

**SETTLEMENT AND RELEASE AGREEMENT**

**1. INTRODUCTION**

**1.1. Initiative for Safer Cosmetics and Able C&C U.S., Inc.**

This Settlement Agreement is entered into by and between Initiative for Safer Cosmetics ("IFSC"), on the one hand, and Able C&C U.S., Inc. (formerly known as Missha US, Inc.) ("Missha"), on the other hand, with IFSC and Missha collectively referred to as the "Parties."

**1.2. General Allegations**

IFSC alleges that Missha manufactured and distributed and offered for sale in the State of California "Missha Super Aqua Cell Renew Snail Cleansing Foam" (NOV 2024-02788) and "Missha M Perfect Cover B.B Cream" (NOV 2024-02194) containing Diethanolamine ("DEA"), and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* and its implementing regulations ("Proposition 65"). California has identified and listed DEA under Proposition 65 as a chemical known to the State of California to cause cancer.

**1.3. Product Description**

The products that are covered by this Settlement Agreement are defined as Missha Super Aqua Cell Renew Snail Cleansing Foam (NOV 2024-02788) and Missha M Perfect Cover B.B Cream (NOV 2024-02194) that Missha has manufactured, imported, sold, offered for sale or distributed in California. All such items shall be referred to herein as the "Products."

**1.4. Notice of Violation**

On 06/01/2024 IFSC served Missha US, Inc., Able C&C US, Inc., Walmart Inc. ("Walmart"), Wal-Mart.com USA, LLC (NOV 2024-02194) and on 07/07/2024 IFSC served Missha US, Inc., Able C&C US, Inc. (NOV 2024-02788) 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 "60-Day Notice of Violation" ("Notices") that provided Missha and such public enforcers with notice that Missha was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Products allegedly exposed users in California to DEA. To the best of the Parties' knowledge, 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 Settlement Agreement to settle disputed claims between them as set forth herein and in the Notices concerning Missha's compliance with Proposition 65. Missha denies the material factual and legal allegations contained in IFSC's Notice and maintains that all

products that it has manufactured for sale and distribution in California, including the Products, have been and are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Missha of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Missha of any fact, binding, conclusion, issue of law, or violation of law, such being specifically denied by Missha on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Missha under this Settlement Agreement.

## **1.6. Effective Date**

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

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

As of the Effective Date, and continuing thereafter, Products that Missha directly manufactures, imports, distributes, sells, or offers for sale in California shall either be: (a) DEA free Products pursuant to § 2.1, below; or (b) labeled with a clear and reasonable exposure warning pursuant to §§ 2.2 and 2.3, below. For purposes of this Settlement Agreement, a "DEA Free Formulated Product" is a Product that is in compliance with the standard set forth in § 2.1, below. The warning requirements set forth in §§ 2.2 and 2.3 shall not apply to any DEA Free Reformulated Product or to any Product manufactured prior to the Effective Date.

### **2.1. DEA Free Formulation Standards**

To qualify as a “DEA Free Formulated Product,” the Product must meet the following standard: DEA content that is either not detectable (i.e., zero) or below the Reporting Limit (defined herein) when the Product is analyzed pursuant to liquid chromatography/tandem mass spectrometry (LC-MS/MS), inductively coupled mass spectroscopy (ICP-MS) or other method of analysis utilized by the International Organization of Standardization (ISO) for qualitative or quantitative screening of cosmetics and cosmetic raw materials.

#### **2.1.1 Reporting Limit**

The “Reporting Limit” is 0.10 ppm in a sample of a Product tested by an accredited testing laboratory employing LC-MS/MS, ICP-MS or other reliable method of analysis utilized by the ISO for qualitative and quantitative screening of cosmetics and cosmetic raw materials.

### **2.2. Warning Option**

Products that do not meet the warning exemption standard set forth in Section 2.1 above shall be accompanied by a warning as described in Section 2.3 below. This warning requirement shall only be required as to Products that are manufactured, distributed, marketed, imported, sold, shipped for sale or offered for sale to consumers by Missha in the State of California. No Proposition 65 warning shall be required for any Products that are supplied or contracted to be

supplied to third parties by Missha prior to 6 months after the Effective Date, and all such Products are hereby deemed to be exempt from Proposition 65 enforcement.

### **2.3. Warning Language**


(a) Where required to meet the criteria set forth in Section 2.2, Missha shall display one of the following warning statements on the packaging label of the Products that do not meet the warning exemption standard set forth in Section 2.1 above. The Warning shall consist of either the Standard Warning (under 2.3. (i)) or the Short-Form Warning (under 2.3. (ii)).

i. Standard Warning. The Standard Warning shall consist of the statement:


- 1) **“WARNING:” [or] “CA WARNING:” [or] “CALIFORNIA WARNING:”**  
This product can expose you to chemicals including Diethanolamine, which is [are] known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

or

ii. Short-Form Warning. The Short-Form Warning shall consist of one of the following statements:


- 2)  **“WARNING:” [or] “CA WARNING:” [or] “CALIFORNIA WARNING:”**  
Cancer risk from exposure to Diethanolamine (“DEA”). See [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

or

- 3)  **“WARNING:” [or] “CA WARNING:” [or] “CALIFORNIA WARNING:”**  
Can expose you to Diethanolamine (“DEA”), a carcinogen. See [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

or

On a product manufactured/labeled prior to 1/1/2028, regardless of date of sale:

- 4)  **WARNING:** Cancer – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

Missha may use “cancer and” in the warning at its option. Missha may include the names of additional chemicals in the warning if they are present in the Products at a level that Missha reasonably believes would require a Proposition 65 warning.

(b) The requirements for warnings, set forth in subsection (a) above, are imposed pursuant to the terms of this Settlement Agreement. The Parties recognize that these are not the exclusive methods of providing a warning under Proposition 65 and its implementing regulations. Missha

shall be deemed to be in compliance with the warning requirements of this Settlement Agreement by either adhering to this Section 2.3 or by complying with the Proposition 65 warning requirements adopted by the State of California Office of Environmental Health Hazard Assessment (“OEHHA”) as of or after the Effective Date.

(c) If Proposition 65 warnings for Diethanolamine should no longer be required, Missha shall have no further obligations pursuant to this Settlement Agreement.

(d) INTERNET - As set forth in Cal. Code Regs. Tit. 27, § 25602(b), to the extent Covered Products are sold online, a warning that complies with the content requirements of Cal. Code Regs Tit. 27, § 25603 must be provided via one of the following methods: (1) A warning on the product display page; (2) A clearly marked hyperlink using the word “WARNING” or the words “CA WARNING” or “CALIFORNIA WARNING” on the product display page that links to the warning; or (3) An otherwise prominently displayed warning provided to the purchaser prior to completing the purchase. If a warning is provided using the short-form label content pursuant to Section 25602(a)(4), the warning provided on the website may use the same content. For purposes of this section, a warning is not prominently displayed if the purchaser must search for it in the general content of the website. For internet purchases made prior to 1/1/28, a retail seller is not responsible under Section 25600.2(e)(4) for conspicuously posting or displaying the new warning online until 60 calendar days after the retailer receives a warning or a written notice under Section 25600.2(b) and (c) which updates a short-form warning compliant with Section 25603(c) with content compliant with Section 25603(b). These requirements extend to any short form on a product manufactured/ labeled prior to 1/1/28, regardless of date of sale 5560775.2 websites under the exclusive control of Missha where Covered Products are sold into California. In addition, Missha shall instruct any third-party website to which it directly sells its Covered Products to include the same online warning, as set forth above, as a condition of selling the Covered Products in California.

(e) FOREIGN LANGUAGE - If the Product has consumer information in a foreign language, then the package must also contain the WARNING in the foreign language.

## **2.4 Existing Inventory of Covered Products**

(a) The requirements under Section 2 shall not apply to Products that are already in the stream of commerce prior to the Effective Date. Such products shall be deemed exempt from the requirements under Section 2 and shall be permitted to be sold through as previously manufactured, packaged, and labeled.

(b) Products in the stream of commerce include, but is not limited to, Products already distributed to downstream distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, (including, but not limited to, Walmart, Inc., Walmart.com, Wal-Mart Stores East, L.P., and any of Walmart’s past, current, and future agents, parents, subsidiaries, and affiliated entities under common ownership), franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, and users.

**3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)**

In full satisfaction of all potential civil penalties and attorney's fees, costs and any other expenses incurred by IFSC or its counsel, Missha shall pay the total Settlement amount of Thirty Thousand Dollars (\$30,000) (the "Settlement Amount") as set forth below.

**3.1 Civil Penalties to Health & Safety Code 25249.7 (B):**

Two Thousand Dollars of the Settlement Amount shall be considered a "civil penalty" pursuant to California Health and Safety Code. Missha shall issue two separate checks within ten (10) days of the Effective Date for a total amount of Two Thousand Dollars (\$2,000) as follows, and all payments shall be delivered to the addresses listed below.

3.1 (a) One Check made payable to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of One Thousand Five Hundred Dollars (\$1,500), representing 75% of the total civil penalty; and

3.1 (b) One check payable to "Initiative for Safer Cosmetics" in the amount of Five Hundred Dollars (\$500), representing 25% of the total civil penalty.

**3.2 Attorney's Fees and Costs:**

Twenty Eight Thousand Dollars (\$28,000) of the total Settlement Amount shall be paid to Cliffwood Law Firm, PC within ten (10) days of the Effective Date, as IFSC's attorneys, for reasonable investigation fees, and costs, attorney's fees, and any other cost incurred as a result of investigating and bringing this matter to Missha's attention.

**4. PAYMENT PROCEDURES**

**4.1** All Payments owed to OEHHA, pursuant to section 3.1(a) shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties NOVs #2024-02788 & #2024-02194") at the following address:

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

**4.2** All Payments owed to IFSC, pursuant to Section 3.1(b) shall be delivered to:

IFSC  
% Cliffwood Law Firm, PC  
Attn: Elham Shabatian  
12100 Wilshire Blvd, Suite 800  
Los Angeles, CA 90025

**4.3** All Payments owed to Cliffwood Law Firm, PC pursuant to Section 4.3, shall be delivered to:

Cliffwood Law firm, PC  
Attn: Elham Shabatian  
12100 Wilshire Blvd, Suite 800  
Los Angeles, CA 90025

#### **4.4 PROOF OF PAYMENT**

A copy of each check payable to OEHHHA, shall be mailed to Cliffwood Law firm, PC, simultaneous with payment to Cliffwood Law Firm, PC at the address set forth above, as proof of payment to OEHHHA.

### **5. RELEASE OF ALL CLAIMS**

#### **5.1. Release of Missha, Downstream Releasees, and Upstream Vendors**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, IFSC, on behalf of itself and its respective owners, principals, shareholders, officers, directors, employees, parents, subsidiaries its past and current agents, representatives, attorneys, successors and/or assignees (collectively, "Releasors"), hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and fully releases all claims relating to the Products, 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) Missha, Missha's parent companies, corporate affiliates, subsidiaries, affiliates, doing business as entities ("DBAs"), successor companies, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities ("Missha Releasees"), (b) each of Missha's downstream distributors, wholesalers, customers, auctioneers, third-party resellers, users, retailers, including but not limited to Walmart, Wal-Mart.com USA, LLC, and each of Walmart's respective subsidiaries, affiliates and parents, franchisees, cooperative members, licensees, employees, representatives, attorneys, successors, and assignees, and any other downstream entities in the distribution chain for the Products ("Downstream Releasees"), (c) manufacturers, wholesalers, vendors, dealers, shareholders, cooperative members, and owners ("Upstream Releasees"), and (d) the employees, shareholders, officers, directors, members, managers, equity owners, insurers, attorneys, licensors, licensees, franchisees, predecessors, successors and assigns of any of the entities identified in subsection (a), (b), and (c) above. IFSC also, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity, provides a general release herein which 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

Missha Releasees, Upstream Releasees, Downstream Releasees, and any entity identified under subsection (d) above.

## **5.2 Missha's Release of IFSC**

Missha, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against IFSC, her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by IFSC and/or her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products.

## **5.3 California Civil Code § 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 Products will develop or be discovered. IFSC on behalf of itself only, on one hand, and Missha, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action thereof. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 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.

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

## **5.4 Deemed Compliance with Proposition 65**

The Parties Agree that compliance by Missha with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to DEA from use of the Products.

## **5.5 Significant Public Benefit Conferred by this Settlement**

It is the Parties' understanding that the commitments Missha has agreed to herein, and the actions Missha has agreed to undertake pursuant to this Settlement Agreement, including a payment of a civil penalty, would and will 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. In light of significant benefit, to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Missha's purported failure to provide a warning concerning exposure to DEA prior to use of the Products distributed, sold, or offered for sale in California, or will distribute, sell, or offer for sale in California, it is the intent of the parties and a material

term of this Settlement Agreement that such private action would not and will not confer a significant benefit on the general public.

## **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. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, or if DEA is delisted for purposes of Proposition 65, then Missha shall have no further obligations pursuant to this Settlement Agreement. This Settlement Agreement is enforceable solely by the parties hereto.

## **7. NOTICES**

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

**For Missha US, Inc. and Able C&C U.S., Inc.:**

Cole Schotz PC  
Brandon Fierro, Esq.  
25 Main Street  
Hackensack, NJ 07601  
bfierro@coleschotz.com

**For Initiative for Safer Cosmetics:**

Elham Shabatian Esq.  
Cliffwood Law Firm, PC  
12100 Wilshire Blvd, Suite 800  
Los Angeles, CA 90025

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

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

This Settlement 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. ENTIRE AGREEMENT**

This Settlement 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 and understandings related hereto shall be deemed to have been merged within it. No representations

or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

**10. MODIFICATION**

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

**11. 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:

Date: May , 2025



\_\_\_\_\_  
Name: Woong Nam  
Title: CEO  
Able C&C U.S., Inc. (f/k/a/ Missha US, Inc.)



Date: May , 2025

\_\_\_\_\_  
Name:  
Title: *DEKI YANGZOM, DIRECTOR*  
Initiative for Safer Cosmetics  
**May 8, 2025**