

# SETTLEMENT AND RELEASE AGREEMENT

## 1. INTRODUCTION

### 1.1. Initiative for Safer Cosmetics and Fisk Industries, Inc.

This Settlement Agreement is entered into by and between Initiative for Safer Cosmetics ("IFSC") and Clean Product Advocates, LLC ("CPA"), on the one hand, and Fisk Industries, Inc. (together with its subsidiaries and affiliates, "Fisk Industries"), on the other hand, with IFSC, CPA and Fisk Industries collectively referred to as the "Parties."

### 1.2. General Allegations

IFSC and CPA allege that Fisk Industries manufactured and distributed and offered for sale in the State of California "Product Name" 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 Diethanolamine 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 (a) Dermactin Underglo Sheer Makeup, (b) COVER YOUR GRAY Waterproof Root Color Touch-Up, (c) Dermactin-TS Pre-Cosmetic Foundation Base – Creates Perfect Base for Applying Foundation, and (d) ZURI Flawless Liquid Eyeliner, that Fisk Industries has manufactured, imported, sold, offered for sale or distributed in California. All such items shall collectively be referred to herein as the "Product" or "Products."

### 1.4. Notice of Violation

On 8/9/24, IFSC served Fisk Industries, Inc. (NOV 2024-03379); on 7/28/2024 IFSC served Fisk Industries, Inc., Walmart Inc., Wal-Mart.com USA, LLC (NOV 2024-03199); on 5/21/2024 IFSC served Fisk Industries, Inc. (NOV 2024-02110); on 4/25/2024 CPA served Fisk Industries, Inc., Walmart Inc., Wal-Mart.com USA, LLC, Amazon.com Services, LLC (NOV 2024-01598) 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" ("Notice") that provided Fisk Industries and such public enforcers with notice that Fisk Industries was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Products exposed users in California to Diethanolamine. 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 Notice concerning Fisk Industries' compliance with Proposition 65. Fisk Industries denies the material factual and legal allegations contained in CPA's and IFSC's Notice. Nothing in this Settlement Agreement shall be construed as an admission by Fisk Industries 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 Fisk Industries of any fact, binding, conclusion, issue of law, or violation of law, such being specifically denied by Fisk Industries on its behalf. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Fisk Industries 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: WARNINGS**

As of the Effective Date, and continuing thereafter, Fisk Industries shall not directly sell in California, or distribute for sale in California, the Products unless accompanied by a warning label pursuant to Sections 2.2 and 2.3, below. For purposes of this Settlement Agreement, "distribute for sale in California" shall mean selling the products to a distributor that Fisk Industries knows will sell the Products in California. The warning requirements set forth in §§ 2.2 and 2.3 shall not apply to any Product manufactured prior to the Effective Date.

### **2.1. Warning Option/Ceasing Sales**

As set forth in this Section 2.1, Fisk Industries shall not sell any Products in California without a Proposition 65 warning as described in Section 2.2 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 Fisk Industries 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 Fisk Industries prior to 6 months after the Effective Date, and all such Products are hereby deemed to be exempt from Proposition 65 enforcement.

### **2.2. Warning Language**

(a) Where required to meet the criteria set forth in Section 2.2, Fisk Industries shall display one of the following warning statements on the packaging label of the Products sold in California that do not meet the warning exemption standard set forth in Section 2.1 above:

- (1)  **WARNING:** This product can expose you to chemicals including Diethanolamine, 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)
- (2)  **WARNING:** Cancer - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

Fisk Industries may use “cancer and” in the warning at its option. Fisk Industries may include the names of additional chemicals in the warning if they are present in the Products at a level that Fisk Industries 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. Fisk Industries shall be deemed to be in compliance with the warning requirements of this Settlement Agreement by either adhering to this Section 2.2 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, Fisk Industries shall have no further obligations pursuant to this Settlement Agreement.

(d) INTERNET - Product that is sold by Fisk Industries, Inc. on the Internet to persons located in California shall also provide the warning message by a clearly marked hyperlink on the product display page, or otherwise prominently displayed to the purchaser before the purchaser completes his or her purchase of the Product.

(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.

### **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 CPA, IFSC and their counsel. Fisk Industries shall pay the total Settlement amount of Twenty-Eight Thousand Dollars (\$28,000) (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. Fisk Industries 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-Six Thousand Dollars (\$26,000) of the total Settlement Amount shall be paid to Cliffwood Law Firm, PC within ten (10) days of the Effective Date, as CPA and 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 Fisk Industries' 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 #2024-03379, 2024-03199, 2024-02110, 2024-01598") 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 CPA and 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 OEHHA, 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 OEHHA.

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

### **5.1. Release of Fisk Industries, Downstream Customers 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 and CPA, on behalf of themselves and each of their 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 and discharges Fisk Industries and the other Releasees (as defined below), from any and all presently existing or future arising 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) Fisk Industries; (b) each of Fisk Industries' downstream distributors in the stream of commerce (including but not limited to Walmart Inc., Wal-Mart.com USA, LLC, Amazon.com Services, LLC and any other upstream or downstream entities in the distribution chain for the Products, including, but not limited to, manufacturers, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, third-party re-sellers, insurers, and users; (c) Fisk Industries 's parent companies, corporate affiliates, subsidiaries, affiliates, doing business as entities ("DBAs"), successor companies, and their respective past, present, officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities; and (d) the employees, shareholders, officers, directors, members, managers, equity owners, insurers, attorneys, predecessors, successors and assigns of any of the entities identified in subsection (a) and (c), above (collectively "Releasees"). IFSC and CPA also, on behalf of themselves and each of their respective past and current agents, representatives, attorneys, successors, and/or assignees and *not* in its representative capacity for the public, 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 Fisk Industries and the Releasees.

### **5.2 Fisk Industries's Release of IFSC and CPA**

Fisk Industries, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against IFSC and CPA, and their attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by IFSC, CPA 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 and its past and current agents, representatives, attorneys, successors and/or assignees, and CPA on behalf of itself and its past and current agents, representatives, attorneys, successors and/or assignees, on one hand, and Fisk Industries or behalf of itself only, 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, CPA and Fisk Industries each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

### **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, then Fisk Industries shall have no further obligations pursuant to this Settlement Agreement.

### **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 Fisk Industries, Inc.:**

John Stewart, Esq.  
Cole Schotz P.C.  
Court Plaza North  
25 Main Street  
Hackensack, NJ 07601

**For Initiative for Safer Cosmetics and  
Clean Products Advocates, LLC:**

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

**10. MODIFICATION**

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

**11. AUTHORIZATION AND COUNTERPARTS**

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. This Settlement Agreement may be executed in any number of counterparts with the same force and effect as if all signatures were appended to one document, each of which shall be deemed an original. Execution and delivery of this Settlement Agreement using Adobe Sign, DocuSign, or other signature generating software or signatures transmitted by electronic mail portable document format (“PDF”) copy bearing the PDF signature of any party hereto shall constitute a valid and binding execution and delivery of this Settlement Agreement by such party. Such signature generating software or signatures transmitted by PDF copies shall constitute enforceable original documents.

Agreed to:

Date: March 6, 2025



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Name: Ira Adler  
Title: President  
Fisk Industries, Inc.

Date: March \_\_, 2025  
3/7/2025



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Name: Dekee Yangsom Director  
Title:  
Initiative for Safer Cosmetics

Date: March \_\_, 2025  
3/7/2025



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Name:  
Title: Dekee Yangsom Director  
Clean Products Advocates, LLC