

# Exhibit B

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiff,

v.

ZOA ENERGY, LLC

Defendant.

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

CLASS ACTION

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

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  
 28 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           b.       The Court preliminarily finds for purposes of considering this Settlement that:  
2 (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is  
3 impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims  
4 of the named representatives are typical of the claims of the Settlement Class they seek to represent;  
5 (d) the Plaintiff will fairly and adequately represent the interests of the Settlement Class; (e) the  
6 questions of law and fact common to the Settlement Class predominate over any questions affecting  
7 only individual members of the Settlement Class; and (f) a class action is superior to other available  
8 methods for the fair and efficient adjudication of the controversy.

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

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

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

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

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

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

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

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

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

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

23                  8.     The Court further finds that the Notice Plan adequately informs members of the  
24 Settlement Class of their right to exclude themselves from the Settlement Class so as not to be bound  
25 by the terms of the Settlement Agreement. Any member of the Class who desires to be excluded from  
26 the Settlement Class, and therefore not bound by the terms of the Settlement Agreement, must submit  
27 a timely and valid written Request for Exclusion pursuant to the instructions set forth in the Notice.  
28

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  
28 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, case number, (vi) the objector's signature, and (vii) the signature of the objector's counsel, if any (the "Objection").

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

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

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

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

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
Deadline for Parties to file all papers in response to any timely and valid Objections	14 calendar days after the Objection Deadline
Final Approval Hearing	120 calendar days following entry of this Order

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

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

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

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



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. Wasylyk preliminarily appointed as Class Counsel.

9  
10  
11  
12 IT IS SO ORDERED.

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

\_\_\_\_\_  
HONORABLE JAMES DONATO  
UNITED STATES DISTRICT JUDGE