

SIXTY DAY NOTICE OF VIOLATION

*California Safe Drinking Water and Toxic Enforcement Act of 1986
(Cal. Health & Safety Code § 25249.5, et seq.) (“Proposition 65”)*

DATE: 12/2/2020

TO: Peter Thomas Roth Labs LLC
California Attorney General’s Office;
District Attorney’s Office for 58 Counties; and
City Attorneys for Los Angeles, Sacramento, San Diego, San Jose, and San Francisco

FROM: Piyush Yadav

RE: Titanium Dioxide (airborne, unbound particles or respirable size) in Certain Loose Powder Cosmetic Products

I. INTRODUCTION

My name is Piyush Yadav. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items.

I have identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at Cal. Health & Safety Code § 25249.6 *et seq.*, with respect to the products identified below in Exhibit A. These violations by have occurred and continue to occur because the alleged violator, Peter Thomas Roth Labs LLC (Peter Thomas Roth), failed to provide required clear and reasonable warnings with these products.

Please allow this letter to serve as notice of these violations to Peter Thomas Roth and the appropriate public enforcement agencies. Pursuant to Cal. Health & Safety Code § 25249.7(d), I intend to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

II. GENERAL PROPOSITION 65 INFORMATION

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment’s (“OEHHA”) Proposition 65 Implementation Office at (916) 445-6900 or visit their website at <http://oehha.ca.gov/proposition-65>. I have enclosed with this letter a copy of a summary of Proposition 65 prepared by the Office of Environmental Health Hazard Assessment.

III. LISTED CHEMICAL

The violations involve exposure to the chemical Titanium Dioxide (airborne, unbound particles of respirable size). Effective September 2, 2011, the State of California officially listed Titanium dioxide

(airborne, unbound particles of respirable size) as a chemical known to cause cancer.

IV. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

Peter Thomas Roth knowingly and intentionally exposed and continues to knowingly and intentionally expose consumers within the State of California to Titanium Dioxide (airborne, unbound particles of respirable size). The warning prong of Proposition 65 states that “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual...” *Cal. Health & Safety Code § 25249.6*.

The specific types of products that are causing consumer exposures in violation of Proposition 65, and that are covered by this Notice, are listed in Exhibit A below. All products within the type covered by this Notice shall be referred to hereinafter as the “Products.” Ongoing violations have occurred every day since at least the dates stated in Exhibit A, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. Peter Thomas Roth violated Proposition 65 because it failed to provide persons using these Products with appropriate warnings that they are being exposed to these chemicals, including by failing to have a warning on product labels for Products sold in California and failing to have a warning on the webpages where the Products are sold to purchasers in California.

Through the act of buying, acquiring and using any and all of the Products, California citizens are exposed to Titanium Dioxide (airborne, unbound particles of respirable size) when used in a standard manner, including as indicated on the product labels. The route of exposure to this chemical has been and continues to be inhalation. Inhalation of the listed chemical occurs when the Products are applied to the skin and face as directed, which releases respirable-sized particles of titanium dioxide into the air. No clear and reasonable warning is provided with the Products regarding the carcinogenic hazards of airborne titanium dioxide.

V. CONTACT INFORMATION

Please direct all questions concerning this notice to me through my counsel’s office at the following address:

Elizabeth Kramer
Erickson Kramer Osborne LLP
182 Howard St.
San Francisco, CA 94105
Telephone: (415) 635-0631
Email: elizabeth@eko.law

VI. RESOLUTION OF NOTICED CLAIMS

Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against Peter Thomas Roth unless it agrees in a binding written instrument to: (1) reformulate the identified products so as to eliminate further exposure to the identified chemicals, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned exposures to the identified chemicals, as well as expensive and time-consuming litigation.

If Peter Thomas Roth is interested in resolving this dispute without resorting to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section V above. It should be noted that neither my counsel nor I can: (1) finalize any settlement until after the 60-day notice period has expired; or (2) speak for the Attorney General or any district or city attorney who received this Notice. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy public enforcement officials.

VII. VIOLATING PRODUCTS (EXHIBIT A)

Instant Mineral SPF 45 (20.75% titanium dioxide)
(sold since approximately 4/1/2011)

Further, it is this citizen's position that Peter Thomas Roth is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.



Drug Facts
Active ingredients Titanium Dioxide.....20.75% Zinc Oxide.....19.60%
Purpose Sunscreen
Uses <ul style="list-style-type: none">• helps prevent sunburn• if used as directed with other sun protection measures (see Directions), decreases the risk of skin cancer and early skin aging caused by the sun
Warnings For external use only Do not use on damaged or broken skin
When using this product keep out of eyes. Rinse with water to remove.
Stop use and ask a doctor if rash occurs
Keep out of reach of children. If swallowed, get medical help or contact a Poison Control Center right away.
Directions <ul style="list-style-type: none">• apply liberally 15 minutes before sun exposure• reapply at least every 2 hours• use a water-resistant sunscreen if swimming or sweating

Drug Facts (Continued)
Spending time in the sun increases your risk of skin cancer and early skin aging. To decrease this risk, regularly use a sunscreen with a broad spectrum SPF value of 15 or higher and other sun protection measures including: <ul style="list-style-type: none">• limit time in the sun, especially from 10a.m.-2p.m.• wear long-sleeved shirts, pants, hats, and sunglasses• children under 6 months of age: ask a doctor
Inactive Ingredients Silica, Mica (CI 77019), Iron Oxides (CI 77491, CI 77492, CI 77499), Aluminum Hydroxide, Stearic Acid, Polymethylsilsesquioxane, Triethoxycaprylsilane, Manganese Violet (CI 77742), Chlorphenesin, Potassium Sorbate, Retinyl Palmitate, Tocopheryl Acetate, Ascorbyl Palmitate, Tetrasodium EDTA, Butylene Glycol, Water/Aqua/Eau, Salix Alba (Willow) Bark Extract.
Other Information <ul style="list-style-type: none">• protect this product from excessive heat and direct sun
Questions or comments?



Instant Mineral SPF 45



SKU 5201003 IN STOCK

Instant Mineral SPF 45

★★★★★ 3.3 (13)

Use anytime for immediate SPF45 protection. Works as a finishing powder with SPF45.

\$30.00

− 1 +
QTY

ADD TO CART

SAVE FOR LATER

SHARE

[f](#) [t](#) [p](#)

DESCRIPTION

REVIEWS

DESCRIPTION

Use this powder sunscreen anytime for immediate SPF45 protection. Works as a finishing powder with SPF45. Can be used for SPF45 touch-ups throughout the day without having to reapply your makeup. Convenient pocket-size applicator.

CERTIFICATE OF MERIT

California Health and Safety Code Section 25249.7(d)

I, Elizabeth Kramer, hereby declare:

1. This Certificate of Merit accompanies the attached 12/2/2020, sixty-day Notice of Violation (“Notice”) in which it is alleged that the parties identified in the Notice have violated California Health and Safety Code § 25249.6, by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party, Piyush Yadav.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposures to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established, and the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute;
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health and Safety Code § 25249.7(h)(2), *i.e.*, (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: 12/2/2020

/s/ Elizabeth Kramer
Elizabeth Kramer
Attorney for Piyush Yadav

PROOF OF SERVICE PURSUANT TO 27 CCR § 25903

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am over the age of 18 years, and not a party to the within action. My business address is 182 Howard St. San Francisco, CA. I am a resident or employed in the county where the mailing occurred.

On 12/2/2020, I served the following documents:

SIXTY DAY NOTICE OF VIOLATION CAL. HEALTH & SAFETY CODE § 25249.5 *ET SEQ.*;
PROPOSITION 65: A SUMMARY;
CERTIFICATE OF MERIT

on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery as indicated below:

The Company that is the subject of this 60 DAY NOTICE (Priority Mail);
City and District Attorneys listed in Attached Service List (First Class Mail).

Also on 12/2/2020, I transmitted via electronic mail the above-listed documents to the electronic mail addresses of the City and/or District Attorneys who have specifically authorized e-mail service and the authorization appears on the Attorney General's website. (See Attached Electronic Service List.)

Also on 12/2/2020, I served the California Attorney General (via website Portal) by uploading a true and correct copy thereof as a PDF file via the California Attorney General's website. Also on 12/2/2020, I also served the California Attorney General a true and correct copy of the CERTIFICATE OF MERIT ATTACHMENTS.

Dated: 12/2/2020

Respectfully Submitted,

/s/ Elizabeth Kramer
Elizabeth Kramer
Attorney for Piyush Yadav

Appendix A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA PROTECTION AGENCY THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACTION 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the office of Environmental Health Hazard Assessment, the lead and Toxic Enforcement Act 1986 (commonly known as "Proposition 65") A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide law. The reader is directed to the statute and its implementing regulations (See citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code Regulations, Sections 250000 through 27000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List" Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 725 chemicals have been listed as of November 16, 2001. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release, or otherwise engage in activities involving those chemicals must comply with the

following:

Clear and Reasonable Warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of the listing of the chemical.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of the listing of chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer (“carcinogens”), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70- year lifetime. The Proposition 65 regulations identify specific “no significant risk” levels for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm (“reproductive toxicants”), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level (NOEL),” divided by a 1,000- fold safety or uncertainty factor. The “no observable effect level” is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharge that do not result in a “significant amount” of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the list chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any

detectable amount; expect an amount that would meet the “ no significant risk” or “no observable effect” test if an individual were exposed to such an amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuit may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 27. California Code of Regulations, Section 25903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

FOR FURTHER INFORMATION...

Contact the Office of Environmental Health Hazard Assessment= Proposition 65 Implementation Office at (916)445-6900

SERVICE LIST

The Honorable Nancy O Malley Alameda County District Attorney 1225 Fallon Street, Room 900 Oakland, CA 94612	The Honorable Stacey Montgomery Lassen County District Attorney 280 South Lassen Street, Ste. 8 Susanville, CA 96130	The Honorable Candice Hooper San Benito County District Attorney 419 4th Street, Second Floor Hollister, CA 95023	The Honorable Gregg Cohen Tehama County District Attorney 444 Oak Street, Room L Red Bluff, CA 96080
The Honorable Tazee Drabec Alpine County District Attorney 270 Laramie Street, PO BOX 248 Markleeville, CA 96120	The Honorable Jackie Lacey Los Angeles County District Attorney 211 West Temple Street, Suite 1200 Los Angeles, CA 90012	The Honorable Michael Ramos San Bernardino County District Attorney 303 West 3rd Street, 8th Floor San Bernardino, CA 92415-0502	The Honorable Eric Haryford Trinity County District Attorney P.O. Box 310 Weaverville, CA 96093
The Honorable Todd Riebs Amador County District Attorney 708 Court Street Jackson, CA 95642	The Honorable David Linn Madera County District Attorney 209 West Yosemite Avenue Madera, CA 93637	The Honorable Bonnie Dumanis San Diego County District Attorney 330 W. Broadway Street San Diego, CA 92101	The Honorable Tim Ward Tulare County District Attorney 221 South Mooney Boulevard, Rm 224 Visalia, CA 93291-4593
The Honorable Michael Ramsay Butte County District Attorney 25 County Center Drive Oroville, CA 95965	The Honorable Edward Berberian Marin County District Attorney 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	The Honorable George Gascon San Francisco County District Attorney 850 Bryant Street, Room 322 San Francisco, CA 94103	The Honorable Laura Krieg Tuolumne County District Attorney 423 North Washington Street Sonora, CA 95370
The Honorable Barbara Yook Calaveras County District Attorney 891 Mountain Ranch Road San Andreas, CA 95249	The Honorable Thomas Cooke Mariposa County District Attorney 5101 Jones Street, P.O. Box 730 Mariposa, CA 95338	The Honorable Tori Varber Salazar San Joaquin County District Attorney 222 East Weber Avenue, Room 202 Stockton, CA 95201	The Honorable Gregory Totten Ventura County District Attorney 900 South Victoria Avenue Ventura, CA 93009
The Honorable John Poyner Colusa County District Attorney 346 Fifth Street Colusa, CA 95932	The Honorable C. David Eyster Mendocino County District Attorney 100 North State Street, P.O. Box 1090 Ukiah, CA 95482	The Honorable Dan Dow San Luis Obispo County District Attorney 1035 Palm Street, 4th Floor San Luis Obispo, CA 93408	The Honorable Jeff Reisig Yolo County District Attorney 301 Second Street Woodland, CA 95695
The Honorable Mark Peterson Contra Costa County District Attorney 900 Ward Street Martinez, CA 94553	The Honorable Larry Morse II Merced County District Attorney 550 W. Main Street Merced, CA 95340	The Honorable Stephen Wagstaffs San Mateo County District Attorney 400 County Center, Third Floor Redwood City, CA 94063	The Honorable Patrick McGrath Yuba County District Attorney 215 Fifth Street Marysville, CA 95901
The Honorable Dale Trigg Del Norte County District Attorney 450 H Street, Room 171 Crescent City, CA 95531	The Honorable Jordan Funk Modoc County District Attorney 204 S. Court Street, Suite 202 Alturas, CA 96101	The Honorable Joyce Dudley Santa Barbara County District Attorney 1112 Santa Barbara Street Santa Barbara, CA 93101	The Honorable Mike Feuer Office of the City Attorney, Los Angeles 800 City Hall East 200 North Main Street Los Angeles, CA 90012
The Honorable Varn Pierson El Dorado County District Attorney 778 Pacific Street Placerville, CA 95667	The Honorable Tim Kendall Mono County District Attorney P.O. Box 617 Bridgeport, CA 93517	The Honorable Jeffrey Rosen Santa Clara County District Attorney 70 West Hedding Street, West Wing San Jose, CA 95110	The Honorable James Sanchez Office of the City Attorney, Sacramento 915 I Street, 4th Floor Sacramento, CA 95814
The Honorable Lisa Smittcamp Fresno County District Attorney 2220 Tulare Street, #1000 Fresno, CA 93721	The Honorable Dean Filipo Monterey County District Attorney P.O. Box 1131 Salinas, CA 93902	The Honorable Jeff Rosell Santa Cruz County District Attorney 701 Ocean Street, Room 200 Santa Cruz, CA 95060	The Honorable Jan Goldsmith Office of the City Attorney, San Diego 1200 Third Avenue, Suite 1820 San Diego, CA 92101
The Honorable Dwayne Stewart Glenn County District Attorney P.O. Box 430 Willows, CA 95988	The Honorable Allison Haley Napa County District Attorney 1127 First Street, Suite C Napa, CA 94559	The Honorable Stephen Carlton Shasta County District Attorney 1355 West Street Redding, CA 96001	The Honorable Dennis Herrera Office of the City Attorney, San Francisco 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102
The Honorable Maggie Fleming Humboldt County District Attorney 825 5th Street, Fourth Floor Eureka, CA 95501	The Honorable Clifford Newell Nevada County District Attorney 201 Commercial Street Nevada City, CA 95959	The Honorable Lawrence Allen Sierra County District Attorney 100 Courthouse Square Downsville, CA 95936	The Honorable Richard Doyle Office of the City Attorney, San Jose 200 East Santa Clara Street, 18th Floor San Jose, CA 95113
The Honorable Gilbert Otero Imperial County District Attorney 940 West Main Street, Suite 102 El Centro, CA 92243	The Honorable Tony Rackauskas Orange County District Attorney 401 Civic Center Drive West Santa Ana, CA 92701	The Honorable James Kirk Andrus Siskiyou County District Attorney P.O. Box 986 Yreka, CA 96097	Office of the California Attorney General Proposition 65 Enforcement Reporting ATTN: Prop 65 Coordinator 1515 Clay Street, Suite 2000 Oakland, CA 94612-0550
The Honorable Thomas Hardy Inyo County District Attorney P.O. Drawer D Independence, CA 93526	The Honorable R. Scott Owens Placer County District Attorney 10810 Justice Center Drive, Suite 240 Roseville, CA 95678	The Honorable Krishna Abrams Solano County District Attorney 675 Texas Street, Suite 4500 Fairfield, CA 94533	
The Honorable Lisa Green Kern County District Attorney 1215 Truxtun Avenue Bakersfield, CA 93301	The Honorable David Hollister Plumas County District Attorney 520 Main Street, Room 404 Quincy, CA 95971	The Honorable Jill Ravitch Sonoma County District Attorney 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
The Honorable Keith Fagundas Kings County District Attorney 1400 West Lacey Boulevard Hanford, CA 93230	The Honorable Michael Hestrin Riverside County District Attorney 3960 Orange Street Riverside, CA 92501	The Honorable Birgit Fladager Stanislaus County District Attorney 832 12th Street, Suite 300 Modesto, CA 95354	
The Honorable Donald Anderson Lake County District Attorney 255 North Forbes Street Lakeport, CA 95453	The Honorable Anne Marie Schubert Sacramento County District Attorney 901 G Street Sacramento, CA 95814	The Honorable Amanda Hopper Sutter County District Attorney 463 Second Street, Suite 102 Yuba City, CA 95991	