

SETTLEMENT AND RELEASE AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement and Release Agreement (“Agreement”) is entered into by and between Piyush Yadav (“Yadav”), on the one hand, and Peter Thomas Roth Labs LLC (“PTR Labs”), on the other hand, with Yadav and PTR Labs each individually referred to as a “Party” and collectively as the “Parties.” Yadav is an individual residing in the State of California who seeks 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. PTR Labs 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 section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Yadav alleges that PTR Labs 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) by failing to provide persons using “Instant Mineral Broad Spectrum SPF 45 Sunscreen” with appropriate warnings that they are being exposed to this chemical, including by failing to have a warning on product labels for this product sold in California and failing to have a warning on the webpages where this product is sold to consumers in California. Yadav further alleges that “[e]ffective September 2, 2011, the State of California officially listed Titanium dioxide (airborne, unbound particles of respirable size) as a chemical known to cause cancer.”

1.3 Product Description

The product that is covered by this Agreement is a powder sunscreen called “Instant Mineral Broad Spectrum SPF 45 Sunscreen” in size 3.4 g / 0.12 fl oz and having SKU 5201003 that PTR Labs has or caused to be sold, offered for sale or distributed in California (the “Product”).

1.4 Notice of Violation

On December 2, 2020, Yadav served PTR Labs and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with a document entitled “Sixty Day Notice of Violation” (“Notice”) that provided PTR Labs and such public enforcers with notice that PTR Labs was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Product exposed users in California to Titanium Dioxide (airborne, unbound particles of respirable size). No public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

The Parties enter into this Agreement to settle disputed claims between them as set forth herein and in the Notice concerning PTR Labs’ alleged violation of Proposition 65. Nothing in this Agreement shall be construed as an admission by PTR Labs of any fact, finding, issue of law, or violation of law; nor shall entry into and/or compliance with this Agreement constitute or be construed as an admission by PTR Labs of any fact, finding, conclusion, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect PTR Labs’ obligations, responsibilities, and duties under this Agreement.

1.6 Effective Date

For purposes of this Agreement, the term “Effective Date” shall mean the date this Agreement is fully executed.

2. INJUNCTIVE RELIEF: WARNING

2.1 PTR no longer sells the Product.


2.2 **Warning.** Should PTR Labs in the future offer the Product in California, it shall do so only if accompanied by a warning as described in Section 2.3 below. The warning requirement shall not apply to Products that are already in the stream of commerce as of the Effective Date. 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 and shall be provided in a manner such that it is clearly associated with the specific Product to which the warning applies.

The warning requirement shall cease if PTR Labs provides documentation showing, pursuant to methods generally accepted by the scientific community, that the Product is reformulated such that it does not contain titanium dioxide in the form of airborne particles that are 10 micrometers or smaller.


2.3 Warning Language

If Products are offered for sale in the future to California consumers, PTR Labs shall provide clear and reasonable Proposition 65 warnings that consist of either the **Warning** or **Alternative Warning** as follows:

(a) **Warning.** The “Warning” shall consist of the statement:

 **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 info go to www.P65Warnings.ca.gov.

(b) **Alternative Warning:** PTR Labs may, but is not required to, use the following alternative short-form warning:

 **WARNING:** Cancer - www.P65Warnings.ca.gov.

The **Warning** or **Alternative Warning** shall include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline as show above. Where the sign, label, shelf tag or webpage 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 “WARNING” text in a size no smaller than the height of the word “WARNING”. The requirements for warnings set forth above are imposed pursuant to the terms of this Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations.

Where a Product sign, label or shelf tag used to provide a warning includes consumer information in a language other than English, the warning must also be provided in that language in addition to English.

If Products are offered for sale in the future to California consumers, PTR Labs shall affix a warning to the Product label or otherwise directly on each unit of the Product provided through in-store retail outlets in California. For the purpose of this Settlement Agreement, “Product label” means a display of written, printed or graphic material that is printed on or affixed to a Product or its immediate container. The entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type size used for other consumer information on the product. The warning shall consist of either the Warning, or the Alternative Warning described above.

In the event that, after 90 days after the Effective Date, PTR Labs either (a) prints catalogs in which the Product appears or (b) causes the Product to appear in a print catalog, and sells the

Product via mail order through such catalogs to California consumers, PTR Labs shall provide a warning for each unit of the Product both on the Product label in accordance with the above, and in the catalog in a manner that clearly associates the warning with the specific Product being purchased. Any warning provided in a mail order catalog shall be in the same type size or larger than other consumer information provided for the Product within the catalog and shall be provided on the same page and in the same location as the display and/or description of the Product. The catalog warning may use the Alternative Warning content described above if the warning provided on the Product label also uses the Alternative Warning content and following subsection.

If, after 90 days after the Effective Date, PTR Labs offers for sale any units of the Product via the internet: (a) to consumers that directly, or indirectly through other entities that PTR Labs has reason to believe, sell to consumers downstream in California; or (b) to consumers in California (including through but not limited to PTR Lab's website, www.peterthomasroth.com), PTR Labs shall provide warnings for each unit of the Product by prominently displaying the warning to the consumer prior to completing the purchase or during the purchase of the Product without requiring the potential purchasers to seek out the warning. The warning or a clearly marked hyperlink to the warning using the word **“WARNING”** given in conjunction with the sale of the Products via the internet shall appear either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the order form for the Product; or (c) on one or more web pages displayed to a purchaser during the checkout process. The internet warning may use the Alternative Warning content described above. To the extent not otherwise made clear, the warning requirements herein are to be construed consistent with the requirements of Cal. Code Regs. Tit. 27, § 25602.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to California Health and Safety Code § 25249.7(b)(2), and in settlement of all the claims alleged or that could have been alleged in the Notice or referred to in this Agreement, PTR Labs agrees to pay \$5,000 in civil penalties as provided herein. The penalty payment will be allocated in accordance with California Health and Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty paid to Yadav and delivered to the address in Section 3.3. PTR Labs will provide its payment in two checks as follows: (1) “OEHHA” in the amount of \$3,750; and (2) “Piyush Yadav” in the amount of \$1,250.

3.2 Attorneys’ Fees and Costs

The Parties acknowledge that Yadav and his counsel, Erickson Kramer Osborne LLP, offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the Agreement had been settled. Shortly after the other settlement terms had been reached, PTR Labs expressed a desire to resolve Yadav’s fees and costs. The Parties reach an accord on the compensation due to Yadav’s counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure § 1021.5 for all work performed in this matter. Under these legal principles, PTR Labs agrees to pay \$15,000.00, in the form of a check made payable to “Erickson Kramer Osborne LLP,” for all fees and costs incurred investigating, bringing this matter to the attention of PTR Labs and negotiating a settlement.

3.3 Payment Information

By April 1, 2022, PTR Labs shall deliver the checks totaling a payment of Twenty Thousand Dollars (\$20,000) for the civil penalties and attorney's fees and costs, as more specifically described in Sections 3.1 and 3.2 above, to Erickson Kramer Osborne LLP at the following address: 44 Tehama Street, San Francisco, California 94105.

Other than these payments, each side is to bear its own attorneys' fees and costs.

In the event that PTR Labs fails to remit the total payments owed under Section 3 of this Agreement on or before April 1, 2022, PTR Labs shall be deemed to be in material breach of its obligations under this Agreement.

4. CLAIMS COVERED AND RELEASED

4.1 Release of PTR Labs, Downstream Customers and Upstream Vendors

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Section 3 above, Yadav in his individual capacity hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to the Product, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against (a) PTR Labs, (b) each of PTR Labs' downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers or users and (c) any PTR Labs parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives,

shareholders, owners, agents, and employees, and sister and parent entities. (collectively “Releasees”).

Yadav also in his individual capacity provides a general release herein that shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of any nature, character or kind, known or unknown, suspected or unsuspected, against PTR Labs and the Releasees. Yadav acknowledges that he is familiar with California Civil Code § 1542, which provides 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 RELEASING PARTY.

Yadav expressly waives and relinquishes any and all rights and benefits that he may have under, or which may be conferred on him by the provisions of California Civil Code § 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters.

Nothing herein shall be construed as diminishing PTR Labs’ continuing obligations to comply with Proposition 65.

4.2 Release of Yadav

PTR Labs waives any and all claims against Yadav, his attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Yadav and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 in this matter, and/or with respect to the Notice or Product.

5. SEVERABILITY

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

6. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Product, then PTR Labs shall provide written notice to Yadav's counsel of any asserted change in the law so that the parties can meet and confer in good faith as to whether PTR Labs' injunctive obligations, if any, should cease. Nothing in this Settlement Agreement shall be interpreted to relieve PTR Labs from any obligation to comply with any pertinent state or federal toxics control law.

7. NOTICE

Unless specified herein, all correspondence and notices required to be provided pursuant to this Agreement shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For PTR Labs: Brad Scheller, Esq.
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
666 Third Avenue, 17th Floor
New York, New York 10017

For Yadav: Elizabeth Kramer
Erickson Kramer Osborne LLP
44 Tehama Street
San Francisco, California 94105

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

8. **COUNTERPARTS; FACSIMILE/E-SIGNATURES**

This Agreement may be executed in counterparts and by facsimile or e-signatures, 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 CALIFORNIA HEALTH & SAFETY CODE § 25249.7(f)**

Yadav agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

10. **ENTIRE AGREEMENT**


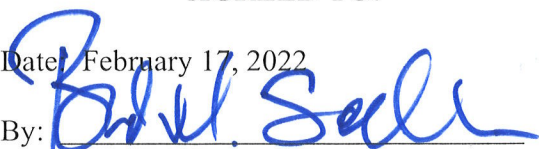
This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

11. **MODIFICATION**

This Agreement may be modified only by a written agreement signed by the Parties.

12. **AUTHORIZATION**

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

AGREED TO:	AGREED TO:
<p>Date: February 17, 2022</p> <p>By: <u></u></p> <p>On Behalf of Piyush Yadav</p>	<p>Date: February 17, 2022</p> <p>By: <u></u></p> <p>On Behalf of Peter Thomas Roth Labs LLC</p>