

## **Amended Class Action Settlement Agreement and Release**

This Amended Class Action Settlement Agreement and Release (“Agreement”) is made and entered into as of August 1, 2024, between ZOA Energy, LLC (“ZOA” or “Defendant”) and the Class Representative (defined below) on behalf of the Settlement Class (defined below) (each a “Party,” and collectively the “Parties”), in the matter of *Mikhail Gershzon v. ZOA Energy, LLC*, No. 3:23-cv-5444 (N.D. Cal.) (“Action”).

**WHEREAS**, on October 23, 2023, Plaintiff Mikhail Gershzon filed the Action on behalf of himself and others similarly situated, alleging that the labels on the Products (as defined below) are misleading as to the Products’ ingredients.

**WHEREAS**, no class has yet been certified, but Gershzon seeks to represent a class comprising:

All persons in the United States who, from March 1, 2021, and Date of Preliminary Approval, purchased in the United States, for personal or household consumption and not for resale or distribution, one or more Products bearing the statement “0 Preservatives” on the label. Excluded from the Settlement Class are: (1) the presiding Judge(s) in the Action; (2) any member of those Judge(s)’ immediate families; (3) Defendant; (4) any of Defendant’s subsidiaries, parents, affiliates, officers, directors, employees, legal representatives, heirs, successors, or assigns; (5) counsel for the Parties; and (6) any persons who timely opt-out of the Settlement Class.

**WHEREAS**, in the Action, Gershzon asserts claims under California law, including California Business & Professions Code § 17200 *et seq.*, California Business & Professions Code § 17500 *et seq.*, California Civil Code § 1750 *et seq.*, as well as claims for breach of express warranty, common-law fraud, intentional misrepresentation, negligent misrepresentation, and restitution based on quasi-contract/unjust enrichment. Plaintiff was also prepared to allege claims on behalf of the proposed Class under similar laws of other and potentially all 50 states plus the District of Columbia. Plaintiff advised Defendant that other potential class representatives would become involved. Defendant was prepared to oppose all claims and would have opposed all efforts to obtain class certification.

**WHEREAS**, ZOA denies that the labeling, packaging, and marketing of the Products are misleading in any respect. However, this Agreement intends to resolve all potential claims with respect to the Products’ labeling, packaging, and marketing and to provide compensation to all purchasers of the Products with respect to any statement by Defendant on the Products’ labels or packages, or in its marketing of the Products, that a purchaser could contend was misleading.

**WHEREAS**, before the Action was filed, Defendant made changes to the business practices at issue in the Action, including by revising the Labeling. As set forth in this Agreement, Defendant will continue to implement Labeling changes as part of the consideration for this Agreement and the Releases to be provided by Settlement Class Members.

**WHEREAS**, the Parties and their counsel have analyzed and evaluated the merits of all Parties’ contentions and this Agreement as it affects all Parties and the Settlement Class Members

and, after taking into account the foregoing, along with the risks and costs of further litigation, are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and equitable, and that a settlement of the Action and the prompt provision of effective relief to the Settlement Class are in the best interests of the Settlement Class Members.

**WHEREAS**, Defendant has denied, and continues to deny, all material allegations of the Action, including that the Products were deceptively and unlawfully labeled, packaged, and marketed in any respect, or that any consumer suffered any harm or injury as a result of his or her purchase of the Products and, without admitting the truth of any allegations made in the Action, or any liability with respect thereto, has concluded that it is desirable to resolve all claims arising from the Products' former Labels on the terms reflected in this Agreement in order to avoid costly and burdensome litigation and further expense, inconvenience, and interference with ongoing business operations.

**WHEREAS**, to reach this Agreement, the Parties engaged in extensive direct discussions and a mediation overseen by the Honorable Dickran Tevrizian (Ret.), former District Judge of the United States District Court for the Central District of California, and the basic structure of the parties' initial settlement was reached in response to a mediator's proposal crafted by Judge Tevrizian.

**WHEREAS**, following the Court's June 25, 2025 order denying Plaintiffs' motion for preliminary approval of the parties' initial settlement, the Parties conferred and negotiated the Settlement contemplated by this Agreement to address each of the concerns the Court raised, as well as an additional concern conveyed by certain State Attorneys General.

**WHEREAS**, Defendant hereby consents, solely and conditionally for the purposes of this Agreement, to the certification of the Settlement Class and appointment of Class Counsel as counsel for the Settlement Class and the Class Representative as representative of the Settlement Class; provided, however, that if this Agreement fails to receive Court approval or otherwise fails to be executed, including but not limited to, the judgment not becoming final, then the Parties retain all the rights that they had immediately preceding execution of this Agreement, and the Action will continue as if the Settlement Class was never certified. The fact that Defendant conditionally consents herein to certification of the Settlement Class shall not be used against Defendant by any Party or non-party for any purpose in this Action or any other action, litigation, lawsuit, or proceeding of any kind whatsoever. The Parties agree, subject to approval by the Court, that the Action between Plaintiff and the Settlement Class, on the one hand, and Defendant, on the other hand, shall be fully and finally compromised, settled, and released on the terms and conditions set forth in this Agreement.

**WHEREAS**, this Agreement is contingent upon the issuance by the Court of both preliminary approval and final approval. Should the Court not issue preliminary approval and/or final approval, the Parties do not waive, and instead expressly reserve, all rights, remedies, claims, and defenses in the Action.

**WHEREAS**, this Agreement reflects a compromise between the Parties and shall in no event be construed as or be deemed an admission or concession by any Party of the truth, or lack thereof, of any allegation or the validity, or lack thereof, of any purported claim or defense asserted

in any of the pleadings or filings in the Action, any related but not yet filed claim, or of any fault on the part of Defendant, and all such allegations are expressly denied. Nothing in this Agreement shall constitute an admission of liability or be used as evidence of liability by or against any Party.

**WHEREAS**, ZOA and the Class Representative, on behalf of the Class (as defined below), wish to resolve any and all past, present, and related future claims that the Class has or may have against ZOA on a nationwide basis, of any nature whatsoever, as they relate to the allegations in the Action regarding the Class Products.

**NOW THEREFORE**, the Parties, for good and valuable consideration, the sufficiency of which is hereby acknowledged, understand and agree to the following terms and conditions.

## **1. DEFINITIONS**

As used in this Agreement, the following capitalized terms have the meanings specified below.

**1.1 “Action”** means the civil action styled as *Gershzon v. ZOA Energy, LLC*, No. 3:23-cv-5444 (N.D. Cal.).

**1.2 “Agreement” or “Settlement Agreement”** means this Class Action Settlement Agreement and Release.

**1.3 “Claim”** means a request for relief submitted by or on behalf of a Class Member on a Claim Form filed with the Claims Administrator in accordance with the terms of this Agreement.

**1.3.1 “Approved Claim”** means a claim approved by the Claims Administrator, according to the terms of this Agreement.

**1.3.2 “Claimant”** means any Settlement Class Member who submits a Claim Form for the purpose of claiming benefits through the Claims Process.

**1.3.3 “Claim Form”** means the document to be submitted by Claimants seeking direct monetary benefits pursuant to this Agreement.

**1.3.4 “Claims Deadline”** means the date by which a Claimant must submit a Claim Form to be considered timely. The Claims Deadline shall be ninety (90) calendar days after the Settlement Notice Date.

**1.3.5 “Claims Process”** means the process by which Class Members may make claims for relief, as described in Section 4 of this Agreement.

**1.4 “Class” or “Settlement Class”** means all persons in the United States who, during the Class Period, purchased in the United States, for personal or household consumption and not for resale or distribution, one or more Products bearing the statement “0 Preservatives” on the label. Excluded from the Settlement Class are: (1) the presiding Judge(s) in the Action; (2) any member of those Judge(s)’ immediate families; (3) Defendant; (4) any of Defendant’s subsidiaries,

parents, affiliates, officers, directors, employees, legal representatives, heirs, successors, or assigns; (5) counsel for the Parties; and (6) any persons who timely opt-out of the Settlement Class.

**1.5 “Class Member” or “Settlement Class Member”** means any person who is a member of the Class.

**1.6 “Class Period”** means March 1, 2021, through the date of entry of an order granting preliminary approval of this Agreement in the Action.

**1.7 “Class Products” or “Products”** means any and all energy drink beverages manufactured, marketed, distributed, or sold by ZOA Energy, LLC with a label stating “0 Preservatives.”

**1.8 “Claims Administrator”** means the independent company approved by the Court to provide the Class Notice and conduct the Claims Administration.

**1.9 “Claims Administration”** means the administration of the Claims Process by the Claims Administrator.

**1.10 “Class Counsel”** means the following attorneys of record for the Class Representative and the Class in the Action, unless otherwise modified by the Court:

Michael D. Braun  
KUZYK LAW, LLP  
2121 Avenue of the Stars, Ste. 800  
Los Angeles, California 90067  
Email: [mdb@kuzykclassactions.com](mailto: mdb@kuzykclassactions.com)

Peter N. Wasylyk  
LAW OFFICES OF PETER N. WASYLYK  
1307 Chalkstone Avenue  
Providence, RI 02908  
Email: [pnwlaw@aol.com](mailto: pnwlaw@aol.com)

**1.11 “Class Notice”** means both those documents notifying Class Members of the Settlement pursuant to the Notice Plan, and the substance of those documents.

**1.11.1 “Long Form Notice”** means the proposed full Class Notice that is attached to this Agreement as **Exhibit 1**, which the Parties acknowledge may be modified by the Court without affecting the enforceability of this Agreement.

**1.11.2 “Short Form Notice”** means the summary Class Notice that is attached to this Agreement as **Exhibit 2**, which the Parties acknowledge may be modified by the Court without affecting the enforceability of this Agreement.

**1.11.3 “Publication Notice”** means the Publication Notice that is attached to this Agreement as **Exhibit 3**, which the Parties acknowledge may be modified by the Court without affecting the enforceability of this Agreement.

**1.11.4 “Notice Plan”** means the plan for dissemination of Class Notice to be submitted to the Court in connection with a motion for preliminary approval of this Settlement, attached to this Agreement as **Exhibit 4**.

**1.11.5 “Settlement Notice Date”** means twenty-one (21) calendar days after the date the Court issues the Preliminary Approval Order.

**1.12 “Class Representative”** means Mikhail Gershzon, the named plaintiff in the Action.

**1.13 “Court”** means the United States District Court for the Northern District of California.

**1.14 “Effective Date”** means the date on which the Judgment becomes final. For purposes of this definition, the Judgment shall become final: (a) if no appeal from the Judgment is filed, the date of expiration of the time for filing or noticing any appeal from the Judgment; or (b) if an appeal from the Judgment is filed, and the Judgment is affirmed or the appeal is dismissed, the date on which the latest deadline for seeking discretionary review from any and all higher courts has passed without such a petition being filed or, if such a petition for discretionary review is filed, the date on which the petition is fully disposed of, either through denial or issuance of a mandate following its granting.

**1.15 “Fees and Costs Award”** means the amount of attorneys’ fees and reimbursement of expenses and costs awarded by the Court to Class Counsel, which will be paid out of the Settlement Fund.

**1.16 “Final Approval Hearing”** means the hearing to be conducted by the Court to determine whether to grant final approval of the Settlement and to enter Judgment.

**1.17 “Final Approval Order”** means the order to be submitted to the Court in connection with a motion for final approval and the Final Approval Hearing, substantially in the form attached hereto as **Exhibit 5**.

**1.18 “Judgment”** means the final judgment entered on the Court docket in the Action.

**1.19 “Labeling” or “Label”** means all written, printed, or graphic matter appearing upon the packaging of any of the Products, as well as all written, printed, or graphic matter used in the distribution or sale of any of the Products, including, without limitation, all information, representations, instructions, and pictorial content published or appearing in advertising, promotions, commercials, displays, print media, websites, social media, television, and all other media platforms and outlets, describing, explaining, and/or promoting any of the Products.

**1.20 “Notice and Other Administrative Costs”** means all costs and expenses actually incurred by the Claims Administrator in administering the Settlement, including the publication of Class Notice, establishment of the Settlement Website, the processing, handling, reviewing, and paying of claims made by Claimants, and paying taxes and tax expenses related to the Settlement Fund (including all federal, state, or local taxes of any kind and interest or penalties thereon, as well as expenses incurred in connection with determining the amount of and paying any taxes

owed and expenses related to any tax attorneys and accountants). All taxes on the income of the Settlement Fund, and any costs or expenses incurred in connection with the taxation of the Settlement Fund shall be paid out of the Settlement Fund, shall be considered to be a Notice and Other Administrative Cost, and shall be timely paid by the Claims Administrator without prior order of the Court. The Parties shall have no liability or responsibility for the payment of any such taxes.

**1.21 “Objection Deadline”** means the date by which Class Members must file with the Court a written statement objecting to any terms of the Settlement or to Class Counsel’s request for fees or expenses. The Parties will request that the Court set the Objection Deadline to be sixty (60) calendar days after the Settlement Notice Date.

**1.22 “Opt-Out Deadline”** means the deadline by which a Class Member must exercise his or her option to opt out of the Settlement so as not to release his or her claims as part of the Released Claims. The Parties will request that the Court set the Opt-Out Deadline to coincide with the Objection Deadline.

**1.23 “Person”** means individual or entity.

**1.24 “Plaintiff”** means the Class Representative, individually and on behalf of the Class.

**1.25 “Preliminary Approval Date”** means the date of entry of the Court’s order granting preliminary approval of the Settlement.

**1.26 “Preliminary Approval Order”** means the proposed order to be submitted to the Court in connection with the motion for preliminary approval, substantially in the form attached hereto as **Exhibit 6**.

**1.27 “Programmatic Relief”** means the relief as set forth in detail in Section 5.1 of this Agreement.

**1.28 “Proof of Purchase”** means a receipt or purchase record from a Released Party, a removed UPC code, or other documentation (such as a paper receipt, email receipt, or other electronic record) from a third-party commercial source reasonably establishing the fact and date of purchase of the applicable Product during the Class Period in the United States.

**1.29 “Released Claims”** means any and all claims or causes of action, whether known or unknown, that were or could have been asserted in the Action, which arise from Plaintiffs’ allegations that the labeling, packaging, marketing, and/or advertising of the products was misleading or deceptive due to the inclusion of preservatives in the Products. Class Members are releasing claims based only on the identical factual predicate set forth in the Complaint and nothing further.

**1.30 “Released Parties”** means all manufacturers, marketers, distributors, retailers, sellers, and resellers of any of the Products, together with each of their direct and indirect parent companies, predecessor entities, successor entities, related companies, direct and indirect subsidiaries, divisions, holding entities, past and present affiliates and banners, franchisees, distributors, wholesalers, retailers, advertising and production agencies, licensors, and agents,

including all current and former officers, directors, managers, members, partners, owners, employees, shareholders, consultants, attorneys, legal representatives, insurers, agents, assigns, and other equity interest holders of any of the foregoing, and their heirs, executors, administrators, and assigns.

**1.31 “Releasing Parties”** means Plaintiff, all Settlement Class Members, and any Person claiming on their behalf (other than Class Counsel).

**1.32 “Request for Exclusion”** means the written submission by a Settlement Class Member to be excluded from the Settlement consistent with the terms of this Agreement, which request shall include the requestor’s name, address, the name of the Action, and lawful signature.

**1.33 “Service Award”** means an award approved by the Court that is payable to the Class Representative from the Settlement Fund.

**1.34 “Settlement”** means the resolution of this Action embodied in the terms of this Agreement.

**1.35 “Settlement Fund”** means the qualified settlement fund this Agreement obligates ZOA to fund in the amount of \$3,000,000, which is in the form of a non-reversionary common fund and is established in accordance with 26 C.F.R. §§ 1.468B-1(c) and (e)(1).

**1.36 “Settlement Payment”** means a money payment from the Settlement Fund to a Settlement Class Member with an Approved Claim.

**1.37 “Settlement Website”** means a website maintained by the Claims Administrator to provide the Class with information relating to the Settlement.

**1.38 “Unknown Claims”** means any Released Claim that, if known, might have affected the Plaintiff’s settlement with and release of the Released Parties, or might have affected a decision not to object to or opt-out of this Settlement.

**1.39 “ZOA” or “Defendant”** means ZOA Energy, LLC, the defendant in the Action.

## **2. SETTLEMENT FUND**

**2.1 Settlement Consideration.** ZOA agrees to establish the Settlement Fund, a non-reversionary common fund of \$3,000,000, which shall be used to pay all Settlement expenses, including Notice and Other Administrative Costs, Attorneys’ Fees and Costs Award, the Service Award, and Settlement Payments for Approved Claims. The Settlement Fund will not include any costs related to the Programmatic Relief. Except for costs related to the Programmatic Relief, ZOA shall not be liable to pay more than the amount of the Settlement Fund or to pay anything apart from the Settlement Fund.

**2.2 Creation and Administration of Qualified Settlement Fund.** The Claims Administrator is authorized to establish the Settlement Fund under 26 C.F.R. §§ 1.468B-1(c) and (e)(1), to act as the “administrator” of the Settlement Fund pursuant to 26 C.F.R. § 1.468B-2(k)(3), and to undertake all duties as administrator in accordance with the Treasury Regulations

promulgated under § 1.468B of the Internal Revenue Code of 1986. All costs incurred by the Claims Administrator operating as administrator of the Settlement Fund shall be construed as costs of Claims Administration and shall be borne solely by the Settlement Fund. Interest on the Settlement Fund shall inure to the benefit of the Class.

**2.3 Schedule of Payments into Settlement Fund.** ZOA will make payments into the Settlement Fund in accordance with the following schedule:

**2.3.1 Notice and Other Administrative Costs.** Amounts for the Notice and Other Administrative Costs are to be paid at a time agreed upon between ZOA and the Claims Administrator.

**2.3.2 Fees and Costs Award.** An amount equal to the Fees and Costs Award described in Section 3.2 of this Agreement, is to be paid within fourteen (14) calendar days after the entry of Judgment.

**2.3.3 Payment of Service Awards and Approved Claims.** An amount equal to \$3,000,000 less the sum of all prior payments made into the Settlement Fund, to be paid seven (7) calendar days after the Effective Date.

### **3. ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS**

**3.1 Application for Attorneys' Fees and Costs and Service Awards.** At least thirty-five (35) calendar days before the Objection Deadline, Class Counsel and Class Representative shall file a motion, set for hearing on the same date as the Final Approval Hearing, requesting a Fees and Costs Award and Service Awards, to be paid from the Settlement Fund. Class Counsel shall apply for attorneys' fees no greater than one-third of the Settlement Fund. Class Counsel shall also apply for a Service Award to the Class Representative not to exceed seven thousand five hundred Dollars (\$7,500) total.

**3.2 Distribution of Attorneys' Fees and Costs.** The Claims Administrator shall pay to Class Counsel from the Settlement Fund the amount of attorneys' fees and costs awarded by the Court within twenty-one (21) calendar days of entry of Judgment, notwithstanding the filing of any appeals, or any other proceedings which may delay the Effective Date of the Settlement or a final Judgment in the case, subject to Class Counsel providing full payment details for Kuzyk Law, LLP account ending in -2219 via routing number and tax ID number for Kuzyk Law, LLP. Payment of the Fees and Costs Award will be made from the Settlement Fund by wire transfer to Kuzyk Law, LLP account ending in -2219 for distribution in accordance with the wire instructions to be provided by Kuzyk Law, LLP, and completion of necessary forms, including but not limited to Form W-9. Notwithstanding the foregoing, if for any reason, the Fees and Costs Award is overturned, reduced, vacated, or otherwise modified, Class Counsel shall be obligated to return any difference between the amount of the original award and any reduced award. If the Settlement remains in force, the difference shall be returned to the Settlement Fund; if the Settlement is not in force, the difference shall be returned to ZOA.

**3.3 Distribution of Service Award.** Any Service Award approved by the Court for the Class Representative shall be paid from the Settlement Fund in the form of a check to the Class

Representatives that is sent care of Class Counsel within of fourteen (14) calendar days after the Effective Date.

**3.4 Settlement Independent of Award of Fees, Costs, and Service Award.** The payment of the Fees and Costs Award and the Service Award are subject to and dependent upon the Court's approval. However, this Settlement is not dependent or conditioned upon the Court's approving Class Counsel's and the Class Representative's requests for such payments or awarding the particular amounts sought by Class Counsel and the Class Representative. In the event the Court declines Class Counsel's or the Class Representative's requests or awards less than the amounts sought, this Settlement will continue to be effective and enforceable by the Parties, provided, however, that the Class Representative and Class Counsel retain the right to appeal the amount of the Fees and Costs Award, even if the Settlement is otherwise approved by the Court.

#### **4. CLAIMS PROCESS**

**4.1 General Process.** To obtain monetary relief as part of the Settlement, a Class Member must fill out and submit a Claim Form, completed online or in hard copy mailed to the Claims Administrator. The claim made via the Claim Form will proceed through the following general steps as described in **Exhibit 7**:

**4.1.1** The Claimant will be asked to provide identifying information. The Claimant will have the opportunity to upload or otherwise provide receipts evidencing his or her purchases or, alternatively, to attest to the purchases under penalty of perjury.

**4.1.2** The Claimant will be asked to identify how many cans of Class Products he or she purchased for personal or household consumption since March 1, 2021, and to certify that such products were purchased for personal or household consumption and not for distribution or resale. The Claimant will receive one Dollar (\$1) for every can of Product purchased.

**4.1.3** Approved Claims submitted with receipts will be capped at a Settlement Payment of one hundred fifty Dollars (\$150) per household.

**4.1.4** Approved Claims submitted without receipts will be capped at a Settlement Payment of ten Dollars (\$10) per household.

**4.2 The Claim Form and Timing.** The Claim Form will be available on the Settlement Website and may be submitted to the Claims Administrator online. A maximum of one Claim Form may be submitted for each Claimant, and subsequent Claim Forms received from persons residing at the same address without receipts will be rejected. Claim Forms must be submitted or postmarked on or before the Claims Deadline to be considered timely. The Claims Deadline shall be clearly and prominently stated in the Preliminary Approval Order, the Class Notice, on the Settlement Website, and on the Claim Form.

**4.3 Substance of the Claim Form.** In addition to information about the number of Class Products as set forth in Section 4.1 of this Agreement, the Claim Form will request customary identifying information (including the Claimant's name, address, email address, and telephone number) and may seek limited additional information from Claimants to provide reasonable bases for the Claims Administrator to monitor for and detect fraud. The Claim Form also will require

the Claimant to declare that the Class Products were not purchased for resale or distribution. In addition, the Claim Form will require the Claimant to declare that the information provided is true and correct to the best of the Claimant's memory and understanding.

**4.4 Claim Validation.** The Claims Administrator shall be responsible for reviewing all claims to determine their validity. The Claims Administrator shall reject any Claim that does not comply in any material respect with the instructions on the Claim Form or with the terms of this Section 4, that is submitted after the Claims Deadline, or that the Claims Administrator identifies as fraudulent. The Claims Administrator shall retain sole discretion in accepting or rejecting claims, subject to review by the Parties' counsel, who shall confer in good-faith to resolve any disputes. Failing agreement among the Parties' counsel, any disputes shall be raised with the Court.

**Pro Rata Adjustment of Settlement Payments.** If the total value of all Approved Claims exceeds the funds available after allocation or distribution of the Notice and Other Administrative Costs, the Fees and Costs Award, and the Service Award, then the amounts of the Settlement Payments per claim will be reduced pro rata, as necessary, to use all of the funds available for distribution to Class Members. Any such pro rata adjustment will be calculated prior to distribution of funds (i.e., will be made in a single distribution). If the total value of all Approved Claims is less than the funds available after allocation or distribution of the Notice and Other Administrative Costs, the Fees and Costs Award, and the Service Award, then the amounts of the Settlement Payments per claim will be increased on a pro rata basis for distribution to Class Members

#### 4.5

**4.6 Timing of Distribution.** The Claims Administrator shall pay out Settlement Payments for Approved Claims in accordance with the terms of this Agreement commencing within thirty (30) calendar days after the Effective Date, or as otherwise ordered by the Court. The Parties shall work with the Claims Administrator to choose a manner of payment that is secure, cost-effective, and convenient for Claimants.

**4.7 Unredeemed Settlement Payments and *Cy Pres*:** Those Class Members whose payments are not redeemed (e.g., uncashed checks) within one hundred and eighty (180) calendar days after issuance ("Unredeemed Payments") will be ineligible to receive a Settlement Payment, and the Claims Administrator will have no further obligation to make any payment from the Settlement Fund pursuant to this Settlement Agreement or otherwise to such Class Member. Any Unredeemed Payments, including interest accrued thereon, will be donated *cy pres* to the Clean Label Project. If this organization is not acceptable to the Court, the parties shall meet and confer in good faith and consult with the Court to identify one or more suitable alternatives.

**4.8 Unexhausted Amounts and *Cy Pres*:** After payment from the Settlement Fund of the Notice and Other Administrative Costs, the Fees and Costs Award, the Service Award, and Settlement Payments, and after donation *cy pres* of Unredeemed Payments, funds that remain in the Settlement Fund ("Unexhausted Amounts"), including interest thereon, shall be donated *cy pres* to the Clean Label Project.

**4.9 Taxes on Distribution.** Any person who receives a Settlement Payment will be solely responsible for any taxes or tax-related expenses owed or incurred by that person by reason

of that Award. Such taxes and tax-related expenses will not be paid from the Settlement Fund. In no event will ZOA, the Class Representatives, Class Counsel, the Claims Administrator, or any of the other Released Parties have any responsibility or liability for taxes or tax-related expenses arising in connection with the issuance of Settlement Payments or other payments made from the Settlement Fund to Class Representatives, Settlement Class Members, or any other person or entity.

**4.10 No Unclaimed Property Rights.** This Agreement does not create any vested property interest or unclaimed property rights for Settlement Class Members who do not file Approved Claims.

## **5. PROGRAMMATIC RELIEF.**

**5.1 Programmatic Relief.** ZOA adopted new Labeling for the Products substantially similar to the sample labeling attached hereto as **Exhibit 8**. The new Labeling reflected in **Exhibit 8** does not contain a representation that the Product contains “0 Preservative,” among other changes.

**5.1.1** Defendant agrees that it will not revert to a label that includes the statement “0 Preservatives” or words to that effect unless the Product ingredients change to no longer include chemical preservatives (i.e., citric and ascorbic acid).

**5.1.2** Defendant agrees that by no later than 60 days after the Effective Date it will update images of the Products on its website accordingly and will not make future posts on any social medial platforms that include Product images with a label that includes the statement “0 preservatives” or words to that effect unless the Product ingredients change to no longer include chemical preservatives (i.e., citric and ascorbic acid).

**5.2 Exhaustion of Inventory.** For the avoidance of doubt, the Released Parties, including Defendant, (i) shall be permitted to sell existing Products manufactured with the prior Labeling prior to the date of this Agreement in the ordinary course of business; (ii) shall not be required to withdraw, destroy, or recall any Products; and (iii) shall not be obligated to modify or replace existing promotional materials already in the hands of third parties.

## **6. CLASS NOTICE AND CLAIMS ADMINISTRATION.**

**6.1 Claims Administrator.** The Claims Administrator shall assist with various administrative tasks, including, without limitation:

**6.1.1** Establishing and operating the Settlement Fund;

**6.1.2** Arranging for the dissemination of the Class Notice pursuant to the Notice Plan agreed to by the Parties and approved by the Court;

**6.1.3** Assisting in the distribution to the United States Department of Justice and to State Attorneys General, within ten days after the Parties present this Agreement to the Court for Preliminary Approval, of the notices of settlement required by the Class Action Fairness Act.

**6.1.4** Making any other mailings required under the terms of this Agreement or any Court order or law, including handling returned mail;

**6.1.5** Answering inquiries from Class Members and/or forwarding such inquiries to Class Counsel;

**6.1.6** Receiving and maintaining Requests for Exclusion;

**6.1.7** Establishing a Settlement Website;

**6.1.8** Establishing a toll-free informational telephone number for Class Members;

**6.1.9** Receiving and processing (including monitoring for fraud and validating or rejecting) Claims and distributing Settlement Payments to Class Members;

**6.1.10** Providing regular updates on the Claims status to counsel for all Parties;

**6.1.11** Preparing a declaration attesting to compliance with the Notice Plan; and

**6.1.12** Otherwise assisting with the implementation and administration of the Settlement.

**6.2 Notice.** Notice of the Settlement to the Class will be effectuated through advertisement in suitable media as determined by the Claims Administrator and through targeted internet and social media-based advertisements. The Class Notice will conform to all applicable requirements of the California Constitution, the United States Constitution (including the Due Process Clauses), and any other applicable law, and will otherwise be in the manner and form approved by the Parties and Court.

**6.3 Timing of Class Notice.** Class Notice will commence on the Settlement Notice Date.

**6.4 Opt-Out Procedures.** Class Members who wish to opt out of and be excluded from the Settlement must submit a Request for Exclusion to the Claims Administrator, postmarked no later than the Opt-Out Deadline. The Request for Exclusion must be personally completed and submitted by the Class Member or his or her attorney, and so-called “mass” or “class” opt-outs shall not be permitted or recognized. The Claims Administrator shall periodically notify Class Counsel and ZOA’s counsel of any Requests for Exclusion and provide a final list of all Requests for Exclusion within 7 calendar days after the Opt-Out Deadline. All Class Members who submit a timely, valid Request for Exclusion will be excluded from the Class and will not be bound by this Agreement, and all Class Members who do not submit a timely, valid Request for Exclusion will be bound by this Agreement and the Judgment, including the release in Section 8.1 of this Agreement.

**6.5 Procedures for Objecting to the Settlement.** Class Members have the right to appear and show cause why the Settlement should not be granted final approval, subject to each of the provisions of this paragraph:

**6.5.1 Timely Written Objection Required.** Any objection to the Settlement must be in writing, postmarked on or before the Objection Deadline, and sent to the Court at the address set forth in the Class Notice.

**6.5.2 Form of Written Objection.** Any objection regarding or related to the Settlement must contain (i) a caption or title that clearly identifies the Action and that the document is an objection, (ii) information sufficient to identify and contact the objecting Class Member or his or her attorney if represented, (iii) information sufficient to establish the person's standing as a Settlement Class Member, (iv) a clear and concise statement of the Class Member's objection, (v) identification of the case name and case number, (vi) the objector's signature, and (vii) the signature of the objector's counsel, if any (the "Objection").

**6.5.3 Authorization of Objections Filed by Attorneys Representing Objectors.** Class Members may object either on their own or through an attorney hired at their own expense, but a Class Member represented by an attorney must sign either the Objection itself, or execute a separate declaration stating that the Class Member authorizes the filing of the Objection.

**6.5.4 Effect of Both Opting Out and Objecting.** If a Class Member submits both an Opt-Out Form and Objection, the Class Member will be deemed to have opted out of the Settlement, and thus to be ineligible to object. However, any objecting Class Member who has not timely submitted a completed Opt-Out Form will be bound by the terms of the Agreement upon the Court's final approval of the Settlement.

**6.5.5 Appearance at Final Approval Hearing.** Objecting Class Members may appear at the Final Approval Hearing and be heard.

**6.5.6 Right to Discovery.** Upon Court order, the Parties will have the right to obtain document discovery from and take depositions of any Objecting Class Member on topics relevant to the Objection.

**6.5.7 Response to Objections.** The Parties shall have the right, but not the obligation, either jointly or individually, to respond to any objection, with a written response due the same day as the motion for final approval or as otherwise ordered by the Court.

**6.5.8 Effect of Non-Objection.** A Settlement Class Member who does not file and serve a timely Objection may not appeal from the entry of any order approving the Settlement.

## **7. COURT APPROVAL.**

**7.1 Preliminary Approval.** Within fourteen (14) days of a fully executed Agreement, Plaintiffs will submit to the Court this Agreement and will request via unopposed motion that the Court enter the Preliminary Approval Order in substantially similar form as the proposed order attached as **Exhibit 6**. In the motion for preliminary approval, Plaintiffs will request that the Court grant preliminary approval of the proposed Settlement, provisionally certify the Class for settlement purposes and appoint Class Counsel, approve the forms of Notice attached as **Exhibits 1-3**, find that the Notice Plan attached as **Exhibit 4** satisfies due process, and schedule a Final Approval Hearing to determine whether the Settlement should be granted final approval, whether

an application for attorneys' fees and costs should be granted, and whether an application for a service award should be granted. ZOA may, but is not required to, file a memorandum of law in support of the motion.

**7.2 Final Approval.** A Final Approval Hearing to determine final approval of the Agreement shall be scheduled as soon as practicable, subject to the calendar of the Court, but no sooner than one hundred twenty (120) calendar days after the Preliminary Approval Date. If the Court issues the Preliminary Approval Order and all other conditions precedent of the Settlement have been satisfied, no later than twenty-five (25) calendar days before the Final Approval Hearing and fourteen (14) calendar days after the Objection Deadline, all Parties will request, individually or collectively, that the Court enter the Final Approval Order in substantially similar form as the proposed order attached as **Exhibit 5**, with Class Counsel filing a memorandum of law in support of the motion. ZOA may, but is not required to, file a memorandum of law in support of the motion.

**7.3 Failure to Obtain Approval.** If this Agreement is not given preliminary or final approval by the Court, or if an appellate court reverses final approval of the Agreement, the Parties will seek in good faith to revise the Agreement as needed to obtain Court approval, provided, however, that no party may use subsequent legal developments or other intervening events, other than the decision(s) denying or reversing approval of the Agreement, as justification for renegotiating the Settlement. Failing this, the Parties will be restored to their respective places in the litigation. In such event, the terms and provisions of this Agreement will have no further force or effect; the Parties' right and defenses will be restored, without prejudice, to their respective positions as if this Agreement had never been executed; and any orders entered by the Court in connection with this Agreement will be vacated. For the avoidance of doubt, in such event, the first amended complaint shall be deemed withdrawn, and the original complaint shall be deemed the operative complaint when litigation resumes.

## **8. RELEASE.**

**8.1 Effect.** By executing this Agreement, the Parties acknowledge that, upon both the entry of the Final Approval Order by the Court, and the passing of the Effective Date, and the Settlement amount being fully funded, the Action shall be dismissed with prejudice, and all Released Claims shall thereby be conclusively settled, compromised, satisfied, and released as to the Released Parties. The Final Approval Order shall provide for and effect the full and final release, by the Releasing Parties, of all Released Claims, consistent with the terms of this Agreement. The relief provided for in this Agreement shall be the sole and exclusive remedy for any and all claims of Settlement Class Members against the Released Parties related to the Released Claims.

**8.2 Scope of Release.** The Releasing Parties hereby fully release and forever discharge the Released Parties from the Released Claims. The Parties acknowledge and agree that bodily injury, wrongful death, and/or emotional distress claims arising from bodily injury, are not part of any of the facts alleged by the Class Representative and that such claims are not included within the Released Claims.

**8.3 Waiver.** Without limiting the foregoing, the Released Claims specifically extend to and include claims related to the Products that the Releasing Parties do not know or suspect to

exist in their favor at the time that the Settlement, and the releases contained herein, becomes effective, including, without limitation, Unknown Claims. This paragraph constitutes a waiver of, without limitation as to any other applicable law, section 1542 of the California Civil Code, which provides:

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.

**8.4 Later Discovered Facts.** The Releasing Parties understand and acknowledge the significance of these waivers of section 1542 of the California Civil Code and any other applicable federal or state statute, case law, rule, or regulation relating to limitations on releases. In connection with such waivers and relinquishment, the Releasing Parties acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts that they now know or believe to be true with respect to the subject matter of the Action and the Settlement, but that it is their intention to release fully, finally, and forever release all Released Claims with respect to the Released Parties, and in furtherance of such intention, the release of the Released Claims will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts at any time.

**8.5 Claim Preclusion.** Each of the Releasing Parties shall forever refrain, whether directly or indirectly, from instituting, filing, maintaining, prosecuting, assisting with, or continuing any suit, action, claim, or proceeding against any of the Released Parties in connection with any of the Released Claims (a “Precluded Action”). If any of the Releasing Parties does institute, file, maintain, prosecute, or continue any such Precluded Action, Plaintiffs and Class Counsel shall cooperate with the efforts of any of the Released Parties to obtain dismissal with prejudice. The releases provided for herein shall be a complete defense to, and will preclude, any Released Claim in any suit, action, claim, or proceeding. The Final Approval Order shall further provide for and effect the release of all known or unknown claims (including Unknown Claims), actions, causes of action, claims, administrative claims, demands, debts, damages, costs, attorney’s fees, obligations, judgments, expenses, compensation, or liabilities, in law or in equity, contingent or absolute, that the Released Parties now have against Plaintiffs, Class Representatives, or Class Counsel, by reason of any act, omission, harm, matter, cause, or event whatsoever arising out of the initiation, prosecution, or settlement of the Action, except with respect to any breach of the terms of this Agreement by any of Plaintiffs, Class Representatives, or Class Counsel.

**8.6 Court Retains Jurisdiction.** The Court shall retain jurisdiction over the Parties and this Agreement with respect to the future performance of the terms of this Agreement, and to assure that all payments and other actions required of any of the Parties by the Settlement are properly made or taken.

**8.7 Covenant Not to Sue.** Plaintiff agrees and covenants, and each Class Member who has not opted out will be deemed to have agreed and covenanted, not to sue any of the Released Parties, with respect to any of the Released Claims, or otherwise to assist others in doing so, and Plaintiff agrees, and each Class Member who has not opted out will be deemed to have agreed, to

be forever barred from doing so, in any court of law or equity, or any other forum. Nothing in this Paragraph prohibits Plaintiff or any Class Member from communicating with governmental authorities.

**8.8 Release of the Class Representative and Class Counsel.** Upon the Effective Date, ZOA will be deemed to have, and by operation of the Judgment will have, fully, finally, and forever released, relinquished, discharged, and covenanted not to sue the Class Representative and Class Counsel from any and all claims, demands, rights, suits, liabilities, and causes of action, whether past, present, or future, known or unknown, asserted or unasserted, that arise out of or relate to the filing and conduct of the Action.

**9. TERMINATION.**

**9.1 ZOA's Option to Terminate.** If more than 500 Class Members individually opt out, ZOA has the right in its sole discretion, but not the obligation, to terminate the Settlement Agreement and revert to the status quo ante, provided, however, that (i) the time for ZOA to exercise this right shall expire fifteen (15) calendar days after the Opt-Out Deadline, and (ii) ZOA may only exercise the option after meeting and conferring in good faith with Class Counsel.

**10. NO ADMISSION OF LIABILITY.**

**10.1 No Admission of Liability.** ZOA, while continuing to deny all allegations of wrongdoing and disclaiming all liability with respect to all claims, considers it desirable to resolve the Action on the terms stated in this Agreement to avoid further expense, inconvenience, and burden, and, therefore, has determined that this Settlement Agreement on the terms set forth herein is in ZOA's best interests. ZOA denies any liability or wrongdoing of any kind associated with the claims alleged in the Action, and denies the material allegations of all the complaints filed in the Action. Neither the Settlement Agreement nor any actions taken to carry out the Settlement are intended to be, nor may they be deemed or construed to be, an admission or concession of liability, or of the validity of any claim, defense, or of any point of fact or law on the part of any Party, including but not limited to an admission that this Action is properly brought on a class or representative basis, or that a class or classes may be certified, other than for settlement purposes. Neither the Settlement Agreement, nor the fact of settlement, nor the settlement proceedings, nor the settlement negotiations, nor any related document, shall be used as an admission, concession, presumption, inference, or evidence thereof of any wrongdoing by ZOA or of the appropriateness of these or similar claims for class certification in any proceeding.

**11. ZOA'S POSITION ON CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS.**

**11.1 ZOA's Position on the Conditional Certification of Settlement Class.** ZOA disputes that class certification in this Action is proper. Solely for purposes of avoiding the expense, inconvenience, and burden of further litigation, ZOA does not oppose the certification of the Class for the purposes of this Settlement only. Preliminary certification of the Class will not be deemed a concession that certification of a litigation class or subclass is appropriate, nor will ZOA be precluded from challenging class certification in further proceedings in this Action or in any other action if the Settlement Agreement is not finalized or finally approved. If the Settlement

Agreement is not finally approved by the Court for any reason whatsoever, and said failure to obtain final approval is conclusive after any and all appeals, ZOA's stipulation to certification only for purposes of effectuating this Settlement will be automatically rescinded, and no doctrine of waiver, estoppel, or preclusion will be asserted in any litigated certification proceedings in this Action or any other judicial proceeding. No agreements made by or entered into by ZOA in connection with the Settlement Agreement may be used by Plaintiffs, any Class Member, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in this Action or any other judicial proceeding.

## **12. MISCELLANEOUS.**

**12.1 Change of Time Periods.** The time periods and/or dates described in this Settlement Agreement are subject to Court approval and may be modified upon order of the Court or written stipulation of the Parties, without notice to Settlement Class Members. The Parties reserve the right, by agreement and subject to the Court's approval, to grant any reasonable extension of time that might be needed to carry out any of the provisions of this Settlement Agreement.

**12.2 Time for Compliance.** If the date for performance of any act required by or under this Settlement Agreement falls on a Saturday, Sunday, or court holiday, that act may be performed on the next business day with the same effect as it had been performed on the day or within the period of time specified by or under this Settlement Agreement.

**12.3 Entire Agreement.** This Agreement shall constitute the entire Agreement among the Parties with regard to the subject matter of this Agreement and shall supersede any previous agreements, representations, communications, and understandings among the Parties with respect to the subject matter of this Agreement. The Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation, warranty, inducement, negotiation, or undertaking concerning any part or all of the subject matter of the Agreement has been made or relied upon except as expressly set forth herein.

**12.4 Notices Under Agreement.** All notices or mailings required by this Agreement to be provided to or approved by Class Counsel, defense counsel, or either Party, or otherwise made pursuant to this Agreement, shall be provided as follows:

*If to Class Representatives or Class Counsel*

Michael D. Braun  
Kuzyk Law, LLP  
2121 Avenue of the Stars, Ste. 800  
Los Angeles, California 90067  
mdb@kuzykclassactions.com

*and*

Peter N. Wasylyk  
Law Offices of Peter N. Wasylyk  
1307 Chalkstone Avenue

Providence, RI 02908  
pnwlaw@aol.com

*If to ZOA or defense counsel*

Stephanie Schuster  
Morgan, Lewis & Bockius LLP  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004-2541  
stephanie.schuster@morganlewis.com

**12.5 Good Faith.** The Parties acknowledge that each intends to implement the Agreement. The Parties have at all times acted in good faith and shall continue to, in good faith, cooperate and assist with and undertake all reasonable actions and steps in order to accomplish all required events on the schedule set by the Court, and shall use reasonable efforts to implement all terms and conditions of this Agreement.

**12.6 No Oral Modifications.** This Agreement may be amended only by means of a writing signed by the Parties.

**12.7 Parties Accept Risk of Changes in Fact and Law.** Each Party, including Plaintiff on behalf of himself and the Settlement Class, expressly accepts and assumes the risk that, if facts or laws pertinent to matters covered by this Agreement are hereafter found to be other than as now believed or assumed by that Party to be true or applicable, this Agreement shall nevertheless remain effective.

**12.8 Binding on Successors.** Except as specifically provided herein, this Agreement is binding on, and shall inure to the benefit of, the Parties, the Released Parties, and their respective direct and indirect parent companies, predecessor entities, successor entities, related companies, direct and indirect subsidiaries, holding entities, past and present affiliates, franchisees, distributors, wholesalers, retailers, advertising and production agencies, licensors, and agents, including all current and former officers, directors, managers, members, partners, owners, employees, shareholders, consultants, attorneys, legal representatives, insurers, agents, assigns, or other equity interest holders of any of the foregoing, and their heirs, executors, administrators, and assigns. All Released Parties other than Defendant, which are Parties, are intended to be third-party beneficiaries of this Agreement.

**12.9 Evidentiary Preclusion.** The Parties agree that, to the fullest extent permitted by law, neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any Released Party or the appropriateness of class certification in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. In addition, any failure of the Court to approve the Settlement and/or any objections or interventions may not be used as evidence in the Action or any other proceeding for any purpose whatsoever. However, the Released Parties may file this Agreement and Final Approval Order in any action or proceeding that may be brought against them in any jurisdiction

to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

**12.10 No Reliance on Other Representations.** No Party has relied on any statement, representation, omission, inducement, or promise of any other Party (or any officer, agent, employee, representative, or attorney for any other Party) in executing this Agreement, or entering the Settlement provided for herein, except as expressly stated in this Agreement.

**12.11 Arms-Length Negotiations.** This Agreement compromises claims that are contested, and the Parties agree that the consideration provided to the Class and other terms of this Agreement were negotiated in good faith and at arms' length by the Parties, and reflect an Agreement that was reached voluntarily, after consultation with competent legal counsel, and guided in part by the Parties' private mediation with a former District Judge of the U.S. District Court for the Central District of California, the Honorable Dickran Tevrizian (Ret.) of JAMS.

**12.12** The Parties reached the Agreement after considering the risks and benefits of litigation. The determination of the terms of, and the drafting of, this Agreement, has been by mutual agreement after negotiation, with consideration by and participation of all Parties hereto and their counsel. Accordingly, the rule of construction that any ambiguities are to be construed against the drafter shall have no application.

**12.13 Publicity.** Until the Settlement is finally approved by the Court, the Parties and their counsel will not make any public statements about this Settlement inconsistent with announcements made in ZOA's 8-K and the Parties' agreed upon notices. (i.e., **Exhibits 1–3**) filed with the Court.

**12.14 Independent Advice.** Each Party has had the opportunity to receive, and has received, independent legal advice from his, her, or its attorneys regarding the advisability of making the Settlement, the advisability of executing this Agreement, and the legal and income tax consequences of this Agreement, and fully understands and accepts the terms of this Agreement.

**12.15 Requisite Corporate Power.** Defendant represents and warrants, severally and not jointly, that: (a) it has the requisite corporate power and authority to execute, deliver, and perform the Agreement and to consummate the transactions contemplated hereby; (b) the execution, delivery, and performance of the Agreement and the consummation by it of the actions contemplated herein have been duly authorized by necessary corporate action on the part of the Defendant; and (c) the Agreement has been duly and validly executed and delivered by the Defendant and constitutes its legal, valid, and binding obligation.

**12.16 Reasonable Best Efforts to Effectuate.** The Parties acknowledge that it is their intent to consummate this Agreement, and agree to cooperate to the extent reasonably necessary to effectuate and implement the terms and conditions of this Agreement and to exercise their best efforts to accomplish the terms and conditions of this Agreement. The Parties further agree they will not engage in any conduct that will or may frustrate the purpose of this Agreement. The Parties further agree, subject to Court approval as needed, to reasonable extensions of time to carry out any of the provisions of the Agreement.

**12.17 No Other Consideration.** The Class Representative represents and warrants that he is entering into the Agreement on behalf of himself individually and as a proposed representative of the Settlement Class Members, of his own free will and without the receipt of any consideration other than what is provided in this Agreement or disclosed to, and authorized by, the Court. The Class Representative represents and warrants that he has reviewed the terms of the Agreement in consultation with Class Counsel and believes them to be fair and reasonable, and covenants that he will not file an Opt-Out request or object to this Agreement.

**12.18 Non-assignment.** Plaintiff represents and warrants, that no portion of any claim, right, demand, action, or cause of action against any of the Released Parties that Plaintiff has or may have arising out of the Action or pertaining to his purchase and/or use of the Products and/or the design, manufacture, testing, marketing, Labeling, packaging, or sale of the Products otherwise referred to in this Agreement, and no portion of any recovery or settlement to which Plaintiff may be entitled, has been assigned, transferred, or conveyed by or for Plaintiff in any manner; and no Person other than Plaintiff has any legal or equitable interest in the claims, demands, actions, or causes of action referred to in this Agreement as those claims, demands, actions, or causes of action relate to Plaintiff himself.

**12.19 Support from the Parties.** After a full investigation, discovery, and arms-length negotiations, the Parties and their counsel agree that they: (a) have independently determined that the Settlement is in the best interest of the Settlement Class; (b) shall support motions for entry of the Preliminary Approval Order and Final Approval Order; and (c) will not encourage any Persons to Opt-Out or file Objections to the Settlement or this Agreement.

**12.20 Stay Pending Court Approval.** Plaintiff's Counsel and Defendant's Counsel agree to stay all proceedings in the Action, other than those proceedings necessary to carry out or enforce the terms and conditions of the Settlement, until the Effective Date of the Settlement has occurred. If, despite the Parties' best efforts, this Agreement should fail to become effective, the Parties will return to their prior positions in the Action.

**12.21 Exhibits.** All Exhibits to this Agreement are material and integral parts hereof, and are incorporated by reference as if fully rewritten herein.

**12.22 Variance; Dollars.** In the event of any variance between the terms of this Agreement and any of the Exhibits hereto, the terms of this Agreement shall control and supersede the Exhibit(s). All references in this Agreement to "Dollars" or "\$" shall refer to United States dollars.

**12.23 Waiver.** The waiver by one Party of any provision or breach of this Agreement shall not be deemed a waiver of any other provision or breach of this Agreement.

**12.24 Headings.** The descriptive headings of any paragraph or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

**12.25 Governing Law.** This Agreement shall be interpreted, construed, and enforced according to the laws of the State of California, without regard to conflicts of law.

**12.26 Continuing Jurisdiction.** After entry of the Judgment, the Court shall have continuing jurisdiction over the Action solely for purposes of (i) enforcing this Agreement, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as may be appropriate under court rules or applicable law.

**12.27 Execution.** This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument. Photocopies and electronic copies (e.g., PDF copies) shall be given the same force and effect as original signed documents.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

Date:

**PLAINTIFF MIKHAIL GERSHZON**

By: \_\_\_\_\_  
Mikhail Gershzon

Date:

**KUZYK LAW, LLP**

By: \_\_\_\_\_  
Michael D. Braun

Date:

**LAW OFFICES OF PETER N. WASYLYK**

By: \_\_\_\_\_  
Peter N. Wasylyk

Date:

**DEFENDANT ZOA ENERGY, LLC**

By: \_\_\_\_\_  
Name:  
Title:

Date:

**MORGAN, LEWIS & BOCKIUS LLP**

By: \_\_\_\_\_  
Stephanie Schuster  
Counsel for ZOA Energy, LLC

# **EXHIBIT 1**

## **NOTICE OF CLASS ACTION AND PROPOSED SETTLEMENT**

**IF YOU LIVE IN THE UNITED STATES AND PURCHASED ANY ZOA ENERGY DRINK LABELED WITH THE STATEMENT “0 PRESERVATIVES” BETWEEN MARCH 1, 2021, AND [DATE OF PRELIMINARY APPROVAL], A CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.**

*A federal court authorized this notice.*

*You are not being sued. This notice is not a solicitation from a lawyer.*

- A Settlement has been reached in the class action lawsuit (“lawsuit”) styled *Mikhail Gershzon v. ZOA Energy, LLC*, Case No. 3:23-cv-5444-JD, pending in the United States District Court for the Northern District of California. The lawsuit alleges that the statement “0 Preservatives” on the labels of ZOA Energy drinks (“Products”) is misleading because it contains citric and ascorbic acids. Based on this allegation, Mikhail Gershzon (“Plaintiff” or “Class Representative”) asserted claims against Defendant ZOA Energy, LLC (“Defendant” or “ZOA”) under California law, including California Business & Professions Code § 17200 *et seq.*, California Business & Professions Code § 17500 *et seq.*, California Civil Code § 1750 *et seq.*, as well as claims for breach of express warranty, common-law fraud, intentional misrepresentation, negligent misrepresentation, and restitution based on quasi-contract/unjust enrichment.
- ZOA denies these allegations and maintains that its labeling and marketing are truthful, accurate, and compliant with applicable law. The Court did not rule in favor of either side. The Parties agreed to settle this case to avoid the expense and risk associated with the lawsuit. This Settlement will resolve all claims of all Settlement Class Members against Defendant involving the Products.
- You are included in the Settlement if you are a resident of the United States who purchased any ZOA Energy drink with a label stating “0 Preservatives” in the United States for personal consumption and not for resale or distribution between March 1, 2021 and [DATE OF PRELIMINARY APPROVAL].

To settle the lawsuit, ZOA Energy has agreed to provide a Settlement Fund of three million dollars (\$3,000,000) to pay the following: Settlement Payment for Approved Claims to individuals who live in the United States and purchased any ZOA Energy drink with a label stating “0 Preservatives” in the United States for personal consumption and not for resale or distribution between March 1, 2021 and [DATE OF PRELIMINARY APPROVAL]; Attorneys’ Fees and Costs Award; Notice and Other Administrative Costs; and Class Representative Service Awards. If the total value of all Approved Claims exceeds the funds available after allocation or distribution of the Fees and Costs Award, the Notice and Other Administrative Costs, and the Service Awards, then the amounts of the Settlement Payments per claim will be reduced pro rata, as necessary, to use all of the funds available for distribution to Class Members. Any such pro rata adjustment will be calculated prior to distribution of funds (i.e., will be made in a single distribution). Those Class Members whose payments are not redeemed (e.g., uncashed checks) within one hundred and eighty

(180) calendar days after issuance (“Unredeemed Payments”) will be ineligible to receive a Settlement Payment, and the Claims Administrator will have no further obligation to make any payment from the Settlement Fund or otherwise to such Class Member. Any Unredeemed Payments, including interest accrued thereon, will be donated *cy pres* to the Clean Label Project..

Class Members who submit approved claims with receipts will be capped at a Settlement Payment of One Hundred Fifty Dollars (\$150) per household.

Class Members who submit claims without receipts will be capped at a Settlement Payment of Ten Dollars (\$10) per household.

Each Class Member may submit a claim either electronically (*i.e.*, through the Settlement Website) or by mail.

This Notice summarizes the Settlement. For the precise terms and conditions of the Settlement, please: (i) see the Settlement Agreement, which is available at [www.zoasettlement.com](http://www.zoasettlement.com); or (ii) contact the Claims Administrator by calling \_\_\_\_\_ or writing to:

ZOA Energy Drink Settlement

c/o \_\_\_\_\_

**Your legal rights will be affected regardless of whether you do or do not act.**

**Read this Notice carefully.**

This notice summarizes the proposed settlement. For the precise terms of the settlement, please see the settlement agreement available at [www.zoasettlement.com](http://www.zoasettlement.com), by contacting class counsel at [info@kuzykclassactions.com](mailto:info@kuzykclassactions.com), by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

This Notice explains the following rights and options—**and the deadlines to exercise them.**

**Your Legal Rights and Options in this Settlement**

<b>Submit Claim Form</b>	<p>You must submit a Claim to get money from this Settlement. Claim Forms must be submitted online or postmarked by [DATE].</p> <p>By submitting a Claim, you agree to be bound by the Settlement, and you give up your right to sue or continue to sue Defendant for the claims released by the Settlement.</p>
<b>Do Nothing</b>	<p>If you do nothing, you agree to be bound by the Settlement, you give up your rights to sue Defendant for the claims released by the Settlement, and you will not get money from the Settlement.</p>
<b>Exclude Yourself (or “Opt Out”)</b>	<p><b>Get out of the Settlement. Get no money from the Settlement. Keep your rights.</b></p> <p>This is the only option that allows you to keep your right to sue ZOA Energy, LLC, about the claims in this lawsuit. You will not get any money from the Settlement. Your request to exclude yourself (Opt-Out) must be RECEIVED or POSTMARKED by [DATE].</p> <p>You cannot both exclude yourself and also object.</p>
<b>Object</b>	<p>Stay in the Settlement, but tell the Court why you think the Settlement, the amount of attorneys' fees and expenses, or the award to the Class Representative should not be approved. Objections must be RECEIVED or POSTMARKED by [DATE].</p> <p>You may still submit a Claim Form even if you object. You cannot both exclude yourself and also object.</p>
<b>Go to the Final Approval Hearing</b>	<p>You can ask to speak in Court about the fairness of the Settlement, the amount of attorneys' fees, or award to the Class Representative, at your own expense. See Questions 17-19 below for more details.</p> <p>The Final Approval Hearing is scheduled for _____</p>

These rights and options—and the deadlines to exercise them—are explained in this Notice. The deadlines may be moved, canceled, or otherwise modified, so please check the Settlement Website at [www.zoasettlement.com](http://www.zoasettlement.com) regularly for updates and further details.

The Court in charge of this lawsuit has preliminarily approved the Settlement and will hold a hearing to make a final decision on whether to approve it. The proposed relief offered to

Class Members will be provided only if the Court gives final approval to the Settlement and, if there are any appeals, after the appeals are resolved in favor of the Settlement.

## **WHAT THIS NOTICE CONTAINS**

### **Basic Information**

1. Why did I get this Notice?
2. What is this case about?
3. Why is there a Settlement?
4. Why is this a class action?
5. How do I know if I am included in the Settlement?

### **The Settlement Benefits**

6. What does this Settlement provide?
7. How do I make a Claim?
8. What am I giving up as part of the Settlement?
9. Will the Class Representative receive any compensation for his efforts in bringing this lawsuit?

### **Excluding Yourself from the Settlement**

10. How do I exclude myself from the Settlement?
11. If I do not exclude myself, can I sue later?
12. What happens if I do nothing at all?

### **The Lawyers Representing You**

13. Do I have a lawyer in the lawsuit?
14. How will the lawyers be paid?

### **Objecting To The Settlement**

15. How do I tell the Court that I do not like the Settlement?
16. What is the difference between objecting and asking to be excluded?

### **The Final Approval Hearing**

17. When and where will the Court decide whether to approve the Settlement?
18. Do I have to come to the hearing?

19. May I speak at the hearing?

## **Do Nothing**

20. What happens if I do nothing?

## **Get More Information**

21. How do I get more information about the Settlement?

## **BASIC INFORMATION**

### **1. Why did I get this Notice?**

You are receiving this Court-authorized Notice because you may be a Class Member in a proposed Settlement regarding allegedly inaccurate labeling found on ZOA Energy drink Products that contained the statement “0 Preservatives” on the label.

For purposes of Settlement only, the Court has certified a class (“Settlement Class”). You are a member of the Settlement Class (“Settlement Class Member”) if you are a resident of the United States who purchased any ZOA Energy drink with a label stating “0 Preservatives” in the United States for personal use and not for resale or distribution between March 1, 2021 and [DATE OF PRELIMINARY APPROVAL].

This Notice explains the nature of the lawsuit and the Claims being settled, your legal rights, and the proposed benefits to the Class.

### **2. What is this case about?**

Judge James Donato of the Northern District of California is overseeing this matter, *Mikhail Gershzon v. ZOA Energy, LLC*, Case No. 3:23-cv-5444-JD, which was brought on behalf of the Plaintiff and a putative class of similarly situated consumers. The person who brought the lawsuit is called the “Plaintiff,” and the company sued is called the “Defendant.”

Plaintiff Mikhail Gershzon filed the lawsuit against ZOA Energy, LLC, individually and on behalf of certain others who purchased ZOA Energy Drinks labeled with the statement “0 Preservatives” on the label for personal use between March 1, 2021 and [DATE OF PRELIMINARY APPROVAL].

Plaintiff alleges that ZOA Energy Drinks bearing the statement “0 Preservatives” on the label were misleading to reasonable consumers because the Products contained citric and ascorbic acid, which were allegedly used as chemical preservatives.

Defendant denies the Plaintiff’s allegations that it violated any law or caused any harm as alleged in the lawsuit. Defendant asserts that the labeling and marketing of its Products were truthful and accurate. The Parties agreed to settle this case to avoid the expense and risks associated with the lawsuit.

The Court has not decided who is right.

To obtain more information about this case and the Settlement, please see Section 21 below.

### **3. Why is there a Settlement?**

The Court did not decide in favor of the Plaintiff or Defendant. Instead, both sides agreed to settle this case to avoid the expense and risks associated with the lawsuit.

The Plaintiff, Defendant, and their attorneys believe the proposed Settlement is fair, reasonable, adequate, and is, therefore, in the best interest of the Class Members. This Settlement provides injunctive relief and immediate monetary relief to the Settlement Class without the cost, time, and expense of litigating, which can take years.

Full details about the proposed Settlement can be found in the Settlement Agreement, available at [www.zoasettlement.com](http://www.zoasettlement.com).

### **4. Why is this a class action?**

In a class action, one or more people called “Class Representatives” (in this case, Mikhail Gershzon) sue on behalf of people who have similar claims. All of these people who may have similar claims form a “Class” and are called “Class Members.” The Settlement resolves the issues for all Class Members, except those who exclude themselves from the Class (Opt-Out), as explained in Section 10.

### **5. How do I know if I am included in the Settlement?**

You are included in the Settlement as a Class Member if you are a resident of the United States who purchased any ZOA Energy drink with a label stating “0 Preservatives” in the United States for personal use and not for resale or distribution between March 1, 2021 and [DATE OF PRELIMINARY APPROVAL].

The Settlement Class excludes: (1) the Released Parties; (2) any government entities; (3) persons who made a valid, timely request for exclusion; (4) the Honorable James Donato and any members of his immediate family; and (5) all individuals, distributors, wholesalers, retailers, or others who purchased the Products for the purpose of selling it to someone else.

If you are not sure whether you are a member of the Class, or have any other questions regarding the Settlement, please visit [www.zoasettlement.com](http://www.zoasettlement.com) or write with questions to ZOA Energy Settlement ., c/o [ADMIN], or call [TOLL-FREE NUMBER].

## **THE SETTLEMENT BENEFITS**

### **6. What does the Settlement provide?**

If the proposed Settlement is finally approved by the Court, and after any appeals are resolved (if any appeals are filed) in favor of the Settlement, Defendant has agreed to refund you as follows based upon whether or not you have proof of purchase:

**Without Receipt(s):** You will get \$1.00 per unit purchased, up to a maximum of \$10.00 per Household;

or

**With Receipt(s):** You will get reimbursed \$1.00 per unit purchased up to a maximum of \$150.00 per Household.

A Settlement Class Member may make only a single Claim and must choose the most appropriate for their situation. If a proof of purchase is rejected by the Claims Administrator, the claim request will be treated as one without proof of purchase and be subject to applicable maximum limits.

There is a \$3 million cap for the total Settlement Fund—including Attorneys' Fees and Costs, Notice and Other Administrative Costs, and Service Awards for the Class Representative. If the total value of all Approved Claims exceeds the funds available after allocation or distribution of the Notice and Other Administrative Costs, the Fees and Costs Award, and the Service Award, then the amounts of the Settlement Payments per claim will be reduced pro rata, as necessary, to use all of the funds available for distribution to Class Members. Any such pro rata adjustment will be calculated prior to distribution of funds (i.e., will be made in a single distribution).

Those Class Members whose payments are not redeemed (e.g., uncashed checks) within one hundred and eighty (180) calendar days after issuance ("Unredeemed Payments") will be ineligible to receive a Settlement Payment, and the Claims Administrator will have no further obligation to make any payment from the Settlement Fund pursuant to this Settlement Agreement or otherwise to such Class Member. Any Unredeemed Payments, including interest accrued thereon, will be donated *cy pres* to the Clean Label Project.

The deadline to make a valid claim is 11:59 p.m. Pacific Time on \_\_\_\_\_. To make a claim, please visit [www.zoasettlement.com](http://www.zoasettlement.com).

## **7. How to make a Claim?**

You must submit a Claim Form, with or without Proof of Purchase, to be eligible to receive any money from the Settlement. Proof of Purchase is a receipt or purchase record from a Released Party, a removed UPC code, or other documentation from a third-party commercial source reasonably establishing the fact and date of purchase of the applicable Product during the Class Period in the United States. You may complete the Claim Form online at [www.zoasettlement.com](http://www.zoasettlement.com); download the form and email it to \_\_\_\_\_; or contact the Claims Administrator at [Address] [Toll-free number] to request a Claim Form and either submit by email to \_\_\_\_\_ or by mail at [Address]. Your Claim Form must be signed under penalty of perjury and postmarked or submitted online no later than 11:59 p.m. Pacific Time on \_\_\_\_\_.

## **8. What am I giving up as part of the Settlement?**

Unless you exclude yourself (Opt-Out), you will be included in the Settlement if it is approved by the Court. By staying in the Class, you will be eligible to receive monetary benefits provided by the Settlement, to which you may be entitled, and you will release the Defendant from all of the Released Claims in this lawsuit, whether or not you file a valid Claim Form.

This means that you will no longer be able to sue ZOA Energy, LLC regarding any of the Released Claims if you are a Class Member and do not timely and properly Exclude yourself (Opt-Out) from the Class. “Released Claims” are defined in Section 1.30 of the Settlement Agreement.

Upon the Effective Date and by operation of the judgment, the Releasing Parties shall have fully, finally, and forever released, relinquished, and discharged against the Released Parties all Released Claims (including, without limitation, any unknown claims), as well as any claims arising out of, relating to, or in connection with, the defense, settlement, or resolution of this Action or the Released Claims.

The full text of the Settlement Agreement, which includes all the provisions about settled Claims and Releases, is available at [www.zoasettlement.com](http://www.zoasettlement.com).

**9. Will the Class Representatives receive any compensation for their efforts in bringing this lawsuit?**

Possibly. The Class Representative will request a Service Award of up to a maximum total amount of \$7,500 to compensate him for services as a Class Representative, including, but not limited to his efforts in bringing the lawsuit and resolving the matter on behalf of the Class. The Court will make the final decision as to the amount, if any, to be paid to the Class Representative.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

**10. How do I exclude myself (Opt-Out) from the Settlement?**

If you do not want to be part of the Settlement, you must send a written request for exclusion (Opt-Out). If you exclude yourself, you cannot file a claim or object to the Settlement, and you will not be entitled to any monetary payments from the Settlement. The request to exclude yourself from the Settlement must be made on an individual basis and postmarked (in the case of a paper mail submission) or received (in the case of personal delivery) by the Claims Administrator at the below address on or before 11:59 p.m. Pacific Time on \_\_\_\_\_:

ZOA Energy Drink Class Action  
c/o Kroll Settlement Administration LLC  
P.O. Box XXXX  
New York, NY 10150-XXXX

The Opt-Out request must contain the requestor’s name and address, the words “I wish to be excluded from the *ZOA Energy Drink Class Action*,” and the requestor’s signature.

Instructions on how to submit an exclusion request are available at [www.zoasettlement.com](http://www.zoasettlement.com) or by emailing or calling the Claims Administrator.

**11. If I do not exclude myself, can I sue later?**

No. If you are a Class Member and you do not exclude yourself (Opt-Out) from the Settlement and the Settlement is finally approved by the Court, you forever give up the right to sue ZOA Energy, LLC., and the Released Parties for all the Released Claims, which this Settlement fully and finally resolves.

If you submit a valid and timely request to be excluded (Opt-Out), you cannot Object to the proposed Settlement. However, if you ask to be excluded, you may sue or continue to sue ZOA Energy, LLC, or the Released Parties about the same claims resolved by this Settlement in the future. You will not be bound by anything that happens in this lawsuit.

## **12. What happens if I do nothing at all?**

If you are a Class Member, do nothing, and the Settlement is finally approved by the Court, you forever give up the right to sue ZOA Energy, LLC and the Released Parties for the Released Claims, which this Settlement fully and finally resolves.

## **THE LAWYERS REPRESENTING YOU**

### **13. Do I have a lawyer in the case?**

Yes. The Court has ordered that Michael D. Braun of Kuzyk Law, LLP and Peter N. Wasylyk of the Law Offices of Peter N. Wasylyk (together, “Class Counsel”) will represent the interests of all Class Members. Class Members will not be separately charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

### **14. How will the costs of the lawsuit and Settlement be paid?**

The Claims Administrator’s and Notice Provider’s costs and fees associated with administering the Settlement, including all costs associated with the publication of the Notice of Settlement will be paid out of the Settlement Fund. Class Counsel’s reasonable attorneys’ fees and costs related to obtaining the Settlement consistent with applicable law will also be paid out of the Settlement Fund, subject to Court approval. Class Counsel shall apply for attorneys’ fees no greater than one-third of the Settlement Fund. The Class Representative will also request that the Court approve a payment of up to \$7,500 from the Settlement Fund, as an incentive award for his participation as the Class Representative, for taking on the risk of litigation, and for settlement of his individual claim as a Class Member. Actions. The amounts are subject to Court approval and the Court may award less.

## **OBJECTING TO THE SETTLEMENT**

### **15. How do I tell the Court that I do not like the Settlement?**

You can ask the Court to deny approval of the Settlement by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out, and the lawsuit will continue. If that is what you want to happen, you should object.

Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in

person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must:

- (a) Identify the case name and number *Mikhail Gershzon v. ZOA Energy, LLC*, Case No. 3:23-cv-5444-JD;
- (b) Provide the name, address, telephone number, and, if available, the email address of the Person objecting and their Counsel if represented;
- (c) A detailed statement of Objection(s), including the grounds for those Objection(s);
- (d) Objections must be submitted to the Court either by filing them electronically or in person at any location of the United States District Court for the Northern District of California or by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue San Francisco, CA 94102; and be filed or postmarked on or before \_\_\_\_\_.

## **16. What is the difference between objecting and asking to be excluded?**

Objecting is simply telling the Court that you don't like something about the Settlement. You can Object only if you stay in the Class.

Excluding yourself (Opting Out) is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to Object because the Settlement no longer affects you.

## **THE FINAL APPROVAL HEARING**

## **17. When and where will the Court decide whether to approve the Settlement?**

A Court has preliminarily approved the Settlement and will hold a Final Approval Hearing to determine whether to give final approval to the Settlement. The purpose of the Final Approval Hearing is for the Court to determine whether the Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Class, and to consider the award of Attorneys' Fees and Costs to Class Counsel and to consider the request for Service Awards to the Class Representative. If there are any valid, timely Objections, the Court will consider them and listen to the people who have asked to speak at the hearing, if a request to do so was properly made,

The Court will hold the Final Approval Hearing on \_\_\_\_\_, at \_\_\_:00 \_\_.m. in the United States District Court for the Northern District of California, Courtroom 11, 19th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, in Courtroom 8D South. The hearing may be postponed to a different time, date, or location without additional notice, so it is recommended that you periodically check [www.zoasettlement.com](http://www.zoasettlement.com) for updated information.

## **18. Do I have to come to the hearing?**

No, you are not required to come to the Final Approval Hearing. However, you are welcome to attend the hearing at your own expense.

If you submit an Objection, you do not have to come to the hearing to talk about it. As long as you submitted the written Objection according to the instructions in Question 15 (including all of the information required), and it was received on time, the Court will consider it. You also may pay your own lawyer to attend the Final Approval Hearing, but that is not necessary.

**19. May I speak at the hearing?**

Yes, you may speak at the Final Approval Hearing, but you must ask the Court for permission. To request permission to speak, you must have filed an Objection according to the instructions in Question 15, including all of the information required.

You cannot speak at the hearing if you exclude yourself (Opt-Out) from the Settlement.

**DO NOTHING**

**20. What happens if I do nothing?**

If you do nothing and the Settlement is finally approved by the Court, you will not get any money from the Settlement, you will not be able to sue for the Claims in this lawsuit, and you will release Claims against Defendant and the Released Parties.

**GETTING MORE INFORMATION**

**21. How do I get more information about the Settlement?**

This is only a summary of the proposed Settlement. If you want additional information about this lawsuit, including a copy of the actual Settlement Agreement, the complaint filed in this lawsuit, the Court's Preliminary Approval Order, Class Counsel's Application for Attorneys' Fees and Costs, other pertinent information, **and to check the status of the Settlement or if the Settlement has been approved by the Court**, please visit [www.zoasettlement.com](http://www.zoasettlement.com)

You may also contact the Claims Administrator at \_\_\_\_\_

**PLEASE DO NOT ADDRESS ANY QUESTIONS ABOUT THE SETTLEMENT OR LITIGATION TO THE CLERK OF THE COURT OR THE JUDGE.**

# **EXHIBIT 2**

From:  
To:  
Subject: Email Notice of Proposed Class Action Settlement

---

Class Member ID: <>RefNum<>

## **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

### **IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA**

*A Court authorized this notice. This is not a solicitation from a lawyer.  
You are not being sued.*

A Settlement has been reached in a class action lawsuit filed against ZOA Energy, LLC (“Defendant”) alleging that the statement “0 Preservatives” on the labels of ZOA Energy drinks (“Products”) is misleading because it contains chemical preservatives citric and ascorbic acids. Defendant denies these allegations and maintains that its labeling and marketing are truthful, accurate, and compliant with applicable law. The Court did not rule in favor of either side. The Parties agreed to settle this case to avoid the expense and risk associated with the lawsuit. The Court has granted preliminary approval of the Settlement.

You are a member of the Settlement Class (“Settlement Class Member”) if you are a resident of the United States who purchased any ZOA Energy drink with a label stating “0 Preservatives” in the United States for personal use and not for resale or distribution between March 1, 2021 and [DATE OF PRELIMINARY APPROVAL].

If you are a Settlement Class Member who purchased any ZOA Energy drink with a label stating “0 Preservatives” between March 1, 2021 and \_\_\_\_\_, did not purchase the Products for purposes of resale, and do not have a valid Proof of Purchase, you will receive a payment of \$1 per unit purchased up to a maximum of \$10. Only one claim per household will be honored.

If you are a Settlement Class Member who purchased any ZOA Energy drink with a label stating “0 Preservatives” between March 1, 2021 and \_\_\_\_\_, did not purchase the Products for purposes of resale, and have a valid Proof of Purchase for all purchases, you will receive a minimum of \$1 per unit up to a total of \$150 maximum per household.

**If you purchased ZOA Products at issue in the class action Settlement, your legal rights are affected whether you act or do not act.**

**Please read this entire notice carefully.**

**WHO IS INCLUDED?** You are a Settlement Class Member if you are a resident of the United States who purchased any ZOA Energy drink with a label stating “0 Preservatives” in the United States for personal use and not for resale or distribution between March 1, 2021 and [DATE OF PRELIMINARY APPROVAL]. You are included in this Settlement as a Settlement Class Member unless you opt out of the Settlement.

**SETTLEMENT BENEFITS.** If the proposed Settlement is finally approved by the Court, and after any appeals are resolved (if any appeals are filed) in favor of the Settlement, Defendant has agreed to refund you as follows based upon whether or not you have proof of purchase:

- Without Receipts: You will get \$1.00 per unit purchased, up to a maximum of \$10.00 per Household; or
- With Receipts: You will get reimbursed \$1.00 per unit purchased up to a maximum of \$150.00 per Household.

**The only way to receive a benefit is to file a Claim. To get a Claim Form, visit the Settlement Website, [www.zoasettlement.com](http://www.zoasettlement.com) or call toll-free \_\_\_\_\_.** **The Claim Deadline is XXXX, 2025.**

**OPT-OUT.** If you do not want to be legally bound by the Settlement, you must exclude yourself. A more detailed notice explaining how to exclude yourself is available at [www.zoasettlement.com](http://www.zoasettlement.com). You must mail your letter requesting exclusion, postmarked no later than \_\_\_\_\_, to the Settlement Administrator. ***You cannot exclude yourself by phone or email.*** If you exclude yourself from the Settlement, you will receive no benefits under the Settlement and will not be legally bound by the Court's judgments related to the Settlement Class and the Defendant in this class action.

**OBJECT.** If you stay in the Settlement, you may object to it by **XXX 2025**, if you do not agree with any part of it. A more detailed notice explaining how to object is available at [www.zoasettlement.com](http://www.zoasettlement.com). You must mail your written objection to the Court, postmarked no later than **XXXX, 2025**. You can object only if you stay in the Settlement Class.

**OTHER OPTIONS.** If you do nothing, you will remain in the Settlement Class, you will not be eligible for benefits, and you will be bound by the decisions of the Court and give up your rights to sue the Defendant for the claims resolved by this Settlement.

**FOR MORE INFORMATION.** Please visit the Settlement Website at [www.zoasettlement.com](http://www.zoasettlement.com) or call the Settlement Administrator toll-free at \_\_\_\_\_ for a copy of the more detailed notice and the Class Action Settlement Agreement. On **XXXXX**, the Court will hold a Final Approval Hearing in Courtroom 11 at \_\_\_\_\_ of the United States District Court for the Northern District of California Located at 450 Golden Gate Avenue, San Francisco, CA 94102 to determine whether to approve the Settlement and Class Counsel's request for a Plaintiff Service Award and Attorneys' Fees and Expenses.

For more information visit the Settlement Website at [www.zoasettlement.com](http://www.zoasettlement.com) or contact the Claims Administrator at 1-800 XXX-XXXX.

# **EXHIBIT 3**

## **NOTICE OF PROPOSED CLASS ACTION SETTLEMENT**

### **IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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**IF YOU LIVE IN THE UNITED STATES AND PURCHASED ANY ZOA ENERGY DRINK LABELED WITH THE STATEMENT “0 PRESERVATIVES” BETWEEN MARCH 1, 2021, AND [DATE OF PRELIMINARY APPROVAL], YOU MAY BE ENTITLED TO A PAYMENT FROM A CLASS ACTION SETTLEMENT.**

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*A Court has authorized this Notice. This is not a solicitation from a lawyer.*

#### **Why have I received this Notice?**

A settlement has been reached in a class action lawsuit against ZOA Energy, LLC (“Defendant”) which asserts claims under California law, including California Business & Professions Code § 17200 et seq., California Business & Professions Code § 17500 et seq., California Civil Code § 1750 et seq., as well as claims for breach of express warranty, common-law fraud, intentional misrepresentation, negligent misrepresentation, and restitution based on quasi-contract/unjust enrichment, associated with the sale of Defendant’s energy drink bearing the statement “0 Preservatives” on the label (“Product”).

A Court has authorized this Notice because you have a right to know about the proposed settlement of this class-action lawsuit (the “Settlement”) and your options before the Court decides whether to give “final approval” to the Settlement. This Notice summarizes the lawsuit, the proposed Settlement, and your legal rights.

#### **Who is included in the Settlement Class?**

The Settlement Class includes: All persons in the United States who, from March 1, 2021, to the [Date of Preliminary Approval] (“Class Period”), purchased in the United States, for personal or household consumption and not for resale or distribution, one or more Products bearing the statement “0 Preservatives” on the label.

#### **What are the benefits of the Settlement?**

The Settlement provides for the establishment of a Settlement Fund in the amount of \$3,000,000 (Three Million Dollars) to pay for: (i) all Settlement Payments to Settlement Class Members who submit Approved Claims, (ii) a Service Award to the Class Representative, (iii) an Attorneys’ Fees & Costs Award, and (iv) payment of Notice and Other Administrative Costs.

Each Settlement Class Member who timely files with the Settlement Administrator an Approved Claim without a purchase receipt will receive a Settlement Payment of One Dollar (\$1) for every can of Product purchased with a cash award cap of Ten Dollars (\$10) from the Settlement Fund. Each Settlement Class Member who timely files with the Settlement Administrator an Approved Claim with a purchase receipt will receive a Settlement Payment of One Dollar (\$1) for every can of Product purchased with a cash award cap of One Hundred Fifty Dollars (\$150) per household from the Settlement Fund. If the total value of all Approved Claims exceeds the funds available after allocation or distribution of the Notice and Other Administrative Costs, the Fees and Costs Award, and the Service Award, then the amounts of the Settlement Payments per claim will be reduced pro rata, as necessary, to use all of the funds available for distribution to Class Members. Any such pro rata adjustment will be calculated prior to distribution of funds (i.e., will be made in a single distribution). Payments to Class Members that are not redeemed (e.g., uncashed checks) within one hundred and eighty (180) calendar days after issuance (“Unredeemed

Payments") will be donated *cy pres* to the Clean Label Project.

**In order to receive a Settlement Payment, you must complete and submit a Claim Form by XXXXXX XX, 2025. Claim Forms may be submitted online at [www.zoasettlement.com](http://www.zoasettlement.com) or printed from the website and mailed to the Claims Administrator. Claim Forms submitted by mail must be postmarked no later than XXXXXX XX, 2025.**

**How can I exclude myself from the Settlement Class?**

If you don't want to make a claim and you don't want to be legally bound by the Settlement, your request to be excluded must be **submitted no later than XXXXXX XX, 2025**, or you will not be able to sue, or continue to sue, the Defendant about the claims and allegations in this case. Refer to the Settlement Website and the Notice for information and instructions on how to exclude yourself. [www.zoasettlement.com](http://www.zoasettlement.com).

**How can I object?**

If you want to stay in the Settlement Class, but you want to object to the Settlement and/or to Class Counsel's request for Fee Award, your objection must be filed with the Court **no later than XXXXXX XX, 2025**. Refer to the Settlement Website and the Notice for information and instructions on how to object. [www.zoasettlement.com](http://www.zoasettlement.com).

**Do I have a lawyer in this case?**

Yes, the Court has appointed the law firms of Kuzyk Law, LLP and Law Offices of Peter N. Waslyk to represent the Settlement Class. These attorneys are called Class Counsel. You will not be charged for their services. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

**The Court's Final Approval Hearing.**

The Court has scheduled a Final Approval Hearing on XXXXXX XX, 2025, at XX:XX XX at the XXXXXX. The hearing may be moved to a different date or time without additional notice, so it is a good idea to check XXXXXX for updates. At the Final Approval Hearing, the Parties will request that the Court consider whether the Settlement Class should be certified as a class for settlement purposes and, if so, (i) consider any properly-filed objections; (ii) determine whether the Settlement is fair, reasonable and adequate, was entered into in good faith and without collusion, and should be approved, and shall provide findings in connection therewith; and (iii) enter the Final Approval Order, including final approval of the Class Action Settlement Agreement and Release, and a Fee Award. It is unknown how long these decisions will take. You may attend the hearing with your own lawyer, but you do not have to.

**Where can I get more information?**

This Notice summarizes the proposed Settlement. More details are in the Class Action Settlement Agreement & Release, which you can view at [www.zoasettlement.com](http://www.zoasettlement.com). You can also contact the Settlement Administrator by mail, email or phone and/or to update your contact information.

XXXXXX Settlement  
c/o Kroll Settlement Administration LLC  
PO Box 225391  
New York, NY 10150-5391  
XXXXXX  
(XXX) XXX-XXXX

# **EXHIBIT 4**

**EXHIBIT 4**  
**NOTICE PLAN DEADLINES**

<b>DEADLINE</b>	<b>EVENT DATE</b>
Preliminary Approval Date	Date the Preliminary Approval Order is entered
Class Administrator to establish settlement website	14 calendar days after the Preliminary Approval Date
Settlement Notice Date -- Claims Administrator to transmit notice (publication notice, internet notice, email notice)	21 calendar days after the Preliminary Approval Date
Deadline for Plaintiff to file memorandum in support of fees, reimbursement of expenses and service award	At least 35 calendar days before the Objection Deadline
Objection Deadline	60 calendar days after the Settlement Notice Date
Opt-Out Deadline	60 calendar days after the Settlement Notice Date
Exclusion Deadline (Class Administrator to provide a final list of all Requests for Exclusion)	7 calendar days after the Opt-Out Deadline
Settlement administrator to transmit list of all class members seeking exclusion	7 calendar days from the Opt-Out Deadline
Deadline for Defendant to exercise right to terminate	15 calendar days after the Opt-Out Deadline
Claims Deadline	90 calendar days after the Settlement Notice Date
Deadline to file Motion for Final Approval	At least 25 calendar days before the Final Approval hearing and 14 calendar days after the Objection Deadline.
Final Approval Hearing	TBD but no sooner than 120 calendar days after the Preliminary Approval Date

# **EXHIBIT 5**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**MIKHAIL GERSHZON on behalf of himself  
and all others similarly situated,**

**CASE NO.: 3:23-cv-5444-JD**

## **CLASS ACTION**

**[PROPOSED] ORDER GRANTING  
PLAINTIFF'S MOTIONS FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT, ATTORNEYS' FEES  
AND COSTS, AND SERVICE AWARD,  
AND FINAL JUDGMENT**

## ZOA ENERGY, LLC

## Defendant.

Judge: Hon. James Donato

Action Filed: October 23, 2023

1 Plaintiff Mikhail Gershzon, individually and on behalf of the proposed Settlement Class seeks  
2 final approval of a proposed Settlement of claims against Defendant ZOA Energy, LLC (“ZOA”). The  
3 Court, having read and considered the Settlement Agreement and accompanying documents, as well  
4 as the Motion for Preliminary Approval of Class Action Settlement, Motion for Final Approval of  
5 Class Action Settlement and supporting papers, HEREBY ORDERS AS FOLLOWS:

6 WHEREAS Plaintiff’s Motion for Final Approval of Class Action Settlement came on for  
7 hearing before this Court on [TBD] with Class Counsel KUZYK LAW (“Class Counsel”) appearing  
8 on behalf of Mikhail Gershzon (“Class Representative” or “Plaintiff”), and Defense Counsel Morgan,  
9 Lewis & Bockius LLP appearing on behalf of ZOA Energy LLC (“Defendant” or “ZOA”)  
10 (collectively, the “Parties”).

11 WHEREAS the Parties agreed to settled the above captioned matter which was submitted for  
12 preliminary approval by this Court and subsequently approved on \_\_\_\_\_ (“Preliminary Approval  
13 Order”).

14 WHEREAS the Preliminary Approval Order established that Notice would be given to the  
15 putative settlement class which provided for an Objection, Opt-Out, and Claims Deadline of [TBD].  
16 WHEREAS, in accordance with the Preliminary Approval Order, Class Members have been given  
17 notice of the terms of the Settlement and the opportunity to object to or exclude themselves from its  
18 provisions.

19 WHEREAS, having received and considered the Settlement, all papers filed in connection  
20 therewith, including Plaintiff’s Motion for Final Approval of Class Action Settlement, Plaintiff’s  
21 Motion for Award of Attorneys’ Fees and Costs, and Plaintiff’s Motion for Approval of Service Award,  
22 and the evidence and argument received by the Court at the hearing before it entered the Preliminary  
23 Approval Order and at the final approval hearing on [TBD], the Court HEREBY ORDERS and  
24 MAKES DETERMINATIONS as follows:

25 1. Incorporation of Other Documents. The Settlement Agreement, including its exhibits,  
26 and the definitions of words and terms contained therein are incorporated by reference in this Order.  
27 The terms of this Court’s Preliminary Approval Order are also incorporated by reference in this Order.  
28

1           2.     Jurisdiction. This Court has jurisdiction over the subject matter of this Action and over  
2 the Parties, including all members of the following Settlement Class certified for settlement purposes  
3 in this Court's Preliminary Approval Order pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3):

4  
5           All persons in the United States who, from March 1, 2021, to the present,  
6 purchased in the United States, for personal or household consumption  
7 and not for resale or distribution, one or more Products bearing the  
8 statement "0 Preservatives" on the label. Excluded from the Settlement  
9 Class are: (1) the presiding Judge(s) in the Action; (2) any member of  
those Judge(s)' immediate families; (3) Defendant; (4) any of  
Defendant's subsidiaries, parents, affiliates, officers, directors,  
employees, legal representatives, heirs, successors, or assigns; (5)  
counsel for the Parties; and (6) any persons who timely opt-out of the  
Settlement Class.

10           3.     Class Certification. The Court finds and determines that the Settlement Class, as  
11 defined in the Settlement Agreement and above, meets all of the legal requirements for class  
12 certification for settlement purposes under Fed. R. Civ. P. 23(a), (b)(2) (with respect to the settlement's  
13 programmatic relief), and (b)(3), and it is hereby ordered that the Class is finally certified for  
14 settlement purposes.

15           4.     Pursuant to the Settlement Agreement, and for settlement purposes only, the Court  
16 finds as to the Settlement Class with respect to all aspects of the Settlement Agreement that the  
17 prerequisites for a class action under Fed. R. Civ. P. 23(a) and (b)(3) have been satisfied in that:

18           a.     The Settlement Class is so numerous that joinder of all members is  
19                   impracticable;

20           b.     There are questions of law or fact common to the Settlement Class;

21           c.     The claims of the Class Representative are typical of the claims of the  
22                   Settlement Class;

23           d.     The Class Representative, Mikhail Gershzon, has fairly and adequately  
24                   protected the interests of the Settlement Class and is, therefore, appointed as a  
25                   Class Representative;

26           e.     Michael D. Braun of Kuzyk Law, LLP and Peter N. Wasylyk of Law Offices  
27                   of Peter N. Wasylyk have fairly and adequately protected the interests of the

1 Settlement Class and are qualified to represent the Settlement Class and are,  
2 therefore, appointed as Class Counsel;

3 f. The questions of law and fact common to the Settlement Class predominate  
4 over the questions affecting only individual members; and  
5 g. A class action is superior to other available methods for fairly and efficiently  
6 adjudicating the controversy.

7 5. Pursuant to the Settlement Agreement, and for settlement purposes only, for purposes  
8 of the programmatic relief specified in section 5 of the Settlement Agreement, the Court further finds  
9 as to the Settlement Class that the prerequisites for a class action under Fed. R. Civ.  
10 P. 23(a) and (b)(2) have been satisfied in that:

11 a. The Settlement Class is so numerous that joinder of all members is  
12 impracticable;  
13 b. There are questions of law or fact common to the Settlement Class;  
14 c. The claims of the Class Representative are typical of the claims of the  
15 Settlement Class;  
16 d. The Class Representative and Class Counsel have fairly and adequately  
17 protected the interests of the Settlement Class;  
18 e. Defendant has acted or refused to act on grounds generally applicable to the  
19 Settlement Class, thereby making appropriate final programmatic relief with  
20 respect to the Settlement Class as a whole.

21 6. Adequate Representation. The Court orders that Class Representative Mikhail  
22 Gershzon is appointed as the Class Representative. The Court also orders that Michael D. Braun of  
23 Kuzyk Law, LLP and Peter N. Wasylyk of Law Offices of Peter N. Wasylyk are appointed Class  
24 Counsel. The Court finds that the Class Representative and Class Counsel fairly and adequately  
25 represent and protect the interests of the absent Settlement Class Members in accordance with Fed. R.  
26 Civ. P. 23.

1        7.        Arms-Length Negotiations. The Court finds that the proposed Settlement is fair,  
2 reasonable, and adequate based on the value of the Settlement, and the relative risks and benefits of  
3 further litigation.

4        8.        Class Notice. The Court finds that the approved Notice Plan has been satisfactorily  
5 and substantially implemented. Pursuant to the Preliminary Approval Order, Notices of Class Action  
6 Settlement (hereinafter referred to the “Notice”) were published as follows:

- 7        a.        A Settlement Website ([www.zoasettlement.com](http://www.zoasettlement.com)), e-mail address ([TBD])  
8                telephone number ([TBD]), and mailing address ([TBD]) were set up on or  
9                before [TBD].<sup>1</sup> The contact information was also provided on the Settlement  
10               Website and in any print-media notices.
- 11        b.        Since its implementation, the Settlement Website has set forth, in large text, the  
12                deadlines for claims, objections, and requests for exclusion from the Settlement  
13                Class as well as the date of the Final Fairness Hearing. It also contains easily  
14                accessible links to the short form and long form notices, Preliminary Approval  
15                Order, Settlement Agreement, and Preliminary Approval Motion (including all  
16                related paperwork).
- 17        c.        [TBD details re notice, online ads, etc.]
- 18        d.        All online advertisements directed potential Settlement Class Members to the  
19                Settlement Website, where they could download all important documents,  
20                review frequently asked questions, review the long form and short form notices,  
21                and file a claim.

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<sup>1</sup> Pursuant to this Court’s order preliminarily approving the settlement, notice commenced on  
27                [TBD].  
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- e. A toll-free number with an Interactive Voice Response (“IVR”) system has been available since initiation of the Notice and remains available to answer questions regarding the settlement.
- f. Weekly reports regarding submission of claims, objections, and requests for exclusion were provided to counsel for all parties, including Class Counsel, throughout the notice campaign. Additional reporting will continue after Final Approval to ensure proper oversight of the claims processes.

9. The Court finds that distribution of the Notice in the manner set forth in the Settlement Agreement constituted the best notice practicable under the circumstances, and constituted valid, due, and sufficient notice to all members of the Class. The Court finds that such notice complies fully with the requirements of Fed. R. Civ. P. 23, the Constitution of the United States, and any other applicable laws. The Notice informed the Settlement Class of: (1) the terms of the Settlement; (2) their right to submit objections, if any, and to appear in person or by counsel at the final approval hearing and to be heard regarding approval of the Settlement; (3) their right to request exclusion from the Class and the Settlement; and (4) the location and date set for the final approval hearing. Adequate periods of time were provided by each of these procedures.

10. The Court finds and determines that the notice procedure carried out by Kroll LLC afforded adequate protections to Class Members and provides the basis for the Court to make an informed decision regarding approval of the Settlement based on the responses of Class Members. The Court finds and determines that the Notice was the best notice practicable and has satisfied the requirements of law and due process.

11. Settlement Class Response. A total of \_\_\_\_\_ Settlement Class Members submitted Approved Claims, and there have been X Objections to the Settlement (defined below) and X Requests for Exclusion.

a. [After careful consideration, the Court hereby overrules Objector X's Objection for the reasons stated on the record.]/[No Objections were received to the Settlement. This positive reaction by the Settlement Class demonstrates the strength of the Settlement.]

b. [The Court also hereby orders that each of the individuals appearing on the list annexed hereto as Exhibit A who submitted valid Requests for Exclusion are excluded from the Settlement Class. Those individuals will not be bound by the Settlement Agreement (except with respect to the programmatic relief specified in section 5 of the Settlement Agreement), and neither will they be entitled to any of its benefits.]/[No Settlement Class members opted out of the Settlement. This positive reaction by the Settlement Class demonstrates the strength of the Settlement.]

12. Final Settlement Approval. The Court hereby finally approves the Settlement Agreement, the exhibits, and the Settlement contemplated thereby (“Settlement”), and finds that the terms constituted, in all respects, a fair, reasonable, and adequate settlement as to all Settlement Class Members in accordance with Fed. R. Civ. P. 23 and direct consummation pursuant to its terms and conditions.

13. The Court finds that the Settlement Agreement provides substantial and meaningful monetary benefits to the Settlement Class as follows: ZOA agreed to provide cash benefits with a gross potential payout of up to \$3,000,000 (three million dollars) in the aggregate.

14. The Court finds that the Settlement Agreement also provides substantial and meaningful programmatic relief to the Settlement Class as follows: Defendant shall not produce Products with the challenged Labeling that includes the statement “0 Preservatives” or words to that effect unless the Product ingredients change to no longer include citric and ascorbic acid. Additionally, Defendant agrees that no more than 60 days after the Judgment becomes final it will update images of the Products on its website accordingly and will not make future posts on any social media platforms that include Product images with a label that includes the statement “0 preservatives” or words to that effect unless the Product ingredients change to no longer include citric and ascorbic acid.

15. The Court finds that the Settlement is fair when compared to the strength of Plaintiff's case, the strength of Defendant's defenses, the risks involved in further litigation and maintaining class status throughout the litigation, and the amount offered in settlement.

1       16. The Court finds that the Parties conducted a diligent investigation and research such  
2 that their attorneys were able to reasonably evaluate their respective positions.

3       17. The Court finds that Class Counsel has extensive experience acting as counsel in  
4 complex class action cases and their view on the reasonableness of the settlement was therefore given  
5 its due weight.

6       18. The Court hereby grants final approval to and orders the payment of those amounts to  
7 be made to the Settlement Class Members in accordance with the terms of the Settlement Agreement.  
8 The Court finds and determines that the Settlement Payments to be paid to each Settlement Class  
9 Member as provided for by the Settlement are fair and reasonable.

10       19. The Court further finds that the Settlement Class's reaction to the settlement weighs in  
11 favor of granting Final Approval of the Settlement.

12       20. The Settlement Agreement is not an admission by Defendant, nor is this Order a finding  
13 of the validity of any allegations or of any wrongdoing by Defendant. Neither this Order,  
14 the Settlement, nor any document referred to herein, nor any action taken to carry out the Settlement,  
15 shall be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the  
16 part of Defendant or Released Parties.

17       21. Based upon claims received as of the date of this Order, the parties expect  
18 approximately \$       of the gross settlement fund to be available for cy pres distribution to the Clean  
19 Label Project as identified by the parties and approved by the Court. The Court hereby approves  
20 awards of [insert details of cy pres awards]. The parties may adjust these awards upwards or  
21 downwards as necessary to fully exhaust (but not exceed) the amounts available for distribution after  
22 payments of all other settlement expenses, without further Order of the Court.

23       22. Attorneys' Fees and Costs; Service Awards. Class Counsel have litigated this matter  
24 with skill and diligence to confer both a monetary benefit, and a benefit in the form of cessation of the  
25 challenged practice, on the Class Members, and having expended resources and effort to secure a  
26 benefit to the Class, with no guarantee of payment due to the contingent nature of the representation,  
27 and having turned down other work, are entitled to reasonable attorneys' fees and costs and,

1 accordingly, the Court approves Plaintiff's Motion for Award of Attorneys' Fees and Costs for \$[ ],  
2 which represents \$[ ] for attorneys' fees and [amount not to exceed \$(\$ )] for costs.

3 23. Class Counsel have devoted [X] hours with a lodestar of \$[X] to achieve the Settlement  
4 in this Action. Having reviewed Class Counsel's Motion for Award of Attorneys' Fees and Costs, the  
5 Court finds the requested amount of attorneys' fees \$[ ] to be fair, reasonable, and appropriate under  
6 applicable law and based upon the following factors: (1) the results obtained are a fair, adequate, and  
7 reasonable benefit to the Settlement Class; (2) the fee award represents [ ] or [ ]% of the \$3 million  
8 common fund which is consistent with fee awards in other similar settlements approved by this Court;  
9 (3) the fee award represents a XX% voluntary reduction in Class Counsel's lodestar; (4) [no Settlement  
10 Class Member objected to the terms of the Settlement, including the fee award]; (5) the considerable  
11 risk that Settlement Class Counsel would recover nothing; and (6) the financial burden taken on by  
12 Settlement Class Counsel in litigating the case on a contingent basis.

13 24. The Court also finds that Class Counsel have incurred \$[ ] in litigation cost which  
14 were reasonably incurred in the ordinary course of prosecuting this case and were necessary given the  
15 complex nature and scope of this case. The Court finds that Class Counsel are entitled to be reimbursed  
16 for these costs.

17 25. In making this award of attorneys' fees and costs, the Court has further considered and  
18 found that:

- 19 a. The Settlement Agreement created a Settlement Fund of \$3,000,000 in cash for  
20 the benefit of the Settlement Class pursuant to the terms of the Settlement  
21 Agreement;
- 22 b. ZOA's adoption of the Programmatic Relief was a negotiated, material term of  
23 the Settlement Agreement;
- 24 c. Settlement Class Members who submitted acceptable proof of claim forms will  
25 benefit from the Settlement Agreement because of the efforts of the Class  
26 Counsel and the Class Representative;
- 27 d. The fee sought by the Class Counsel is fair and reasonable;

- e. Class Counsel have prosecuted the action with skill, perseverance, and diligence, as reflected by the Settlement Fund, and the positive reaction of the Settlement Agreement by the Settlement Class;
- f. This Action involved complex factual and legal issues that were extensively researched and developed by the Class Counsel;
- g. Class Counsel's rates are fair, reasonable, and consistent with rates accepted within this jurisdiction for complex consumer class action litigation;
- h. Had the Settlement not been achieved, a significant risk existed that Plaintiff and the Class Members may have recovered significantly less or nothing from Defendant;
- i. Public policy considerations support the requested fees; and
- j. The amount of attorneys' fees awarded and expenses reimbursed are appropriate to the specific circumstances of this action.

26. ZOA and the Released Parties shall not be liable for any additional fees or expenses for Class Counsel or counsel of any Class Representative or Settlement Class Member in connection with the Action beyond those expressly provided in the Settlement Agreement.

27. The attorneys' fees and costs set forth in this Order shall be paid and distributed in accordance with the terms of the Settlement Agreement.

28. The Class Representative's dedication and efforts have conferred a significant benefit on millions of consumers across the United States and the general public and accordingly, the Court approves Class Representative's motion for service award not to exceed \$7,500.

29. This incentive award is justified by: (1) the risks Class Representative faced in bringing this lawsuit, financial and otherwise; (2) the amount of time and effort spent on this action by the Class Representative; and (3) the benefits the Class Representative helped obtain for the Class Members under the Settlement.

30. The Court finds that the proposed service award to the Class Representative is fair, reasonable, and adequate, and orders the following to be paid out of the Settlement Fund: \$7,500 for

1 Mikhail Gershzon. The service award set forth in this Order shall be paid and distributed in accordance  
2 with the terms of the Settlement Agreement.

3 31. Dismissal. This Action is hereby DISMISSED WITH PREJUDICE, on the merits, by  
4 Plaintiff and all members of the Settlement Class as against ZOA on the terms and conditions set forth  
5 in the Settlement Agreement without costs to any party, except as expressly provided for in the  
6 Settlement Agreement.

7 32. Release. Upon the Effective Date as defined in the Settlement Agreement, the Plaintiff  
8 and each and every one of the Settlement Class Members unconditionally, fully, and finally releases  
9 and forever discharges the Released Parties from the Released Claims. In addition, any rights of the  
10 Class Representative afforded under Section 1542 of the California Civil Code and any other similar,  
11 comparable, or equivalent laws, are terminated.

12 33. Injunction Against Released Claims. Each and every Settlement Class Member, and  
13 any person actually or purportedly acting on behalf of any Settlement Class Member(s), is hereby  
14 permanently barred and enjoined from commencing, instituting, continuing, pursuing, maintaining,  
15 prosecuting, or enforcing any Released Claims (including, without limitation, in any individual, class  
16 or putative class, representative or other action or proceeding), directly or indirectly, in any judicial,  
17 administrative, arbitral, or other forum, against the Released Parties. This permanent bar and  
18 injunction is necessary to protect and effectuate the Settlement Agreement, this Final Order of  
19 Dismissal, and this Court's authority to effectuate the Settlement Agreement, and is ordered in aid of  
20 this Court's jurisdiction and to protect its judgments.

21 34. No Admission of Liability. The Settlement Agreement and any and all negotiations,  
22 documents, and discussions associated with it will not be deemed or construed to be an admission or  
23 evidence of any violation of any statute, law, rule, regulation, or principle of common law or equity,  
24 or of any liability or wrongdoing by Defendant, or the truth of any of the claims. Evidence relating to  
25 the Agreement will not be discoverable or admissible, directly or indirectly, in any way, whether in  
26 this Action or in any other action or proceeding, except for purposes of demonstrating, describing,  
27 implementing, or enforcing the terms and conditions of the Agreement, the Preliminary Approval  
28 Order, or this Order.

1       35. Findings for Purposes of Settlement Only. The findings and rulings in this Order are  
2 made for the purposes of settlement only and may not be cited or otherwise used to support the  
3 certification of any contested class or subclass in any other action.

4       36. Effect of Termination or Reversal. If for any reason the Settlement terminates or Final  
5 Approval is reversed or vacated, the Settlement and all proceedings in connection with the Settlement  
6 will be without prejudice to the right of Defendant or the Class Representative to assert any right or  
7 position that could have been asserted if the Agreement had never been reached or proposed to the  
8 Court, except insofar as the Agreement expressly provides to the contrary. In such an event, the  
9 certification of the Settlement Class will be deemed vacated. The certification of the Settlement Class  
10 for settlement purposes will not be considered as a factor in connection with any subsequent class  
11 certification issues.

12       37. Settlement as Defense. In the event that any provision of the Settlement or this Final  
13 Order of Dismissal is asserted by Defendant as a defense in whole or in part to any claim, or otherwise  
14 asserted (including, without limitation, as a basis for a stay) in any other suit, action, or proceeding  
15 brought by a Settlement Class Member or any person actually or purportedly acting on behalf of any  
16 Settlement Class Member(s), that suit, action or other proceeding shall be immediately stayed and  
17 enjoined until this Court or the court or tribunal in which the claim is pending has determined any  
18 issues related to such defense or assertion. Solely for purposes of such suit, action, or other proceeding,  
19 to the fullest extent they may effectively do so under applicable law, the Parties irrevocably waive and  
20 agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are  
21 not subject to the jurisdiction of the Court, or that the Court is, in any way, an improper venue or an  
22 inconvenient forum. These provisions are necessary to protect the Settlement Agreement, this Order  
23 and this Court's authority to effectuate the Settlement and are ordered in aid of this Court's jurisdiction  
24 and to protect its judgment.

25       38. Retention of Jurisdiction. Without affecting the finality of the Judgment and Order in  
26 any way, the Court retains jurisdiction of all matters relating to the interpretation, administration,  
27 implementation, effectuation and enforcement of this Order and the Settlement.

1           39. Notice of Completion of Duties. On or before [TBD], Class Counsel shall file a Notice  
2 of Completion of Duties, accompanied by declarations from the Settlement Administrator and Class  
3 Counsel, which includes the following information:

4           (1) The total number of claims received;  
5  
6           (2) The total number of verified claims, including a breakdown as to the claims which were  
7 not verified for purposes of payout;  
8           (3) Total amount of monies claimed, including a breakdown by claimant;  
9           (4) Total amount of administration costs incurred, including a breakdown of costs incurred  
10           for the court to review; and  
11           (5) The amount of money being directed cy pres.

12  
13           40. Upon the Court's receipt of and satisfaction with Class Counsel's Notice of Completion  
14 of Duties and accompanying declarations, the Court shall discharge Class Counsel's and the Settlement  
15 Administrator's duties and declare this matter closed, unless otherwise ordered by the Court.

16           41. Nothing in this Order shall preclude any action to enforce the Parties' obligations  
17 pursuant to the Settlement Agreement or pursuant to this Order, including the requirement that  
18 Defendant make payments to participating Settlement Class Members in accordance with the  
19 Settlement.

20           42. The Parties and the Settlement Administrator will comply with all obligations under  
21 the Settlement Agreement until the Settlement is fully and finally administered.

22           43. The Parties shall bear their own costs and attorneys' fees except as otherwise provided  
23 by the Settlement Agreement and this Court.

24           44. Entry of Judgment. Judgment be entered pursuant to this Order in a separate document  
25 consistent with Rule 58(a).

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28           IT IS SO ORDERED.

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1 HONORABLE JAMES DONATO  
2 UNITED STATES DISTRICT JUDGE

# **EXHIBIT 6**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**MIKHAIL GERSHZON on behalf of himself  
and all others similarly situated,**

**CASE NO.: 3:23-cv-5444-JD**

## **CLASS ACTION**

**[PROPOSED] ORDER RE:  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT AND CLASS  
CERTIFICATION**

## ZOA ENERGY, LLC

**Plaintiff,**

V.

## Defendant.

Judge: Hon. James Donato

Action Filed: October 23, 2023

Trial Date: n/a

1 Plaintiff Mikhail Gershzon, individually and on behalf of the proposed Settlement Class,  
2 seeks preliminary approval of a proposed settlement of claims against Defendant ZOA Energy, LLC  
3 (“ZOA”). The Court, having read and considered the Settlement Agreement and accompanying  
4 documents, as well as the Motion for Preliminary Approval of Class Action Settlement and  
5 supporting papers, HEREBY ORDERS AS FOLLOWS:

6 1. Settlement Terms: The Court, for purposes of this Order, adopts all defined terms as  
7 set forth in the Settlement Agreement.

8 2. Jurisdiction: The Court has jurisdiction over the subject matter of the action and over  
9 all parties to the action, including all members of the Settlement Class.

10 3. Preliminary Approval of Proposed Settlement Agreement: Subject to further  
11 consideration by the Court at the time of the Final Approval Hearing, the Court preliminarily approves  
12 the Settlement as fair, reasonable, and adequate to the Settlement Class, as falling within the range of  
13 possible final approval, and as meriting submission to the Settlement Class for its consideration. The  
14 Court also finds the Settlement Agreement: (a) is the result of serious, informed, non-collusive, arms-  
15 length negotiations, involving experienced counsel familiar with the legal and factual issues of this  
16 case and guided in part by the Parties’ private mediation with Judge Dickran M. Tevrizian (Ret.), and  
17 (b) preliminarily meets all applicable requirements of law, including Federal Rule of Civil Procedure  
18 23.

19 4. Class Certification for Settlement Purposes Only:

20 a. For purposes of the Settlement only, the Court conditionally certifies the  
21 Settlement Class, as described below:

22 All persons in the United States who, from March 1, 2021, to the  
23 present, purchased in the United States, for personal or household  
24 consumption and not for resale or distribution, one or more Products  
25 bearing the statement “0 Preservatives” on the label. Excluded from the  
26 Settlement Class are: (1) the presiding Judge(s) in the Action; (2) any  
27 member of those Judge(s)’ immediate families; (3) Defendant; (4) any  
of Defendant’s subsidiaries, parents, affiliates, officers, directors,  
employees, legal representatives, heirs, successors, or assigns; (5)  
counsel for the Parties; and (6) any persons who timely opt-out of the  
Settlement Class.

b. The Court preliminarily finds for purposes of considering this Settlement that:

- (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the named representatives are typical of the claims of the Settlement Class they seek to represent; (d) the Plaintiff will fairly and adequately represent the interests of the Settlement Class; (e) the questions of law and fact common to the Settlement Class predominate over any questions affecting only individual members of the Settlement Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

5. Class Representative: The Court orders that Mikhail Gershzon is appointed as the Representative Plaintiff.

6. Class Counsel: The Court also orders that Michael D. Braun of Kuzyk Law, LLP and Peter N. Wasyluk of Law Offices of Peter N. Wasyluk are appointed Class Counsel. The Court preliminarily finds that the Representative Plaintiff and Class Counsel fairly and adequately represent and protect the interests of the absent Settlement Class Members in accordance with Federal Rule of Civil Procedure 23.

7. Class Notice: The Court finds that the Settlement as set forth in the Settlement Agreement falls within the range of reasonableness and warrants providing notice of such Settlement to the members of the Settlement Class, and accordingly, the Court, pursuant to Federal Rule of Civil Procedure 23(c) and 23(e), preliminarily approves the Settlement upon the terms and conditions set forth in the Settlement Agreement. The Court approves, as to form and content, the notices and claim form substantially in the form attached to the Settlement Agreement.

a. Notice Plan: The Court finds that the Parties' plan for providing notice to the Settlement Class (the "Notice Plan") described in the Settlement Agreement constitutes the best notice practicable under the circumstances; constitutes due and sufficient notice to the Settlement Class of the terms of the Settlement Agreement and the Final Approval Hearing; and complies fully with the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law.

b. Settlement Claims Administrator: The Court appoints Kroll, LLC as the Claims Administrator. Kroll, LLC shall be required to perform all duties of the Claims Administrator as set forth in the Settlement Agreement and this Order.

c. The Parties' proposed Notice Plan consists of direct notice in the form of Email Notice, Internet Notice (including online display ads, Google search ads, social media ads, and website), and Publication Notice, as well as a Settlement Website where Settlement Class Members may view and download a Full Notice. Settlement Class Members may also request that the Settlement Administrator mail or email them a copy of the Full Notice.

d. On or before twenty (20) days after entry of this Order, the Settlement Administrator shall establish the Settlement Website.

e. Starting no later than twenty (20) days after the entry of this Order, the Settlement Administrator shall cause the Email Notice to be sent to Settlement Class Members for whom ZOA maintains an email address.

f. Starting no later than twenty (20) days after entry of this Order, the Settlement Administrator shall provide Internet Notice in the form of a social media campaign and/or Banner Advertisements with at least an estimated 85% reach.

g. Starting no later than twenty (20) days after the entry of this Order, the Settlement Administrator shall provide Publication Notice to Settlement Class Members through a Banner Advertisement placed in a newspaper that is circulated nationwide, which shall be selected by the Parties. At least fourteen (14) days prior to the Claim Filing Deadline, the Settlement Administrator will provide two (2) reminder notices to the Settlement Class Members for whom they have sent Email Notice.

8. The Court further finds that the Notice Plan adequately informs members of the Settlement Class of their right to exclude themselves from the Settlement Class so as not to be bound by the terms of the Settlement Agreement. Any member of the Class who desires to be excluded from the Settlement Class, and therefore not bound by the terms of the Settlement Agreement, must submit a timely and valid written Request for Exclusion pursuant to the instructions set forth in the Notice.

1                   9.     Objection and “Opt-Out” Deadlines: Settlement Class Members who wish to  
2 object to the Settlement or to exclude themselves from the Settlement must do so by the Objection  
3 Deadline and Opt-Out Deadline, which are sixty (60) calendar days after the Settlement Notice Date.  
4 If a Class Member submits both an Opt-Out Form and Objection, the Class Member will be deemed  
5 to have opted out of the Settlement, and thus to be ineligible to object. However, any objecting Class  
6 Member who has not timely submitted a completed Opt-Out Form will be bound by the terms of the  
7 Agreement upon the Court’s final approval of the Settlement.

8                   10.    Exclusion from the Settlement Class: Class Members who wish to opt out of  
9 and be excluded from the Settlement must follow the directions in the Class Notice and submit a  
10 Request for Exclusion to the Claims Administrator, postmarked no later than the Opt-Out Deadline,  
11 which is sixty (60) calendar days after the Settlement Notice Date. The Request for Exclusion must be  
12 personally completed and submitted by the Class Member or his or her attorney. One person may not  
13 opt someone else out and so-called “class” opt-outs shall not be permitted or recognized. The Claims  
14 Administrator shall periodically notify Class Counsel and ZOA’s counsel of any Requests for  
15 Exclusion.

16                   11.    All Class Members who submit a timely, valid Request for Exclusion will be  
17 excluded from the Class and will not be bound by the terms of the Settlement Agreement, shall not be  
18 bound by the release of any claims pursuant to the Settlement Agreement or any judgment, and shall  
19 not be entitled to object to the Settlement Agreement or appear at the Final Approval Hearing. All  
20 Class Members who do not submit a timely, valid Request for Exclusion will be bound by the  
21 Settlement Agreement and the Judgment, including the release of any claims pursuant to the  
22 Settlement Agreement.

23                   12.    Objections to the Settlement: Any objection to the Settlement must be in  
24 writing, postmarked on or before the Objection Deadline, which is sixty (60) calendar days after the  
25 Settlement Notice Date, and sent to the Claims Administrator at the addresses set forth in the Class  
26 Notice. Any objection regarding or related to the Settlement must contain (i) a caption or title that  
27 clearly identifies the Action and that the document is an objection, (ii) information sufficient to identify  
and contact the objecting Class Member or his or her attorney if represented, (iii) information sufficient

1 to establish the person's standing as a Settlement Class Member, (iv) a clear and concise statement of  
2 the Class Member's objection, (v) identification of the case name, case number, (vi) the objector's  
3 signature, and (vii) the signature of the objector's counsel, if any (the "Objection").

4       13. Objecting Class Members may appear at the Final Approval Hearing and be  
5 heard.

6       14. Any Settlement Class Member who does not make a valid written objection as  
7 set forth in the Settlement shall be deemed to have waived such objection and forever shall be  
8 foreclosed from making any objection to the fairness or adequacy of or from seeking review by any  
9 means, including an appeal, of the following: the Settlement, the Settlement Agreement, the payment  
10 of attorneys' fees and costs, service award, or the Final Approval Order and Judgment.

11       15. Submission of Claims: To receive a Cash Award, the Settlement Class  
12 Members must follow the directions in the Notice and file a claim with the Claims Administrator by  
13 the Claims Deadlines, which is ninety (90) calendar days after the Settlement Notice Date. Settlement  
14 Class Members who do not submit a valid claim will not receive a Cash Award and will be bound by  
15 the Settlement.

16       16. Schedule of Events: The following events shall take place as indicated in the  
17 chart below:

Event	Date
Deadline to commence Notice Plan ("Settlement Notice Date")	21 calendar days following entry of this Order
Deadline for Plaintiffs' application for attorneys' fees and costs and Plaintiffs' incentive awards	35 calendar days before the objection deadline
Deadline for Objections to be postmarked	60 calendar days following commencement of the Notice Plan
Deadline for Opt-Out Requests to be postmarked	60 calendar days following commencement of the Notice Plan
Deadline for Claim Forms to be postmarked or submitted online	90 calendar days after commencement of the Notice Plan

1	Deadline for Plaintiffs to file motion for final approval of class action settlement	at least 25 calendar days before the Final Approval Hearing and 14 calendar days after the Objection Deadline
2	Deadline for Parties to file all papers in response to any timely and valid Objections	14 calendar days after the Objection Deadline
3	Final Approval Hearing	120 calendar days following entry of this Order

4

5           17. Authority to Extend: The Court may, for good cause, extend any of the  
 6 deadlines set forth in this Order without further notice to the Settlement Class Members. The Final  
 7 Approval Hearing may, from time to time and without further notice to the Settlement Class, be  
 8 continued by order of the Court.

9           18. If, for any reason, the Settlement Notice Date does not or cannot commence at  
 10 the time specified above, the Parties will confer in good faith and recommend a corresponding  
 11 extension of the Claims Deadline to the Court.

12           19. Notice to appropriate federal and state officials. The Claims Administrator  
 13 shall, within ten (10) calendar days of the entry of this Order, prepare and provide the notices required  
 14 by the Class Action Fairness Act of 2005, Pub. L. 109-2 (2005), including, but not limited to, the  
 15 notices to the United States Department of Justice and to the Attorneys General of all states in which  
 16 Settlement Class Members reside, as specified in 28 U.S.C. § 1715.

17           20. Preliminary injunction: Plaintiffs, Settlement Class Members, and any other  
 18 person, representative, or entity acting on behalf of any Settlement Class Members are, until the Final  
 19 Approval Hearing, barred and enjoined from (a) filing, commencing, prosecuting, maintaining, or  
 20 intervening in (as members of a class or otherwise) any claim, lawsuit, arbitration, administrative,  
 21 regulatory, or other proceeding arising out of the Released Claims against any of the Released Parties;  
 22 and (b) organizing or soliciting the participation of any Settlement Class Members into a separate class  
 23 for purposes of pursuing as a purported class action (including by seeking to amend a pending  
 24 complaint to include class allegations, or by seeking class certification in a pending action) any claim,  
 25 lawsuit, or other proceeding arising out of the Released Claims against any of the Released Parties.  
 26 The Court finds that issuance of this preliminary injunction is necessary and appropriate in aid of the  
 27 Court's jurisdiction over the action and to protect and effectuate the Court's review of the Settlement.

28

1                   21.    Final Approval Hearing: The Court shall conduct a Final Approval Hearing to  
2 determine final approval of the Agreement on \_\_\_\_\_ at \_\_\_\_\_ in  
3 Courtroom 11 at the San Francisco Courthouse, located at 450 Golden Gate Avenue, San Francisco,  
4 CA 94102. At the Final Approval Hearing, the Court shall address whether the proposed Settlement  
5 should be finally approved as fair, reasonable, and adequate, and whether the Final Approval Order  
6 and Judgment should be entered; and whether Class Counsel's application for attorneys' fees, costs,  
7 expenses and service award should be approved. Consideration of any application for an award of  
8 attorneys' fees, costs, expenses and service award shall be separate from consideration of whether or  
9 not the proposed Settlement should be approved, and from each other. The Court will not decide the  
10 amount of any service award or Class Counsel's attorneys' fees until the Final Approval Hearing. The  
11 Final Approval Hearing may be adjourned or continued without further notice to the Class.

12                   22.    In the Event of Non-Approval: In the event that the proposed Settlement is not  
13 approved by the Court, the Effective Date does not occur, or the Settlement Agreement becomes null  
14 and void pursuant to its terms, this Order and all orders entered in connection therewith shall become  
15 null and void, shall be of no further force and effect, and shall not be used or referred to for any  
16 purposes whatsoever in this civil action or in any other case or controversy; in such event the  
17 Settlement and all negotiations and proceedings directly related thereto shall be deemed to be without  
18 prejudice to the rights of any and all of the Parties, who shall be restored to their respective positions  
19 as of the date and time immediately preceding the execution of the Settlement.

20                   23.    Stay of Proceedings: With the exception of such proceedings as are necessary  
21 to implement, effectuate, and grant final approval to the terms of the Settlement Agreement, all  
22 proceedings are stayed in this Action and all Settlement Class Members are enjoined from  
23 commencing or continuing any action or proceeding in any court or tribunal asserting any claims  
24 encompassed by the Settlement Agreement, unless the Settlement Class Member timely files a valid  
25 Request for Exclusion as defined in the Settlement Agreement.

26                   24.    No Admission of Liability: By entering this Order, the Court does not make any  
27 determination as to the merits of this case. Preliminary approval of the Settlement Agreement is not a  
28 finding or admission of liability by Defendant. Furthermore, the Settlement Agreement and any and

1 all negotiations, documents, and discussions associated with it will not be deemed or construed to be  
2 an admission or evidence of any violation of any statute, law, rule, regulation, or principle of common  
3 law or equity, or of any liability or wrongdoing by Defendant, or the truth or validity of any of the  
4 allegations made or claims asserted. Evidence relating to the Settlement Agreement will not be  
5 discoverable or used, directly or indirectly, in any way, whether in this Action or in any other action  
6 or proceeding, except for purposes of demonstrating, describing, implementing, or enforcing the terms  
7 and conditions of the Agreement, this Order, the Final Approval Order, and the Judgment.

8 25. Retention of Jurisdiction: The Court retains jurisdiction over this Action to  
9 consider all further matters arising out of or connected with the Settlement Agreement and the  
10 settlement described therein.

11 Having considered the Motion for Preliminary Approval of Class Action Settlement and  
12 Certification of the Settlement Class, the Court finds and orders as follows:

13 (1) The Settlement Agreement warrants preliminary approval. The Court finds, on a  
14 preliminary basis, that the Settlement Agreement appears to be within the range of reasonableness of  
15 a settlement that could ultimately be given final approval by this Court. The Court has reviewed the  
16 terms of the Settlement and preliminarily finds the Settlement to be fair, reasonable, and adequate.  
17 The Court further finds that the Settlement Agreement substantially fulfills the purposes and objectives  
18 of the class action, and provides substantial relief to the Settlement Class without the risks, burdens,  
19 costs, or delay associated with continued litigation, trial, and/or appeal. The Court also finds that the  
20 Settlement Agreement: (a) is the result of arm's-length negotiations between experienced class action  
21 attorneys; (b) is sufficient to warrant notice of the Settlement and the Final Approval Hearing to be  
22 disseminated to the Settlement Class; and (c) meets all applicable requirements of law, including  
23 Federal Rule of Civil Procedure 23 and the Class Action Fairness Act, 28 U.S.C. § 1715, the United  
24 States Constitution, and the United States District Court for the Northern District of California's  
25 Procedural Guidance for Class Action Settlements.

26 (2) Certification of the Settlement Class for settlement purposes is appropriate. On a  
27 motion for preliminary approval, the parties must also show that the Court "will likely be able to ...  
28 certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(c)(1). The Court finds

1 for purposes of settlement only that the Settlement Class meets all of the requirements of Fed. R. Civ.  
2 P. 23(a) and (b)(3).

3 (3) The proposed Notice Plan is approved. Due process under Rule 23 requires that class  
4 members receive notice of the Settlement and an opportunity to be heard and participate in the  
5 litigation. *See* Fed. R. Civ. P. 23(c)(2)(B). The proposed Notice Plan appears to comport with due  
6 process, Rule 23, and all other applicable law.

7 (4) Mikhail Gershzon is preliminarily appointed as a Class Representative and Kuzyk Law,  
8 LLP and The Law Offices of Peter N. Wasyluk preliminarily appointed as Class Counsel.

9  
10  
11  
12 IT IS SO ORDERED.

13 DATED: \_\_\_\_\_

14 \_\_\_\_\_  
15 HONORABLE JAMES DONATO  
16 UNITED STATES DISTRICT JUDGE  
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# **EXHIBIT 7**

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Your claim must  
be submitted  
online or  
postmarked by:

<<Claims  
Deadline>>

**CLAIM FORM FOR ZOA ENERGY DRINK CLASS  
ACTION**

*Mikhail Gershzon v. ZOA Energy, LLC,  
Civil Action No. 3:23-cv-5444-JD*

United States District Court for the Northern District of  
California

ZOA-C

**SETTLEMENT CLAIM FORM**

You can also submit a claim online at [www.zoasettlement.com](http://www.zoasettlement.com)

**NOTE:** If you wish to receive payment electronically, you must complete the Claim Form online at [www.zoasettlement.com](http://www.zoasettlement.com).

Use this Claim Form to claim refunds of a portion of the purchase price of one or more cans of ZOA Energy Drink manufactured by ZOA Energy, LLC that were labeled with the statement “0 Preservatives” (“Products”).



**\*000000000000\***

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This Claim Form is only for claims concerning the purchase(s) of Products between March 1, 2021 **and** \_\_\_\_\_ for personal use and not for purposes of resale. You cannot use this form to make a Claim concerning the purchase(s) of any other products manufactured by ZOA Energy, LLC or any other company. Claim Form submission is limited to one per household. **All Claim Forms must be submitted online or postmarked by \_\_\_\_\_.** If mailing, please return this form to:

ZOA Energy Drink Class Action  
c/o Kroll Settlement Administration LLC  
P.O. Box XXXX  
New York, NY 10150-XXXX

## **SECTION 1: CLAIMANT INFORMATION**

Please enter the Class Member information below.

---

**First Name**

---

**Last Name**

---

**Address 1**

---

**Address 2**

---

**City**

---

**State**

---

**Zip Code**

**Email Address (optional):** \_\_\_\_\_ **@** \_\_\_\_\_ **.com**

**\*000000000000\***

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**Telephone Number:** ( \_\_\_\_ ) \_\_\_\_ - \_\_\_\_ - \_\_\_\_

Check this box to certify if you are an individual who received notice regarding the class action lawsuit.

Enter the Class Member ID Number provided on your Notice (If you did not receive a Notice, please leave this field blank):

**Class Member ID : 0 0 0 0 0** \_\_\_\_\_

## **SECTION 2: PURCHASE HISTORY:**

**Option 1: I purchased, but I *do not* have Proof of Purchase.\***

For Settlement Class Members who purchased ZOA Products between March 1, 2021 **and** \_\_\_\_\_, and **do not have** a valid Proof of Purchase, please complete the following information. You will receive a payment of \$1 per unit purchased up to a **maximum** of \$10. Only one claim per household will be honored.

**Option 2: I purchased, and I have Proof of Purchase for all of my Purchases.**

For Settlement Class Members who purchased ZOA Products between March 1, 2021 and \_\_\_\_\_, did not purchase the Products for purposes of resale, and **have** a valid Proof of Purchase for all their Purchases, please complete the following information. You will receive a minimum of \$1 per unit up to a total of \$150 **maximum** per household. **\*Please attach Proof(s) of Purchase, reflecting proof for each product you purchased. Failure to provide sufficient proof of purchase may result in your claim being subject to a reduction in the total quantity or awarded a reduced value. You will not be contacted by the Settlement Administrator to supplement your claim if you fail to attach sufficient proof of purchase with the submission of your claim.\***

**\*000000000000\***

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- \* **“Proof of Purchase” means a receipt or purchase record from a Released Party, a removed UPC code, or other documentation (such as a paper receipt, email receipt, or other electronic record) from a third-party commercial source reasonably establishing the fact and date of purchase of the applicable Product during the Class Period in the United States.**

### **SECTION 3: SIGN AND DATE THE AFFIRMATION BELOW**

I swear under penalty of perjury under the laws of the United States of America and the laws of my state of citizenship that:

1. I am the person identified in Section 1 of this Claim Form.
2. The information in this Claim Form is true and correct to the best of my knowledge and belief.
3. I have not submitted and will not submit any other claim for the same purchases and have not authorized and will not authorize any other person or entity to do so, and I am not aware of any other person or entity having done so on my behalf.
4. I purchased the Product(s) for personal use and not for resale.\*

Signature: \_\_\_\_\_

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

\* I understand that my claim form may be subject to audit, verification, and Court review, and the decision of the Settlement Administrator is final and binding on me and ZOA Energy, LLC

# **EXHIBIT 8**

LIVE HEALTHY



ZOA ENERGY



THINK HEALTHY



ZOA ENERGY FOR  
BALANCE AND DRIVE



B & C VITAMINS



ELECTROLYTES:  
POTASSIUM & MAGNESIUM



190MG BRANCHED-CHAIN  
AMINO ACIDS



CAMU CAMU EXTRACT



CAFFEINE FROM  
GREEN COFFEE & GREEN TEA

160 MG CAFFEINE

FROSTED GRAPE

FLAVOR WITH OTHER  
NATURAL FLAVORS



CONTAINS NO FRUIT JUICE.  
0 SYNTHETIC COLORS.

**Nutrition Facts**

Serving Size 1 can

Amount per serving

**Calories 10**

% Daily Value

Total Fat 0g 0%

Sodium 110mg 5%

Total Carbohydrate 2g 1%

Total Sugars 0g

Includes 0g Added Sugars 0%

Protein 0g

Potassium 60mg 2% • Vit. C 90mg 100%

Riboflavin 0.3mg 20% • Niacin 12mg 80%

Vit. B6 1.3mg 80% • Folate 75mcg 20%

Vit. B12 1.8mcg 80% • Pant. Acid 4mg 80%

Magnesium 10mg 2% • Choline 20mg 2%

Not a significant source of saturated fat, trans fat, cholesterol, dietary fiber, vitamin D, calcium, and iron.

INGREDIENTS: CARBONATED WATER, CITRIC ACID, SODIUM CITRATE, NATURAL FLAVORS, FRUIT JUICE COLOR, POTASSIUM CITRATE, NATURAL CAFFINE, ASCORBIC ACID, SUCRALOSE, L-LEUCINE, MAGNESIUM LACTATE, GREEN TEA EXTRACT, ACEROLA JUICE POWDER, L-VALINE, L-SOLEUCINE, D-CALCIUM PANTOTHENATE, ACESULFAME POTASSIUM, L-GLUTAMINE, CHOLINE BITARTRATE, NIACINAMIDE (VIT. B3), PYRIDOXINE HYDROCHLORIDE (VIT. B6), FOLIC ACID, RIBOFLAVIN (VIT. B2), CAMU CAMU EXTRACT, TURMERIC EXTRACT, CYANOCOBALAMIN (VIT. B12).

MANUFACTURED FOR ZOA ENERGY, LLC  
1220 E 5TH AVE SUITE A, TAMPA, FL  
33605 © 2023, ZOA ENERGY, LLC.

NOT RECOMMENDED FOR CHILDREN  
OR PEOPLE WHO ARE PREGNANT,  
NURSING, OR SENSITIVE TO CAFFEINE.

160 MG CAFFEINE FROM ALL NATURAL  
SOURCES PER 12 FL. OZ SERVING.



PLEASE RECYCLE



ZOAENERGY.COM

**ZERO SUGAR**  
ENERGY DRINK  
12 FL OZ (355 ML)