

1 KAMALA D. HARRIS
Attorney General of California
2 ERIC M. KATZ
Supervising Deputy Attorney General
3 DANIEL M. LUCAS
MICHAEL T. ZARRO
4 Deputies Attorney General
State Bar No. 110171
5 300 South Spring Street, Suite 1702
Los Angeles, CA 90013
6 Telephone: (213) 897-0628
7 Fax: (213) 897-2802
E-mail: Michael.Zarro@doj.ca.gov

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Superior Court Of California
County Of Los Angeles

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Sherril R. Carter, Executive Officer/Clerk
By: Judi Lara, Deputy

8 *Attorneys for Plaintiff California State Water
Resources Control Board*
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES
12

13 BC 548526

14 **CALIFORNIA STATE WATER
RESOURCES CONTROL BOARD,**

15 Plaintiff,
16

17 v.

18 **AMI ADINI & ASSOCIATES, INC., A
19 CALIFORNIA CORPORATION; AMI ADINI,
AN INDIVIDUAL; ELIE BALAS, AN
20 INDIVIDUAL; AND DOES 1 THROUGH 100,
INCLUSIVE,**

21 Defendants
22

Case No.

COMPLAINT FOR DAMAGES

- 1. Professional Negligence
- 2. Negligent Misrepresentation

23 **CASE OVERVIEW**

24 1. Defendant Ami Adini & Associates, Inc. (AAA) is a professional services firm
25 specializing in environmental investigation, monitoring and remediation. As such, AAA
26 addresses soil and groundwater contamination on behalf of claimants who seek reimbursement
27 under the Barry Keene Underground Storage Tank Cleanup Trust Fund (Cleanup Fund), which is
28 administered by the State Water Resources Control Board (State Water Board).

1 show their true names and capacities when the same have been ascertained. Plaintiff is informed
2 and believes that each of the Defendants named herein as a Doe is responsible in some manner for
3 the events, occurrences, and circumstances that form the basis of this lawsuit, and is thereby
4 liable for the damages, costs, and other relief sought herein. Plaintiff is informed and believes
5 that each of these fictitiously named Defendants Does 1 through 100, inclusive, were agents,
6 servants, and/or employees of their co-Defendants, and in doing the things alleged in this
7 complaint were acting in the scope of their authority as such agents, servants, and/or employees,
8 and with the permission and consent of their co-Defendants. AAA, Adini, Balas, and Does 1
9 through 100, inclusive, are collectively referred to herein as "Defendants."

10 8. Venue is appropriate in this Court because AAA's principal place of business is located
11 in Los Angeles County, most of the activity alleged herein took place in Los Angeles County, and
12 it is also the County where a substantial amount of environmental services were performed.

13 BACKGROUND

14 9. The Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989 (Act) was
15 enacted in part to "help ensure an efficient petroleum underground storage tank cleanup program
16 that adequately protects public health and safety and the environment and provides for the rapid
17 distribution of cleanup funds." (Health & Saf. Code, § 25299.10, subd. (b)(1).) The Act
18 established the Cleanup Fund, created by the Legislature within the state treasury. (Health & Saf.
19 Code, § 25299.50.)

20 10. Owners of underground storage tanks (USTs) containing petroleum pay money to the
21 Cleanup Fund each year. (Health & Saf. Code, §§ 25299.41, 25299.43.) The current storage fee
22 is 1.4 cents per gallon of petroleum stored. (*Id.*) Owners who pay into the Cleanup Fund and
23 comply with its requirements may make claims for reimbursement from the Cleanup Fund for the
24 costs of corrective action associated with cleaning up releases of petroleum from leaking
25 underground storage tanks. "Claim," under the terms of the Act, means "a submittal to the fund
26 for the reimbursement of costs incurred due to an occurrence. A claim consists of several
27 documents, including, but not limited to, the fund application, reimbursement requests, and
28 verification documents." (Health & Saf. Code, § 25299.13; see also Cal. Code Regs., tit. 23,

1 § 2814, subd. (d).) UST owners or operators who make claims on the Cleanup Fund are called
2 “claimants”. (Cal. Code Regs., tit. 23, § 2804.)

3 11. “Corrective action” within the Act, means various specified activities associated with
4 identifying cleanup needs and cleaning up releases of petroleum and petroleum products from an
5 underground storage tank. The State Water Board may expend the money in the Cleanup Fund to
6 reimburse claims for “reasonable and necessary” costs of corrective action up to \$1.5 million per
7 occurrence. (See, e.g., Health & Saf. Code, § 25299.51.)

8 12. Pursuant to California Code of Regulations section 2812.2, subdivision (a), the State
9 Water Board may only reimburse from the Fund reasonable and necessary corrective action,
10 regulatory technical assistance, and third party compensation costs that are incurred by or on
11 behalf of a claimant.

12 13. Pursuant to Health and Safety Code section 25299.57, subdivision (h), the State
13 Water Board has published Cost Guidelines, dated October 1, 2001, to provide “a summary of
14 expected costs for common remedial actions” and to “help claimants identify reimbursable goods
15 and services.” (Cost Guidelines, p. 6.) On September 21, 2006, the State Water Board published
16 the “2006 Revised Personnel Labor Rates” to update the Cost Guidelines and provide further
17 guidance regarding labor costs. Additionally, the State Water Board published guidance on
18 necessary and reasonable costs for reimbursement in the *Designation of Reasonable and*
19 *Necessary Reimbursable Costs and Upcoming Additional Changes*, dated August 11, 2011. The
20 Cost Guidelines were additionally updated on January 1, 2014 in the published *Cost Guidelines*
21 *Update, January 1, 2014*.

22 GENERAL ALLEGATIONS

23 14. Defendants are experienced in the investigation, monitoring and remediation of soil
24 and groundwater contamination caused by petroleum and petroleum products stored in USTs.
25 Employees working under the direction of AAA are Professional Geologists, Professional
26 Engineers, field geologists, and other professionals trained and experienced in the science and
27 techniques applicable to the environmental services they provide. Accordingly, in providing such
28 environmental services on behalf of claimants to the Cleanup Fund as set forth below, Defendants

1 knew or should have known what corrective action was reasonable and necessary based upon the
2 standards of the industry in the community in which the services were performed and consistent
3 with the State Water Board's Cost Guidelines.

4 15. Adini, Balas, and the employees working at AAA, as long time participants in the
5 environmental services industry, were aware of the laws, regulations, and guidelines published by
6 the Cleanup Fund and had the necessary expertise to discern what corrective action taken on
7 behalf of claimants was reasonable and necessary in accordance with those laws, regulations and
8 guidelines. Likewise, Defendants knew that claimants were legally obligated to verify under
9 penalty of perjury that the amount of money for which they seek repayment is true and correct.
10 Defendants knew the State Water Board would rely on the information provided by Defendants in
11 making disbursements to the claimants.

12 16. Defendants submitted invoices to numerous Cleanup Fund claimants for: services
13 provided by AAA; services provided by third-party contractors that included a mark-up for
14 administrative costs; material and equipment used in the course of the services provided; and,
15 miscellaneous expenses including mileage, lodging and meal costs. Defendants knew at the time
16 they provided these invoices that they would be submitted by claimants to the Cleanup Fund for
17 reimbursement, who in turn would represent that the services were reasonable and necessary for
18 corrective action and then, in turn, remit these reimbursements directly and in whole to AAA.
19 Indeed, between 2008 and 2013, AAA received over \$16 million from the Cleanup Fund.

20 17. The State Water Board maintains a comprehensive database of sites where corrective
21 action is being taken to address releases from USTs, known as "GeoTracker." Staff within the
22 State Water Board's Fraud Waste and Abuse Prevention team first accessed the GeoTracker
23 database on July 7, 2010 to determine the sites where AAA had performed work. On February
24 28, 2011, pursuant to Health and Safety Code section 25299.59, the State Water Board requested
25 that AAA provide documentation to support the charges for environmental services stated on
26 invoices submitted to the Cleanup Fund for the calendar year 2008 relating to 39 active sites as
27 listed on Exhibit A to this complaint. The State Water Board has been auditing the charges using
28 the records received on April 15, 2011, from AAA in response to the February 28, 2011 letter.

1 During that audit, the State Water Board discovered instances of misrepresentation and
2 professional negligence as alleged herein. Since June 27, 2013, AAA, Adini, and State Water
3 Board have tolled the running of any applicable statute of limitations.

4 18. Defendants billed AAA employees at higher rates than those that are acceptable under
5 industry standards and the Cost Guidelines. For example, AAA invoices for 2008 reflect charges
6 for work performed by "Staff Geologists" billed at the higher rates charged for work performed
7 by "Principal Engineers/Geologists." In addition, draftspersons who by industry standard and
8 Cost Guidelines should have charged a rate of \$65 per hour, were billed at \$105 per hour. At four
9 sites audited so far, this "up-coding" resulted in over-billing of nearly \$10,000 in 2008. Further
10 investigation of these four sites shows the practice of charging rates above industry standards
11 continued throughout 2009 and 2010. The State Water Board is informed and believes that
12 wrongful up-coding as alleged herein occurred with regard to additional sites and during
13 additional time frames, and will amend this complaint according to proof as information is
14 developed.

15 19. During its audit of AAA's 2008 invoicing, the State Water Board discovered that
16 Defendants systematically charged flat rates for tasks labeled "scheduling/coordination" and
17 "clerical" which were not supported by employee time sheets. Sites audited to date reflect
18 charges for employees Larry Witwer, Chad Johnson, Mike Caulfield, Gilad Mars and Samantha
19 Kollar totaling more than \$35,000, which are not supported by the time sheets kept by these
20 employees. Further investigation indicates the practice of charging "flat rates" continued
21 throughout 2009 and 2010 at much higher than industry standard or Cost Guideline-based charges
22 for "scheduling/coordination," "project planning," and "field work preparation." The over-
23 charges audited to date represent 20.8% to 31% of AAA's total charges for labor. The State
24 Water Board is informed and believes that over-stated billing for scheduling, coordination,
25 project planning, field work and clerical work occurred with regard to additional sites and during
26 additional time frames, and will amend this complaint according to proof as information is
27 developed.

1 20. When first developed, uploading information to GeoTracker was new to users and
2 required additional time. However, by 2008 that activity was more familiar, easily done and now
3 takes very little time. Nevertheless, AAA invoices for 2008 reflect substantial charges for
4 GeoTracker uploads which no longer could be justified as reasonable and necessary corrective
5 action. Based upon a review of 37 submissions made by claimants to the Cleanup Fund in 2008,
6 the State Water Board has determined that AAA regularly included flat rate charges for
7 GeoTracker uploads at the rate of \$200 each. Flat rate charges for a task are not allowed by the
8 Fund. In addition, this activity was not supported by employee time sheets, and is not a
9 reasonable and necessary charge by the standards of the environmental remediation industry or
10 under the Cost Guidelines in effect in 2008. These unsupported flat rate charges for GeoTracker
11 uploading at 29 sites audited so far for 2008 resulted in more than \$10,000 in over-billing. The
12 State Water Board is informed and believes that over-stated billing for GeoTracker uploads
13 occurred with regard to additional sites and during additional time frames, and will amend this
14 complaint according to proof as information is developed.

15 21. The State Water Board has so far compared the hours billed on employee time sheets
16 and those reflected on AAA's 2008 invoicing at 29 of its 37 then active sites. Attached hereto as
17 Exhibit A is a chart summarizing the findings to date. Instances of "padding" at these 29 sites -
18 that is, time invoiced that was not supported by corresponding time sheets - amounts to
19 \$310,876.40. The State Water Board is informed and believes that additional such wrongful
20 padding of bills occurred with regard to additional sites and during additional time frames, and
21 will amend this complaint according to proof as information is developed.

22 22. Fifty-five gallon drums are often used to store waste materials generated when taking
23 corrective action at sites where petroleum products have been discharged. This includes waste
24 water generated during the purging and sampling of groundwater monitoring wells. In its audit of
25 AAA's 2008 invoices, the State Water Board determined that Defendants charged multiple times
26 for the same drum, which was not removed from the site and used for disposal. Instead, the
27 records indicate these drums were pumped out with vacuum trucks and re-used. Defendants'
28 practice of charging drum removal rates regardless of how waste is handled is not consistent with

1 industry standards or the Cost Guidelines, and resulted in charges to the Cleanup Fund that were
2 neither necessary nor reasonable. The State Water Board is investigating the amount of over-
3 charges, and will amend this complaint according to proof as further information is developed.

4 23. Further investigation by the State Water Board demonstrates that the practice of over-
5 charging for storage drums continued throughout 2009 and 2010, and included charges for drums
6 that were never used on sites because AAA was actually using less-expensive "totes" for waste
7 water storage. The State Water Board estimates that, between 2008 and 2010, Defendants
8 charged in excess of \$62,000 for drums that were not on site. The State Water Board is informed
9 and believes that billing for drums not used on site occurred with regard to additional sites and
10 during additional time frames, and will amend this complaint according to proof as information is
11 developed.

12 24. High Vacuum Dual-Phase Extraction (HVDPE) systems are used to remediate soil and
13 groundwater contamination caused by leaking USTs. Defendants employed this technique at a
14 number of sites on behalf of claimants who submitted claims for reimbursement from the Cleanup
15 Fund. However, Defendants wrongfully, carelessly and negligently did so as alleged in more
16 detail below.

17 25. Defendants used costlier mobile HVDPE systems for multiple, short-term, interim
18 remedial events when, if proper professional diligence was employed, a stationary system would
19 have been the correct choice to implement a continuous long-term remedial action at a cost
20 cheaper than utilizing a mobile HVDPE system. This determination should have been made at
21 the outset of the remedial effort based upon data that was, or should have been, available to
22 Defendants. Instead, Defendants carelessly and negligently pursued expensive, and in some cases
23 ineffective, remedial action as follows:

24 (a) At the Hawatmeh site (Fund Claim No. 17934), Defendants employed short-term
25 interim actions using mobile HVDPE in circumstances where industry practice would dictate the
26 use of long-term soil vapor extraction. The cost difference between these alternatives at the
27 Hawatmeh site alone is estimated at \$282,743; accordingly, the State Water Board seeks recovery
28

1 of this sum as charges that were neither reasonable nor necessary to the corrective action pursued
2 at the site.

3 (b) At the Airport site (Fund Claim No. 14629), Defendants implemented a total of seven
4 “interim” remedial action plans using HVDPE. The State Water Board is informed and believes
5 that these interim actions did not involve dual phase remediation of both soil and groundwater,
6 but only addressed soil contamination . Defendants should have implemented a fixed, long-term
7 soil vapor extraction system to address the contamination. The cost difference between that
8 industry standard and the inappropriate system implemented by Defendants is estimated to be
9 \$467,151; accordingly, the State Water Board seeks recovery of this sum as charges that were
10 neither reasonable nor necessary to the corrective action pursued at the site.

11 (c) At the EDCO-Victoria site (Fund Claim No. 12758), Defendants conducted four
12 “interim” remedial events involving HVDPE. Once again, data collected at the site would dictate
13 a different course of action under accepted industry practices. Indeed, after reportedly operating
14 the HVDPE for 150 days, Defendants still detect free-phase petroleum product on the water table
15 beneath the site. After an expenditure of \$1,442,175, Defendants have not accomplished the
16 fundamental first step in addressing soil and groundwater contamination caused by leaking UST
17 systems. Accordingly, the State Water Board seeks recovery of this entire sum as charges that
18 were neither reasonable nor necessary to the corrective action pursued at the site.

19 The State Water Board is informed and believes that Defendants’ practice of using mobile instead
20 of fixed HVDPE systems occurred at other sites, and will amend this complaint according to
21 proof as additional information is developed.

22 26. HVDPE systems should be carefully monitored to assure continued effective operation.
23 Defendants failed to use proper professional diligence to assure such monitoring was done to the
24 standards commonly accepted in the environmental industry. For example, at the “Zaman.01”
25 site (Fund Claim No. 17582), Defendants continued to operate a mobile HVDPE system after
26 data collection indicated it was no longer effectively remediating soil or groundwater at the site.
27 If Defendants had properly interpreted the data they themselves were collecting, Defendants
28 would have stopped operation as it was wasteful and no longer reasonable and necessary for

1 corrective action at the site. This resulted in approximately \$237,648 in charges that were not
2 eligible for reimbursement from the Fund. Likewise, at the Sanchez site (Fund Claim No. 13087),
3 Defendants continued HVDPE operation for 43 days after the data demonstrated the process was
4 no longer effectively remediating soil or groundwater at the site. This resulted in charges of
5 approximately \$116,792 that were neither reasonable nor necessary to corrective action at the
6 Sanchez site. The State Water Board is informed and believes that Defendants' failure to manage
7 and operate HVDPE systems in accord with industry standards occurred at other sites, and will
8 amend this complaint according to proof as additional information is developed.

9 27. Groundwater monitoring is an important aspect of soil and groundwater remediation at
10 sites contaminated by leaking USTs. Defendants conducted hundreds of groundwater monitoring
11 events at the 37 sites that were audited by the State Water Board. On numerous occasions,
12 Defendants failed to apply the skill, prudence and diligence commonly accepted in the
13 environmental industry. For example, Defendants conducted unnecessary sampling and testing,
14 and pursued monitoring with more frequency than was necessary. Defendants did this
15 unreasonable and unnecessary work in order to make unwarranted profits by producing formulaic
16 and repetitive reports and submitting them to the oversight agencies, rather than submitting
17 meaningful and efficient reports consistent with standard industry practices. The State Water
18 Board is informed and believes that the practice of "churning" groundwater monitoring charges
19 was widespread at AAA, and will amend this complaint according to proof to state the amount of
20 charges that were not reasonable and necessary to effective remediation at the 37 sites managed
21 by Defendants.

22 28. State Water Board further alleges that Defendants pursued other activity that was not in
23 line with regulatory directives and, therefore, not reasonable and necessary to the corrective
24 action being pursued. State Water Board will amend this complaint according to proof to state
25 the amount of charges that were not reasonable and necessary to effective remediation at the 37
26 sites managed by Defendants because the work was not consistent with regulatory directives.
27
28

1
2 **FIRST CAUSE OF ACTION**

3 (Professional Negligence Against all Defendants)

4 29. Plaintiff incorporates herein by reference each and every matter, fact and allegation
5 contained in paragraphs 1 through 28, inclusive, of this complaint and makes the same a part
6 hereof with the same force and effect as though fully set forth herein.

7 30. When performing environmental services, each of the Defendants had a duty to utilize
8 the skill, prudence and diligence commonly possessed and exercised by members of the
9 profession. When preparing invoices to claimants that they knew would be submitted to the
10 Cleanup Fund for reimbursement, each of the Defendants had a duty to truthfully and accurately
11 state costs for only such corrective action as was reasonable and necessary. In exercising this
12 duty, Defendants were required to follow the standard of care implemented by members of the
13 environmental remediation profession, and utilize the skill, prudence and diligence commonly
14 possessed and exercised by members of that profession.

15 31. By charging for environmental services that were not reasonable and necessary as
16 alleged above, Defendants breached their duty to exercise professional standards of skill, care,
17 prudence and diligence when pursuing corrective action on behalf of claimants that Defendants
18 knew would be submitted to the Cleanup Fund for reimbursement.

19 32. Defendants submitted invoices for the corrective action alleged above to claimants with
20 the intention that they be, in turn, submitted to the Cleanup Fund for reimbursement.
21 Accordingly, it was reasonably foreseeable that Defendants' failure to exercise the standard of
22 care applicable to environmental consultants would cause harm to the State Water Board.

23 33. Defendants' careless and negligent failure to implement the standard of care applicable
24 to environmental professionals, and to exercise the skill, prudence and diligence commonly
25 possessed and exercised by environmental professionals, proximately caused damage to the State
26 Water Board. Defendants' negligent and careless conduct resulted in unauthorized
27 reimbursement from the Cleanup Fund for corrective action that was not reasonable and
28 necessary.

EXHIBIT "A"

AMI ADINI ASSOCIATES, INC.
OVERBILLED AND OVERPAID AMOUNTS FOR 37 CLAIMS IN 2008
STATE WATER RESOURCE CONTROL BOARD
FRAUD, WASTE, AND ABUSE PREVENTION UNIT

	SITE	CLAIM NO.	NUMBER OF INSTANCES OF OVERPAYMENT	OVERBILLED HOURS	OVERBILLED AMOUNT	OVERPAID AMOUNT
1	A&N SERVICE	18879	7	14.25	\$1,572.50	\$1,017.41
2	AIRPORT	14629	30	96.75	\$9,651.25	\$6,384.16
3	AMERICAN MEDICAL ENTERPRISE (aka, AME)	7276	53	177	\$20,198.75	\$19,986.25
4	AMPM	9930	60	128.25	\$11,397.50	\$11,157.50
5	ANDRAWIS (aka, Iskander Texaco)	14229	3	3.75	\$257.50	\$257.50
6	B-52 MINI MART (aka, Hawatmen.P02)	17934 & 17499	49	237.5	\$26,582.50	\$26,582.50
7	CALLAHAN	2388	102	408	\$50,270.00	\$49,835.00
8	CRISLER	2696	19	45	\$3,868.75	\$3,448.75
9	EDCO STATION (aka, Victoria or EDCO.P36)	12758	91	280.49	\$29,759.81	\$27,752.22
10	FRISHKORN	18040	46	121.5	\$11,473.75	\$11,473.75
11	HOLLOWAY	1875	35	78.75	\$6,307.50	\$6,307.50
12	KOBIAUTO	16390	27	91.13	\$9,113.13	\$9,113.13
13	MARJAMA	18405	9	15	\$1,210.00	\$1,210.00
14	ONESTOPAUTO	8648	20	56.5	\$4,990.00	\$4,990.00
15	PRESENT	8405	38	125.25	\$11,012.50	\$10,892.50
16	SANCHEZ (aka, Former Toombs Trucking)	13087	48	143	\$15,445.63	\$15,445.63
17	SCOVEL	16660	38	92.25	\$7,041.25	\$6,732.85
18	VALLEY CENTER OIL	13911	32	70	\$5,612.50	\$5,612.50
19	WORTMANN	18870	67	205	\$20,153.75	\$20,153.75
20	ZAMAN.P01 (8355 3rd Str. W.)	17582	63	124.25	\$11,605.00	\$11,605.00
21	ZAMAN.P02 (8800 Burton Way)	10022	24	44.25	\$3,250.00	\$3,250.00
	SUBTOTAL		861	2557.87	\$260,773.57	\$253,207.90
22	ARTESIA	18033	22	64.25	\$6,418.75	\$6,232.61*
23	CHINOAUTO	7325	21	89.75	\$9,560.00	\$9,282.76*
24	MARTIN	12237	19	71.75	\$7,188.75	\$6,980.28*
25	MOGTADARI	18048	38	101.5	\$8,677.50	\$8,425.85*
26	MONTPARK	18716	17	40.5	\$5,195.00	\$5,044.35*
27	ROLO TRANSPORTATION	18260	19	39.5	\$3,047.50	\$2,959.12*
28	UNION DEVELOPMENT	16785	47	143.75	\$17,235.00	\$16,735.19*
29	VENTURA TRANSFER COMPANY	18814	7	27.5	\$2,065.00	\$2,005.12*
	SUBTOTAL		1051	3136.37	\$320,161.07	\$310,876.40*
30	EDCO STATION (aka, Olympic or EDCO.P35)	12977	TBD	TBD	TBD	TBD
31	STUDIO STAR MOBIL	13823	TBD	TBD	TBD	TBD
32	SEVLIAN	15106	TBD	TBD	TBD	TBD
33	Nandina Liquor	16584	TBD	TBD	TBD	TBD
34	FERGUSON	18255	TBD	TBD	TBD	TBD
35	CT&F, INC.	18256	TBD	TBD	TBD	TBD
36	ELSCO, INC.	18861	TBD	TBD	TBD	TBD
37	BRANDED SERVICE STATION	18929	TBD	TBD	TBD	TBD
	GRAND TOTAL				\$408,481.00#	\$396,635.00#

* - Estimated based on 97% on overbilled amount.

- Projected amount