

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

In the matter of:

**ADMINISTRATIVE CIVIL LIABILITY
COMPLAINT NO.
R4-2019-0090
IN THE MATTER OF MILLENNIUM
DIAMOND ROAD PARTNERS, LLC et al.
MILLENNIUM DEVELOPMENT
TRACT 53430
WDID 4 19C36851**

ORDER NO. R4-2021-0106 (PROPOSED)

**SETTLEMENT AGREEMENT AND
STIPULATION FOR ENTRY OF
DECISION BY SETTLEMENT**

Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Decision by Settlement (“Stipulation” or “Stipulated Order”) is entered into by and between the Assistant Executive Officer of the Regional Water Quality Control Board, Los Angeles Region (“Regional Water Board”), on behalf of the Regional Water Board Prosecution Team (“Prosecution Team”) and Millennium Diamond Road Partners, LLC and Tiffany Cheung (“Settling Respondents”) (collectively “Parties”) and is presented to the Regional Water Board or its delegate for adoption as an Order by settlement, pursuant to Government Code section 11415.60.

Section II: RECITALS

1. On September 13, 2019, the Assistant Executive Officer of the Regional Water Board issued Administrative Civil Liability Complaint No. R4-2019-0090 (“Complaint”) to Millennium Diamond Road Partners, LLC and Tiffany Cheung for alleged violations related to construction work on the Millennium Development Tract No. 53430 (“Site”). Specifically, the Complaint sought to impose \$4,363,112 in administrative civil liability for alleged violations of the Clean Water Act section 401 Water Quality Certification No. 13-038, National Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit) Order No. 2009-009-DWQ as amended by Order No. 2010-0014-DWQ, and Water Code section 13267 Order No. R4-2018-0074 by failing to submit a technical report pertaining to the discharges of storm water from the Site by the date required in the Order.

2. A hearing on the Complaint was scheduled before the Regional Water Board on December 12, 2019. At the request of Settling Respondents, the hearing was continued to February 13, 2020. The Parties subsequently stipulated to continue the hearing to May 14, 2020 to allow for settlement discussions.

3. On July 30, 2020, Millennium Diamond Road Partners, LLC transferred ownership of the Site parcels to Hua Qing Enterprise, LLC via deeds of foreclosure. The transfer left Millennium Diamond Road Partners, LLC with no assets in real property.

4. Due to the ongoing COVID-19 pandemic, the Regional Water Board continued the hearing to October 8, 2020. The hearing was again continued and bifurcated into two phases, with a Phase 1 hearing before a panel of board members on the issue of liability scheduled for October 29, 2020, and a Phase 2 hearing to consider the panel's recommendations and penalties scheduled for December 10, 2020.

5. On September 30, 2020, the Parties jointly requested that the hearings be taken off calendar to allow for renewed settlement discussions given that Millennium Diamond Road Partners, LLC's transfer of property to Hua Qing Enterprise, LLC left it with no apparent ability to pay. The Parties request was granted, and settlement negotiations resumed.

6. On March 4, 2021, the Regional Water Board issued a Notice of Violation to Millennium Diamond Road Partners, LLC, alleging the failure to submit the 2019-2020 annual report by September 1, 2020, as required pursuant to the Construction General Permit. This alleged violation occurred after issuance of the Complaint and is not included therein.

7. On May 27, 2021, Millennium Diamond Road Partners, LLC's coverage under the Construction General Permit was administratively terminated with its concurrence.

8. The Prosecution Team's financial expert has determined that each of the Settling Respondents is unable to pay the liability proposed in the Complaint, or any substantial amount beyond what is proposed in this Stipulated Order. As described in the Prosecution Team's expert report (Exhibit A) Millennium Diamond Road Partners, LLC has no liquid or real assets and is insolvent, with liabilities exceeding assets. Similarly, as described in the Prosecution Team's expert report (Exhibit B), Tiffany Cheung's expenses exceed her income and she is essentially bankrupt.

9. The Parties have engaged in settlement negotiations and agree to fully settle the alleged violations alleged in the Complaint and in Paragraph 6, above, without administrative or civil litigation and by presenting this Stipulated Order to the Regional Water Board, or its delegate, for adoption as an Order by settlement, pursuant to Government Code section 11415.60. The Prosecution Team believes that the resolution of the alleged violations is fair and reasonable and fulfills all of its enforcement objectives, that no further action is warranted concerning the specific violations alleged in the Complaint and in Paragraph 6, above, except as provided in this Stipulated Order and that this Stipulated Order is in the best interest of the public.

Section III: STIPULATIONS

The Parties stipulate to the following:

10. **Jurisdiction:** The Parties agree that the Regional Water Board has subject matter jurisdiction over the matters alleged in this action and personal jurisdiction over the Parties to this Stipulation.

11. **Monetary Sanctions:** The Settling Respondents agree to the imposition of thirty-nine thousand four hundred forty-six dollars (\$39,446) in monetary sanctions, payable in five equal installments of seven thousand eight hundred eighty-nine dollars and twenty cents (\$7,889.20). The first payment of \$7,889.20 shall be due no later than thirty (30) days following the Regional Water Board's adoption of this Stipulated Order. The remaining four (4) installments of \$7,889.20 shall be due every year for four (4) years on the anniversary date of the Regional Water Board's adoption of this Stipulated Order. All payments shall be due and payable by check to the State Water Resources Control Board Cleanup and Abatement Account and mailed to:

State Water Resources Control Board
Division of Administrative Services
Accounting Office
1001 I Street, 18th Floor
Sacramento, CA 95814

All checks shall reference the Order number assigned to this Stipulation. Copies of each check shall be sent via US Mail and email at the time payment is made to Hugh Marley, Los Angeles Regional Water Quality Control Board, 320 West Fourth Street, Suite 200 Los Angeles, CA 90013 (hugh.marley@waterboards.ca.gov) and David Boyers, State Water Resources Control Board, 801 K Street, Suite 2300 Sacramento, CA 95814 (david.boyers@waterboards.ca.gov).

If any of the payment deadlines as set forth herein is not met, payment of the full amount, less any payments that have already been made, will become immediately due.

12. **Debarment:** Settling Respondents agree that, as of the effective date of the Stipulated Order, Millennium Diamond Road Partners, LLC and Tiffany Cheung are prohibited from performing any work for or in connection with any program administered, funded or directed in any manner by the State Water Board or any Regional Water Quality Control Board for a period of five years. The prohibition in this paragraph includes, but is not limited to, any program, fund, or account authorized under division 7 of the Water Code.

13. **Dismissal:** The Prosecution Team agrees that the violations alleged in the Complaint and in Paragraph 6, above, shall be dismissed with prejudice upon adoption of this Stipulated Order by the Regional Water Board and that, except as provided in this Stipulated Order, no further action shall be taken by the Regional Water Board against Settling Respondents and their officers, employees, representatives, agents, or assigns with respect to the violations alleged in the Complaint and in Paragraph 6, above.

14. **Admission of Liability:** Millennium Diamond Road Partners, LLC admits to each of the violations alleged in the Complaint and the violation alleged in Paragraph 6, above.

15. **Denial of Liability:** In settling this matter, Tiffany Cheung does not admit to any of the violations alleged in the Complaint or in Paragraph 6, above. However, Tiffany Cheung agrees that in the event of any future enforcement actions by the Regional Water Board, the State Water Board or any other Regional Water Quality Control Board, this Stipulated Order may be used as evidence of a prior enforcement action against her consistent with Water Code section 13327 or section 13385, subdivision (e).

16. **Public Notice:** Settling Respondents understand that this Stipulated Order must be noticed for a 30-day public review and comment period prior to consideration by the Regional Water Board or its delegate. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Regional Water Board, or its delegate, for adoption, the Prosecution Team may unilaterally declare this Stipulated Order void and decide not to present it to the Regional Water Board or its delegate. Settling Respondents agree that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order. The Prosecution Team's expert reports (Exhibits A and B) may be provided to members of the public on request, but shall not be posted on the internet.

17. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Regional Water Board's or its delegate's adoption of the Order, and public review of this Stipulated Order is lawful and adequate. The Parties understand that the Regional Water Board, or its delegate, has the authority to require a public hearing to consider adoption of this Stipulated Order. In the event procedural objections are raised or the Regional Water Board requires a public hearing prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure and/or this Stipulated Order as necessary or advisable under the circumstances.

18. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

19. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party. The Parties are represented by counsel in this matter.

20. **Modification:** The Parties shall not modify this Stipulated Order by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Regional Water Board or its delegate.

21. **If the Stipulated Order Does Not Take Effect:** In the event that the Stipulated Order does not take effect because the Regional Water Board or its delegate does not approve it, or the State Water Resources Control Board (State Water Board) or a court vacates it in whole or in part, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violation(s), unless the Parties agree otherwise. 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 the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to the following:

- A. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional 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 Stipulated Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the alleged violations; or
- B. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

22. **Waiver of Hearing:** Settling Respondents have been informed of the rights Water Code section 13323, subdivision (b) provides, and hereby waive their right to a hearing before the Regional Water Board prior to the Stipulated Order's adoption.

23. **Waiver of Right to Petition or Appeal:** Settling Respondents hereby waive their right to petition the Regional Water Board's adoption of the Stipulated Order for review by the State Water Board, and further waives their rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

24. **Covenant Not to Sue:** Settling Respondents covenant not to sue or pursue any administrative or civil claim(s) against any State agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any matter expressly addressed by the Complaint or this Stipulated Order.

25. **Necessity for Written Approvals:** All approvals and decisions of the Regional Water Board under the terms of this Stipulated Order shall be communicated to the Settling Respondents in writing. No oral advice, guidance, suggestions, or comments from Regional Water Board employees or officials regarding submissions or notices shall be construed to relieve the Settling Respondents of their obligation to obtain any final written approval this Stipulated Order requires.

26. **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.

27. **No Third-Party Beneficiaries:** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.

28. **Severability:** This Stipulated Order is severable; should any provision be found invalid, the remainder shall remain in full force and effect.

29. **Counterpart Signatures; Facsimile and Electronic Signature:** This Stipulated Order 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 Stipulated Order 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.

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

IT IS SO STIPULATED.

By:  8/6/2021
Hugh Marley
Assistant Executive Officer
Regional Water Board Prosecution
Team
Date

By: _____
Stanley Cheung
Millennium Diamond Road
Partners, LLC
Date

By: _____
Tiffany Cheung
Date

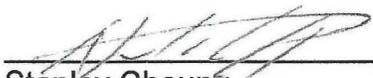
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IT IS SO STIPULATED.

By: _____
Hugh Marley
Assistant Executive Officer
Regional Water Board Prosecution
Team

Date

By: _____

Stanley Cheung
Millennium Diamond Road
Partners, LLC

8/6/2021

Date

By: _____

Tiffany Cheung

8/12/2021

Date

HAVING CONSIDERED THE PARTIES STIPULATIONS, THE LOS ANGELES REGIONAL WATER QUALITY CONTROL BOARD FINDS THAT:

1. The foregoing Stipulation is fully incorporated herein and made part of this Order.
2. This is an action to enforce the laws and regulations administered by the Regional Water Board. The Regional Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321, subdivision (a)(2), Title 14, of the California Code of Regulations.
3. The Executive Officer of the Regional Water Board is authorized to refer this matter directly to the Attorney General for enforcement if the Discharger fails to perform any of its obligations under this Order.

Pursuant to Government Code section 11415.60, **IT IS HEREBY ORDERED** on behalf of the California Regional Water Quality Control Board, Los Angeles Region.

By:

Renee Purdy
Executive Officer

Date