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10 Attorneys for Defendants
Peter Thomas Roth, LLC,
11 Peter Thomas Roth Designs LLC,
Peter Thomas Roth Global LLC,
12 and Peter Thomas Roth Labs LLC

13
14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **OAKLAND DIVISION**
17

18 KARI MILLER and SAMANTHA PAULSON,
on behalf of themselves and those similarly
19 situated,

20 Plaintiffs,

21 vs.

22 PETER THOMAS ROTH, LLC; PETER
THOMAS ROTH DESIGNS LLC; PETER
THOMAS ROTH GLOBAL, LLC; PETER
23 THOMAS ROTH LABS LLC; and DOES 1-100,

24 Defendants.

Case No.:

**NOTICE OF REMOVAL OF ACTION
FROM STATE COURT TO FEDERAL
COURT**

1 PLEASE TAKE NOTICE that Defendants Peter Thomas Roth, LLC, Peter Thomas Roth
2 Designs LLC, Peter Thomas Roth Global, LLC, and Peter Thomas Roth Labs LLC (collectively
3 “Defendants”) hereby remove to this Court the State Court Action described below.

4 **INTRODUCTION**

5 1. On December 27, 2018, Plaintiffs Kari Miller and Samantha Paulson (collectively,
6 “Plaintiffs”) filed a class action complaint in the Superior Court of the State of California, County
7 of Alameda (“the State Court Action”), against Defendants, styled as *Kari Miller and Samantha*
8 *Paulson v. Peter Thomas Roth, LLC, Peter Thomas Roth Designs LLC, Peter Thomas Roth Global,*
9 *LLC and Peter Thomas Roth Labs LLC* (hereinafter “the Complaint”). The State Court Action has
10 been accorded Case Number RG18933751. Copies of the Complaint and civil case cover sheet are
11 attached hereto as **Exhibit A.**

12 2. The Summons purports that the Complaint and Summons were personally served on
13 Peter Thomas Roth Labs LLC’s registered agent for service of process, Corporation Service
14 Company (CSC), on January 9, 2019. A copy of the executed Summons is attached hereto as
15 **Exhibit B.**

16 3. Defendant Peter Thomas Roth Labs LLC filed and served an Answer to the
17 Complaint on February 6, 2019. A copy of Defendant Peter Thomas Roth Labs LLC’s Answer to
18 the Complaint is attached hereto as **Exhibit C.**

19 4. Attached hereto as **Exhibit D** is a copy of the Notice of Case Management
20 Conference and Order that was served in the State Court Action.

21 5. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) in that it is
22 being filed within thirty (30) days of the initial service of copies of the Summons and Complaint on
23 Peter Thomas Roth Labs LLC. No previous Notice of Removal has been filed with this Court.

24 6. To date, Peter Thomas Roth, LLC, Peter Thomas Roth Designs LLC, and Peter
25 Thomas Roth Global, LLC have not been served with the Summons and Complaint and, in fact,
26 each of these entities is not a proper party. If served, Defendants intend to move to quash service
27 based on lack of jurisdiction. Diversity will not be destroyed if Peter Thomas Roth, LLC, Peter
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1 Thomas Roth Designs LLC, and Peter Thomas Roth Global, LLC are served.

2 7. Defendants join in and consent to the removal of this action.

3 **THE PARTIES**

4 8. Defendant Peter Thomas Roth, LLC is a New York limited liability company with its
5 principal place of business in New York. Compl. at ¶ 5.

6 9. Defendant Peter Thomas Roth Designs LLC is a Delaware limited liability company
7 with its principal place of business in New York. Compl. at ¶ 6.

8 10. Defendant Peter Thomas Roth Global, LLC is a New York limited liability company
9 with its principal place of business in New York. Compl. at ¶ 7.

10 11. Defendant Peter Thomas Roth Labs LLC is a New York limited liability company
11 with its principal place of business in New York. Compl. at ¶ 8.

12 12. According to the Complaint, Plaintiffs are citizens of California. Compl. at ¶¶ 3, 4.

13 13. On information and belief, no persons or entities not identified as a named party in
14 the Complaint have been named or served in this action and, accordingly, the consent of any
15 persons or entities other than Defendants is not needed for removal.

16 **VENUE**

17 14. Venue is appropriate in the United States District Court for the Northern District of
18 California pursuant to 28 U.S.C. § 1441(a), as this removal has been brought in the district in which
19 the matter was pending in state court. Pursuant to Civil Local Rule 3-2(c) and (d), assignment to
20 the Oakland Division is proper, as the State Court Action has been pending in Alameda County, and
21 a substantial part of the events that give rise to the action allegedly occurred in Contra Costa County
22 and Sacramento County.

23 **DIVERSITY JURISDICTION UNDER THE CLASS ACTION FAIRNESS ACT OF 2005**

24 15. This action is a civil action that may be removed pursuant to 28 U.S.C. §§ 1446(a)
25 and 1453(b) because this Court has diversity jurisdiction under the Class Action Fairness Act of
26 2005 (“CAFA”). 28 U.S.C. § 1332(d).

27 16. Defendant Peter Thomas Roth, LLC is incorporated in New York. Compl. at ¶ 5; 28
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1 U.S.C. § 1332(c).

2 17. Defendant Peter Thomas Roth Designs LLC is incorporated in Delaware. Compl. at
3 ¶ 6; 28 U.S.C. § 1332(c).

4 18. Defendant Peter Thomas Roth Global, LLC is incorporated in New York. Compl. at
5 ¶ 7; 28 U.S.C. § 1332(c).

6 19. Defendant Peter Thomas Roth Labs LLC is incorporated in New York. Compl. at ¶
7 8; 28 U.S.C. § 1332(c).

8 20. Plaintiffs are citizens of California. Compl. at ¶¶ 3-4.

9 21. The citizenship of the other putative class members is also not identified or limited in
10 any way. Compl. at ¶¶ 77, 89.

11 22. The Complaint defines the “Water Drench Class” as “[a]ll persons who, between
12 December 28, 2014 and the present, purchased, in the United States, any Water Drench Product.”
13 Compl. at ¶ 89. The Complaint defines the “Water Drench Product Subclass” as “[a]ll Water
14 Drench Class Members who, purchased, in California, any Water Drench Product.” *Id.* This class
15 includes numerous citizens of states other than California.

16 23. The Complaint defines the “Rose Stem Cell Class” as “[a]ll persons who, between
17 December 28, 2014 and the present, purchased, in the United States, any Rose Stem Cell Product.”
18 Compl. at ¶ 77. The Complaint defines the “Rose Stem Cell Subclass” as “[a]ll Rose Stem Class
19 [sic] Members who, purchased, in California, any Rose Stem Cell Product.” *Id.* This class includes
20 numerous citizens of states other than California.

21 24. Minimal diversity under CAFA is established because the putative class is not
22 limited to citizens of the same state as Defendants. *See* 28 U.S.C. § 1332(d)(2)(A); *Mondragon v.*
23 *Capital One Auto Finance*, 736 F.3d 880, 881-82 (9th Cir. 2013) (“A pure inference regarding the
24 citizenship of prospective class members may be sufficient if the class is defined as limited to
25 citizens of the state in question, but otherwise such a finding should not be based on guesswork.”).

26 25. While the Complaint is silent as to the size of the putative class, PTR has sold over
27 100,000 units of the implicated products identified in the Complaint nationwide and, thus,
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1 reasonably assumes that the putative class exceeds 100 people, the minimum number required for
2 jurisdiction under CAFA. See 28 U.S.C. § 1332(d)(5)(B). **Exhibit E** at ¶ 9.

3 26. Finally, although the Complaint is silent as to the specific amount of monetary relief
4 sought by the proposed class, the relief requested by the representative Plaintiffs and reflected in
5 Peter Thomas Roth Labs LLC’s records demonstrate that the aggregate amount in controversy
6 exceeds \$5,000,000. **Exhibit E** at ¶ 4; 28 U.S.C. § 1332(d)(2), (6).

7 27. The Complaint seeks compensatory damages, exemplary damages, restitution,
8 injunctive relief, and attorneys’ fees and costs. Compl. at ¶¶ 57-60. These damages satisfy the
9 amount in controversy requirement. 28 U.S.C. § 1332(d)(6).

10 **CONCLUSION**

11 28. Defendants will promptly serve Plaintiffs with this Notice of Removal and will
12 promptly file a copy of this Notice of Removal with the clerk of the Court for the Superior Court of
13 the State of California, County of Alameda, as required under 28 U.S.C. § 1446(d).

14 WHEREFORE, pursuant to 28 U.S.C. § 1441(a) and in accordance with the procedures set
15 forth in 28 U.S.C. § 1446, Defendants respectfully request that the above-captioned action pending
16 in the Superior Court of the State of California, County of Alameda, be removed to this Court.

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18 Dated: February 7, 2019

Respectfully submitted,

MINTZ LEVIN COHN FERRIS GLOVSKY AND POPEO P.C.

19
20 */s/ Nada I. Shamonki*

21 By: Daniel J. Herling
22 Nada I. Shamonki
23 Nicole V. Ozeran

24 Attorneys for Defendants
25 Peter Thomas Roth, LLC,
26 Peter Thomas Roth Designs LLC,
27 Peter Thomas Roth Global, LLC,
28 and Peter Thomas Roth Labs LLC

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I filed the foregoing **NOTICE OF REMOVAL OF ACTION FROM STATE COURT TO FEDERAL COURT** electronically on February 7, 2019, with the Clerk of the United States District Court in the CM/ECF system, which will serve a notice of the filing upon all counsel or parties of record on the email addresses listed on the court website.

/s/ Nada I. Shamonki
Nada I. Shamonki