

## **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 Charlotte Tilbury Beauty Inc. (“CTB”), on the other hand, with EHA and CTB 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. EHA alleges that CTB 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, and CTB denies, that CTB manufactured, sold, or distributed for sale in California, powdered face makeup products that contained Titanium Dioxide that is airborne and in unbound particles of respirable size (“TiO<sub>2</sub>”) that it exposed consumers to this chemical at a level requiring a Proposition 65 warning. CTB denies that the products contained TiO<sub>2</sub> that is airborne and in unbound particles of respirable size and that the products required or requires a Proposition 65 warning and that CTB’s manufacture, sale, or distribution for sale in California violated Proposition 65 in any manner whatsoever. TiO<sub>2</sub> 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 Charlotte Tilbury - Cheek to Chic Climax blush products that are manufactured, sold, or distributed for sale in California, directly or indirectly, by CTB (“Covered Products”).

#### **1.4 Notice of Violation**

On or around December 8, 2022, EHA served CTB, the California Attorney General, and certain other public enforcement agencies with a 60-Day Notice of Violation of Proposition 65 (“Notice”). The Notice alleged that CTB had violated Proposition 65 by failing to provide clear and

reasonable warning to consumers in California that use of the Covered Products exposes them to TiO<sub>2</sub>.

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.

### **1.5 No Admission**

CTB 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 Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by CTB 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 CTB of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by CTB. This Section shall not, however, diminish or otherwise affect CTB's obligations, responsibilities, and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, CTB maintains that it has not knowingly manufactured, or caused to be manufactured, the Covered Products for sale in California in violation of Proposition 65.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is executed by the Parties and the provision of a completed IRS Form W-9 by EHA's counsel to CTB's counsel.

## **2. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

### **2.1 General**

Commencing one year after the Effective Date, CTB shall not sell into the state of California any Covered Product that exposes a person to Titanium Dioxide that is airborne and in unbound particles of respirable size at levels set forth in Section 2.2 unless the Covered Product meets the warning requirements under section 2.3.

### **2.2 Reformulation Levels**

When measured using bulk testing, greater than 5.0 X 10<sup>3</sup> respirable-sized TiO<sub>2</sub> unbound particles. This would be measured using the following method:

1. Preparation for qualitative presence or absence and quantification of TiO<sub>2</sub> particles unbound in the respirable-size fraction by TEM are conducted as follows: The product is prepared for analysis by weighing and suspending a portion of the suspect material in an alcohol/deionized water mix. Measured aliquots of the sample suspension are then filtered through a 0.2 μm mixed cellulose ester filter (MCE). It has been determined that the optimal range of material extracted from the product falls between 10-50 mg suspended in a 400 mL 50/50 DI H<sub>2</sub>O/isopropyl alcohol solution\*, from which 1-5 mL aliquots are drawn and filtered. The final MCE filter is dried, collapsed with acetone, and coated with carbon in a vacuum evaporator. The fibers and solids collected on the carbon-coated filter replicate are transferred onto copper grids for TEM analysis.

2. The resulting preparation is then scanned to assure a particle loading of the filter between 5-15%, and then quantified by analysis, measuring lengths and widths and chemistries of particulate to determine overall percent TiO<sub>2</sub> and size bin categorized for comparison with target value compliances. Only particles less than 10 μm relative aerodynamic diameter not touching or adhering to other materials on the filter preparation that reveal only titanium (and oxygen) peaks by EDS will be considered for quantification. To observe and quantify all such structures down to unbound particles as small as 50 nm (minimum dimension of 0.050 μm), the analysis should be conducted at 20-25,000x magnification. Sufficient area of the filter shall be analyzed to reach an analytical sensitivity of at least 5.0 X 10<sup>3</sup> RPTi /mg of product.

3. Products prepared and analyzed by this bulk screening protocol that are found to contain >5.0 X 10<sup>3</sup> RPTi /mg of product shall be deemed as “Fails TiO<sub>2</sub> screening test”, as would any product found to contain respirable titanium dioxide fibers (mineralogically, acicular to fibrous rutile) observed on the filter analyzed to the specified analytical sensitivity (5.0 X 10<sup>3</sup> RPTi /mg). Product samples thusly failing this standard would then be recommended for further testing to confirm releasability such as product use simulation in a controlled environment with appropriate air testing, etcetera. Alternatively, such products may be reformulated by the manufacturer or removed as noncompliant.

Should EHA reach a court-approved settlement with any other party that manufactures, sells, or distributes consumer products in the state of California alleging a violation of Proposition

65 with respect to TiO<sub>2</sub>, Defendant may comply with the reformulation and/or warning standard in that settlement and will be deemed in compliance with Proposition 65.

Covered Products' compliance with the bulk testing standard set forth in this section constitutes compliance with Proposition 65 as to TiO<sub>2</sub>.

### **2.3 General Warning Requirements**

Commencing on the Effective Date, CTB agrees to provide a Proposition 65 warning for any Covered Product that does not meet the thresholds established in paragraph 2.2.

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, directly to each Covered Product sold in California by CTB, or on a placard, shelf tag, sign or electronic device or automatic process that contains one 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](http://www.P65Warnings.ca.gov).

OR

2) **⚠️ WARNING:** Cancer— [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

The warning content and method of transmission shall be provided in any form as authorized by any Proposition 65 law or regulation effective on or after the Effective Date. There shall be no obligation for CTB to provide a warning for Covered Products that entered the stream of commerce prior to the Effective Date, and the Section 4 release applies to all such Covered Products.

(i) **Changes in Warning Regulations or Statutes**

In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting Proposition 65 warning text and/or methods of transmission applicable to the Covered Products and the chemical at issue, which are different than those set forth above, CTB 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 Proposition 65 warnings as to TiO<sub>2</sub> exposure from this product are no longer required, a lack of warning by CTB will not thereafter be a breach of this Agreement.

#### **2.4 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. For the avoidance of doubt, Covered Products in the stream of commerce specifically include, but are not limited to, Covered Products in the process of manufacture.

### **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, CTB agrees to pay three thousand (\$3,000.00) 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. CTB shall issue two separate checks for the initial civil penalty payment to (a) “OEHHA” and (b) Environmental Health Advocates, Inc. as follows:

- One payment of \$2,250.00 to OEHHA, due 10 (ten) days after the effective date.
- One payment of \$750.00 to EHA, due 10 (ten) days after the effective date.

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:

Isaac Fayman  
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, within ninety (90) days of the date this Settlement Agreement is executed by the Parties, CTB agrees to pay thirty-two thousand dollars (\$32,000.00) to EHA and its counsel for all fees and costs incurred in investigating, bringing this matter the attention of CTB, and negotiating a settlement. The thirty-two thousand dollars (\$32,000.00) in Attorney's Fees and Costs shall be payable to Entorno Law, LLP.

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**

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

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 EHA's Release of CTB**

This Settlement Agreement is a full, final, and binding resolution of all claims between EHA, on its own behalf and not on behalf of the public, and CTB for all claims that can 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 CTB and each of its respective parents, subsidiaries, affiliated entities under common ownership, directors, officers, members, employees, attorneys, and any entity, including, but not limited to each entity to whom CTB 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 TiO<sub>2</sub> required under Proposition 65 in the Covered Products manufactured, sold, or distributed for sale in California by CTB before the Effective Date, as alleged in the Notice, or for any other reason.

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 CTB 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 TiO<sub>2</sub> required under Proposition 65 in the Covered Products manufactured, distributed, sold or offered for sale by CTB, before the Effective Date. EHA agrees that it will not at any time defame, disparage, or impugn CTB, the CTB brand, and/or the Covered Products.

#### **4.2 CTB's Release of EHA**

CTB, 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, 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 relating to the Covered Products will develop or be discovered. EHA on behalf of itself only, on one hand, and CTB on behalf of itself 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.**

EHA and CTB each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

**5 PUBLIC BENEFIT**

It is CTB's understanding that the commitments it has agreed to herein, and actions to be taken by CTB under this Settlement Agreement confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of CTB that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to CTB's alleged failure to provide a warning concerning actual or alleged exposure to TiO<sub>2</sub> prior to use of the Covered Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Covered Products addressed in this Settlement Agreement, provided that CTB is in material compliance with this Settlement Agreement.

**6. 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.



7. **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.

8. **ENFORCEMENT**

If EHA alleges that CTB has failed to comply with this Agreement, prior to filing an action or a Proposition 65 Notice of Intent to Sue letter against any Released Party, EHA shall first provide CTB thirty (30) days' advance written notice of the alleged violation(s). EHA shall provide testing results, lot numbers, photographs of the Covered Product packaging for the Covered Product at issue or such other evidence EHA believes supports its allegations. The Parties shall meet and confer during such thirty (30) day period in an effort to resolve the matter informally without the need for litigation. EHA shall take no further action if during the thirty (30) day period, CTB provides EHA (i) persuasive evidence that no violation exists; or (ii) corrective action has been, or is, taken to rectify the alleged violation. If the corrective action in good faith may take longer to complete than the initial thirty (30) day period, then CTB may have up to sixty (60) days to correct the alleged violation, provided the corrective action has commenced within the initial thirty (30) day period. If the matter is not resolved within thirty (30) days, or if the corrective action is not completed within sixty (60) days, EHA can file suit to enforce this Agreement in any Superior Court in the State of California. In any action to enforce the terms of this Settlement Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

9. **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 CTB:

Lindsay Donn Mann  
Charlotte Tilbury Beauty Inc.  
148 Lafayette Street  
New York, NY 10013  
Lindsay.DonnMann@charlottetilbury.com

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.

**10. 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.

**11. 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).

**12. MODIFICATION**

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

**13. 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.

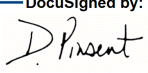
**AGREED TO:**

**AGREED TO:**

Date: 5/31/2023

Date: June 7, 2023

By:   
ENVIRONMENTAL HEALTH  
ADVOCATES, INC.

DocuSigned by:  
By:   
CBBDF4595293434  
CHARLOTTE TILBURY BEAUTY INC.