

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

In the matter of:)	
)	
ADVANCEDGEO, INC.;)	SETTLEMENT AGREEMENT AND
ADVANCEDGEO)	STIPULATION FOR ENTRY OF
ENVIRONMENTAL, INC.; AND)	ADMINISTRATIVE CIVIL LIABILITY
ROBERT MARTY)	ORDER
)	
Alleged misrepresentations)	PROPOSED
submitted to the Underground)	ORDER
Storage Tank Cleanup Fund)	WQ 2022-XXXX-EXEC

Section I: INTRODUCTION

1. This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order (Order or Stipulated Order) is entered into by and between the State Water Resources Control Board (State Water Board) Prosecution Team, on behalf of the Underground Storage Tank Cleanup Fund (UST Cleanup Fund), with AdvancedGeo, Inc., and Mr. Robert Marty (collectively "Settling Respondents"), and is presented to the State Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60 and Health and Safety Code section 25299.80. The State Water Board Prosecution Team, the Settling Respondents, and their representatives are collectively referred to as the Parties. This Stipulated Order resolves the violations alleged against all named parties in the June 7, 2021 complaint (Complaint) (Attachment A) by the imposition of administrative civil liability against the Settling Respondents in the amount of two hundred and thirty thousand dollars (**\$230,000.00**).

Section II: RECITALS

2. The investigation into AdvancedGeo Environmental, Inc. (AGE) arose out of the conviction of environmental laboratory owner and director, Roobik Yaghoubi, for fraud related to environmental sample analysis. Mr. Yaghoubi pleaded guilty to submitting false data to the State Water Board in Los Angeles County Superior Court in Case BA450757. AGE and Mr. Marty were clients of Mr. Yaghoubi and Cal Tech Environmental Laboratory (CTEL).
3. During the CTEL investigation, AGE was identified as a party that allegedly submitted inflated invoices to the UST Cleanup Fund. Subsequently, Metamorphic, Inc. (MMI) was identified as a company owned by Mr. Marty. The State Water Board Prosecution team alleges that there is evidence of alleged kickbacks between MMI and CTEL.
4. On November 17, 2017, the Director of the State Water Board's Office of Enforcement (OE) under delegated authority issued AGE a subpoena for records and documents and interrogatories pursuant to Government Code section 11180.
5. On November 17, 2017, the Director of OE under delegated authority issued MMI a subpoena for records and documents and interrogatories pursuant to Government Code section 11180.
6. On December 13, 2017, AGE provided OE six (6) boxes that included hard copy documents representing AGE's subpoena response (AGE Response). One of the boxes included a separate sealed envelope containing MMI's interrogatory responses.
7. OE's Fraud, Waste and Abuse Prevention Unit (Fraud Prevention Unit) reviewed invoices and records AGE submitted to the UST Cleanup Fund and compared those to the records AGE provided in response to the subpoena. Documents included cancelled checks and invoices, and publicly-available records submitted by AGE to GeoTracker, which included technical documents. In addition, the Fraud Prevention Unit compared the submitted items with documents seized from CTEL during the execution of a search warrant.
8. The Fraud Prevention Unit uncovered an alleged scheme involving CTEL and several environmental consultants that involved the creation of inflated invoices for the purpose of obtaining ineligible payments from the UST Cleanup Fund. AGE is one of the environmental consultants the Fraud Prevention Unit alleged used inflated invoices to obtain ineligible payments. The Fraud Prevention Unit further alleged the scheme utilized inflated invoices and kickback payments to obtain and distribute ineligible payments.

9. On June 7, 2021, the Executive Director of the State Water Board signed a Complaint for administrative civil liability alleging four hundred and sixty-six (466) instances of misrepresentations to the UST Cleanup Fund. The Complaint is attached, and its factual allegations are incorporated herein by reference. (See Attachment A.)
10. The Settling Respondents deny all allegations and liability raised in the Complaint. Included among those denied allegations is that AdvancedGeo, Inc. is a successor to AGE, which the Settling Respondents deny. By entering into this Stipulated Order, AdvancedGeo, Inc. neither admits nor acknowledges it has assumed any of AGE's liabilities.
11. On September 25, 2014, the Health and Safety Code was amended to add section 25299.80 providing for the imposition of administrative civil liability for misrepresentations made to the UST Cleanup Fund. (Stats. 2014, Ch. 547, Senate Bill 445 (Hill, 2014).) This provision of the Health and Safety Code authorizes the imposition of administrative civil liability for the alleged violations covered by this Stipulated Order.
12. The Parties have engaged in settlement negotiations regarding the administrative civil liability and agree to settle the alleged violations for **two hundred and thirty thousand dollars (\$230,000.00)** without further administrative action or civil litigation and by presenting this Stipulation to the State Water Board, or its delegee, for adoption as an Order by settlement, pursuant to Government Code section 11415.60 and Health and Safety Code section 25299.80. This Stipulated Order also includes injunctive relief as agreed to by the Parties.
13. Health and Safety Code section 25299.80, subdivision (e), provides:
"In determining the amount of civil liability imposed under this section, the executive director of the board... shall take into account the nature, circumstance, extent, and gravity of the violation, the person's ability to pay, any prior history of misrepresentations by the person to the board or local agency, any economic benefits or savings that resulted or would have resulted from the false statement, and other matters as justice may require."
14. In the present case, the conduct alleged in the Complaint are intentional misrepresentations to the UST Cleanup Fund, which resulted in the UST Cleanup Fund authorizing payments for alleged ineligible costs. Intentional misrepresentations are very difficult to detect and require enormous amounts of staff resources to discover, prosecute, and recover damages. In this case, the alleged misconduct caused a calculated sixty-six thousand, three hundred and fifty-five dollars and ten cents (\$66,355.10) in damages to the UST Cleanup Fund in reimbursement of alleged ineligible costs. Further, the Fraud Prevention Unit accrued an estimated one hundred and eighty thousand, one hundred dollars

(\$180,100) in enforcement costs in the investigation up until the issuance of the Complaint in this matter. The estimated economic benefit for the alleged violations is one hundred and ten thousand, nine hundred and sixty-one dollars and nineteen cents (\$110,961.19) (Attachment B). The Settling Respondents have no prior history of misrepresentations. The Settling Respondents stipulate to the ability to pay the administrative civil penalty. The Parties each raised salient arguments to support their respective settlement positions, including arguments over the evidence and the number of alleged misrepresentations at issue in this matter, but have agreed to the payment of two hundred and thirty thousand dollars (\$230,000) and disqualification from the UST Cleanup Fund, its subaccounts, and the Replacing, Removing, or Upgrading Underground Storage Tanks (RUST) Program, as detailed in Paragraph 19 herein, to avoid further litigation. The administrative penalty here amounts to greater than three times the amount of the economic harm inflicted on the UST Cleanup Fund. The amount of the administrative civil liability imposed pursuant to this Stipulated Order takes into account the factors described in Health and Safety Code section 25299.80, legal arguments raised by the Settling Respondents' counsel during the course of settlement negotiations, and the litigation risks associated with proceeding to an adjudicative proceeding.

15. The State Water Board Prosecution Team believes that the resolution of the alleged violations set forth herein is fair and reasonable and fulfills all of its enforcement objectives, that no further action against the Settling Respondents is warranted concerning conduct described in the Complaint, either directly or through claimants, except as provided in this Stipulated Order, and that this Stipulated Order is in the best interest of the public.
16. The Parties understand and agree that neither the payment of any sum of money nor the execution of this Stipulated Order by the Parties will constitute or be construed as an admission of any wrongdoing or liability by the Settling Respondents.

Section III: STIPULATIONS

The Parties stipulate to the following:

17. **Jurisdiction:** The Parties agree that the State Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction of the Parties to this Stipulated Order.
18. **Administrative Civil Liability:** Settling Respondents hereby agree to the imposition of two hundred and thirty thousand dollars (\$230,000.00) in administrative civil liability to the State Water Board to resolve the violations alleged in this Stipulated Order. Settling Respondents agree to pay this amount as follows:
 - a. **Two hundred and thirty thousand dollars (\$230,000.00)** shall be paid to the UST Cleanup Fund. Payment shall be made no later than thirty (30) days after adoption of the order approving this Stipulated Order by the State Water Board, or its delegee, by check payable to the "UST Cleanup Fund." Payment of the entire amount by one Settling Respondent shall constitute payment on behalf of all Settling Respondents and all parties named in the Complaint. Settling Respondents shall indicate on the check the number of this Stipulated Order. Settling Respondents shall send the original signed check to the State Water Resources Control Board, Accounting Office, Attn: ACL Payment, P.O. Box 1888, Sacramento, California 95812-1888. A copy of the check shall be sent to Nickolaus Knight, Attorney IV, State Water Resources Control Board, Office of Enforcement, 801 "K" Street, Suite 2300, Sacramento, California 95814.
19. **Injunctive Relief/ Prohibitions:**
 - a. Settling Respondents agree that as of the effective date of this Order, they are disqualified from submitting reimbursement packages on behalf of their clients, and from receiving reimbursements from their clients that received reimbursements, from any account authorized and in effect under division 20, chapters 6.75 and 6.76 of the Health and Safety Code as of the effective date of this Order, with the exception of the UST Cleanup Fund claims, Site Cleanup Subaccount Program, and Orphan Site Cleanup Fund Projects identified in Attachment C. Settling Respondents agree that they will be disqualified from receiving reimbursements from their clients for all claims identified in Attachment C three (3) years from the effective date of this Order.
 - i. After a period of ten (10) years from the effective date of this Order, Settling Respondents may submit a request to the Assistant Deputy Director of the Division of Financial Assistance for the UST Cleanup Fund (Fund Manager) for termination of the disqualification. The request shall contain a statement of the

Settling Respondents cleanup related activities during the ten-year period of disqualification and justification for the termination of the disqualification. Upon receiving the request, the Fund Manager may, at the Fund Manager's own discretion, terminate the disqualification for any or all of the Settling Respondents, or may deny the request. The Fund Manager's response to the request is the final agency action and shall not be appealable.

- ii. No work on behalf of any client receiving reimbursement from any account authorized and in effect under division 20, chapters 6.75 and 6.76 of the Health and Safety Code performed during the period of disqualification, except otherwise provided for under paragraph 19.a., is eligible for reimbursement, regardless of the termination of the disqualification.

- 20. **State Water Board Not Liable:** Neither the State Water Board members nor the State Water Board staff, attorneys, or representatives shall be liable for any injury or damage to person or property resulting from acts or omissions by the Settling Respondents, their directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order, nor shall the State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the Settling Respondents, their directors, officers, employees, agents, representatives, or contractors in carrying out activities pursuant to this Stipulated Order.
- 21. **Covenant Not to Sue:** The Settling Respondents covenant not to sue or pursue any administrative or civil claim or claims against any State Agency or the State of California, or their officers, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by this Stipulated Order.
- 22. **Compliance with Applicable Laws and Regulatory Changes:** The Settling Respondents understand that payment of an administrative civil liability in accordance with the terms of this Stipulated Order and/or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that additional violations of the type alleged may subject it to further enforcement, including additional administrative civil liability. Nothing in this Stipulated Order shall excuse the Settling Respondents from meeting any more stringent requirements which may be imposed hereafter by changes in applicable and legally binding legislation or regulations.

23. **Covered Matters:** Upon approval by the Settling Respondents, adoption by the State Water Board, or its delegee, as an Order, this Stipulated Order represents a final and binding resolution and settlement of all claims, violations, or causes of action alleged in relation to the conduct described in the Complaint, which could have been asserted under Health and Safety Code section 25299.80, based on the facts alleged. The provisions of this paragraph are expressly conditioned on Settling Respondents' full payment of the Administrative Civil Liability.
24. Party Contacts for Communications related to this Stipulation and Order:
- | | |
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| <p>For the UST Cleanup Fund:
 Nickolaus Knight, Senior Counsel
 State Water Resources Control Board
 Office of Enforcement
 801 "K" Street, Suite 2300
 Sacramento, California 95814
 nickolaus.knight@waterboards.ca.gov
 916.327.0169 (t)</p> | <p>For Settling Respondents:
 Davina Pujari
 Wilmer Hale, LLP
 One Front Street, Suite 3500
 San Francisco, California 94111
 davina.pujari@wilmerhale.com
 628.235.1136 (t)
 628.235.1001 (f)</p> |
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25. **Attorneys' Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from each Party's own counsel in connection with the matters set forth herein.
26. **Public Notice:** The Parties understand that this Stipulated Order will be noticed for a thirty (30)-day public review period prior to consideration by the State Water Board or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the State Water Board or its delegee for adoption, the Assistant Deputy Director of the Division of Financial Assistance may unilaterally declare this Stipulated Order void and decide not to present it to the State Water Board. The Settling Respondents agree that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.
27. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for adopting the Order by the State Water Board, or its delegee, and review of this Stipulation by the public is lawful and adequate. In the event procedural objections are raised prior to the Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.
28. **No Waiver of Right to Enforce:** The failure of the State Water Board Prosecution Team to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of this Stipulated Order. The failure to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order. No oral advice, guidance, suggestions, or comments by employees or officials of any Party regarding matters

covered under this Stipulated Order shall be construed to relieve any Party regarding matters covered in this Stipulated Order. The State Water Board reserves all rights to take additional enforcement actions, including without limitation, the issuance of administrative civil liability complaints or orders for violations other than those addressed by this Order.

29. **Interpretation:** This Stipulated Order shall not be construed against the Party preparing it, but shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties were represented by counsel in this matter.
30. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing and approved by the State Water Board or its delegee.
31. **Severability:** This Stipulation and Order are severable; should any provision be found invalid the remainder shall remain in full force and effect.
32. **If the Order Does Not Take Effect:** The Settling Respondents obligation under this Stipulated Order is contingent upon the entry of the Order by the State Water Board as proposed. In the event that this Stipulated Order does not take effect because it is not approved by the State Water Board, or its delegee, or is vacated in whole or in part by the State Water Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the State Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, or may continue to pursue settlement. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in any subsequent administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code sections 1152 and 1154, California Government Code section 11415.60, and any other applicable privilege under federal and/or state law. The Parties agree to waive any and all objections related to their efforts to settle this matter, including, but not limited to:
 - a. Objections related to prejudice or bias of any of the State Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or,

- b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review of the alleged violations to the extent this period has been extended by these settlement proceedings.
33. **Waiver of Hearing:** The Settling Respondents have been informed of the rights provided by Health and Safety Code section 25299.80, subdivision (c), and Water Code section 13323, subdivision (b), and, if the settlement is adopted by the State Water Board, hereby waives their right to a hearing before the State Water Board prior to the Stipulated Order's adoption. However, should the settlement not be adopted, and should the matter proceed to the State Water Board for hearing, the Settling Respondents do not waive the right to a hearing before an order is imposed.
34. **Waiver of Right to Petition or Appeal:** Except in the instance where the settlement is not adopted by the State Water Board or its delegee, the Settling Respondents hereby waive their rights to petition for writ of administrative mandate in the California Superior Court or to appeal to a California Superior Court and/or any California appellate level Court.
35. **Authority to Bind:** Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Stipulated Order.
36. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, or claimants, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.
37. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulation may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document. Further, this Stipulation may be executed by facsimile or electronic signature, and any such facsimile or electronic signature by any Party hereto shall be deemed to be an original signature and shall be binding on such Party to the same extent as if such facsimile or electronic signature were an original signature.

38. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the State Water Board, or its delegee, enters the Order incorporating the terms of this Stipulated Order.

IT IS SO STIPULATED.

Date: 4/22/2022

signed copy available upon request
Diane Barclay
UST Cleanup Fund Manager
Assistant Deputy Director

Settling Respondents

Date: 4/21/2022

signed copy available upon request
Robert Marty

Date: 4/21/2022

signed copy available upon request
AdvancedGeo, Inc.
Robert Marty, President

**FINDINGS AND ORDER OF THE
STATE WATER RESOURCES CONTROL BOARD**

Having considered the allegations and the Parties' stipulations, the State Water Board finds that:

1. This Order incorporates Paragraphs 1 through 38 by reference as if set forth fully herein.
2. In accepting this settlement, the State Water Board has considered, where applicable, the factors prescribed in Health and Safety Code section 25299.80, subdivision (e).
3. This is an action to enforce the laws and regulations administered by the State Water Board. The State Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.), in accordance with section 15321(a)(2), title 14, of the California Code of Regulations.
4. Fulfillment of the Settling Respondents' obligations under the Order constitutes full and final satisfaction of any and all liability for Covered Matters in accordance with the terms of the Order.
5. The State Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Settling Respondents fails to perform any of its obligations under the Stipulated Order.
6. The Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order between the State Water Board Prosecution Team and the Settling Respondents is approved pursuant to Health and Safety Code section 25299.80 and Government Code section 11415.60 and is incorporated by reference into this Order.

IT IS HEREBY ORDERED on behalf of the State Water Resources Control Board.

Date: _____

Joe Karkoski
Deputy Director
Division of Financial Assistance

STATE OF CALIFORNIA

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF FINANCIAL ASSISTANCE

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT

In the Matter of Alleged Misrepresentations to the Underground Storage Tank Cleanup Fund by

Advanced Geo, Inc., Advanced GeoEnvironmental, Inc., and Robert Marty

INTRODUCTION

This complaint alleges that Advanced Geo, Inc. (A G I), formerly Advanced GeoEnvironmental, Inc. (A G E), and their principal, Robert Marty, intentionally misrepresented costs incurred to the Underground Storage Tank Cleanup Fund (Fund) in order to obtain additional reimbursement payments that neither A G E nor Mr. Marty had earned. Specifically, the allegations below are that Mr. Marty, through his collusion with Roobik Yaghoubi, owner and operator of Cal Tech Environmental Laboratory (CTEL), presented inflated invoices to the Fund for reimbursement. In order to split the illicit proceeds from the inflated invoices, Mr. Marty created a shell company, Metamorphic, Inc. (M M I), to receive the payments as “business development expenses.” The illicit portions of the reimbursements were split between Mr. Yaghoubi and Mr. Marty, through his shell company, M M I. Mr. Yaghoubi was criminally prosecuted for his conduct. This complaint is brought forth to address the conduct of A G E, its successor A G I, and their principal, Mr. Marty.

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Advanced Geo, Inc. (A G I), formerly Advanced GeoEnvironmental, Inc. (A G E), and Mr. Robert Marty are alleged to have submitted claims containing material misrepresentations to the Fund.
2. **Administrative Authority:** Effective September 25, 2014, chapter 6.75 of division 20 of the California Health and Safety Code¹ was amended to include penalties, disqualification of consultants, and other administrative enforcement remedies for misrepresentations made to the Fund.

¹ All statutory references are to the Health and Safety Code unless otherwise specified.

3. **Penalty:** Section 25299.80, subdivision (a) provides that:
 - i. *“A person who makes a misrepresentation in any claim, including, but not limited to, a record, report, certification, application, invoice, form, or other document that is submitted to the fund relating to a claim, is subject to civil liability of not more than five hundred thousand dollars (\$500,000.00) for each violation of this subdivision.”*
4. **Disqualification:** Section 25299.71, subdivision (c) provides that the Executive Director of the State Water Resources Control Board (State Water Board) may permanently disqualify a contractor or consultant from further participation in the Fund if the contractor or consultant is found to be civilly liable under section 25299.80, if the Executive Director makes one of the following findings:
 - i. The alleged violation is knowing, willful, or intentional.
 - ii. The contractor or consultant received a material economic benefit from the action that caused the violation.
 - iii. The alleged violation is chronic or the contractor or consultant is a recalcitrant violator, as determined pursuant to subdivision (g) of Section 13399 of the Water Code.
5. **Administrative Civil Liability (ACL) Complaint:** Section 25299.80, subdivision (c) provides that the Executive Director of the State Water Board may impose the civil liability administratively in the same manner as provided for in Water Code section 13323 et seq.
6. **Considerations:** Section 25299.80, subdivision (e) and Water Code section 13327 provide that in determining the amount of civil liability, the Executive Director of the State Water Board shall take into account the nature, circumstances, extent, and gravity of the violation, the person’s ability to pay, any prior history of misrepresentations by the person to the Board or local agency, any economic benefits or savings that resulted or would have resulted from the false statement, and other matters as justice may require.
7. **Enforcement Remedies:** Section 25299.80, subdivision (f) provides that the remedies under section 25299.80 are in addition to, and do not supersede or limit, any other civil, administrative, or criminal remedies.
8. **Licensure Complaints:** Section 25299.80, subdivision (h) provides that the State Water Board shall file a complaint with any applicable licensing board against any person licensed or otherwise regulated by that licensing board who is found to be liable under section 25299.80.

BACKGROUND

9. **Establishment of Fund:** The Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989 (Act) commencing with section 25299.10 authorizes the State Water Board to reimburse eligible underground storage tank owners and operators for specific costs incurred as a result of an unauthorized release of petroleum.
10. **Reasonable and Necessary Costs:** Section 25299.57 provides that the State Water Board may expend the money in the Fund to reimburse for “reasonable and necessary” costs of corrective action up to \$1 million per occurrence for claims submitted on or after January 1, 2015, and \$1.5 million for claims submitted prior to that date. (Cal. Code Regs., tit. 23, § 2812.2, subd. (a).)
11. **Claim:** Section 25299.13 provides that a “claim” is a submittal to the Fund for reimbursement of costs incurred due to an occurrence. A claim consists of several documents, including, but not limited to the Fund application, reimbursement requests, and verification documents. (Cal. Code Regs., tit. 23, § 2804.)
12. **Claimant:** Underground storage tank owners or operators who make claims to the Fund are called “claimants.” (Cal. Code Regs., tit. 23, § 2804.)
13. **Actual Costs:** Section 25299.57, subdivision (b)(1) provides that the State Water Board shall either approve or disapprove the costs incurred as reasonable and necessary.
14. **Reimbursement Request (RR):** California Code of Regulations, title 23, section 2804 provides that a “reimbursement request” means documents required by the Division of Financial Assistance (Division) and necessary for reimbursement of a claim. Reimbursement Requests (RRs) submitted to the Fund must include invoices and supporting documentation that demonstrate that the costs claimed are eligible for reimbursement. (Cal. Code Regs., tit. 23, § 2812.)
15. **Markup:** Markup is a term used to define the difference between the cost of any good, service, or financial instrument and its current selling price. In other words, it is the result of subtracting selling price minus cost. The Fund allows reimbursement of actual costs plus markup for reasonable and necessary work. Typically, the Fund allows a ten percent (10%) markup on actual costs incurred.

ADVANCED GEOENVIRONMENTAL, INC.

16. **A G E:** A G E, was incorporated on July 31, 1992 and operated under California Secretary of State Business License #C1710577. A G E was an environmental consulting company based at 837 Shaw Road in Stockton, California. A G E was

dissolved on January 3, 2020 but for purposes of this complaint continues to exist. (Corp. Code, §§ 2010, 2011.)

17. **A G E Corporate Officers:** According to California Secretary of State records, A G E's corporate officers included Mr. Marty as the chief executive officer, secretary, and chief financial officer and Joshua Ong, Robert Loeffler, and James Colson as directors.
18. **A G E Licensure:** A G E was licensed by the California Contractors State License Board (CSLB) license #680227. Known registered professionals for A G E included Mr. Robert Loeffler, Professional Geologist (PG #6709); Brian Millman, Professional Geologist (PG #8574); Diane Becker, Professional Geologist, (PG #7469); Jo'l Chapman, Professional Geologist (PG #9497); and William Little, Professional Geologist (PG #7473). Mr. Marty was not licensed to practice geology or engineering in California.

METAMORPHIC, INC.

19. **M M I:** Metamorphic, Inc. (M M I) was incorporated on December 14, 2007 and operates under California Secretary of State Business License #C3058576. M M I is an environmental consulting firm located at 13944 Bluff Drive, Lockeford, California.
20. **M M I Corporate Officers:** According to California Secretary of State records, M M I's corporate officers include only Mr. Marty as the chief executive officer, secretary, chief financial officer, and director.
21. **M M I Affiliation:** Mr. Marty is a corporate officer for both M M I and A G E, which are identified as affiliated companies as defined in section 25299.54. Mr. Marty is an officer in both M M I and A G E.

ADVANCED GEO, INC.

22. **A G I:** A G I, formerly A G E, was incorporated in Delaware on December 26, 2019 and registered as a foreign corporation in California on January 3, 2020. A G I operates under California Secretary of State Business License #C4541557. A G I is an environmental consulting company based at 837 Shaw Road in Stockton, California with offices throughout California, Nevada, Oregon, Texas, and Washington. A G I's environmental consulting services includes, but is not limited to, cleanup of contaminated soil and groundwater at sites throughout California, Nevada, Oregon, Texas, and Washington.
23. **A G I Corporate Officers:** According to California Secretary of State records, A G I's corporate officers include Mr. Marty as the chief executive officer and chief financial officer, and Mr. Loeffler as the secretary.

24. **A G I Licensure:** A G I was licensed by the California Contractors State License Board (CSLB) license #1063765. Known registered professionals for A G I include Mr. Loeffler, Professional Geologist (PG #6709); Mr. Millman, Professional Geologist (PG #8574); Ms. Becker, Professional Geologist, (PG #7469); Mr. Chapman, Professional Geologist (PG #9497); and Mr. Little, Professional Geologist (PG #7473). Mr. Marty is not licensed to practice geology or engineering in California.
25. **A G I Fund Sites:** A G I has sought reimbursement from the Fund for work performed at one-hundred-seventy-six (176) sites. Currently, A G I is working on forty-two (42) eligible Fund sites located in: Alameda County (one site), Contra Costa County (three sites), Los Angeles County (four sites), Merced County (one site), Orange County (two sites), Riverside County (one site), Sacramento County (one site), San Bernardino County (one site), San Joaquin County (twenty-seven sites), and Stanislaus County (one site). A G I has received more than \$45 million in reimbursements from the Fund since the Fund first began accepting claims in 1992.
26. **A G I** has the same corporate officers, works in the same locations, and works on the same claims as A G E.

ROBERT MARTY- RESPONSIBLE CORPORATE OFFICER

27. Mr. Marty is a responsible corporate officer for all of the corporate entities named in this complaint. Mr. Marty was personally involved in the transactions between A G E, CTEL and the Fund, including the presentation of fraudulent claims to the Fund on behalf of A G E. Mr. Marty's conduct and direction facilitated each of the violations alleged in this complaint. Thus, Mr. Marty is personally liable as a responsible corporate officer for the allegations in this complaint. (*People v. Roscoe* (2009) 169 Cal.App.4th 829.)

CAL TECH ENVIRONMENTAL LABORATORIES, LLC

28. **Cal Tech Environmental Laboratories, LLC (CTEL):** CTEL was based in Paramount, California, (Los Angeles County) and operated between 1999 and August 2015 as an accredited analytical laboratory. CTEL analyzed water, air, and soil samples using specific wastewater and hazardous waste analytical methods. CTEL's Environmental Laboratory Accreditation Program certificate expired in September 2016.
29. **A G E Subcontracted Laboratory:** Between February 8, 2002 and August 25, 2015, A G E utilized CTEL's analytical services to perform analyses of samples collected by A G E's agents, employees, or representatives. Samples analyzed by CTEL included samples collected from and pertaining to Fund sites.

30. **Results, Reports, and Invoices:** CTEL provided analytical results in the form of electronic data and laboratory reports to A G E for the analytical services requested by A G E. CTEL also provided A G E with invoices for services rendered. For Fund sites, A G E uploaded, or caused to be uploaded, CTEL's data and laboratory reports to the State Water Board's online database GeoTracker®. A G E included CTEL's invoices in RRs submitted to the Fund on behalf of claimants.
31. **Search Warrant, Arrest, and Guilty Plea:** On August 25, 2015 a search warrant was served on CTEL. Ultimately, the investigation resulted in the Los Angeles County District Attorney's Office filing criminal charges (17 Counts) against CTEL and its owner, Mr. Yaghoubi, over allegations of grand theft and providing falsified data to the State, all felonies (Case No. BA450757). On November 16, 2017, Mr. Yaghoubi was arrested. On May 16, 2018, Mr. Yaghoubi pleaded guilty to one (1) felony count (Count 1), of knowingly procuring or offering any false or forged instrument to be filed, registered, or recorded in any public office within California.

INVESTIGATION

32. During the CTEL investigation, A G E was identified as a party that knowingly submitted inflated invoices to the Fund. Subsequently, M M I was identified as an affiliate of A G E resulting from identified evidence of kickbacks between A G E's affiliate M M I and CTEL.
33. **A G E Subpoenas and Interrogatories:** On November 17, 2017, the Director of the Office of Enforcement under delegated authority issued A G E a subpoena for records and documents and interrogatories pursuant to Government Code section 11180.
34. **M M I Subpoenas and Interrogatories:** On November 17, 2017, the Director of the Office of Enforcement under delegated authority issued M M I a subpoena for records and documents and interrogatories pursuant to Government Code section 11180.
35. **Subpoena and Interrogatory Responses:** On December 13, 2017, A G E provided the Office of Enforcement six (6) boxes that included hard copy documents representing A G E's subpoena response (A G E Response). One of the boxes included a separate sealed envelope containing hard copy documents representing M M I's subpoena response (M M I Response).
36. **Investigative Approach:** The Office of Enforcement's Fraud, Waste and Abuse Prevention Unit (Fraud Prevention Unit) reviewed invoices and records A G E submitted to the Fund and compared those to the records A G E and M M I provided in response to the subpoena. Documents included: canceled checks and invoices (discovered from the CTEL search warrant), and publicly available

records submitted by A G E to GeoTracker®, which included technical documents.

INFLATED INVOICES, PAYMENT CYCLES, AND KICKBACKS

37. The Fraud Prevention Unit uncovered a scheme involving CTEL and several environmental consultants that involved the creation of inflated invoices for the purpose of obtaining ineligible payments from the Fund. A G E is one of the environmental consultants that used the inflated invoices to obtain ineligible payments. The scheme utilized inflated invoices and kickback payments to obtain and distribute the ineligible payments. The scheme is described below.
38. CTEL created inflated invoices for A G E, i.e., the invoices submitted to A G E were greater than the actual cost of the laboratory analyses.
39. The costs for analytical services provided by CTEL were recorded on invoicing charts maintained by CTEL and obtained during the search warrant. CTEL's invoicing charts are collectively referred to herein as the "Ledger." For environmental sample analyses conducted on behalf of A G E, CTEL generally identifies two (2) costs in the Ledger for each laboratory sample analysis.
40. The higher of the two (2) costs recorded on CTEL's Ledger corresponds to the costs A G E submitted to the Fund.
41. In addition, the higher of the two costs on CTEL's Ledger corresponds to the costs A G E paid to CTEL. A G E paid for multiple of CTEL's inflated invoices on one (1) check, referred to herein as a "Payment Cycle." The Office of Enforcement investigated fourteen (14) Payment Cycles from November 2014 to July 2015.
42. A kickback payment was made by CTEL to M M I for every Payment Cycle. CTEL paid M M I \$63,859.00 in kickbacks over all fourteen Payment Cycles.
43. M M I received kickback payments from CTEL. The Association of Certified Fraud Examiners (ACFE) describes kickbacks as improper, undisclosed payments made to obtain favorable treatment. Kickbacks involve the submission of invoices for goods and services that are either overpriced or fictitious. Other characteristics of kickback schemes are that they involve collusion between multiple parties and are a form of a "negotiated bribery" in which a commission is paid to the bribe-taker. The corrupt payments in kickback schemes are often made by normal business check, cashier's check, or wire transfer and "disguised as some sort of legitimate business expense (such as consulting fees)." (ACFE Fraud Examiners Manual, 2018 US Edition).
44. The kickback payments CTEL made to M M I were undisclosed to the Fund by A G E, M M I, or Mr. Marty. The existence of undisclosed kickback payments

made to Mr. Marty by a subcontractor of a consultant (A G E), where Mr. Marty is a director, is an unusual and unexpected business practice.

45. On February 5, 2019, the State Water Board settled with GSA Engineering, Inc. and its principal Mr. Daniel Louks, for misrepresentations in an inflated invoicing scheme that resulted in receiving kickback payments from CTEL.
46. On August 15, 2018, The Fraud Prevention Unit interviewed Mr. Mark Wilson of Greenedge, L.L.C., an environmental consulting company. Mr. Wilson made statements that he received two invoices from CTEL, one (1) high price and one (1) low price.
47. In May of 2016, Mr. Samuel Lou, a former employee of CTEL was interviewed by District Attorney Inspector Mr. John Cheslock. Mr. Lou made statements that invoices charged to CTEL's clients are lower than the charges invoiced to the government referring to the lower costs as "the real money that they pay" CTEL.
48. The evidence demonstrates that for each Laboratory ID, the lower costs in the Ledger represent the actual costs to A G E E for CTEL's services.
49. Based on the facts described above, CTEL's payments to M M I are illegal kickbacks representing M M I's share of the illicit proceeds resulting from an inflated invoice scheme.
50. Additionally, based on the facts and nature of the inflated invoice scheme described above, Mr. Marty's incorporation of M M I and repeated acceptance of CTEL's payments is evidence that Mr. Marty had knowledge of, and was an active participant in the inflated invoice scheme.
51. Mr. Marty, A G E, and M M I, are culpable for misrepresentations made to the State Water Board related to the inflated invoice scheme.

MISREPRESENTATIONS²

52. Over the course of fourteen (14) Payment Cycles, A G E knowingly, willfully, or intentionally made four hundred sixty-six (466) misrepresentations relating to inflated CTEL invoices submitted to the Fund, corresponding to \$66,355.10 of damages. The Fraud Prevention Unit estimated the economic benefit to be the damages the Fund experienced as a result of the violations. The Fraud Prevention Unit calculated the economic benefit for A G E, CTEL, and M M I as follows:

² The kickback payment checks from CTEL to M M I included Fund and non-Fund related payments.

- i. A G E's economic benefit is equal to the markup of the inflated invoices minus the markup of the actual costs, which is \$6,041.10.
 - ii. CTEL's economic benefit is the cost of the inflated invoices minus the actual costs, minus the fifteen percent (15.0%) kickback to M M I, which is \$24,143.22.
 - iii. M M I's economic benefit is fifteen percent (15.0%) of the inflated invoices submitted to the Fund, which is \$36,170.78. M M I also received fifteen percent (15.0%) of the non-Fund related inflated invoices, which is \$27,688.22. In total M M I received \$63,859.00 in kickbacks from Fund and non-Fund related invoices. (See Attachment A for a summary of Payment Cycles 1 through 14.)
53. Each Payment Cycle contains multiple invoices and therefore represents numerous misrepresentations to the Fund. The Fraud Prevention Unit calculated the misrepresentations in the attached tables. (See Attachments B through O.) Each invoice contains costs for a laboratory sample analysis by CTEL and subsequent markup by A G E, which accounts for two (2) misrepresentations because there are two (2) separate requests for cost reimbursement based on misrepresented information. In some Payment Cycles, A G E's invoices contain multiple CTEL invoices for laboratory sample analysis and markup by A G E. In these instances, each CTEL invoice for laboratory sample analysis and subsequent markup by A G E is accounted for as a separate misrepresentation. For example, if A G E's invoice contained two (2) CTEL invoices for laboratory sample analysis and markup, three (3) misrepresentations were identified and accounted for in the attached tables. Further, if A G E's invoice contained three (3) CTEL invoices for laboratory sample analysis and markup, four (4) misrepresentations were identified and accounted for in the attached tables.

PAYMENT CYCLE 1

54. A G E paid CTEL \$21,392.50 for the invoices relating to Misrepresentations 1 through 36, with Check Nos. 12016 and 12017, dated July 28, 2015.
55. CTEL paid M M I \$3,209.00 for the kickbacks relating to Misrepresentations 1 through 36, with Check No. 1615, dated July 30, 2015. CTEL's check to M M I is fifteen percent (15.0%) of A G E's payment to CTEL for Payment Cycle 1.
56. Misrepresentations 1 through 36 are shown on the attached table "Payment Cycle 1." (See Attachment B.)

PAYMENT CYCLE 2

57. A G E paid CTEL \$12,212.25 for the invoices relating to Misrepresentations 37 through 47, with Check No. 11909, dated July 14, 2015.

58. CTEL paid M M I \$1,831.80 for the kickbacks relating to Misrepresentations 37 through 47, with Check No. 1597, dated July 17, 2015. CTEL's check to M M I is fifteen percent (15.0%) of A G E's payment to CTEL for Payment Cycle 2.
59. Misrepresentations 37 through 47 are shown on the attached table "Payment Cycle 2." (See Attachment C.)

PAYMENT CYCLE 3

60. A G E paid CTEL \$54,982.00 for the invoices relating to Misrepresentations 48 through 98, with Check Nos. 11861, 11892, 121893, 11894, and 11896, dated July 3, 2015.
61. CTEL paid M M I \$8,247.30 for the kickbacks relating to Misrepresentations 48 through 98, with Check No. 1591, dated July 13, 2015. CTEL's check to M M I is fifteen percent (15.0%) of A G E's payment to CTEL for Payment Cycle 3.
62. Misrepresentations 48 through 98 are shown on the attached table "Payment Cycle 3." (See Attachment D.)

PAYMENT CYCLE 4

63. A G E paid CTEL \$30,304.00 for the invoices relating to Misrepresentations 99 through 126, with Check Nos. 11612 and 11613, dated May 12, 2015.
64. CTEL paid M M I \$4,545.50 for the kickbacks relating to Misrepresentations 99 through 126, with Check No. 1522, dated May 21, 2015. CTEL's check to M M I is fifteen percent (15.0%) of A G E's payment to CTEL for Payment Cycle 4.
65. Misrepresentations 99 through 126 are shown on the attached table "Payment Cycle 4." (See Attachment E.)

PAYMENT CYCLE 5

66. A G E paid CTEL \$40,577.50 for the invoices relating to Misrepresentations 127 through 173, with Check Nos. 11547, 11548, and 11551, dated May 1, 2015.
67. CTEL paid M M I \$6,086.50 for the kickbacks relating to Misrepresentations 127 through 173, with Check No. 1504, dated May 13, 2015. CTEL's check to M M I is fifteen percent (15.0%) of A G E's payment to CTEL for Payment Cycle 5.
68. Misrepresentations 127 through 173 are shown on the attached table "Payment Cycle 5." (See Attachment F.)

PAYMENT CYCLE 6

- 69. A G E paid CTEL \$25,177.50 for the invoices relating to Misrepresentations 174 through 181, with Check Nos. 11419 and 11421, dated April 3, 2015.
- 70. CTEL paid M M I \$3,776.55 for the kickbacks relating to Misrepresentations 174 through 181, with Check No. 1469, dated April 10, 2015. CTEL's check to M M I is fifteen percent (15.0%) of A G E's payment to CTEL for Payment Cycle 6.
- 71. Misrepresentations 174 through 181 are shown on the attached table "Payment Cycle 6." (See Attachment G.)

PAYMENT CYCLE 7

- 72. A G E paid CTEL \$34,177.00 for the invoices relating to Misrepresentations 182 through 229, with Check Nos. 11295, 11296, and 11297, dated March 9, 2015.
- 73. CTEL paid M M I \$5,126.55 for the kickbacks relating to Misrepresentations 182 through 229, with Check No. 1435, dated March 13, 2015. CTEL's check to M M I is fifteen percent (15.0%) of A G E's payment to CTEL for Payment Cycle 7.
- 74. Misrepresentations 182 through 229 are shown on the attached table "Payment Cycle 7." (See Attachment H.)

PAYMENT CYCLE 8

- 75. A G E paid CTEL \$20,689.50 for the invoices relating to Misrepresentations 230 through 243, with Check Nos. 11217 and 11218, dated February 2, 2015.
- 76. CTEL paid M M I \$3,103.25 for the kickbacks relating to Misrepresentations 230 through 243, with Check No. 1429, dated March 9, 2015. CTEL's check to M M I is fifteen percent (15.0%) of A G E's payment to CTEL for Payment Cycle 8.
- 77. Misrepresentations 230 through 243 are shown on the attached table "Payment Cycle 8." (See Attachment I.)

PAYMENT CYCLE 9

- 78. A G E paid CTEL \$17,526.00 for the invoices relating to Misrepresentations 244 through 262, with Check No. 11161, dated February 12, 2015.
- 79. CTEL paid M M I \$2,628.90 for the kickbacks relating to Misrepresentations 244 through 262, with Check No. 1412, dated February 23, 2015. CTEL's check to M M I is fifteen percent (15.0%) of A G E's payment to CTEL for Payment Cycle 9.

80. Misrepresentations 244 through 262 are shown on the attached table "Payment Cycle 9." (See Attachment J.)

PAYMENT CYCLE 10

81. A G E paid CTEL \$47,750.50 for the invoices relating to Misrepresentations 263 through 308, with Check Nos. 10927, 10928, 10929, and 10930, dated December 22, 2014.
82. CTEL paid M M I \$7,162.50 for the kickbacks relating to Misrepresentations 263 through 308, with Check No. 1351, dated December 29, 2014. CTEL's check to M M I is fifteen percent (15.0%) of A G E's payment to CTEL for Payment Cycle 10.
83. Misrepresentations 263 through 308 are shown on the attached table "Payment Cycle 10." (See Attachment K.)

PAYMENT CYCLE 11

84. A G E paid CTEL \$40,459.00 for the invoices relating to Misrepresentations 309 through 356, with Check Nos. 10852, 10853, and 10854, dated December 10, 2014.
85. CTEL paid M M I \$6,068.50 for the kickbacks relating to Misrepresentations 309 through 356, with Check No. 1329, dated December 15, 2014. CTEL's check to M M I is fifteen percent (15.0%) of A G E's payment to CTEL for Payment Cycle 11.
86. Misrepresentations 309 through 356 are shown on the attached table "Payment Cycle 11." (See Attachment L.)

PAYMENT CYCLE 12

87. A G E paid CTEL \$30,910.00 for the invoices relating to Misrepresentations 357 through 417, with Check Nos. 10728, 10729, 10730, and 10731, dated November 19, 2014.
88. CTEL paid M M I \$4,636.50 for the kickbacks relating to Misrepresentations 357 through 417, with Check No. 1309, dated December 2, 2014. CTEL's check to M M I is fifteen percent (15.0%) of A G E's payment to CTEL for Payment Cycle 12.
89. Misrepresentations 357 through 417 are shown on the attached table "Payment Cycle 12." (See Attachment M.)

PAYMENT CYCLE 13

90. A G E paid CTEL \$21,621.00 for the invoices relating to Misrepresentations 418 through 437, with Check No. 10723, dated November 17, 2014.
91. CTEL paid M M I \$3,243.15 for the kickbacks relating to Misrepresentations 418 through 437, with Check No. 1295, dated November 21, 2014. CTEL's check to M M I is fifteen percent (15.0%) of A G E's payment to CTEL for Payment Cycle 13.
92. Misrepresentations 418 through 437 are shown on the attached table "Payment Cycle 13." (See Attachment N.)

PAYMENT CYCLE 14

93. A G E paid CTEL \$27,955.50 for the invoices relating to Misrepresentations 438 through 466, with Check Nos. 10593, 10594, and 10596, dated October 27, 2014.
94. CTEL paid M M I \$4,193.00 for the kickbacks relating to Misrepresentations 438 through 466, with Check No. 1274, dated November 5, 2014. CTEL's check to M M I is fifteen percent (15.0%) of A G E's payment to CTEL for Payment Cycle 14.
95. Misrepresentations 438 through 466 are shown on the attached table "Payment Cycle 14." (See Attachment O.)

FUND PAYMENT

96. Payment Cycles 1 through 14 included invoices for laboratory analyses for thirty-seven (37) Fund sites. A G E submitted RRs to the Fund for costs incurred on behalf of the claimants for each of these sites. A G E submitted, one-hundred-eighty-nine (189) inflated invoices in Payment Cycles 1 through 14 to the Fund for reimbursement. The Fund denied four (4) of the invoices and reimbursed one hundred percent (100%) of the remaining one-hundred-eighty-five (185) invoices to the Fund.
97. The Fund requires each claimant to provide proof of payment (POP) to ensure the claimant pays its contractors for all reimbursed costs. The claimants associated with Payment Cycles 1 through 14 provided POP for all one-hundred-eighty-nine (189) A G E invoices, including the four (4) invoices denied by the Fund. Therefore, claimants paid A G E for all one-hundred-eighty-nine (189) invoices submitted to the Fund.

STATUTORY MAXIMUM ADMINISTRATIVE CIVIL LIABILITY

98. Pursuant to section 25299.80, subdivision (a), the maximum liability for the four hundred sixty-six (466) misrepresentation detailed above is \$233,000,000.00.
99. Statutory considerations for the amount of administrative civil liability are analyzed in the following paragraphs 100 to 106.
100. Nature, circumstances, and extent of the violation: The four-hundred sixty-six (466) misrepresentations A G E made to the Fund are material misrepresentations intended to gain money from the Fund to which A G E is not entitled. A G E made the four-hundred sixty-six (466) misrepresentations on or after September 25, 2014, which was the effective date of section 25299.80.
- i. The Fund relied on A G E's invoices to represent both actual and reasonable costs incurred. The Fund could not have detected A G E's misrepresentations on their own. The misrepresentations A G E made are ineligible costs and the Fund only pays actual costs incurred. (Section 25299.57.) A G E's misrepresentations caused the Fund to authorize payment for ineligible costs. The Fund would not have authorized the payments had it known A G E's representations were false. Further, A G E's misrepresentations caused monies to be expended and resources to be wasted which otherwise could have been available to other Fund eligible sites.
 - ii. The full extent of A G E's misrepresentations subject to section 25299.80 are not known. The Fraud Prevention Unit presented all four-hundred sixty-six (466) of A G E's misrepresentations made between September 25, 2014 and September 30, 2015. It is likely that A G E's practice of making similar misrepresentations to the Fund began as early as when M M I was incorporated in 2007.
 - iii. The misrepresentations are intentional misconduct that is very difficult to detect. An enormous amount of staff resources are required to investigate the misconduct and identify the misrepresentations, primarily due to the deliberate efforts by A G E to cover up the misrepresentations. Intentional fraud is the highest order of misconduct and should be deterred in the strongest available manner.
101. Gravity of the violation: A G E's four hundred sixty-six (466) misrepresentations to the Fund totals \$66,355.10 in damages. The violations resulted in the theft of a substantial amount of money from the Fund, as well as a waste of funds available to the claimants to clean up the petroleum releases from their sites. The violations are a significant harm to the Fund, as well as to each of the claimants for the sites for which the fraudulent reimbursements were issued. Each instance of misrepresentation represents a significant liability to the Fund not only as an

additional expense unrelated to cleaning up contamination, but also as additional resources required to detect, deter and recover the fraudulent reimbursement. Thus, the magnitude of every misrepresentation is many times the actual number of dollars obtained through the misrepresentation.

102. Ability to pay: A G E is estimated to have received more than \$45 million dollars of reimbursements from the Fund since the Fund was established. A G E received approximately \$7 million after September 25, 2014. A G E's average annual reimbursement between January 1, 2015 and December 31, 2018, is estimated to be \$1.4 million, ranging from \$683,000 to \$2.489 million.
 - i. Because A G E did not provide accounting records, payroll records, or corporate tax returns, A G E's total income could not be determined. A G E's website states that the company provides services not eligible for payment from the Fund, including site assessments, underground tank removal, general engineering, equipment sales, and installation of water and wastewater treatment systems. Based on the estimated historic disbursements from the Fund to A G E, A G E has the ability to pay a significant civil liability penalty.
103. Other Matters as Justice May Require: In the criminal prosecution of Mr. Yaghoubi, eight (8) felony counts were charged, including Count 1. Count 1 pertained to four (4) analyses conducted on behalf of A G E. Count 1 related to A G E samples analyzed by CTEL, known as Laboratory ID 1404-139. By pleading guilty to Count 1, Mr. Yaghoubi admitted that the data for Laboratory ID 1404-139 was false. On June 4, 2014, A G E submitted the false data for Laboratory ID 1404-139 to the State. A G E engaged in precisely the same conduct and should be deterred in the strongest way available before the State Water Board.
104. Economic benefit: The total economic benefit to A G E and M M I for the four-hundred sixty-six (466) misrepresentations was \$110,961.19.
105. Cost of Enforcement: The conservative estimate of the cost of enforcement is \$180,100.00. It requires enormous resources to detect and deter intentional misrepresentations, many of which are not accounted for in the costs here, including training, additional staff hours not captured in this estimate, and attorney costs that are not included in this estimate. Each instance of misrepresentation represents the review and analysis of many pages of invoices, evidence, and investigation material. Thus, the cost of enforcement is very high, and difficult to accurately quantify.
106. Deterrence Considerations: The effective use of our enforcement tools serves as a deterrent to those who seek to improperly obtain monies from the Fund. The provisions of sections 25299.71 and 25299.80 provide an administrative remedy tool to protect the Fund and to deter those who seek to obtain monies improperly

from the Fund. To act as a deterrent, the liability should be adequate to prevent entities and individuals from viewing the liability as the cost of doing business. In the case of intentional misrepresentations or fraud, the deterrence should be at a magnitude that the penalty for intentional misconduct is so great that no reasonable person would engage in the conduct.

PROPOSED ADMINISTRATIVE CIVIL LIABILITY

107. **Penalty:** Having taken into consideration the factors described above, the Prosecution Team recommends the State Water Board issue an ACL in the amount of **\$1,165,000.00** pursuant to sections 25299.71 and 25299.80. This liability is the minimum liability recommended by the Prosecution Team. This penalty number represents \$2,500 for each alleged misrepresentation to the Fund, based on an analysis of the factors above.
108. **Disqualification of Business:** The Prosecution Team recommends that, pursuant to section 25299.71, the State Water Board permanently disqualify A G E, A G I and M M I from receiving any moneys from the Fund, or any account authorized under division 20, chapter 6.7 and 6.75 of the Health and Safety Code.
109. **Disqualification of Individuals:** The Prosecution Team further recommends that, pursuant to section 25299.71, the State Water Board permanently disqualify Mr. Marty, Mr. Loeffler, Mr. Ong, and Mr. Colson from receiving any moneys from the Fund, or any account authorized under division 20, chapter 6.7 and 6.75 of the Health and Safety Code.
110. **Licensure Complaints:** The Prosecution Team further recommends that, pursuant to section 25299.80(h), the State Water Board file complaints with the Board for Professional Engineers, Land Surveyors, and Geologists against Mr. Ong and Mr. Loeffler. Additionally, the Prosecution Team recommends that, pursuant to section 25299.80, subdivision (h), the State Water Board file complaints with the Contractors State License Board against A G E, M M I, and Mr. Marty.

Advanced Geo, Inc., Advanced GeoEnvironmental Inc., and Robert Marty

STATE WATER RESOURCES CONTROL BOARD

A handwritten signature in blue ink, appearing to read "Eileen Sobeck".

Eileen Sobeck,

Executive Director

State Water Resources Control Board

Dated: June 7, 2021