

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

AMIT HEZI, JOSEPH NINA, and DANIEL
PRESCOD individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

CELSIUS HOLDINGS, INC,

Defendant.

Case No. 1:21-cv-09892 (JHR)

Honorable Jennifer H. Rearden

**DECLARATION OF RYAN J. CLARKSON IN SUPPORT OF PLAINTIFFS'
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

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*Attorneys for Plaintiffs and the Settlement
Class*

I, Ryan J. Clarkson, declare as follows:

1. I am the managing attorney at Clarkson Law Firm, P.C. (“CLF”) and counsel of record for named Plaintiffs Amit Hezi, Joseph Nina, and Daniel Prescod (“Plaintiffs” or “Class Representatives”). I am licensed to practice in the Southern District of New York, and I am a member in good standing of the New York State Bar Association. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would testify competently thereto.

2. I make this declaration in support of Plaintiffs’ motion for final approval of class action settlement.

3. Unless otherwise defined, capitalized terms in this Declaration have the same meaning as set forth in the Parties’ Settlement Agreement, executed on November 21, 2022 and attached hereto as **Exhibit A**.

Preliminary Statement

4. The Settlement provides meaningful injunctive relief, designed to dispel the alleged consumer deception created by the “No Preservatives” label claim on Celsius beverages, and \$7,800,000 in restitution for the Settlement Class. As detailed herein, Class Representatives and Class Counsel respectfully submit that the Settlement, which was approved by the Honorable Victor Marrero on November 23, 2022, is fair, reasonable, and adequate and represents a favorable result for the Settlement Class in light of the significant risks of continuing to litigate the Actions.

5. In preliminarily approving the Settlement, Judge Marrero determined that the Notice Plan “constitutes the best notice practicable under the circumstances and 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.”

6. From December 14, 2022 through February 13, 2023, Notice was provided to the Settlement Class in accordance with the court-approved Notice Plan. This included (1) an online media notice plan resulting in 168,262,000 digital impressions (almost 9 million more than the previously-approved Notice Plan anticipated); (2) a streaming radio service notice plan generating 1,099,000 banner impressions during the campaign, which is 168,000 more than was described in the previously-approved Notice Plan; (3) search engine advertising, which generated 68,391 impressions; and (4) a press release through PR Newswire’s US1 and National Hispanic Newswire, picked up by 377 media outlets, reaching a total potential audience of 170,500,000. As estimated, the Notice Plan “delivered a 81% reach with an average frequency of 3.0.” The Settlement Website and toll-free hotline (IVR) that the Notice Administrator set up also received significant use—as of March 16, 2023, 2,750,392 unique users have made generated nearly 11.9 million views of the Settlement Website, and nearly one thousand calls have been made to the IVR.

7. The Class’s response to the Settlement has been overwhelmingly positive. Almost a million Class Members made valid claims, with only 12 opt-outs, and only 1 objection to the Settlement. There were no objections to Plaintiffs’ motion for reimbursement of reasonable litigation Costs in the amount of \$242,294.01, Fees in the amount of \$2,600,000, and \$20,000 in Service Awards to the Class Representatives. This is an excellent result considering the reach and scope of the Notice Plan, and the positive reaction of the Class to the Settlement supports the propriety of Final Approval. Plaintiffs’ response to the single objection is attached hereto as **Exhibit B**.

8. As reflected by Class Member response, the Settlement provides the Class with meaningful injunctive and monetary relief, without the inherent risk that would accompany further litigation. The Settlement was achieved after nearly four years of hard-fought litigation that involved extensive discovery, class certification briefing, motions to disqualify experts, summary adjudication briefing, two interlocutory appeals, and two full-day mediations.

9. Plaintiffs now move for final approval of the Settlement, which is procedurally and substantively fair, reasonable, and adequate. Because the Settlement provides an excellent result for the Class, reached through arm's-length negotiations by dedicated and experienced Class Counsel, and eliminates the risk and expense of continued litigation and lengthy appeals, Plaintiffs respectfully request the Court grant the Settlement final approval and enter Judgment.

I. BACKGROUND AND OVERVIEW OF LITIGATION AND SETTLEMENT

A. Investigation of Claims

10. In 2018, my office was contacted by Daniel Prescod regarding a potential false advertising lawsuit against Defendant based on allegedly false and deceptive labeling of the Products as containing “no preservatives.” During the weeks and months that followed, my office investigated the potential claims, conducted background research on Prescod and the potential defendants, reviewed the Products’ labeling, consulted a food science expert, and reviewed all relevant statutory and case authority.

11. As is custom for consumer cases my office brings, we conducted a thorough case intake interview with Prescod. We inquired about his motivation for seeking legal action, which was to right a perceived wrong based on the allegedly false and deceptive labeling and obtain refunds for purchasers who were deceived like him. We performed a conflicts check. We also reviewed all online search tools and social media for information on Prescod, including

Facebook, Twitter, LinkedIn, Google, and other available tools.

12. My office conducted extensive background research on Defendant. We researched its solvency and learned that it is one of the largest energy drink manufacturers in the United States. We also learned as much as we could about the types of products it sold, the channels of distribution through which it sold the Products, its gross annual revenues, the popularity of the products at issue, its leadership structure, its advertising and marketing campaigns, its public relations initiatives, and numerous other issues impacting our ability to litigate this case to a successful conclusion.

13. My office also reviewed all relevant statutory, case, and regulatory authority. Although my firm has prior experience with false advertising litigation, the legal landscape is ever-changing and this required hours of additional research. We reviewed all of these authorities.

14. My office ordered exemplars of the Products at issue and reviewed the Products' labeling in detail.

15. My office also researched experts in food science. We located several academics from various universities and contacted a number of potential consulting experts, several of whom we interviewed. We discussed the viability of the potential claims over the course of several phone calls.

16. Based on our review of the facts and applicable law, my firm agreed to take on the case on a contingency fee. We knew at the time that the case would be an expert-driven lawsuit requiring input from qualified professionals in the fields of food science, economics, conjoint analysis survey methodologies, and marketing. We also knew that there would be a substantial risk of nonpayment given the fact that consumer cases are often dismissed on

pleadings challenges. We believed that the claims were meritorious, our client was highly credible, and something ought to be done to address Defendant's allegedly false and deceptive claims.

17. On February 6, 2019, my firm, on behalf of Prescod, prepared and served Defendant with a statutory notice letter, pursuant to California Civil Code, Section 1782, outlining Defendant's allegedly false and deceptive conduct.

B. Prescod is Filed in Early 2019

18. On March 19, 2019, Prescod filed a class action complaint in the California Superior Court, County of Los Angeles, asserting five causes of action against Defendant: (1) violation of California's Unfair Competition Law (codified at Cal. Bus. & Prof. Code §§ 17200, *et seq.*, the "UCL"); (2) violation of California's False Advertising Law (codified at Cal. Bus. & Prof. Code §§ 17500, *et seq.*, the "FAL"); (3) violation of California's Consumers Legal Remedies Act (codified at Cal. Civ. Code §§ 1750, *et seq.*, the "CLRA"); (4) Breach of Express Warranty; and (5) Unjust Enrichment. *See Prescod v. Celsius Holdings, Inc.*, Case No. 19STCV09321 (L.A.S.C.) (referred to herein as "*Prescod.*")

19. Prescod alleged that Celsius Holdings, Inc., which manufactures, markets, and sells Celsius brand beverages at retail outlets throughout the United States, deceptively and unlawfully labeled, marketed, and sold the Products as containing "No Preservatives" despite containing citric acid, which Plaintiffs allege is a preservative that has a preservative effect in the Products.

20. Over the past four years, Prescod engaged in extensive fact and expert discovery and expended considerable time and resources prosecuting *Prescod*. For example, Prescod: (1) engaged in multiple rounds of written discovery; (2) pursued and reviewed thousands of business

records, including all advertising, labeling, scientific support, and sales records; (3) issued third-party subpoenas regarding sales and manufacturing; (4) deposed Defendant's corporate designees and experts; and (5) overcame numerous discovery disputes.

21. The Honorable Kenneth Freeman certified *Prescod* as a class action. In support of his class certification motion, Prescod submitted reports from four experts in food science, conjoint surveys, marketing, and economics. The parties filed cross-motions to exclude the other's experts. Prescod overcame Defendant's motions, and Judge Freeman excluded Defendant's gastroenterologist.

22. Judge Freeman denied Defendant's motion for summary adjudication. Judge Freeman also denied Prescod's cross-motion for summary adjudication.

23. Defendant then filed two interlocutory petitions for writ of mandate: one challenging Judge Freeman's certification order, and one challenging his denial of Defendant's motion for summary adjudication. Prescod opposed, and on May 25, 2022, the California Court of Appeal denied both petitions.

24. After Defendant's petitions were denied, Judge Freeman set *Prescod* for trial in May 2023.

C. Hezi is Filed in 2021

25. Amit Hezi and Joseph Nina filed this action on November 23, 2021, asserting violations of New York's GBL §§ 349-350, breach of warranty, and unjust enrichment.

26. The parties in *Hezi* have engaged in extensive fact discovery in preparation for class certification.

27. Plaintiffs advised Defendant of their intention, in *Hezi*, to add both products and causes of action to the claims asserted and to seek certification of a nationwide class to litigate

those claims. When the Parties reached the instant Settlement, they agreed as part of the Settlement, and for settlement purposes only, that Plaintiffs would amend their Complaint in *Hezi* to assert the threatened claims with respect to all applicable products.

D. Arm's-Length Negotiations Leading to Settlement

28. Since *Prescod* was filed, the Parties have informally discussed the prospect of settlement. Those discussions led to two separate mediations. On December 9, 2021, the Parties participated in a full-day mediation with the Honorable Lisa Hart Cole (Ret.) of Signature Resolution in Los Angeles, California. The Parties were unable to reach a settlement. The Parties fully briefed class certification and summary adjudication in *Prescod*, prior to this first mediation.

29. On September 16, 2022, the Parties participated in a second full-day mediation with the Honorable Peter Lichtman (Ret.) of Signature Resolution in Los Angeles, California. After the mediation, Judge Lichtman presented a double-blind mediator's proposal to the Parties. Nearly four years after *Prescod* was filed, and nearly a year after *Hezi* was filed, the Parties accepted Judge Lichtman's mediator's proposal, which formed the basis for the Settlement. The Parties had conducted all discovery in *Hezi* and briefed both of Defendant's interlocutory appeals before this second mediation.

30. On October 12, 2022, the Parties notified Judge Marrero they had reached a Settlement in principle and asked him to vacate all deadlines in *Hezi*, which he granted.

31. After substantial further negotiation on other non-monetary terms, on November 21, 2022, the Parties executed the Settlement Agreement. Thereafter, Judge Marrero granted the Parties' joint stipulation (1) granting Plaintiffs leave to file a first amended complaint ("FAC") to add *Prescod* as a named Plaintiff and Class Representative, add additional Celsius products to the

defined, at-issue “Products,” add additional causes of action and allegations applicable to Plaintiffs’ claims, including those of added Plaintiff Prescod and the class members he seeks to represent, adjust the Class definitions to reflect the terms of the Settlement, and (2) ordered the FAC as the operative complaint.

E. Preliminary Approval of Settlement

32. On November 22, 2022, Plaintiffs filed their unopposed motion for preliminary approval of the Settlement. The next day, Judge Marrero preliminarily approved the Settlement.

33. In preliminarily approving the Settlement, Judge Marrero described the Settlement as “fair, reasonable, and adequate to the Settlement Class.”

34. Judge Marrero also approved the Notice and Notice Plan as satisfying the requirements of Federal Rule of Civil Procedure 23 and due process, conditionally certified the Settlement Class for purposes of effectuating the Settlement, and appointed Postlethwaite & Netterville (“P&N”) as Class Administrator.

35. Judge Marrero appointed Amit Hezi, Joseph Nina, and Daniel Prescod as Class Representatives, and Clarkson Law Firm, P.C. as Class Counsel, finding that the Representative Plaintiffs and Class Counsel “fairly and adequately represent and protect the interests of the absent Settlement Class Members in accordance with Fed. R. Civ. P. 23.”

36. On January 13, 2023, Plaintiffs filed their motion for award of attorneys’ Fees and Costs, and Class Representative Service Awards.

37. On March 6, 2023, Plaintiffs filed the final report from the Class Administrator detailing the total number of opt-outs and objections.

II. THE SETTLEMENT

38. The “Settlement Class” includes:

All persons in the United States who, between January 1, 2015 and November 23, 2022 (the “Class Period”), purchased in the United States, for personal or household consumption and not for resale or distribution, one of the Class Products.¹

(Ex. A ¶ 1.6.)

39. **Labeling and Advertising Changes.** Pursuant to the Settlement Agreement, Celsius has agreed to permanently cease using the allegedly false claims in its Labeling and advertising of the Products. Within 6 months of the Effective Date, Defendant will implement Labeling substantially similar to that attached as Exhibit 7 to the Settlement (i.e., Labeling that does not include any representation that the Products are preservative-free.) Defendant agrees to use this new Labeling for a period of at least three (3) years from adoption (“Restricted Period”). During the Restricted Period, Defendant may change the Labeling of the Products, but such changes shall not restore the deleted representations unless the formulation of the subject Product changes in a manner warranting such a representation. (Ex. A ¶ 5.1.)

40. **\$7,800,000 Non-Reversionary Common Fund.** Celsius will establish, or cause to be established, a \$7,800,000 non-reversionary Settlement Fund, which shall be used to pay all “Settlement expenses, including Notice and Other Administrative Costs; Fees and Costs Award; Service Awards; and Settlement Class Members’ Claims.” (*Id.* ¶ 2.1.)

41. **Claims.** Each Settlement Class Member will receive an average of \$4.60. This number, while lower than P&N originally estimated, is a result of the extraordinarily high number of claims, which is a testament to both the adequacy of the Settlement and the strength of the Notice Plan. Additionally, 58,952 Class Members will receive over \$23.00, and 98,463 Class Members will receive over \$14.00; these numbers are excellent results for a Settlement of this

¹ Excluded from the Settlement Class are: (1) the presiding judges in *Prescod* and *Hezi*; (2) any member of those judges’ immediate families; (3) Defendant; (4) any of Defendant’s subsidiaries, parents, affiliates, and officers, directors, employees, legal representatives, heirs, successors, or assigns; (5) the Parties’ counsel; and (6) any persons who timely opt-out of the Settlement Class.

size. Most food and beverage class actions only receive 100,000 claims. Here, the Settlement received nearly *nine times* that many claims and was still able to provide excellent financial results for all Claimants.

42. **Cy Pres.** The Settlement provides for the *cy pres* distribution of any funds that remain unclaimed or unused after the initial distribution. Unclaimed or unused funds, together with interest thereon, will be donated *cy pres* in equal shares to the Los Angeles Mission, Eat Learn Play Foundation, National First Responder Fund, and Wounded Warrior Project. (Ex. A ¶ 4.7.)

43. **Fees and Costs and Incentive Awards.** As detailed in the Memorandum of law in support of Plaintiffs' motion for an award of attorneys' fees and costs and service awards ("Fee Motion"), filed January 13, 2023 (ECF 40), Class Counsel seeks an award of attorneys' fees amounting to one-third of the Settlement Fund, or \$2,600,000, as well as reimbursement of reasonable litigation costs not to exceed \$300,000 in the amount of \$242,294.01. (ECF 39-45.) Fees and costs are to be paid by Defendant within fourteen (14) calendar days after the entry of Judgment, and the Class Administrator will distribute the Fees and Costs Award to Class Counsel within twenty-one (21) calendar days of entry of Judgment. (Ex. A. ¶¶ 2.3.2., 3.2.). Plaintiffs also requested service awards totaling \$20,000 (comprised of \$10,000 to Plaintiff Daniel Prescod, and \$5,000 each to Plaintiffs Amit Hezi and Joseph Nina) as compensation for their efforts and diligent service as Class Representatives in the Actions. (*Id.* ¶ 3.1).

44. **Release.** In exchange for payment, Celsius will receive a full release of any and all claims that have been asserted in the Actions, or claims related to the Products that could have been asserted in the Actions, and all claims arising out of or related to the advertising, marketing, promotion, purchase, sale, distribution, design, testing, manufacture, application, use,

performance, warranting, packaging or Labeling of the Class Products. Plaintiffs and each Class Member who has not opted out by the passing of the Effective Date will be deemed to have agreed and covenanted not to sue any of Released Parties, or otherwise assist others in doing so, with respect to any of the Released Claims, and to be forever barred from doing so. (Ex. A ¶¶ 8.1.-8.2.)

45. **Notice.** P&N is the Court-appointed Class Administrator. P&N has ample experience in class action administration and has executed a robust Notice Plan that satisfies due process. As Class Administrator, P&N has: (1) established and operated the Settlement Fund; (2) disseminated Class Notice; (3) handled mailings; (4) answered inquiries from Settlement Class Members and/or forwarded to Class Counsel; (5) received and maintained Exclusions; (6) created a Settlement Website; (7) established a toll-free informational telephone number for Settlement Class Members; (8) processed Settlement Class Member Claims; (9) provided regular status updates to counsel for all Parties; (10) prepared a compliance declaration for the Court at Final Approval; and (11) otherwise assisted and administered the Settlement. P&N will continue to serve these functions as Class Administrator until the terms of the Settlement have been fully carried out and all payments have been appropriately distributed pursuant to the Settlement Agreement.

46. **No Other Agreements.** The Settling Parties have no other agreements, outside of or in addition to the Settlement Agreement, that must be disclosed pursuant to Rule 23(e)(2)(C)(iv).

III. COMPLETION OF COURT-APPROVED NOTICE PLAN AND THE POSITIVE CLASS REACTION TO THE SETTLEMENT

47. P&N executed the court-approved Notice Plan. Plaintiffs are filing the

Declaration of P&N's Director of Notice, Brandon Schwartz, in connection with this motion.

48. The Class's reaction to the Settlement has been overwhelmingly positive. The Notice Plan resulted in 906,539 claims, a remarkably high number for a food and beverage settlement. Of the 906,539 Claims, 245,828 contained receipts.

49. The deadline for Settlement Class Members to object to or opt-out of the Settlement passed on February 13, 2023. P&N received only one objection to the Settlement and twelve requests for exclusion. On February 1, 2023, Sherri Taylor mailed her Objection to the Class Administrator.

50. The number of objections and exclusions is extraordinarily low for a Settlement Class of this size, especially considering the scale, scope, and reach of the Notice Plan. Additionally, there have been no objections to the fee award requested by Class Counsel. Class Counsel has addressed the lone objection concurrently with the filing of this Motion. No one objected among the Attorneys General of all 50 states, all territories, including Puerto Rico, as well as the U.S. Attorney General, all of whom were given notice.

51. Each Settlement Class Member will receive an average of \$4.60. This number is a testament to the adequacy of the Settlement and the strength of the Notice Plan. Additionally, nearly 60,000 Class Members will receive over \$23.00, and nearly 100,000 Class Members will receive over \$14.00; these numbers are excellent results for a Settlement of this size.

52. Most food and beverage class actions only receive 100,000 claims. Here, the Settlement received nearly *nine times* that many claims and was still able to provide excellent financial results for all Claimants.

53. The Notice Plan implemented by P&N consisted of a multi-faceted notice approach. The Notice Plan utilized online media, streaming radio, search engine advertising, and

a wide-reaching press release. The Settlement Website and toll-free hotline (IVR) that the Notice Administrator set up also received significant use

54. P&N obtained and designed the settlement website to ensure that class members could receive and review all of the relevant information pertinent to the Settlement. The website contained: (1) a description of the Settlement; (2) a list of important dates, including: the claim form submission date, the exclusion and objection dates; and the Final Approval Hearing date; (3) case documents including: the Complaint, Settlement Agreement, Preliminary Approval Order, Full Notice, and the Claim Form.

55. The Long Form Notice and Short Form Notice provided on the Settlement Website also included information regarding objection procedures for Class Members.

56. As Judge Marrero determined at preliminary approval, Notice for this action more than meets the applicable due process requirements. The Long Form, Short Form, and Claims Form were provided to the Class in English and Spanish. The Long form notice provides the full release language and both Short and Long form notices specify the place of the final approval hearing in detail, including the address and department number.

57. Class Counsel closely monitored the class notice program carried out by P&N and the claims administration process with minimum weekly check-ins and discussions whenever class member questions have arisen.

IV. BACKGROUND AND EXPERIENCE OF CLASS COUNSEL

58. Our firm is comprised of highly respected and experienced leaders in the field of consumer class action litigation.

59. I graduated from the Michigan State University School of Law, summa cum laude, in 2005 and received my B.A. from University of Michigan at Ann Arbor in 1999.

60. Prior to founding Clarkson Law Firm, P.C. (and its predecessor firm) in 2011 and serving as its managing attorney, I was a senior associate at a prominent Southern California class action firm where I exclusively litigated consumer class actions against pharmaceutical companies, insurance carriers, food manufacturers, and other consumer goods manufacturers. Clarkson Law Firm, P.C. has focused on large-scale class action litigation from its inception.

61. I founded Clarkson to help the underdogs of the world speak truth to power by harnessing the energy of the civil justice system to balance the scales between the powerful and the powerless. Our firm's mission is to become the most forward-thinking, purpose-driven law firm in the world. We are a collaborative, innovative, committed group of thought leaders in consumer class actions who have dedicated our professional lives to consumer justice. We are currently comprised of 17 attorneys, 5 paralegals, and nearly 75 employees.

62. I was the first attorney in the country to take on clients in connection with claims for permanent and disabling nerve damage caused by Levaquin, Cipro, and Avelox antibiotics manufactured by Johnson & Johnson and Bayer Pharmaceuticals. I represented dozens of clients across the country and helped to obtain millions of dollars in settlements on behalf of these clients.

63. Class Counsel Clarkson Law Firm, P.C. has extensive experience litigating class actions and other complex civil litigation, including:

- a. *Garcia v. Iovate et al.*, Santa Barbara Superior Court, Case No. 1402915. (false labeling and advertising of the popular "Hydroxycut" weight loss supplement; Clarkson Law Firm successfully intervened, and, along with the efforts of co-counsel, increased the size of the settlement by more than ten-fold to a total settlement value of over \$10 million).
- b. *Escobar v. Just Born, Inc.*, Case No. 2:17-cv-01826-BRO-PJW (C.D. Cal.) (unlawful and deceptive packaging of movie theater box candy; class certification granted; appointment of Clarkson Law Firm as Class Counsel and final approval of \$3.3 million nationwide class granted by Hon. Judge

Terry J. Hatter, Jr. on December 15, 2020).

- c. *Iglesias v. Ferrara Candy Co.*, Case No. 3:17-cv-00849-VC (N.D. Cal.) (unlawful and deceptive packaging of movie theater box candy products; Clarkson Law Firm appointed Class Counsel and final approval of \$2.5 million nationwide class granted by the Hon. Vince Chhabria on October 31, 2018).
- d. *Tsuchiyama v. Taste of Nature*, Los Angeles Superior Court, Case No. BC651252 (unlawful and deceptive packaging of movie theater box candy; notice of settlement and stipulation of dismissal entered pursuant to final approval of nationwide class in related case *Trentham v. Taste of Nature, Inc.*, Case No. 18PG-CV00751 granted on October 24, 2018).
- e. *White v. GSK Consumer Healthcare Holdings (USA) LLC*, Case No. 5:20-cv-04048 (N.D. Cal.) (false labeling and advertisement of products as “100% Natural” and “Clinically proven to curb cravings”; Clarkson Law firm appointed Class Counsel and final approval of \$6.5 million nationwide class granted by Hon. Nelson S. Roman on November 22, 2021).
- f. *Prescott v. Bayer Healthcare, LLC*, Case No. 20-cv-00102-NC (N.D. Cal.) (false labeling and advertisement of products as “Mineral-based”; Clarkson Law Firm appointed Class Counsel and final approval of \$2.25 million nationwide class settlement granted by Hon. Nathanael M. Cousins on December 15, 2021)

64. A true and correct copy of Class Counsel’s resume, which includes more detailed information about my firm’s practice and the qualifications of the other attorneys at the firm working on this case, is attached hereto as **Exhibit C**.

V. THE SETTLEMENT IS A PRODUCT OF CLASS COUNSELS’ EFFORTS AND DEDICATION TO THE ACTIONS

65. Class Counsel diligently investigated the claims, defenses, and underlying events and transactions that are the subject of the Actions, and invested substantial time and resources into the prosecution of the Actions, which ultimately led to a significant Settlement for the Class. Class Counsel’s efforts included, among other things: (1) relentlessly pursuing and reviewing thousands of business records; (2) deposing Defendant’s corporate designees and experts; (3)

subpoenaing third parties for sales and manufacturing data; (4) retaining and working with experts in multiple disciplines, all of whom conducted in-depth studies and produced thorough expert reports on food science, marketing, and conjoint analysis/damages; (5) concurrently litigating *Hezi* and *Prescod*; (6) obtaining class certification in *Prescod*; (7) successfully defending against Defendant's motion for summary adjudication in *Prescod*; (8) overcoming Defendant's interlocutory petitions; (9) attending two full-day mediations; and (10) engaging in months of settlement negotiations.

66. The Parties have engaged in extensive discovery in *Prescod* and *Hezi*, including written discovery, multiple rounds of document production, fact and expert depositions, and third-party discovery. Plaintiffs analyzed the labeling and advertising, ingredients, consumer complaints, sales information, studies, and market research. Plaintiffs also deposed Celsius' corporate designees and experts. Discovery was adversarial in nature and conducted with an eye towards trying the Actions.

67. This Action involved difficult, complex, and hotly disputed expert-driven issues regarding, *inter alia*, damages methodologies, food science, and advertising statements. Nothing was assured. Plaintiffs faced the risk of establishing liability at trial and discrediting Defendant's experts, while maintaining the credibility of Plaintiffs' experts. It is impossible to predict which testimony would be credited, and ultimately, which expert version would be accepted by the jury. The experience of Class Counsel has taught it that these considerations can make the ultimate outcome of a trial highly uncertain. While Plaintiffs raised questions on the validity and applicability of Defendants' expert reports, there certainly was no guarantee that the testimony of Plaintiffs' experts would have been accepted over that of Defendant's.

68. While Plaintiffs were confident that their experts would be deemed believable and

credible, there was also a possibility of a verdict in favor of Defendant. Should that occur, the Class would have been left with nothing. Recognizing the potential for non-payment, Class Counsel spent a significant amount of time preparing the case to navigate these difficult issues.

69. From the beginning, this nationwide class action has demanded a great deal of attention from Class Counsel. Due to the considerable expenditure of time, effort and resources—including significant pre- and post-filing investigations, preparation of discovery on a wide range of topics, extensive consultation with consultants, and mediation—Class Counsel were required on some occasions to forego other employment in order to commit the necessary resources to the prosecution of this case.

VI. THE SETTLEMENT CONFERS SIGNIFICANT BENEFITS TO A LARGE CLASS OF PERSONS

70. The Settlement provides substantial benefits on the Settlement Class and accomplishes the primary purposes of consumer protection laws—to stop and prevent unfair competition and provide redress to consumers harmed by the unfair competition.

71. The Products are an extremely popular line of beverages sold online and at retail outlets, in grocery stores, and through other channels across the United States. Hundreds of thousands of units, if not more, of the Products are sold every day through some of the largest retailers in the country, including Wal-Mart, Target, CVS, and Rite Aid, and online through Amazon.com. Thus, the Class includes millions of consumers who purchased the Products during the Class Period.

72. Defendant has agreed to significant injunctive relief, specifically permanent cessation of the allegedly false claims in its Labeling and advertising of the Products, which will dispel any alleged consumer deception regarding the Products' formulation. Celsius has agreed

to remove the allegedly false “No Preservatives” label attribute and adopt a “nutrition facts panel” in place of the current “dietary supplement” label, thereby promoting transparency and fair competition in the marketplace. Thus, consumers will be able to confidently rely on Defendant’s representations in making future purchasing decisions.

73. Celsius will establish a \$7,800,000 non-reversionary Settlement Fund, which shall be used to pay all Settlement expenses, including Notice and Other Administrative Costs; Fees and Costs Award; Service Awards; and Settlement Class Members’ Claims.

74. The Settlement also benefits the public because it requires that any unclaimed or unused funds that remain after the initial distribution, including interest thereon, will be donated *cy pres* to the following charitable organizations: (1) Eat Learn Play Foundation, which is committed to fighting against childhood hunger, and providing access to quality education and safe places for children to play and be active; (2) National First Responders Fund, which is designed to provide financial resources for injured first responders dealing with work-related post-traumatic stress injuries; (3) Los Angeles Mission, which is committed to providing solutions for impoverished and homeless individuals in Los Angeles, CA, and (4) Wounded Warrior Project, which provides veterans with programs for physical and mental wellness, career transition, and support in navigating Veterans Affairs.

VII. THE STRENGTH OF PLAINTIFFS’ CASE AND THE RISK, EXPENSE, COMPLEXITY, AND LIKELY DURATION OF FURTHER LITIGATION

75. Though Plaintiffs believe in their case, the Settlement provides a significant, immediate return and eliminates substantial risks of less or no recovery. Class Counsel is convinced that the Settlement is in the best interests of the Class based on the negotiations detailed and knowledge of the issues presented.

76. Litigation inherently involves risks and uncertainty. At the time *Prescod* was filed, there were complex issues of fact and law, which presented significant risks that apply to *Hezi* and are present today. This is especially true where, as here, liability depends on Plaintiffs' ability to establish elements requiring subjective determinations of fact. To establish liability at trial, Plaintiffs would need to convince a jury that citric acid is a preservative and acts as a preservative in the Products. Defendant had opposing evidence. And, to establish liability under New York and California consumer protection laws, Plaintiffs must convince a jury that a reasonable consumer would be misled by Defendant's alleged misrepresentation. Such a determination is inherently subjective and introduces a large degree of uncertainty and risk into the litigation.

77. Litigating the case through to trial would have been expensive, required extensive resources, involved substantial risk, and would not have been fully resolved for years. For example, the Parties would have to conduct further fact and expert discovery, retain new experts, subpoena third parties, prepare witnesses, and prepare and litigate various pretrial motions.

78. Even if Plaintiffs were to expend the time and resources litigating the case and prevailed at trial, the Class would face additional risks if Defendants appeal or move for a new trial. Were Plaintiffs to proceed to and succeed at trial, the "best case" recovery may not be better than the settlement remedy.

79. Additionally, the *Hezi* Plaintiffs were preparing to file their motion for class certification, which would require additional fact and expert discovery and extensive briefing. If Plaintiffs' achieved certification in *Hezi*, they would then be required to litigate subsequent summary judgment motions, any appeals, trial, and post-trial motions, all of which would be costly and time-consuming for the Parties and the Court.

80. Plaintiffs faced significant risks related to maintaining certification of the Class through trial. Celsius sought to decertify *Prescod*, oppose certification in *Hezi*, and move for summary judgment. Defendant likely would have argued that individual questions predominate over common questions, that a class action is not a superior vehicle for resolving Plaintiffs' claims, and that a class trial would not be manageable. Although Plaintiffs are confident in their case and believe that they could overcome Defendant's challenges, briefing these issues would require the expenditure of substantial time and resources with no guarantee of success. The Settlement alleviates these risks, and provides a timely, substantial benefit to the Settlement Class.

81. Plaintiffs are unsure that Defendant could withstand a greater judgment. In the final quarter of 2022, Celsius reported record financial losses. The company, in its publicly filed 10-Q, reported negative net income of \$181.9 million, a 2,086.2% decrease from the prior quarter. Thus, it is possible that a greater judgment may impose severe economic hardship on Celsius, and that Celsius may be unable to withstand such a judgment.

82. In negotiating the Settlement, Class Counsel carefully considered the injunctive relief and the compensation of Class Members; specifically, Class Counsel balanced the Settlement against the possible outcomes of a trial on the merits. The risks of trial and the normal "perils" of litigation were all weighed in reaching the Settlement.


83. Since entry of the Preliminary Approval Order, the facts supporting certification have not changed to alter the propriety of class certification.

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I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct. Executed on March 17, 2023 at Los Angeles, California.

A handwritten signature in blue ink, appearing to read 'R. Clarkson', is written over a horizontal line.

Ryan J. Clarkson