

# Exhibit B

**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 chemical preservatives citric and ascorbic acids. Based on this allegation, Mikhail Gershzon (“Plaintiff” or “Class Representative”) asserted claims against Defendant ZOA Energy, LLC (“Defendant” or “ZOA”) for breach of warranty, violation of California’s Business and Professions Code § 17200, *et. seq.*, California’s Business & Professions Code § 17500, *et. seq.*, California’s Civil Code § 1750, *et seq.*, and restitution on the basis of 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. 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”) shall be distributed as follows:

- If the Unexhausted Amounts total \$100,000 or less, 100 percent of the Unexhausted Funds will be donated *cy pres* to the Clean Label Project.
- If the Unexhausted Funds total more than \$100,000, 25 percent of the Unexhausted Amounts, including interest thereon, will be donated *cy pres* to the Clean Label Project, and 75 percent of the Unexhausted Amounts will be returned to ZOA.

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.\\_\\_\\_\\_\\_.com](http://www._____.com), by contacting class counsel at [mike@kuzykclassactions.com](mailto:mike@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.**

<b>Your Legal Rights and Options in this Settlement</b>	
<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 <b>[DATE]</b>.</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 <b>[DATE]</b>.</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 <b>[DATE]</b>.</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.

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## **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.

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”) shall be distributed as follows:

- If the Unexhausted Amounts total \$100,000 or less, 100 percent of the Unexhausted Funds will be donated *cy pres* to the Clean Label Project.
- If the Unexhausted Funds total more than \$100,000, 25 percent of the Unexhausted Amounts, including interest thereon, will be donated *cy pres* to the Clean Label Project, and 75 percent of the Unexhausted Amounts will be returned to ZOA.

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 ZOA SA 031



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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

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.**