

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 Larkly, Inc. (“Larkly”) and COSCo International Inc. (hereinafter “COSCo”, and collectively with Larkly, the “Larkly Defendants”), on the other hand, with EHA, Larkly, and COSCo 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.

1.2 General Allegations

EHA alleges that Larkly manufactures, sells, and distributes for sale in California, makeup palettes that contain Titanium Dioxide (“TiO₂”) and that it does so without first providing the health hazard warning required by the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”). TiO₂ (airborne, unbound particles of respirable size) is listed pursuant to Proposition 65 as a chemical known to cause cancer.

1.3 Product Description

The products covered by this Settlement Agreement are defined as, and expressly limited to powdered sunscreen products containing Titanium Dioxide in a form consisting of airborne particles measuring 10 micrometers or less including but not limited to Larkly SPF 30 Mineral Powder Sunscreen. (“Covered Products”), that is manufactured, sold or distributed for sale in California by Larkly.

1.4 Notice of Violation

On or around June 2, 2022, EHA served Defendant Nordstrom, Inc., the California Attorney General, and all other required public enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that Larkly, LLC had violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to TiO₂ contained in Larkly SPF 30 Mineral Powder Sunscreen. On or around August 19, 2022, EHA served

Larkly, and all other required public enforcement agencies with an Amended 60-Day Notice of Violation of Proposition 65 (“Second Notice”), correcting the manufacturer of Larkly SPF 30 Mineral Powder Sunscreen to Larkly, Inc.

To the best of the parties knowledge, no public enforcer has commenced or is otherwise prosecuting an action to enforce the violations alleged in the Notice or Second Notice.

1.5 No Admission

Larkly Defendants deny the material, factual, and legal allegations in the Notice and maintain that: (i) Larkly does not employ ten or more individuals and is not a person in the course of doing business for purposes of Proposition 65, (ii) the anticipated exposure level from the products Larkly sold and/or distributed for sale in California, including Covered Products, do not pose a significant risk of cancer, and (iii) all of the products Larkly sold and/or distributed for sale in California, including Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Larkly Defendants 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 Larkly Defendants of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Larkly Defendants. This Section shall not, however, diminish or otherwise affect Larkly Defendants’ obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term “Effective Date” shall mean six months following the execution of this Settlement Agreement by the Parties.


2. INJUNCTIVE RELIEF


2.1 General Warning Requirements

Commencing on the Effective Date, Larkly agrees any Covered Product sold shall contain a Proposition 65 warning. Larkly 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* Covered Products 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 Covered Products shall consist of a warning affixed to the packaging, label, tag, or directly to each Covered Product sold in California by Larkly that contains either of the following statements:

- 1)  **WARNING:** This product can expose you to chemicals including Titanium Dioxide, 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.

This warning statement shall be prominently displayed on the Covered Products, on the packing of the Covered Products, or on a placard, shelf tag, or sign provided that the statement is displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual prior to sale. If the warning statement is displayed on the Covered Products' packaging, it must be in a type size no smaller than the largest type size used for other consumer information on the product. In no case shall a warning statement displayed on the Covered Products' packaging appear in a type size smaller than 6-point type. The same warning shall be posted on any websites under the exclusive control of Larkly where Covered Products are sold into California.

(i) Changes in Warning Regulations or Statutes

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, Larkly 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 TiO₂ in this product are no longer required, a lack of warning

by Larkly will not thereafter be a breach of this Agreement. Larkly shall instruct any third-party website to which it sells its Covered Products to include the same warning as a condition of selling the Covered Products.

2.3 Grace Period for Existing Inventory of Covered Products

The injunctive requirements of Section 2 shall not apply to Covered Products that are already in the stream of commerce as of the Effective Date, which Covered Products are expressly subject to the releases provided in Section 4.1.

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 and Second Notice or referred to in this Settlement Agreement, Larkly Defendants or their affiliates agree to pay a sum of two thousand (\$2,000.00) 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 ten (10) days of the date this Settlement Agreement is executed by the Parties, Larkly Defendants shall issue two separate checks for the initial civil penalty payment to (a) “OEHHA” in the amount of one thousand five hundred (\$1,500.00) and (b) Environmental Health Advocates, Inc., in the amount of five hundred (\$500.00).

All payments owed to OEHHA (EIN: 68-0284486), pursuant to this Section shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at the following addresses:

For United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief

Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

All penalty payments owed to EHA shall be sent to:

Environmental Health Advocates
225 Broadway, Suite 1900
San Diego, CA 92101

3.2 Attorney Fees and Costs

The Parties reached an accord on the compensation due to EHA and its counsel under the private attorney general doctrine and principles of contract law. Under these legal principles, Larkly Defendants agree to pay a total of thirty-eight thousand dollars (\$38,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter to the attention of Larkly, and negotiating a settlement (the “Attorneys’ Fees Payment”). The Attorneys’ Fees Payment shall be paid over 12 months, with the first payment due by February 15, 2023, and the subsequent 11 payments due the fifteenth day of each calendar month thereafter. In the event any payment is greater than three business days late, all remaining payments shall be due immediately thereafter.

3.3 Payment Address

All payments required under this Section shall be delivered to:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 1900
San Diego, CA 92101

3.4 Tax Documentation

Larkly Defendants agree to provide a completed IRS 1099 for their payments to, and EHA agrees to provide IRS W-9 forms for, each of the payees under this Settlement Agreement. The Parties acknowledge that Larkly Defendants cannot issue any settlement payments pursuant to Section 3.1 and 3.2 above until after Larkly Defendants receive the requisite W-9 forms from EHA’s counsel.

4. CLAIMS COVERED AND RELEASED

4.1 EHA’s Release of Larkly

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 Larkly Defendants 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 (i) Larkly and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, and attorneys, (ii) each upstream entity from whom the Covered Products was purchased by Larkly, including, but not limited to, COSCo and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, and attorneys, and (iii) each entity to whom Larkly directly or indirectly distributes or sells the Covered Products, 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 TiO₂ required under Proposition 65 in the Covered Products manufactured, sold or distributed for sale in California by Larkly before the Effective Date, as alleged in the Notice and Second Notice. This release does not extend to any third-party retailers selling the product on a website who, after receiving instruction from Larkly to include a warning as set forth above in section 2.2, do not include such a warning.

In further consideration of the promises and agreements herein contained, EHA on its own behalf and not on behalf of the public, 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 Larkly Defendants 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 TiO₂ required under Proposition 65 in the Covered Products manufactured, distributed, sold or offered for sale by Larkly Defendants, before the Effective Date.

4.2 Larkly's Release of EHA

Larkly Defendants, on their own behalf and on behalf of their past and current agents, representatives, attorneys, successors, and assignees, hereby waive 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, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Products.

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 Second Notice and relating to the Covered Products will develop or be discovered. EHA on behalf of itself only, on one hand, and Larkly Defendants on behalf of themselves only, on the other hand, acknowledge 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 and 4.2 may include unknown claims, and nevertheless waive 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. **ENFORCEMENT**

In any action to enforce the terms of this Settlement Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

8. **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 at the following addresses:

For Larkly:

Elizabeth Haskins
Nelson Mullins
3751 Robert M. Grissom Parkway, Suite 300
Myrtle Beach, SC 29577

For COSCo:

COSCo International, Inc.
1633 Sands Place SE
Marietta, GA 30067

For EHA:

Noam Glick
Entorno Law, LLP
225 Broadway, Suite 1900
San Diego, CA 92101

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.

9. **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.

10. **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).

11. MODIFICATION

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

12. 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:

AGREED TO:

Date: 02/09/2023

Date: _____

By: 
ENVIRONMENTAL HEALTH
ADVOCATES, INC.

By: _____
LARKLY, INC.

Date: _____

By: _____
COSCO INTERNATIONAL, INC.

 Digitally signed by Peter M Hofmann
DN: cn=Peter M Hofmann, o, ou,
email=Peter@coscos.com, c=US
Date: 2023.02.13 14:41:57 -05'00'

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By: 
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ADVOCATES, INC.

By: 
LARKLY, INC.

Date: _____

By: _____
COSCO INTERNATIONAL, INC.