023, Eden served C.W. Brower and various public enforcement agencies with notices of violation regarding the Atchison St. Location, the Oakdale Rd. Location, and the Yosemite Blvd. Location, which were assigned Attorney General Numbers 2023-02036, 2023-02035, and 2023-02034, respectively. These three notices (collectively, “Notices”) alleged that C.W. Brower 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. C.W. Brower 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 C.W. Brower 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 C.W. Brower of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by C.W. Brower. 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, C.W. Brower 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 date this Settlement Agreement is executed by Eden and returned to C.W. Brower.

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 C.W. Brower 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 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.

2.2 Compliance with Warning Regulations. The Parties agree that C.W. Brower 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, C.W. Brower shall pay nine thousand dollars (\$9,000.00) 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.

3.1 Date for Payment of Civil Penalty. Within three (3) days of the Effective Date, C.W. Brower shall issue two separate checks for the Civil Penalty payment:

- (a) one check made payable to “OEHHA” in the amount of six thousand seven hundred fifty dollars (\$6,750.00); and
- (b) one check made payable to “Ramy Eden” in the amount of two thousand two hundred fifty dollars (\$2,250.00).

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) 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. C.W. Brower 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. C.W. Brower 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, C.W. Brower shall each reimburse Eden’s counsel for fees and costs incurred as a result of investigating and bringing this matter to C.W. Brower’s attention and negotiating a settlement in the public interest. Within three (3) days of the Effective Date, C.W. Brower shall issue one check payable to “Jarrett Charo APC” in the amount of twenty-one thousand dollars (\$21,000.00) and deliver it to the address identified in § 8(a), below.

5. RELEASE OF ALL CLAIMS

5.1 Release of C.W. Brower and affiliated entities. This Settlement Agreement is a full, final and binding resolution between Eden, acting solely on his own behalf, and C.W. Brower 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 C.W. Brower 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.

5.2 C.W. Brower’s Release of Eden. C.W. Brower, 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 C.W. Brower, 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 C.W. Brower acknowledge and understand the significance and consequences of this specific waiver

of California Civil Code § 1542.

5.5. Public Benefit. It is C.W. Brower'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 C.W. Brower that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to C.W. Brower'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 C.W. Brower 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 C.W. Brower 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 C.W. Brower:
Thomas Niederreuther
C.W. Brower, Inc.
413 S. Riverside Dr., Suite A
niederreuther2000@hotmail.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:

1/24/2024


Date:

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

Agreed and accepted:

1-23-24

Date:

By:  _____

Printed name and title: TOM NIEBERKREUTER
On behalf of C.W. Brower, Inc. V.P., GENERAL COUNSEL