

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties. This Settlement Agreement is entered into by and between XTRA OIL COMPANY (“XTRA”) and Ramy Eden (“Eden”). XTRA and Eden are collectively referred to as the “Parties.” Eden alleges that he 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 XTRA 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 without first providing individuals the health hazard exposure warning required by Proposition 65, XTRA exposed individuals to the chemical unleaded gasoline at the Subject Location (defined in Section 1.3 below). XTRA denies these allegations. Unleaded gasoline is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer. Xtra denies these allegations.

1.3 Description of Subject Location. The location covered by this Settlement Agreement is the service station located at 340 Miller Ave., Mill Valley, California (“Subject Location”).


1.4 Notice of Violation. On or about October 30, 2023, Eden served XTRA and various public enforcement agencies with a notice of violation which was assigned Attorney General No. 2023-03373. The notice of violation alleged that XTRA 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 diligently prosecuted the allegations set forth in the notice of violation. Xtra denies the allegations in the notice.

1.5 No Admission. XTRA 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 presently is, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by XTRA 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 XTRA of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by XTRA. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the notice of violation, XTRA maintains it has not violated Proposition 65.

1.6 Effective Date. For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date on which Eden executes this Settlement Agreement and returns it to XTRA.

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 the Subject Location so long as XTRA 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 XTRA 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, XTRA shall pay a total of five thousand dollars (\$5,000.00) 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 ten (10) days of the Effective Date, XTRA shall issue two separate checks for the Civil Penalty payment:

- (a) one check made payable to “OEHHA” in the amount of three thousand seven hundred fifty dollars (\$3,750.00); and
- (b) one check made payable to “Ramy Eden” in the amount of one thousand two hundred fifty dollars (\$1,250.00).

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) The payment owed to Eden, pursuant to § 3 shall be delivered to the address set forth in Eden’s IRS Form W-9.
- (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. XTRA agrees to provide Eden’s counsel with a copy of the check payable to OEHHA, simultaneous with its penalty payment to Eden, which copy shall be delivered to the address provided in § 8(a), as proof of payment to OEHHA.

(c) Tax Documentation. XTRA 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 executed by Eden;

- (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, XTRA shall reimburse Eden’s counsel for fees and costs incurred as a result of investigating and bringing this matter to XTRA’s attention and negotiating a settlement in the public interest. Within ten (10) days of the Effective Date, XTRA 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 XTRA and all affiliated entities. This Settlement Agreement is a full, final and binding resolution between Eden, acting on his own behalf, and XTRA of any violation of Proposition 65 that Eden asserted or could have asserted for himself for or on behalf of his past and current agents, representatives, attorneys, successors, and/or assigns (“Releasers”) against XTRA and their respective parents, subsidiaries, assigns, predecessors, successors, affiliated entities, directors, officers, members, marketplaces, employees, agents, and attorneys and all refiners, suppliers and distributors of the unleaded gasoline to XTRA at the Subject Location and all their respective parents, subsidiaries, assigns, predecessors, successors, affiliated entities, directors, officers, members, employees, agents, and attorneys (collectively (“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 XTRA’s Release of Eden. XTRA, 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 of violation 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 XTRA, 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 XTRA each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

5.4. Public Benefit. XTRA understands that the commitments agreed to in this Settlement Agreement, 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 XTRA's intent that, to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to XTRA'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, provided that XTRA 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 the listed chemical referenced in the notice of violation, then XTRA 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 in this Settlement Agreement, all correspondence and notices required to be provided pursuant to this Settlement Agreement to any party to the agreement shall be in writing and personally delivered or sent to that party—via: (i) first-class registered or certified mail with return receipt requested; (ii) overnight or two-day courier; or (iii) email—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 XTRA:

Thomas M. Downey
Burnham Brown
2125 Oak Grove Road, Suite 105
Walnut Creek, CA 94598
tdowney@burnhambrown.com

Any 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 that references the Settlement Agreement.

12. ENTIRE AGREEMENT

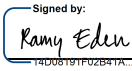
This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related the Settlement Agreement shall be deemed to have been merged within it. No representations or terms of agreement other than those contained in this Settlement Agreement exist or have been made by either party to the agreement to the other party regarding the Settlement Agreement’s subject matter.

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 in this Settlement Agreement.

Agreed and accepted:


Date: 10/20/2024

By:  _____

Ramy Eden

Agreed and accepted:

Date: October 17, 2024

By:  _____

Keith Simas, President on behalf of XTRA OIL

COMPANY