

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) Sandra Assareh			
	DEFENDANT(S) INVOLVED IN SETTLEMENT Dave Graham, Inc. dba Newport Hills 76			
CASE INFO	COURT DOCKET NUMBER N/A		COURT NAME	
	SHORT CASE NAME			
REPORT INFO	INJUNCTIVE RELIEF			
	PAYMENT: CIVIL PENALTY \$4,500	PAYMENT: ATTORNEYS FEES \$17,500	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 / /	
	COPY OF SETTLEMENT MUST BE ATTACHED			
FILER INFO	NAME OF CONTACT Gilbert Alvandi, Esq.			
	ORGANIZATION Alvandi Law Group		TELEPHONE NUMBER ((949)) 777-9897	
	ADDRESS 20301 SW Acacia Street, 2nd Floor		FAX NUMBER ((949)) 777-9448	
	CITY Newport Beach	STATE CA	ZIP 92660-1732	E-MAIL ADDRESS nooshin@alvandigroup.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.

PROPOSITION 65 SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties This Settlement Agreement (“Agreement”) is entered into by and between SANDRA ASSAREH (“Assareh”), on the one hand, and DAVE GRAHAM, INC. (“Graham”) on the other hand, with Assareh and Graham each individually referred to as a “Party” and, collectively, the “Parties.” Assareh 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. Assareh alleges Graham is a person in the course of doing business for purposes of California Health & Safety Code § 25249.11(b) (“Proposition 65”).

1.2 Subject Location The location covered by this Settlement Agreement is the service station located at Newport Hills 76, 2690 San Miguel Drive, Newport Beach, California ~~92649~~ (“Subject Location”). 92660 (DMP)

1.3 Notice of Violation On or about August 17, 2023, Assareh served Graham, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging Graham 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. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

1.4 General Allegations Unleaded gasoline is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer. Assareh alleges Graham potentially exposed individuals to the chemical unleaded gasoline at the Subject Location without first providing individuals with the health hazard exposure warning required by Proposition 65.

1.5 No Admission Graham denies the material, factual, and legal allegations contained in the notice of violation 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, nor shall compliance with this Agreement constitute or be construed as, an admission by Graham of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish

or otherwise affect Graham's obligations, responsibilities and duties under this Settlement Agreement.

1.6 Effective Date For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully 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 in English as set forth in this § 2.1 must be provided at the Subject Location so long as Graham is doing business there. 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 Graham 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, Graham shall collectively pay a total of Four thousand

five hundred dollars and zero cents (\$4,500.00) 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 Assareh. 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 Effective Date, Graham shall collectively issue two separate checks for the Civil Penalty payment: one check made payable to “OEHHA” in the amount of Three thousand three hundred seventy-five dollars and zero cents (\$3,375.00); and one check made payable to (b) “Sandra Assareh” in the amount of One thousand one hundred twenty-five dollars and zero cents (\$1,125.00). 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) The payment owed to Assareh, pursuant to § 3 shall be delivered to the following payment address:

Alvandi Law Group, P.C.
Alvandi Plaza
20301 SW Acacia Street, Second Floor
Newport Beach, CA 92660

(ii) The payment 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. Graham agrees to provide Assareh’s counsel with a copy of the check payable to OEHHA, simultaneous with its penalty payment to Assareh, which copy shall be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHA.

(c) **Tax Documentation.** Graham agrees to provide a completed IRS 1099 for their payments to, and Assareh agrees to provide IRS W-9 forms for, each of the following payees under this Settlement Agreement:

i. "Sandra Assareh" whose address and tax identification number shall be provided within five (5) days after this Settlement Agreement is executed by Parties;

ii. "Alvandi Law Group, P.C." (EIN:27441376) 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.

(d) Notwithstanding the payment procedures set forth above, payment may also be made by ACH or wire transfer. Instructions will be provided separately upon request.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that Assareh and her 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 Assareh and her 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, Graham shall reimburse Assareh's counsel for fees and costs incurred as a result of investigating and bringing this matter to Graham's attention and negotiating a settlement in the public interest. Within fourteen (14) days of the Effective Date, Graham shall collectively issue one check payable to "Alvandi Law Group P.C." in the amount of Seventeen thousand five hundred dollars and zero cents (\$17,500.00) and deliver it to the address identified in § 3.2(a)(i), above.

5. RELEASE OF ALL CLAIMS

5.1 Release of Graham and all affiliated entities. This Settlement Agreement is a full, final and binding resolution between Assareh and Graham of any violation of Proposition 65 that was or could have been asserted by Assareh or on behalf of her past and current agents, representatives, attorneys, successors, and/or assigns ("Releasers") against Graham and 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 the listed chemical under Proposition 65 at the Subject

Location up through the Effective Date, as alleged in the notice of violation. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposures to the listed chemical at the Subject Location, as set forth in the notice of violation.

5.2 Graham' Release of Assareh. Graham, on behalf of themselves, their past and current agents, representatives, attorneys, successors and/or assignees, hereby waive any and all claims against Assareh, her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Assareh and/or her 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 of violation and relating to alleged violations of Proposition 65 at the Subject Location will develop or be discovered. Assareh on behalf of herself only, on one hand, and Graham, 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.

Assareh and Graham each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5.5. Public Benefit. It is Graham' understanding that the commitments agreed to herein, and actions to be taken 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 Graham that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Graham' 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, provided that Graham is 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, Assareh: (a) is not aware of any complaint, claim or action pending by her, or by any other person or entity, against Graham 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 Graham which Assareh believes violated or currently violates any law, rule, regulation, or public policy; and (c) has no present intention of participating in any claim against Graham 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 the listed chemical referenced in the notice of violation, then Graham may provide written notice to Assareh 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 (effective upon confirmation of receipt); (ii) first-class registered or certified mail with return receipt requested; or (iii) overnight or two-day courier—at the following addresses:

For Assareh:
Civil@alvandigroup.com
Alvandi Law Group, P.C.
Alvandi Plaza
20301 SW Acacia Street
Second Floor
Newport Beach, CA 92660

Phone: (949) 777-9897

Fax: (949) 777-9448

For Graham:

Damon.Pitt@klgates.com

Damon M. Pitt

K&L Gates LLP

1 Park Plaza, Twelfth Floor

Orange County, California 92614

Phone: 949.623.3604

Any party, from time to time, may specify in writing to the other parties 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)**

Assareh 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 Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

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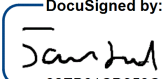
13. **AUTHORIZATION**

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 TO AND ACCEPTED:

Date: 10/17/2023

By: SANDRA ASSAREH

Signature  02EB01GD959C49A...

AGREED TO AND ACCEPTED:

Date: 10/17/2023

By: DAVE GRAHAM, INC.

Name and Title: David Graham Pres.

Signature 