

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Environmental Health Advocates, Inc. (“EHA”), on the one hand, and Devcos International Pty Ltd. (“Devcos”), on the other hand, with EHA and Devcos each individually referred to as a “Party” and collectively as the “Parties.” EHA is a corporation in the State of California serving in the interest of the general public by seeking to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Devcos employs ten or more individuals and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

EHA alleges that Devcos manufactures, sells, and distributes for sale in California, pressed powder that contains Titanium Dioxide - (Airborne, Unbound Particles of Respirable Size) (“Titanium Dioxide”) and that it does so without first providing the health hazard warning required by Proposition 65. Titanium Dioxide is listed pursuant to Proposition 65 as a chemical known to cause cancer.

1.3 Product Description

The product covered by this Settlement Agreement is defined as, and expressly limited to, Devcos Crop Vegan Pressed Powder (“the Product”), that contains Titanium Dioxide and that is manufactured, sold or distributed for sale in California by Devcos.

1.4 Notice of Violation

On July 7, 2021, EHA served Devcos, Marshall’s of MA, Inc., the California Attorney General and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Devcos and others violated Proposition 65 when they failed to warn their customers and consumers in California of the health risks associated with exposures to Titanium Dioxide from the Product.

To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

Devcos denies the material, factual, and legal allegations in the Notice and maintains that all of the products it sold and/or distributed for sale in California, including the Product, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Devcos of any fact, finding, conclusion, issue of law or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Devcos of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Devcos. This Section shall not, however, diminish or otherwise affect Devcos's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean fourteen (14) days following the date this Settlement Agreement is fully executed by the Parties.

2.2. INJUNCTIVE RELIEF

2.1 Clear and Reasonable Warnings

Commencing on the Effective Date, and continuing thereafter, Devcos agrees to only manufacture for sale, purchase for sale, import for sale, or distribute for sale in or into California the Product that is sold with a health hazard warning as provided for in Section 2.2.

2.2 General Warning Requirements

Devcos agrees that each warning shall be prominently placed with such conspicuousness, as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

For purposes of this Settlement Agreement, a clear and reasonable warning for the Product shall consist of a warning affixed to the packaging, label, tag, or directly to each Product sold in California by Devcos that contains one of the following statements:

- 1) **WARNING:** This product can expose you to chemicals including Titanium Dioxide (Airborne, Unbound Particles of Respirable Size), which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.
- 2) **WARNING:** Cancer – www.P65Warnings.ca.gov.

The warning shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the sign, label or tag for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING.”

If Devcos sells Products via an internet website directly to end-user consumers located in California, the warning requirements of this section shall be satisfied if the foregoing warning or clearly marked hyperlink using the word “**WARNING**” appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one of more web pages displayed to a purchased prior to purchase during the checkout process.

The Parties agree that compliance by Devcos with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to Titanium Dioxide from use of the products.

2.3 Other Warnings

In the event that the Office of Environmental Health Hazard Assessment or another authorized agency promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, or legislation is enacted by the California legislature, United States Congress or voters with such requirements or permission, Devcos shall be entitled to use, at its discretion, such other warning text and/or method of transmission without being deemed in breach of this Agreement. If regulations or legislation are enacted providing that warnings as to Titanium Dioxide in this product are no longer required, a lack of warning by Devcos will not thereafter be a breach of this Agreement.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Devcos agrees to pay three thousand five hundred dollars (\$3,500.00) in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code §§ 25249.12(c)(1) & (d), with 75% of the penalty amount paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount retained by EHA. Within fourteen (14) days of the Effective Date, Devcos shall initiate a wire transfer for the civil penalty payment of three thousand five hundred dollars (\$3,500.00) per Section 3.3. of this Settlement Agreement. The civil penalty payment shall be allocated as follows: (a) two thousand six hundred and twenty-five dollars (\$2,625.00) to “OEHHA” and (b) eight hundred and seventy-five dollars (\$875.00) to Environmental Health Advocates, Inc.

3.2 Attorney Fees and Costs

The portion of the settlement attributable to attorneys’ fees and costs, forty-six thousand five hundred dollars (\$46,500.00), shall be paid to EHA’s counsel, who are entitled to attorneys’ fees and costs incurred by it in this action, including but not limited to investigating potential violations, bringing this matter to Devcos’s attention, as well as litigating and negotiating a settlement in the public interest.

Devcos shall provide their payment to EHA’s counsel in thirteen (13) monthly installments as described in Section 3.4 of this Settlement Agreement.

The first through twelfth installments of EHA’s attorneys’ fees and costs totaling thirty-one thousand five hundred dollars (\$31,500.00) shall be in the amount of two thousand six hundred and twenty-five dollars (\$2,625.00), payable to Entorno Law, LLP.

The thirteenth installment payment of EHA’s attorneys’ fees and costs shall be in the amount of fifteen thousand dollars (\$15,000.00), payable to Entorno Law, LLP.

If the first twelve installments of two thousand six hundred and twenty-five dollars (\$2,625.00) totaling thirty-one thousand five hundred dollars (\$31,500.00) are paid on time, then the thirteenth installment of fifteen thousand dollars (\$15,000.00) will be waived by

EHA and EHA's counsel.

3.3 Payment Address

All payments required under this Section 3 shall be made via wire transfer to Entorno Law LLP, and EHA and EHA's counsel shall provide Devcos with instructions for making the wire payments by the Effective Date.

EHA's counsel shall be responsible for distributing the civil penalty Payments to EHA and OEHHA.

3.4 Timing of Attorney's Fees Payments

The wire transfer for the first installment of the above-mentioned payments shall be initiated on or before fourteen (14) days from the Effective Date; the second installment shall be initiated on or before forty-five (45) days from the Effective Date; the third installment shall be initiated on or before seventy-five (75) days from the Effective Date; the fourth installment shall be initiated on or before one hundred and five (105) days from the Effective Date. The fifth installment shall be initiated on or before one hundred and thirty-five (135) days from the Effective Date. The sixth installment shall be initiated on or before one hundred and sixty-five (165) days from the Effective Date. The seventh installment shall be initiated on or before one hundred and ninety-five (195) days from the Effective Date. The eighth installment shall be initiated on or before two hundred and twenty-five (225) days from the Effective Date. The ninth installment shall be initiated on or before two hundred and fifty-five (255) days from the Effective Date. The tenth installment shall be initiated on or before two hundred and eighty-five (285) days from the Effective Date. The eleventh installment shall be initiated on or before three hundred and fifteen (315) days from the Effective Date. The twelfth installment shall be initiated on or before three hundred and forty-five (345) days from the Effective Date. The thirteenth installment, unless waived pursuant to Section 3.2, shall be initiated on or before three hundred and seventy-five (375) days from the Effective Date. If the deadline to make any payment is on Saturday, Sunday or holiday, it will be extended until the next day that is not a holiday. In the event that any payment is late, all remaining payments shall be due and payable immediately thereafter.

3.5 Tax Documentation

EHA agrees to provide IRS W-9 forms for, each of the payees under this Settlement Agreement. The Parties acknowledge that Devcos cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after Devcos receives the requisite W-9 forms from EHA's counsel.

4. CLAIMS COVERED AND RELEASED

4.1 EHA's Release of Devcos

This Settlement Agreement is a full, final, and binding resolution of all claims under Proposition 65 between EHA, on its own behalf and not on behalf of the public, and Devcos of any violation of Proposition 65 that was or could have been asserted by EHA, on its own behalf, on behalf of its past and current agents, representatives, attorneys, successors and assignees, against Devcos and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, each upstream entity from whom the Product was purchased by Devcos, and each entity to whom Devcos directly or indirectly distributes or sells the Product, including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees ("Releasees"), based on the failure to warn about exposures to Titanium Dioxide in the Product manufactured, sold or distributed for sale in California by Devcos before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, EHA on its own behalf and not on behalf of the public, and on behalf of its past and current agents, representatives, attorneys, successors and assignees hereby waives any and all rights it may have to institute or participate in, directly or indirectly, any form of legal action and releases all claims against Devcos and Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not exclusively, investigation fees, expert fees and attorney fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to Titanium Dioxide in the Product manufactured, distributed, sold or offered for sale by Devcos, before the Effective Date.

4.2 Devcos's Release of EHA

Devcos, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against EHA and its

attorneys and other representatives, for any and all actions taken or statements made by EHA and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Product.

4.3 California Civil Code Section 1542

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Product will develop or be discovered. EHA on behalf of itself only, acknowledges that this Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date. The Parties acknowledge that the claims released in Sections 4.1 may include unknown claims, and EHA nevertheless waives and relinquishes any right or benefit it has or may have under California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California.

7. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other; and (d) sent via email at the following addresses:

For Devcos:

Bill Denton
Devcos International Pty. Ltd.
Level 1 / 716-718 High Street
Armdale, VIC 3143 Australia
bill@devcosinternational.com

With copy to:

Jeffrey Margulies
Norton Rose Fulbright US LLP
555 South Flower Street, Forty First Floor
Los Angeles, CA 90071
jeff.margulies@nortonrosefulbright.com

For EHA:

Noam Glick
Entorno Law LLP
225 Broadway, Suite 1900
San Diego, CA 92101
noam@glicklawgroup.com

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

8. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

EHA and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

10. MODIFICATION


This Settlement Agreement may be modified only by written agreement of the Parties.

11. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

Date: 10/14/2021

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

AGREED TO:

Date: 14 OCTOBER 2021

By: 
DEVCO INTERNATIONAL PTY LTD.