

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DAVID VOLZ, <i>et. al.</i> ,	:	
	:	
Plaintiffs,	:	Case No: 1:10-cv-00879
	:	(Judge Barrett)
	:	
v.	:	
	:	
THE COCA COLA COMPANY and	:	
ENERGY BRANDS, INC.,	:	
	:	
Defendants.	:	

**JOINT MOTION FOR AN ENTRY OF AN ORDER OF PRELIMINARY
APPROVAL OF THE PROPOSED SETTLEMENT, DIRECTING NOTICE,
APPROVING THE APPOINTMENT OF CLASS REPRESENTATIVES,
CLASS COUNSEL AND NOTICE ADMINISTRATOR
AND SCHEDULING A FINAL APPROVAL HEARING**

Plaintiffs Dave Volz, Ahmed Khaleel, Nicholas Armada, Scott Cook, Stephanie Bridges and Juan Squiabro (collectively “Plaintiffs” or “Class Representatives”) and Defendants The Coca-Cola Company and Energy Brands, Inc. (d/b/a/ Glaceau) (“Defendants”) jointly move the Court pursuant to Rule 23(E) of the Federal Rules of Civil Procedure for the entry of an order:

(1) conditionally certify a settlement class, pursuant to the Federal Rules of Civil Procedure, as defined in the Settlement Agreement and Release (the “Settlement Agreement”), for settlement purposes only (the “Class”);

(2) granting preliminary approval of the proposed settlement of this class action on the terms set forth in the Settlement Agreement;

(3) directing that the class be provided with notice of the pendency of this action and the settlement in the manner proposed by the parties in the Notice Plan;

(4) approving the appointment of the Notice Administrator;

(5) approving the designated Class Representative and Lead Class Counsel and Florida Class Counsel, Illinois Class Counsel, Missouri Class Counsel, Ohio Class Counsel and Virgin Islands Class Counsel; and

(6) scheduling a hearing at which the Court will consider final approval of the Settlement, entry of the proposed final judgment and Plaintiffs' Counsels' application for an award of attorneys' fees and expenses, costs and expenses.

Attached hereto as Exhibit "1" is the Settlement Agreement entered into between Plaintiffs and Defendants on August 4, 2014. Attached to the Settlement Agreement are the following exhibits:

- Exhibit "A" - Order of Preliminary Approval
- Exhibit "B" - Summary Notice
- Exhibit "C" - Long-Form Notice

August 5, 2014

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been filed electronically with the United States District Court Southern District of Ohio. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. If a party is not given notice electronically through the Court's system a copy will be served by ordinary United States mail, first class postage prepaid, this ____ day of July, 2014.

/s/ Richard S. Wayne



SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement is entered into as of July 31, 2014, by and between Plaintiffs,¹ in their individual capacities and on behalf of the putative Settlement Class, and The Coca-Cola Company and Energy Brands, Inc. (d/b/a Glaceau) (collectively, "Defendants"), and is subject to the approval, pursuant to Rule 23 of the Federal Rules of Civil Procedure, of the Court.

RECITALS

1. WHEREAS, TCCC, by and through its wholly-owned subsidiary Glaceau, manufactures, markets, distributes, promotes and/or sells **vitaminwater** brand beverages (the "Product").
2. WHEREAS, the purported Class Representatives of the Florida Class filed a putative class action in United States District Court for the Southern District of Florida on September 1, 2010, alleging statutory and common law causes of action for unfair and deceptive trade practices and unjust enrichment against Defendants in connection with Defendants' labeling, marketing, promotion, and sales of the Product, which lawsuit is currently pending as *Cook v. The Coca-Cola Co.*, No. 10-cv-61621-MGC (S.D.Fl.).
3. WHEREAS, Vivian E. St. Juste, the purported Class Representative of the Virgin Islands Class, together with other named plaintiffs, filed a putative class action in Superior Court of the Virgin Islands, on October 4, 2010, No. 566/2010 (Sup. Ct. V.I.), alleging statutory and common law causes of action for unfair and deceptive trade practices, consumer protection, unjust enrichment, and breach of express warranties against Defendants in connection with Defendants' labeling, marketing, promotion, and sales of the Product, which lawsuit, following

¹ Capitalized terms shall have the meaning ascribed to them in the Definitions Section I below.

the filing of an Amended Complaint on November 12, 2010, and a Second Amended Complaint on November 17, 2011, is currently pending as *Squiabro v. The Coca-Cola Company*, No. 3:10-cv-118 (D.V.I.) in the United States District Court for the Virgin Islands.

4. WHEREAS, the purported Class Representative of the Ohio Class, together with another named plaintiff, Tim Vandercook, filed a putative class action in Ohio state court on November 18, 2010, No. 10-cv-78575 (Warren Cnty. Ct. Common Pleas), alleging statutory and common law causes of action for unfair and deceptive trade practices, consumer protection, unjust enrichment, promissory estoppel, and negligent misrepresentation against Defendants in connection with Defendants' labeling, marketing, promotion, and sales of the Product, which lawsuit is currently pending as *Volz v. The Coca-Cola Company*, No. 1:10-cv-00879-MRB-SKB in the United States District Court for the Southern District of Ohio.

5. WHEREAS, the purported Class Representative of the Illinois Class filed a putative class action in Illinois state court on December 16, 2010, No. 10-ch-53205 (Cook Cnty. Cir. Ct.), alleging statutory and common law causes of action for unfair and deceptive trade practices and unjust enrichment against Defendants in connection with Defendants' labeling, marketing, promotion, and sales of the Product, which lawsuit is currently pending as *Khaleel v. The Coca-Cola Co.*, No. 1:11-cv-00471 (N.D. Ill.), in the United States District Court for the Southern District of Illinois.

6. WHEREAS, on February 8, 2011, the Judicial Panel on Multidistrict Litigation ("JPML") transferred the Florida Action and the Virgin Islands Action to the United States District Court for the Eastern District of New York, *In re Glaceau Vitaminwater Marketing & Sales Practice Litigation*, Case No. 1:11-md-02215-DLI-RML (the "MDL").

7. WHEREAS, on March 2, 2011, the JPML transferred the Ohio Action and the Illinois Action to the MDL.

8. WHEREAS, on November 17, 2011, Vivian St. Juste and the additional named plaintiffs who initially purported to act as Class Representatives of the Virgin Islands Class, together with Defendants, filed a Joint Stipulation agreeing to the filing of the Second Amended Complaint for the Virgin Islands Class that substituted another named plaintiff, Juan Squiabro, and voluntarily dismissed St. Juste's and the other named plaintiffs' claims under Federal Rule of Civil Procedure 41.

9. WHEREAS, Tim Vandercook, who also initially purported to act as Class Representative of the Ohio Class, filed a notice of withdrawal as named plaintiff on December 12, 2011, without prejudice to his status as a member of any class to be certified in the Ohio Action.

10. WHEREAS, Class Counsel in the Actions proceeding in the MDL filed a motion for class certification on June 29, 2012.

11. WHEREAS, supplemental memoranda of law in support of certification of the Florida Class and the Illinois Class were filed on July 19, 2012, and supplemental memoranda of law in support of certification of the Ohio Class and the Virgin Islands Class were filed on July 20, 2012.

12. WHEREAS, Class Counsel and counsel for Defendants argued the class certification motion on October 11, 2012, and the motion was fully submitted as of that date.

13. WHEREAS, the purported Class Representative of the Missouri Class filed a putative class action in Missouri state court on May 23, 2013, No. 1316-cv13185 (Jackson Cnty.

Cir. Ct.), which lawsuit is currently pending as *Bridges v. The Coca-Cola Co.*, No. 13-cv-00644-BCW (W.D. Mo.), in the United States District Court for the Western District of Missouri.

14. WHEREAS, on July 12, 2013, without deciding the pending class certification motion, U.S. District Court Judge Dora Irizarry (E.D.N.Y.) filed a Suggestion of Remand with the JPML, following which the Ohio Action was remanded to this Court and the Florida, Illinois, and Virgin Islands Actions pending in the MDL were remanded to their respective courts.

15. WHEREAS, the Parties submitted supplemental briefing regarding class certification following remand in the Florida, Illinois, and Ohio Actions to the respective courts overseeing those Actions.

16. WHEREAS, Plaintiffs, by and through Class Counsel, conducted an extensive investigation into the facts and law relating to the matters alleged in the Actions, including (i) label design and product formulation; (ii) the marketing and advertising of the Product; and (iii) sales and pricing data, which investigation included extensive pretrial discovery (including the review of almost 2,000 (two thousand) pages of documents produced by Defendants), depositions of six fact and expert witnesses and defense of nine fact witness depositions together with or through other counsel in the MDL, review of two stipulations by Defendants regarding labeling and marketing statements made in connection with the Product, several litigated discovery disputes, which included conferences with Defendants' counsel and the court, interviews of putative class members, the evaluation of documents and information provided by Defendants, as well as legal research as to the sufficiency of the claims and appropriateness of class certification.

17. WHEREAS, Class Counsel and counsel for Defendants, following preliminary correspondence and discussions over telephone and email, engaged in detailed, in-person

mediation and settlement negotiations on April 15 and 16, 2014, with the assistance of this Court, the Honorable Judge Michael R. Barrett. As a result of those negotiations and the efforts of Class Counsel in prosecuting the Actions, Defendants and Plaintiffs, in their individual capacities and as Class Representatives, Class Counsel, and counsel for Defendants, have agreed to settle this Action pursuant to the provisions of this Settlement Agreement after considering such factors as: (a) the substantial benefits to the Settlement Class under the terms of this Settlement Agreement; (b) the attendant costs, risks, and uncertainty of litigation, including trial and potential appeals; (c) the distraction and diversion of personnel and resources as a result of continuing litigation; and (d) the desirability of consummating this Settlement Agreement promptly.

18. WHEREAS, Defendants acknowledge that the Florida, Illinois, Ohio and Virgin Islands Actions were a precipitating cause of Defendants' cessation of use of the Labeling and Marketing statements listed in paragraph 39(c)(ii), (iii), and (iv), below, prior to the execution of this Settlement Agreement.

19. WHEREAS, the Parties and their counsel, with the assistance of Judge Barrett, negotiated attorneys' fees and costs provided for in Section IX below after reaching agreement regarding all of the material terms of the Settlement, including the Injunctive Relief provisions of Section V below.

20. WHEREAS, Plaintiffs have filed together with this Settlement Agreement a Consolidated Class Action Complaint in this Action consolidating the Claims made in the Actions.

21. WHEREAS, Defendants have denied and continue to deny each and every allegation asserted by Plaintiffs in the Actions and in the Consolidated Class Action Complaint,

do not admit or concede any actual or potential fault, wrongdoing, or liability in connection with any facts or claims that have been or could have been alleged herein, and have denied that the Actions satisfy the requirements to be tried as class actions under Federal Rule of Civil Procedure 23.

22. WHEREAS, this Settlement Agreement is a product of sustained, arm's length settlement negotiations and the Parties believe that this Settlement Agreement is fair, reasonable, and adequate because, inter alia: (1) it provides for certification of a Settlement Class; and (2) it provides substantial Injunctive Relief to the Settlement Class in exchange for Settlement Class Members' Release of certain Claims.

23. WHEREAS, the Parties intend to seek Court approval of this Settlement Agreement as set forth below.

24. The signatories to this Settlement Agreement agree that the recitals set forth herein are contractual in nature and form a material part of this Settlement Agreement.

TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the foregoing recitals, without (a) any admission or concession on the part of Plaintiffs of the lack of merit of the Actions or the Claims asserted in the Consolidated Class Action Complaint, or (b) any admission or concession of liability or wrongdoing or the lack of merit of any defense whatsoever by Defendants, it is hereby stipulated and agreed by the undersigned, on behalf of Plaintiffs, the Settlement Class, Class Counsel, Defendants, and counsel for Defendants, that the Action and all Claims of the Settlement Class be settled, compromised, and dismissed on the merits and with prejudice as to Defendants, subject to Court approval as required by Federal Rule of Civil Procedure 23, on the terms and conditions set forth herein:

I. DEFINITIONS

25. When used in this Settlement Agreement, unless otherwise specifically indicated, the following terms shall have the meanings set forth below:

a. “Action” or “Ohio Action” means *Volz v. The Coca-Cola Company*, 1:10-cv-00879-MRB-SKB, pending in the United States District Court for the Southern District of Ohio.

b. “Actions” means, collectively, the Florida Action, the Illinois Action, the Missouri Action, the Ohio Action, and the Virgin Islands Action.

c. “Claim” and “Claims” mean all claims, demands, actions, suits, causes of action, allegations of wrongdoing and liabilities asserted by Plaintiffs, individually and as Class Representatives, in the Consolidated Class Action Complaint.

d. “Class Representative” means one or more of the Plaintiffs, as individual claimant(s) who seek(s) to represent one of the Settlement Subclasses for purposes of this Settlement Agreement.

e. “Class Settlement Website” means the Internet website to be established by the Notice Administrator, as part of the Notice Plan as set forth in Section IV, below.

f. “Class Counsel” shall mean, collectively, Florida Class Counsel, Illinois Class Counsel, Missouri Class Counsel, Ohio Class Counsel, and Virgin Islands Class Counsel.

g. “Consolidated Class Action Complaint” means the Class Action Complaint filed by Plaintiffs in this Action together with this Settlement Agreement on _____, 2014, consolidating the Claims made in the Actions.

h. “Court” or “Southern District of Ohio” means the United States District Court for the Southern District of Ohio, where this Action is pending.

i. “Days,” unless specified as “business days,” means all calendar days, including Saturdays, Sundays, and legal holidays, but if the last day of a period is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

j. “Effective Date” means the date on which all appellate rights with respect to the Final Approval Order and Judgment have expired or have been exhausted in such a manner as to affirm the Final Approval Order and Judgment, and when no further appeals are possible, including review by the United States Supreme Court.

k. “Final Approval Hearing Date” means the hearing date set by the Court for the final approval of the Settlement Agreement.

l. “Final Approval Order and Judgment” or “Final Judgment” shall have the meaning assigned in Section VII of the Settlement Agreement.

m. “Florida Action” means *Cook v. The Coca-Cola Co.*, No. 10-cv-61621-MGC (S.D.Fl.).

n. “Florida Class Counsel” means Aashish Y. Desai of the Desai Law Firm, P.C. and William C. Wright of The Law Offices of William C. Wright, P.A.

o. “Glacéau” means Energy Brands, Inc. (d/b/a Glacéau).

p. “Illinois Action” means *Khaleel v. The Coca-Cola Co.*, No. 1:11-cv-00471 (N.D. Ill.).

q. “Illinois Class Counsel” means Aashish Y. Desai of the Desai Law Firm, P.C. and Scott J. Ferrell of the Newport Trial Group.

r. “Injunctive Relief” means the injunctive relief to which the Parties have agreed to in Section V, below.

s. “Labeling” means the labeling of the Product, including the Principal Display Panel, as defined in paragraph jj below, and the information display panel as defined by 21 C.F.R. § 101.2, as in effect as of the Effective Date.

t. “Lead Class Counsel” means Richard S. Wayne of Strauss Troy Co., LPA and Brian Giles of Statman Harris & Eyrich LLC.

u. “Long Form Notice” means the longer form of notice to the Settlement Class under the Notice Plan, as further described in Section IV, below.

v. “Marketing” means the advertising, marketing, and promotion of the Product, including but not limited to print, television, radio and internet advertising, except as would constitute Labeling.

w. “Missouri Action” means *Bridges v. The Coca-Cola Co.*, No. 13-cv-00644-BCW (W.D. Mo.).

x. “Missouri Class Counsel” means Christopher S. Shank of Shank & Hamilton, P.C.

y. “Non-Settling Actions” means *In re Glaceau Vitaminwater Mktg. & Sales Prac. Litig.*, No. 1:11-md-2215-DLI-RML (E.D.N.Y.); *Ford v. The Coca-Cola Co.*, No. 1:11-cv-02355-DLI-RML (E.D.N.Y.); and *Ackerman v. The Coca-Cola Co.*, No. 1:09-cv-00395-DLI-RML (E.D.N.Y.).

z. “Notice” means the forms of notice, attached as Exhibits B and C, or such other form as may be approved by the Court, as applicable, which informs the Settlement Class Members of: (i) the certification of the Action for settlement purposes; (ii) the dates and locations of the Final Approval Hearing Date; and (iii) the elements of the Settlement Agreement.

- aa. “Notice Administrator” means Angeion Group.
- bb. “Notice Date” means the first date upon which the Class Notice is disseminated.
- cc. “Notice Plan” means the plan for providing Notice of this Settlement to the Settlement Class Members, as set forth in Section IV below.
- dd. “Objection Date” means the date by which Settlement Class Members must file any written objection or opposition to the Settlement Agreement or any part or provision thereof in the Court, as set forth in Section IV below.
- ee. “Ohio Class Counsel” means Richard S. Wayne and Joseph J. Braun of Strauss Troy LPA, and Brian T. Giles of Statman Harris & Eyrich LLC.
- ff. “Parties” means Plaintiffs and Defendants, each a “Party”.
- gg. “Person” or “Persons” means all persons and entities (including, without limitation, natural persons, firms, corporations, limited liability companies, joint ventures, joint stock companies, unincorporated organizations, agencies, bodies, associations, partnerships, limited liability partnerships, trusts, and their predecessors, successors, administrators, executors, heirs and assigns).
- hh. “Plaintiffs” means Nicholas Armada and Scott Cook in their individual capacity and as Class Representatives of the Florida Class, Ahmed Khaleel, in his individual capacity and as Class Representative of the Illinois Class, Stephanie Bridges, in her individual capacity and as Class Representative of the Missouri Class, Dave Volz, in his individual capacity and as Class Representative of the Ohio Class, and Juan Squiabro, in his individual capacity and as Class Representative of the Virgin Islands Class.

ii. “Preliminary Approval” and “Preliminary Approval Order” mean the Court’s Order Certifying a Settlement Class, Preliminary Approval of Proposed Settlement, Approving and Directing Notice Plan, Appointing Notice Administrator, and Appointing Class Counsel and Lead Class Counsel, in substantially the same form as Exhibit A.

jj. “Principal Display Panel” shall have the meaning assigned to it by 21 C.F.R. § 101.1, as in effect as of the Effective Date.

kk. “Released Claims” shall be construed as broadly as possible to effect complete finality over this litigation involving labeling and marketing of the Product and shall mean those Claims that the Settlement Class Members are releasing, as set forth in Section VI below.

ll. “Released Parties” shall be defined and construed as broadly as possible to effectuate a complete and comprehensive release of the Released Claims, and shall mean Defendants, as well as their respective past, present, and future predecessors, successors, and assigns, the past, present, and future, direct and indirect, parents, subsidiaries, divisions, corporate affiliates, or associates of any of the above; and the past, present, and future members, principals, partners, officers, directors, trustees, control persons, employees, agents, attorneys, shareholders, advisors, insurers and representatives of the above, and any and all entities and individuals that are alleged to have handled, distributed, purchased for resale and/or redistribution, supplied, manufactured and/or sold or offered for sale the Product.

mm. “Releasing Parties” shall include Plaintiffs and all Settlement Class Members, and each of their respective heirs, executors, representatives, agents, legal representatives, assigns, and successors.

nn. “Settlement Agreement” means this Settlement Agreement and Release, including its Exhibits.

oo. “Settlement Class” or “Settlement Class Members” means the Class as defined in Section III below, comprised solely of the Settlement Subclasses.

pp. “Settlement Subclasses” means, collectively, the Florida Class, the Illinois Class, the Missouri Class, the Ohio Class, and the Virgin Islands Class, as defined in Section III below, and each a “Settlement Subclass”.

qq. “Summary Notice” means the shorter form of the notice to the Settlement Class under the Notice Plan, as further described in Section IV below.

rr. “TCCC” means The Coca-Cola Company.

ss. “**vitaminwater**” means the **vitaminwater** product line manufactured and distributed by Glaceau, including any and all of the **vitaminwater** flavors currently and/or previously manufactured, marketed, distributed or sold by Glaceau. For the avoidance of doubt, “**vitaminwater**” does not include the low calorie product lines manufactured and distributed as “**vitaminwater 10**” and “**vitaminwater zero**,” the sparkling energy beverage “**vitaminwater energy**,” or any other product manufactured, marketed, distributed or sold by Defendants.

tt. “Virgin Islands Action” means *Squiabro v. The Coca-Cola Co.* (formerly *St. Juste v. The Coca-Cola Co.*), No. 3:10-cv-00118-CVG-RM (D.V.I.).

uu. “Virgin Islands Class Counsel” means J. Russell Pate of The Pate Law Firm.

II. MOTION FOR PRELIMINARY APPROVAL

26. Within fourteen (14) days after the signing of this Settlement Agreement, Class Counsel shall file with the Court a Motion for Certification of Settlement Class, Preliminary

Approval of Settlement, Approval of Notice of Plan and Notice Administrator and Appointment of Lead Counsel that seeks entry of an order substantially similar to the proposed order attached hereto as Exhibit A, which would, for settlement purposes only:

a. certify a tentative Settlement Class under Federal Rule of Civil Procedure 23(b)(2) composed of the Settlement Class Members;

b. preliminarily approve this Settlement Agreement;

c. approve the proposed Notice Plan and notice in forms substantially similar to those attached hereto as Exhibits B and C;

d. appoint the Notice Administrator; and

e. appoint Lead Class Counsel, Florida Class Counsel, Illinois Class Counsel, Missouri Class Counsel, Ohio Class Counsel, and Virgin Islands Class Counsel.

III. CERTIFICATION OF SETTLEMENT CLASS

27. For purposes of settlement only, and upon the express terms and conditions set forth in this Settlement Agreement, Plaintiffs and Defendants agree to seek certification of a mandatory Settlement Class in the Action pursuant to Federal Rule of Civil Procedure 23(b)(2) as follows:

a. The Settlement Class shall consist of the following five Settlement Subclasses:

(i) **Florida Class:** All persons who purchased the Product in the State of Florida from January 1, 2003, up to and including the Notice Date.

(ii) **Illinois Class:** All persons who purchased the Product in the State of Illinois from January 1, 2003, up to and including the Notice Date.

(iii) **Missouri Class:** All persons who purchased the Product in the State of Missouri from January 1, 2003, up to and including the Notice Date.

(iv) **Ohio Class:** All persons who purchased the Product in the State of Ohio from January 1, 2003, up to and including the Notice Date.

(v) **Virgin Islands Class:** All persons who purchased the Product in the Virgin Islands from January 1, 2003, up to and including the Notice Date.

b. Defendants and their officers, directors, employees, and agents are excluded from the Settlement Class definition.

28. **No Right to Opt Out**

a. Because the Settlement Class is being certified as a mandatory class under Federal Rule of Civil Procedure 23(b)(2), Settlement Class Members shall not be permitted to opt out of the Settlement Class.

29. **Class Certified for Settlement Purposes Only**

a. Defendants' agreement to seek a Settlement Class under Federal Rule of Civil Procedure 23(b)(2) is for settlement purposes only.

b. Nothing in this Settlement Agreement shall be construed as an admission by Defendants that this Action, the other Actions or the Non-Settling Actions, or any similar case is amenable to class certification for trial purposes. Furthermore, nothing in this Settlement Agreement shall prevent Defendants or Plaintiffs from opposing or supporting class certification or seeking vacatur of any order conditionally certifying a Settlement Class if final approval of this Settlement Agreement is not obtained, or not upheld on appeal, including review by the United States Supreme Court, for any reason.

IV. SETTLEMENT CLASS NOTICE AND OBJECTION DATE

30. Because this Settlement Agreement contemplates certification of a class comprised of Settlement Class Members under Federal Rule of Civil Procedure 23(b)(2), individual notice is not required and will not be sent by the Parties. Plaintiffs, Defendants, and the Notice Administrator have developed a Notice Plan, as detailed below. The Parties will recommend to the Court this Notice Plan, which will be administered by an experienced and highly-qualified Notice Administrator.

31. Notice Plan

a. The Notice Plan will employ the following different methods for circulating information about the settlement to Settlement Class Members:

- (i) A press release agreed to by the Parties issued within 15 days of the Court's Order granting Preliminary Approval;
- (ii) Publication of the Summary Notice in the USA Today, and twice in the Virgin Islands Daily News, starting within 15 days of the Court's Order granting Preliminary Approval;
- (iii) a multi-platform Facebook campaign, starting within 15 days of the Court's Order granting Preliminary Approval;
- (iv) An active hyperlink to a copy of the Summary Notice published on Class Counsel's web sites within 15 days of the Court's Order granting Preliminary Approval;
- (v) A Class Settlement Website established within 15 days of Preliminary Approval that contains the Preliminary Approval Order, the Long-Form

Notice, the Settlement Agreement, and other relevant information regarding the Court-approval process;

b. Until the Notice Administrator terminates the Class Settlement Website in accordance with paragraph 33(c) below, an active hyperlink to the Summary Notice shall be maintained on the Class Counsel's website; and

c. The Long-Form Notice and Summary Notice will be made available in English and Spanish on the Class Settlement Website.

32. Court Appointment and Retention of Notice Administrator

a. At the Preliminary Approval hearing, the Parties will propose that the Court appoint Angeion Group as Notice Administrator. The Notice Administrator will facilitate the notice process by assisting the Parties in the implementation of the Notice Plan.

33. Class Settlement Website

a. The Notice Administrator will create and maintain the Class Settlement Website, to be activated within 15 days of Preliminary Approval. The Notice Administrator's responsibilities will also include securing an appropriate URL, such as www.vitaminwaterclassactionsettlement.com.

b. The Class Settlement Website will post the settlement documents and case-related documents such as the Settlement Agreement, the Long-Form Notice, and the Preliminary Approval Order. In addition, the Class Settlement Website will include procedural information regarding the status of the Court-approval process, such as an announcement of the Final Approval Hearing Date, when the Final Approval Order and Judgment has been entered, and when the Effective Date has been reached.

c. The Class Settlement Website will terminate (be removed from the internet) and no longer be maintained by the Notice Administrator after (i) six (6) months from the date of its creation (i.e., the launch of the Class Settlement Website), or (ii) thirty (30) days after either (a) the Effective Date of the Settlement or (b) the date on which the Settlement Agreement is terminated or otherwise not approved by a court, whichever is later. The Notice Administrator will then transfer ownership of the URL to Defendants.

34. Long-Form Notice

a. The Parties have agreed that they will jointly recommend the Long-Form Notice, substantially in the form attached as Exhibit C, to the Court for approval. The Long-Form Notice is designed to provide comprehensive and easily understandable notice of the terms of the Settlement Agreement. The Long-Form Notice shall be posted on the Class Settlement Website as provided by paragraph 33 above.

35. Summary Notice and Publication Program

a. The Parties have agreed that they will jointly recommend the Summary Notice, substantially in the form attached as Exhibit B, to the Court for approval. The Summary Notice is designed to provide the Settlement Class Members material information about the class-action settlement and direct them to the Long-Form Notice posted on the Class Settlement Website. As stated in paragraph 31 above, the Summary Notice (or an active hyperlink to the Summary Notice) will be placed on Class Counsel's websites. The Summary Notice (or the hyperlink) will be removed from the websites after (i) six (6) months from the date of its creation (i.e., placement on the websites) or (ii) thirty (30) days after either (a) the Effective Date of the Settlement or (b) the date on which the Settlement Agreement is terminated or otherwise not approved by a court, whichever is later.

36. CAFA Notice

a. The Parties agree that the Notice Administrator shall serve notice of the settlement (via Federal Express) that meets the requirements of CAFA, 28 U.S.C. § 1715, on the appropriate federal and state officials no later than 10 days after the filing of this Settlement Agreement with the Court.

37. Costs

a. The cost of the above Notice Plan (with the exception of notice provided on Class Counsel web sites) shall be paid by Defendants. Class Counsel will not advocate for content or methods of notice beyond what has been agreed upon above.

V. INJUNCTIVE RELIEF PROVISIONS

38. Defendants shall begin to implement the Injunctive Relief within three (3) months from the Effective Date and shall complete the implementation of the Injunctive Relief within twenty-four (24) months from the Effective Date.

39. Subject to the terms and conditions of this Settlement Agreement, Plaintiffs and Defendants have agreed to move jointly for the Court to enter, as part of the Final Approval Order and Judgment, an injunction applicable to Defendants. The injunctive relief provision of the Final Approval Order and Judgment shall enjoin Defendants as follows:

a. Defendants shall state the amount of calories per bottle of the Product on the Principal Display Panel of the Product.

b. For as long as Defendants display a panel on the Product designating the Product as “excellent source” of certain nutrients, Defendants shall display in bold type the following statement immediately below that panel: “see nutrition facts for more detail”.

c. Defendants shall not use the following statements on Labeling and

Marketing of the Product:

- (i) “vitamins + water = what’s in your hand”;
- (ii) “vitamins + water = all you need”;
- (iii) “made for the center for responsible hydration,” provided nothing herein prevents the use of the word “hydration” in the marketing of the Product when not included in this precise phrase;
- (iv) “this combination of zinc and fortifying vitamins can . . . keep you healthy as a horse”;
- (v) “specially formulated to support optimal metabolic function with antioxidants that may reduce the risk of chronic diseases and vitamins necessary for the generation and utilization of energy from food”;
- (vi) “specially formulated to provide vitamin [A] (a nutrient known to be required for visual function), antioxidants and other nutrients [that] scientific evidence suggests may reduce the risk of age-related eye disease.”
- (vii) “specially formulated with bioactive components that contribute to an active lifestyle by promoting healthy, pain-free functioning of joints, structural integrity of joints and bones, and optimal generation and utilization of energy from food”;
- (viii) “specially formulated with nutrients required for optimal functioning of the immune system, and the generation and utilization of energy from food to support immune and other metabolic activities”;
- (ix) “specially formulated with [B] vitamins and theanine. The [B] vitamins are there to replace those lost during times of stress (physical and mental).

Theanine is an amino acid found naturally in tea leaves and has been shown to promote feelings of relaxation. This combination can help bring about a healthy state of physical and mental being”; and

(x) “specially formulated with nutrients that enable the body to exert physical power by contributing to structural integrity of the musculoskeletal system, and by supporting optimal generation and utilization of energy from food”.

d. Nothing in this Settlement Agreement shall prevent Defendants from implementing the Injunctive Relief prior to the Effective Date. The terms and requirements of the Injunctive Relief shall expire the earliest of the following dates: (a) ten years following the Effective Date; (b) the date upon which there are such changes in the formulation or manufacture of the Product and/or the Product ingredients that would render the Labeling and Marketing changes required by the Injunctive Relief provisions inaccurate; or (c) the date upon which there are changes to any applicable statute, regulation, or other law that Defendants reasonably believe would require a modification to the Labeling and Marketing of the Product required by the Injunctive Relief provisions in order to comply with the applicable statute, regulation, or law.

e. Plaintiffs and Class Counsel agree, on behalf of themselves and all Settlement Class Members, that this Settlement Agreement does not preclude Defendants from making further changes to Labeling and Marketing of the Product as Defendants see fit.

VI. RELEASE

40. Upon the Effective Date, the Releasing Parties forever release and discharge all injunctive, declaratory, or equitable Claims that have been brought, could have been brought, are currently pending, or are ever brought in the future, by any Settlement Class Member against Released Parties, in any forum in the United States (including their territories and Puerto Rico),

whether known or unknown, asserted or unasserted, under or pursuant to any statute, regulation or common law, that relate in any way to the distribution, sale, purchase, labeling, packaging, marketing or advertising of the Product and all equitable Claims for relief, of whatever type or description arising or that may have arisen as a result of, or relate in any way to any of the facts, acts, events, transactions, occurrences, courses of conduct, representations, omissions, circumstances or other matters referenced in any Claim raised (including, but not limited to, any Claim that was raised against Defendants) in the Actions and/or the Consolidated Class Action Complaint.

41. Upon the Effective Date, each of the Plaintiffs, in his or her individual capacity, shall forever release and discharge all Claims that have been brought, could have been brought, are currently pending, or are ever brought in the future, by him or her against Released Parties, in any forum in the United States (including their territories and Puerto Rico), whether known or unknown, asserted or unasserted, under or pursuant to any statute, regulation or common law, that relate in any way to the distribution, sale, purchase, labeling, packaging, marketing or advertising of the Product, including all Claims for any damages or injuries, of whatever type or description arising or that may have arisen as a result of, or relate in any way to any of the facts, acts, events, transactions, occurrences, courses of conduct, representations, omissions, circumstances or other matters referenced in any Claim raised (including, but not limited to, any Claim that was raised against Defendants) in the Actions and/or the Consolidated Class Action Complaint.

42. After entering into this Settlement Agreement, Plaintiffs or the Settlement Class may discover facts other than, different from, or in addition to, those that they know or believe to be true with respect to the Released Claims. Plaintiffs and the Settlement Class Members

expressly waive and fully, finally, and forever settle and release any known or unknown, suspected or unsuspected, contingent or noncontingent injunctive, declaratory, or equitable Claim, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such other, different, or additional facts.

43. No default by any Person in the performance of any covenant or obligation under this Settlement Agreement or any order entered in connection therewith shall affect the dismissal of the Actions, the res judicata effect of the Final Approval Order and Judgment, the foregoing releases, or any other provision of the Final Approval Order and Judgment; provided, however, that all other legal and equitable remedies for violation of a court order or breach of this Settlement Agreement shall remain available to all signatories to this Settlement Agreement.

VII. ENTRY OF FINAL APPROVAL ORDER AND JUDGMENT

44. The Parties shall jointly seek entry by the Court of a Final Approval Order and Judgment as soon as is practical that includes provisions:

- a. granting final approval of this Settlement Agreement, and directing its implementation pursuant to its terms and conditions;
- b. ruling on Class Counsel's application for attorneys' fees, costs, and expenses;
- c. enjoining Defendants according to the specific terms in Section V above;
- d. discharging and releasing the Released Parties, and each of them, from the Released Claims;
- e. permanently barring and enjoining all Releasing Parties from instituting, maintaining, or prosecuting, either directly or indirectly, any lawsuit that asserts Released Claims;

f. directing that, as to Defendants, this Action be dismissed with prejudice and without costs;

g. stating pursuant to Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the Final Approval Order and Judgment is a final, appealable order; and

h. reserving to the Court continuing and exclusive jurisdiction over the Parties with respect to the Settlement Agreement and the Final Approval Order and Judgment.

VIII. DISMISSAL OF THE FLORIDA, ILLINOIS, MISSOURI, AND VIRGIN ISLANDS ACTIONS

45. Within five (5) days of submission of the Motion for Preliminary Approval to this Court as set forth in Section II above, Florida, Illinois, Missouri, and Virgin Islands Class Counsel shall, jointly with Defendants, seek a stay of the Florida, Illinois, Missouri, and Virgin Islands Actions from the respective courts overseeing those Actions until such time as Preliminary Approval is denied, Final Approval is denied, or the Settlement Agreement fails to become effective on the Effective Date, whichever occurs later.

46. Within five (5) days of the Effective Date, Florida, Illinois, Missouri, and Virgin Islands Class Counsel shall voluntarily dismiss the Florida, Illinois, Missouri, and Virgin Islands Actions with prejudice.

IX. ATTORNEYS' FEES, COSTS AND EXPENSES

47. In advance of the Objection Date, Class Counsel shall make an application to the Court for an award of all attorneys' fees, costs, and expenses, in the amount of not more than \$1,200,000 in the aggregate, to be paid by Defendants. Defendants shall not oppose or object to the application by Class Counsel for attorneys' fees, costs, and expenses in an amount up to \$1.2 million, in the aggregate.

48. The \$1.2 million award shall include all fees, costs, and expenses for Class Counsel and Lead Class Counsel, and any and all Plaintiffs' and Settlement Class Members' counsel (and their employees, consultants, experts, and other agents) who may have performed work in connection with this Action or the other Actions. The \$1.2 million award shall include any and all incentive awards payable to Plaintiffs at the sole discretion of Lead Class Counsel. Regardless of the number of attorneys sharing in the Court's award of attorneys' fees, costs, and other expenses, or the size of any incentive award Lead Class Counsel may choose to assign to Plaintiffs, Defendants shall not be required to pay any award that exceeds, in the aggregate, \$1.2 million.

49. Lead Class Counsel shall distribute attorneys' fees and costs to Class Counsel, according to an allocation determined by agreement among Lead Class Counsel and Class Counsel. In no event will any dispute over such allocation impair the effectiveness of this Settlement Agreement. Under no circumstances will Defendants be liable to Plaintiffs, Lead Class Counsel, or Class Counsel, for any additional sums under this Settlement Agreement.

50. If the request for an aggregate award of \$1.2 million in attorneys' fees, costs, and expenses is finally approved by the Court and upheld on any appeal, then Defendants shall use their best efforts to pay \$1.2 million via electronic transfer to Lead Class Counsel within seven (7) business days after the Effective Date. If the aggregate award of attorneys' fees, costs, and other expenses that is ultimately approved and upheld on appeal is less than \$1.2 million as of the Effective Date, then Defendants shall use their best efforts to pay Class Counsel the lesser amount awarded via electronic transfer to Lead Class Counsel within seven (7) business days after the Effective Date.

X. MODIFICATION, TERMINATION, AND EFFECT OF SETTLEMENT

51. In the event the terms or conditions of this Settlement Agreement, other than terms pertaining to the attorneys' fees, costs, and expenses provided for in Section IX above, are materially modified by any court, either Party in its sole discretion to be exercised within fourteen (14) days after such a material modification may, but is under no obligation to, declare this Settlement Agreement null and void. For purposes of this paragraph, material modifications shall be limited to any modifications to the definitions of the Settlement Class, Released Claims, Releasing Parties, or Released Parties. In the event that a Party exercises its option to withdraw from and terminate this Settlement Agreement, then the Settlement proposed herein shall become null and void and shall have no force or effect, the Parties shall not be bound by this Settlement Agreement, and the Parties will be returned to their respective positions existing immediately before the execution of this Settlement Agreement. Notwithstanding the foregoing, in the event this Settlement Agreement is not approved by any court, or the Settlement set forth in this Settlement Agreement is declared null and void, or in the event that the Effective Date does not occur, each Party shall bear its own attorneys' fees and costs and Defendants' payment obligations shall cease.

52. The failure of the Court or any appellate court to approve in full the request by Class Counsel for attorneys' fees, costs, and other expenses shall not be grounds for Plaintiffs, the Settlement Class, or Class Counsel, to cancel or terminate this Settlement Agreement, and shall not be deemed a material modification under the terms of paragraph 51 above.

53. If this Settlement Agreement is terminated pursuant to its terms, disapproved by any court (including any appellate court), and/or not consummated for any reason, or the Effective Date for any reason does not occur, the order certifying the Class for purposes of

effectuating this Settlement Agreement, and all preliminary and/or final findings regarding that class certification order, shall be automatically vacated upon notice of the same to the Court, this Action shall proceed as though the Class had never been certified pursuant to this Settlement Agreement and such findings had never been made, and this Action shall return to the procedural status quo in accordance with this paragraph. Class and Defendants' Counsel shall not refer to or invoke the vacated findings and/or order relating to class settlement in the event this Settlement Agreement is not consummated and any of the Actions are later litigated and contested by Defendants under Rule 23 of the Federal Rules of Civil Procedure.

XI. MISCELLANEOUS

54. Time to Move or Answer

a. Defendants' time to move or answer the Consolidated Class Action Complaint is extended until thirty (30) days following the date on which the Settlement Agreement is terminated or otherwise not approved by a court.

55. Best Efforts to Obtain Court Approval

a. Plaintiffs, Defendants, and the Parties' counsel, agree to use their best efforts to obtain Court approval of this Settlement Agreement, subject, however, to the Parties' rights to terminate the Settlement Agreement under Section X, above.

56. No Admission

a. This Settlement Agreement, whether or not it shall become final, and any and all negotiations, communications, and discussions associated with it, shall not be:

(i) offered or received by or against any Person as evidence of, or be construed as or deemed to be evidence of, any presumption, concession, or admission by a Party of the truth of any fact alleged by Plaintiffs or defense asserted by Defendants, of

the validity of any Claim that has been or could have been asserted in this Action or the other Actions, or the deficiency of any defense that has been or could have been asserted in this Action or the other Actions, or of any liability, negligence, fault or wrongdoing on the part of Plaintiffs or Defendants;

(ii) offered or received by or against any Person as a presumption, concession, admission or evidence of the violation of any state or federal statute, law, rule, or regulation or of any liability or wrongdoing by Defendants, or of the truth of any of the Claims, and evidence thereof shall not be directly or indirectly, in any way, (whether in the Actions, or in any other action or proceeding), except for purposes of enforcing this Settlement Agreement and the Final Approval Order and Judgment, including, without limitation, asserting as a defense the release and waivers provided herein;

(iii) offered or received by or against any Person as evidence of a presumption, concession, or admission with respect to a decision by any court regarding the certification of a class, or for purposes of proving any liability, negligence, fault, or wrongdoing, or in any way referred to for any other reason as against Defendants, in any other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement Agreement; provided, however, that if this Settlement Agreement is approved by the Court, then the signatories to the Agreement may refer to it to enforce their rights hereunder; or

(iv) construed as an admission or concession by Plaintiffs, the Settlement Class or Defendants that the consideration to be given in this Settlement

Agreement represents the relief that could or would have been obtained through trial in the Actions.

57. Administrative Costs

a. Except as provided in Sections IV (Notice), and IX (Attorneys' Fees, Costs, and Expenses), above, each of Plaintiffs and Defendants shall be solely responsible for his, her, or its own costs and expenses.

58. Taxes

a. Class Representatives and Class Counsel shall be responsible for paying any and all federal, state, and local taxes due on any payments made to them pursuant to the Settlement Agreement.

59. Public Statements

a. Except in connection with any proceeding or court filing, or as expressly provided in the Notice Plan described in Section IV, above, or as expressly authorized in writing by Defendants or their counsel, Plaintiffs, and Class Counsel, will not issue any press releases or communicate with any third party, including the media, regarding the Settlement or the Actions, without prior approval of Defendants. If Plaintiffs or Class Counsel receive an inquiry from any third party, they should refer to the Class Notice, refer to the Consolidated Class Action Complaint, make accurate statements regarding the Settlement (including the status of the approval process), or refer to the Court file. Plaintiffs and Class Counsel agree not to make disparaging public statements about Defendants, Defendants' products, the Product, or Defendants' counsel. Plaintiffs and Class Counsel are free to respond in a truthful and non-disparaging manner to Class Member inquiries regarding the Actions and/or the Settlement Agreement. Class Counsel are free to state they served as legal counsel in this lawsuit and

discuss the terms of the Settlement Agreement on their firm websites, biographies, or similar marketing materials, and in connection with speaking engagements and future applications to serve as interim-class or lead counsel, or as otherwise required by law.

b. In connection with any proceedings in any court, Plaintiffs and Class Counsel will not make any representations concerning this Settlement Agreement that are inconsistent with the positions taken by Plaintiffs and Class Counsel in the Ohio Action.

60. Complete Agreement

a. This Settlement Agreement is the entire, complete agreement of each and every term agreed to by and among Plaintiffs, the Settlement Class, Defendants, and Class Counsel. In entering into this Settlement Agreement, no party to the Agreement has made or relied on any warranty or representation not specifically set forth herein. This Settlement Agreement shall not be modified except by a writing executed by all the parties hereto. No extrinsic evidence or parol evidence shall be used to interpret this Settlement Agreement. Any and all previous agreements and understandings between or among the parties to this Settlement Agreement regarding the subject matter of this Agreement, whether written or oral, are superseded and hereby revoked by this Agreement. The parties to this Settlement Agreement expressly agree that the terms and conditions of this Agreement will control over any other written or oral agreements.

61. Headings for Convenience Only

a. The headings in this Settlement Agreement are for the convenience of the reader only and shall not affect the meaning or interpretation of this Settlement Agreement.

62. Severability

a. In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Settlement Agreement shall continue in full force and effect without said provision, subject, however, to the parties' rights to terminate the Agreement under Section X, above.

63. No Party Is the Drafter

a. None of the parties to this Settlement Agreement shall be considered the primary drafter of this Settlement Agreement or any provision hereof for the purpose of any rule of interpretation or construction that might cause any provision to be construed against the drafter.

64. Binding Effect

a. This Settlement Agreement shall be binding according to its terms upon, and inure to the benefit of Plaintiffs, the Settlement Class, Defendants, the Releasing Parties, the Released Parties, as defined in Section I above, and any additional successors and assigns.

65. Authorization to Enter Settlement Agreement

a. Each of the undersigned Class Counsel for a Settlement Subclass represents and warrants that he is fully authorized to conduct settlement negotiations with counsel for Defendants on behalf of that Settlement Subclass and the respective Plaintiff and Class Representative, and to enter into, and to execute, this Settlement Agreement on behalf of that Settlement Subclass, the respective Plaintiff and Class Representative, and his co-Class Counsel, if any, subject to Court approval pursuant to Federal Rule of Civil Procedure 23(e).

66. Execution in Counterparts

a. The Parties may execute this Settlement Agreement in counterparts, and the execution of counterparts shall have the same effect as if all parties had signed the same instrument. Facsimile signatures shall be considered as valid signatures. This Settlement Agreement shall not be deemed executed until signed by Class Counsel and Defendants.

67. Settlement Notice

a. Except for the Notice Plan, as provided for in Section IV above, all other notices or formal communications under this Settlement Agreement shall be in writing and shall be given (i) by hand delivery; (ii) by registered or certified mail, return receipt requested, postage prepaid; or (iii) by Federal Express or similar overnight courier to counsel for the Party to whom notice is directed at the following addresses:

For Plaintiffs and Settlement Class:

Richard S. Wayne
STRAUSS TROY CO., LPA
The Federal Reserve Building
150 East Fourth Street
Cincinnati, OH 45202-4018

For Defendants:

Shon Morgan
QUINN EMANUEL URQUHART & SULLIVAN, LLP
865 S. Figueroa Street, 10th Floor
Los Angeles, California 90017

68. Counsel may designate a change of the person to receive notice or a change of address, from time to time, by giving notice to all Parties in the manner described in this Section.

69. **Governing Law**

a. Without regard to principles of conflicts of laws, this Settlement Agreement shall be governed by and interpreted in accordance with Federal law and, to the extent that resort must be had to State law, by the laws of the State of Ohio.

b. The Court shall retain continuing and exclusive jurisdiction over the Parties with respect to the Settlement Agreement and the Final Approval Order and Judgment.

70. **Interpretation**

a. As used in this Settlement Agreement, the masculine, feminine or neuter gender, and the singular or plural number, shall each be deemed to include the others wherever the context so indicates.

71. **Confidentiality**

a. All proprietary or confidential documents or information that have been previously provided to Class Counsel or Plaintiffs, as of the Effective Date of this Agreement, including under the Stipulated Protective Order entered in the MDL as of December 1, 2010, shall be destroyed, as provided for in that Order, with certification of the destruction to be provided to the producing party within sixty (60) days of the Effective Date.

72. **Compliance With Fed.R.Civ.P. 11**

a. Defendants agree that the Actions were filed in compliance with Fed.R.Civ.P. 11.

IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have executed this Settlement Agreement as of the date first herein written.

[remainder of page intentionally left blank]

Class Counsel

By:  Date: 7/31/14

Richard S. Wayne (Ohio Attorney Bar No. 0022390)

Joseph J. Braun (Ohio Attorney Bar No. 0069757)

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The Federal Reserve Building

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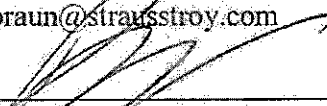
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By: 

Date: July 31, 2014

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Attorneys for Virgin Islands Class

By: _____

Date: _____

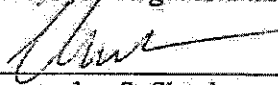
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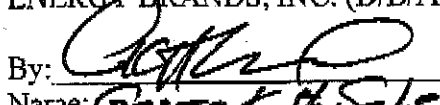
Attorneys for Missouri Class

Defendants

THE COCA-COLA COMPANY

By:  Date: 8/4/2014
Name: RUSSELL S. BONDS
Title: ASSOCIATE GENERAL COUNSEL

ENERGY BRANDS, INC. (D/B/A GLACEAU)

By:  Date: 8/4/14
Name: George E. H. Sahel
Title: Chief Marketing Counsel

Defendants' Counsel

By: _____ Date: _____
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Defendants

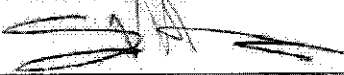
THE COCA-COLA COMPANY

By: _____ Date: _____
Name: _____
Title: _____

ENERGY BRANDS, INC. (D/B/A GLACEAU)

By: _____ Date: _____
Name: _____
Title: _____

Defendants' Counsel

By:  Date: 8/1/2014

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Attorneys for Defendants The Coca-Cola Company and Energy Brands, Inc. (d/b/a Glaceau)

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

DAVID VOLZ, NICHOLAS ARMADA,
SCOTT COOK, AHMED KHALEEL,
STEPHANIE BRIDGES, and JUAN
SQUIABRO,

Plaintiffs,

-against-

THE COCA-COLA COMPANY and
ENERGY BRANDS INC.,

Defendants.

1:10-cv-00879-MRB-SKB

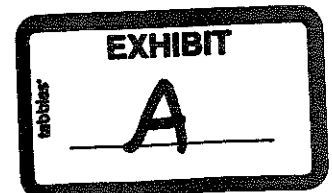
(PROPOSED) ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT

In this Action,¹ Plaintiffs, in their individual capacities and on behalf of all others similarly situated (the "Settlement Class"), assert Claims against Defendants The Coca-Cola Company and Energy Brands, Inc. (d/b/a Glaceau) (collectively "Defendants"). Defendants have denied each of the Claims asserted against them in this Action and deny any and all liability. Plaintiffs maintain that the Claims have merit and that a class should be certified in this Action.

This Court has now been presented with a Motion for Preliminary Approval of Proposed Settlement and a Settlement Agreement dated July 31, 2014. The Settlement Agreement was negotiated, and consented to, on behalf of the Parties, with the assistance of this Court, and resolves the Claims against Defendants arising out of the Action as set forth in the Settlement Agreement. Notice of the proposed settlement has been served on the appropriate federal and state officials pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715.

Having considered the terms of the Settlement Agreement in light of the issues presented by the pleadings, the record in this case, the complexity of the proceedings, the absence of any evidence of collusion between Plaintiffs and Defendants, and the Court's own supervision of the

¹ Capitalized terms shall have the meaning ascribed to them in the Definitions Section I of the Settlement Agreement.



negotiations, and being preliminarily satisfied that the Settlement Agreement is fair, reasonable, and consistent with applicable laws; and being satisfied that the proposed Notice of Class Action Settlement is adequate and sufficiently informative as to the terms and effect of the proposed settlement and the conditional certification of the Settlement Class, IT IS ORDERED THAT:

1. This Court has jurisdiction over the subject matter of the Action pursuant to 28 U.S.C. § 1332(d). This Court also has jurisdiction over all Parties to the Action, including all members of the Class, as defined in Paragraph 3, below.
2. The Settlement Agreement is preliminarily and conditionally approved as a fair, reasonable, and adequate compromise of the risks of the Action, subject to further consideration at the Final Approval Hearing. Plaintiffs and Defendants are authorized and directed to take all actions that may be required prior to final approval by the Court of the proposed settlement and compromises set forth in the Settlement Agreement.
3. For the sole purpose of determining whether the proposed settlement embodied in the Settlement Agreement should be approved as fair, reasonable, and adequate and whether this Action should be dismissed with prejudice as to Defendants, a Settlement Class is preliminarily and conditionally certified under Rule 23(b)(2) of the Federal Rules of Civil Procedure, as follows:
 - 3.1 The Settlement Class shall consist of the following five Settlement Subclasses:
 - 3.1.1 Florida Class: All persons who purchased the Product in the State of Florida from January 1, 2003, up to and including the Notice Date.
 - 3.1.2 Illinois Class: All persons who purchased the Product in the State of Illinois from January 1, 2003, up to and including the Notice Date.
 - 3.1.3 Missouri Class: All persons who purchased the Product in the State of Missouri from January 1, 2003, up to and including the Notice Date.
 - 3.1.4 Ohio Class: All persons who purchased the Product in the State of Ohio from January 1, 2003, up to and including the Notice Date.
 - 3.1.5 Virgin Islands Class: All persons who purchased the Product in the Virgin Islands from January 1, 2003, up to and including the Notice Date.
 - 3.2 Defendants and their officers, directors, employees, and agents are excluded from the Settlement Class definition.
4. Solely for purposes of the proposed settlement, Nicholas Armada and Scott Cook are designated as Class Representatives of the Florida Class, Ahmed Khaleel is designated as as Class Representative of the Illinois Class, Stephanie Bridges is designated as Class Representative of the Missouri Class, Dave Volz is designated as Class Representative of

the Ohio Class, and Juan Squiabro is designated as Class Representative of the Virgin Islands Class.

5. The Court conditionally approves of and appoints Richard S. Wayne of Strauss Troy Co., LPA and Brian Giles of Statman Harris & Eyrich LLC to serve as Lead Class Counsel for the Settlement Class, and further conditionally approves of and appoints Aashish Y. Desai of the Desai Law Firm, P.C. and William C. Wright of The Law Offices of William C. Wright, P.A. as Class Counsel for the Florida Class; Aashish Y. Desai of the Desai Law Firm, P.C. and Scott J. Ferrell of the Newport Trial Group as Class Counsel for the Illinois Class; Christopher S. Shank of Shank & Hamilton, P.C. as Class Counsel for the Missouri Class; Richard S. Wayne and Joseph J. Braun of Strauss Troy Co., LPA, and Brian Giles of Statman Harris & Eyrich LLC as Class Counsel for the Ohio Class; and J. Russell Pate of The Pate Law Firm as Class Counsel for the Virgin Islands Class, for the purpose of determining whether the proposed settlement embodied in the Settlement Agreement should be approved as fair, reasonable, and adequate and whether this Action should be dismissed with prejudice as to Defendants.
6. If the proposed settlement is not approved or consummated for any reason whatsoever, then the settlement class certification established by this Order will be vacated, the Class and Defendants will return to the status of the claims, defenses, and class certification immediately prior to July 31, 2014, the date on which the proposed settlement was reached; the proposed settlement and all proceedings conducted in connection therewith shall be stricken from the record and shall be without prejudice to the status quo ante rights of Plaintiffs and Defendants.
7. The Long Form of Notice of Class Action Settlement (the "Long Form Notice") attached as Exhibit C to the Settlement Agreement and the Summary Notice attached as Exhibit B to the Settlement Agreement are approved. Dissemination of the Class Notice as set forth in the Notice Plan satisfies the requirements of due process and the Federal Rules of Civil Procedure. The Long-Form Notice and Summary Notice will be published in accordance with the terms of the Notice Plan set forth in the Settlement Agreement. Non-substantive changes may be made to the Long-Form Notice and Summary Notice by agreement of Plaintiffs and Defendants without further order of this Court.
8. Angeion Group is appointed as the Notice Administrator.
9. Class Counsel shall file their motion for attorneys' fees, costs, and expenses prior to _____, 2014. If any motions for incentive awards to Class Representatives are to be made, they shall be filed by _____, 2014 [same date]. Defendants shall file any response to any motions filed under this paragraph within 14 days.
10. A Final Approval Hearing shall be held at _ a.m./p.m. on _____, 2014, for the purpose of determining whether the proposed settlement and compromise set forth in the Settlement Agreement shall be approved finally by the Court and whether final judgment dismissing the Action with respect to Defendants is appropriate. This hearing will be held at the United States District Court, Potter Stewart U.S. Courthouse, 100 East Fifth Street, Cincinnati, Ohio 45202, and the Court will consider and determine:

- 10.1 whether the proposed settlement is fair, reasonable, and adequate to members of the Class and should be approved by the Court;
 - 10.2 whether the proposed Settlement Class satisfies the applicable prerequisites for class action treatment under Federal Rules of Civil Procedure 23(a) and 23(b)(2) for purposes of the proposed settlement;
 - 10.3 whether the Court should enjoin Defendants according to the specific terms in the Settlement Agreement;
 - 10.4 whether Final Judgment should be entered, dismissing the Action as to Defendants, on the merits and with prejudice, and to determine whether the release by the Class of the Released Claims, as set forth in the Settlement Agreement, should be provided;
 - 10.5 whether the Court should approve Class Counsel's application for an award of attorneys' fees, expenses, and costs;
 - 10.6 whether the Court should approve any motion for an award of incentive fees for the Class Representatives; and
 - 10.7 such other matters as the Court may deem appropriate.
11. Any person who wishes to oppose or object to final approval of the settlement and compromise in this Action shall mail an objection letter to "Objections - Vitaminwater Notice Administrator," c/o Angeion Group, and service of the objection should be effectuated on Lead Class Counsel, counsel for Defendants, and the Court. Objection letters must be postmarked by _____, 2014, and must include all of the following:
- 11.1 *Volz v. The Coca-Cola Company*, 1:10-cv-00879-MRB-SKB;
 - 11.2 The objector's name, address and telephone number;
 - 11.3 A statement of the objection and a summary of the reasons for the objection;
 - 11.4 Copies of any documents upon which the objection is based; and
 - 11.5 A statement of whether the objector or the objector's lawyer will ask to speak at the final approval hearing.
12. Any person who wishes to appear at the Final Approval Hearing, either in person or through counsel, by _____, 2014, in addition to providing the above information shall also:
- 12.1 Identify the points the objector wishes to speak about at the hearing;
 - 12.2 Enclose copies of any documents the objector intends to rely on at the hearing;
 - 12.3 State the amount of time the objector requests for speaking at the hearing; and

- 12.4 State whether the objector intends to have a lawyer speak on his or her behalf.
13. Any lawyer who intends to speak on behalf of an objector at the Final Approval Hearing shall enter a written notice of appearance of counsel with the Clerk of Court no later than _____, 2014. All properly submitted objections shall be considered by the Court.
 14. Any member of the Class who does not object in the manner set forth above shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness, adequacy, or reasonableness of the proposed settlement, the Final Approval Order and Judgment to be entered approving the settlement, the Release of Claims, or the attorneys' fees, costs, expenses, or incentive fees requested.
 15. All proceedings in the Action, other than such as may be necessary to carry out the terms and conditions of this Order or the responsibilities incidental thereto, are stayed and suspended as between Plaintiffs and Defendants until further order of the Court.
 16. The Court may adjourn the Final Approval Hearing, or any adjournment thereof, without any further notice other than an announcement at the Final Approval Hearing, or any adjournment thereof, and may approve the Settlement Agreement with modifications as approved by the parties to the Settlement Agreement without further notice to the Class.
 17. The Court retains exclusive jurisdiction over the Action to consider all further matters arising out of or connected with the proposed settlement.

SO ORDERED this ____ day of _____, 2014.

The Honorable Judge Michael R. Barrett
United States District Court
Southern District of Ohio

This notice concerns you and your legal rights if you purchased the vitaminwater beverage in Florida, Ohio, Illinois, Missouri and the U.S. Virgin Islands

**United States District Court for the Southern District of Ohio
Volz v. The Coca-Cola Company, 1:10-cv-00879-MRB-SKB**

There is a proposed settlement between The Coca-Cola Company and Energy Brands, Inc. (d/b/a Glaceau) ("Defendants"), who manufacture and distribute vitaminwater brand beverages, in a class action lawsuit with purchasers of vitaminwater. The lawsuit is related to the labeling and marketing of vitaminwater in Florida, Ohio, Illinois, Missouri and the U.S. Virgin Islands from January 2003 through _____, 2014.

WHAT ARE THE SETTLEMENT TERMS?

Defendants and Plaintiffs have agreed to a settlement that includes changes to the labeling and marketing of vitaminwater beverages, such that Defendants will affirmatively make certain statements and refrain from making others. All Class Members will receive these benefits equally.

WHO IS INCLUDED?

This notice applies to you if you purchased vitaminwater brand beverages in the States of Florida, Ohio, Illinois, and Missouri and the U.S. Virgin Islands. **This Notice is just a summary. For more complete information, you should read the Full Notice, which is available at [www.vitaminwaterclassactionsettlement.com].**

WHAT IS THE LAWSUIT ABOUT?

Plaintiffs brought a lawsuit against Defendants for alleged deceptive labeling and marketing of vitaminwater. Defendants deny that vitaminwater was deceptively labeled or marketed but have agreed to the proposed settlement to resolve this class action.

WHAT AM I GIVING UP FOR THIS BENEFIT?

If the settlement is approved by the Court, then you release all injunctive, declaratory, and equitable claims concerning vitaminwater beverage labeling and marketing that were or could have been raised in this lawsuit and you cannot bring another lawsuit asserting such claims. It also means that the Court's order will apply to you and bind you even if you have objected. For more details on the terms of the release, please see the Attachment to this Notice of Class Action Settlement.

WHAT ARE MY OPTIONS?

If you are a Class Member, you can object to the settlement and give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to the settlement in Volz v. The Coca-Cola Company, No. 1:10-cv-00879-MRB-SKB. Be sure to include your name, address, telephone number, signature and the reasons why you object to the settlement. You must send your objection by first class mail to the Notice Administrator, the Court, and to one of the attorneys for the Settlement Class ("Class Counsel") and one of the attorneys for Defendants. A list of the attorneys is provided on the Full Notice, available at

[www.vitaminwaterclassactionsettlement.com]. Your objection must be postmarked no later than [30 days prior to **final hearing date**], 2014, or your objection will not be valid and will not be considered by the Court.

You may ask the Court to speak at the hearing on the approval of the settlement. To do so, you must send a letter saying that it is your "Notice of Intention to Appear" in Volz v. The Coca-Cola Company, No. 1:10-cv-00879-MRB-SKB. Include your name, address, telephone number and signature. Your Notice of Intention to Appear must be postmarked no later than [30 days prior to **final hearing date**], 2014, and also must be sent to the Clerk of Court, Class Counsel and Defendants' Counsel at their addresses in the Full Notice. You cannot speak at the hearing if your Notice of Intention to Appear is late.

WILL THE COURT APPROVE THE PROPOSED SETTLEMENT?

This Court granted preliminary approval of the Settlement, and will hold a Final Approval Hearing on [DATE], 2014 at [TIME] in the U.S. District Court for the Southern District of Ohio, 100 East Fifth Street, Cincinnati, Ohio 45202 to consider whether the Proposed Settlement is fair, reasonable, and adequate and to consider Class Counsel's request for attorneys' fees, costs, and expenses.

WHO REPRESENTS ME?

This Court has appointed Class Counsel to represent the Class. Class Counsel will request the Court award attorneys' fees, costs, and expenses in an amount to be paid entirely by Defendants not to exceed \$1,200,000 for Class Counsel's work on this case; Class Counsel may allocate some of that award to Class Representatives for their participation. You may hire your own attorney, if you wish, but you will be responsible for that attorney's fees and costs.

WHERE CAN I OBTAIN MORE INFORMATION?

For more information, you can view the court file in the Clerk's Office at the courthouse address above or visit the settlement website. Please Do Not Contact The Court Or The Clerk Of The Court Concerning This Notice.

By Order of the Court Dated: [DATE], 2014 THE HONORABLE JUDGE MICHAEL R. BARRETT U.S. DISTRICT COURT SOUTHERN DISTRICT OF OHIO



ATTACHMENT TO NOTICE OF CLASS ACTION SETTLEMENT

TERMS OF RELEASE

Upon the Effective Date, Plaintiffs and Settlement Class Members forever release and discharge all Released Claims against Released Parties.

“Released Claims” are injunctive, declaratory, or equitable Claims, and all claims whatsoever of the Plaintiffs in their individual capacities, that have been brought, could have been brought, are currently pending, or are ever brought in the future, by any Settlement Class Member against Released Parties, in any forum in the United States (including their territories and Puerto Rico), whether known or unknown, asserted or unasserted, under or pursuant to any statute, regulation or common law, that relate in any way to the distribution, sale, purchase, labeling, packaging, marketing or advertising of the Product and all equitable Claims for relief, of whatever type or description arising or that may have arisen as a result of, or relate in any way to any of the facts, acts, events, transactions, occurrences, courses of conduct, representations, omissions, circumstances or other matters referenced in any Claim raised (including, but not limited to, any Claim that was raised against Defendants) in this Action.

“Released Parties” means Defendants, as well as their respective past, present, and future predecessors, successors, and assigns, the past, present, and future, direct and indirect, parents, subsidiaries, divisions, corporate affiliates, or associates of any of the above; and the past, present, and future members, principals, partners, officers, directors, trustees, control persons, employees, agents, attorneys, shareholders, advisors, insurers and representatives of the above, and any and all entities and individuals that are alleged to have handled, distributed, purchased for resale and/or redistribution, supplied, manufactured and/or sold or offered for sale the Product.

“Effective Date” means the date on which all appellate rights with respect to the Final Approval Order and Judgment have expired or have been exhausted in such a manner as to affirm the Final Approval Order and Judgment, and when no further appeals are possible, including review by the United States Supreme Court.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO
VOLZ V. THE COCA-COLA COMPANY CASE NO. 1:10-cv-00879-MRB-SKB

**TO ALL PERSONS WHO PURCHASED VITAMINWATER BEVERAGES IN THE
STATES OF FLORIDA, OHIO, ILLINOIS, AND MISSOURI, AND THE U.S. VIRGIN
ISLANDS: READ THIS NOTICE CAREFULLY.
YOUR LEGAL RIGHTS MAY BE AFFECTED.**

A settlement has been proposed in a class action lawsuit concerning the labeling and marketing of **vitamin**water brand beverages. This settlement resolves that lawsuit. It avoids costs and risks from continuing the lawsuit; provides Injunctive Relief to the Settlement Class, and releases Defendants The Coca-Cola Company and Energy Brands, Inc. (d/b/a Glaceau) (collectively, “Defendants”) from certain liabilities. Your legal rights are affected whether you act or do not act. These rights and options—and their deadlines—are explained in this Notice.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

Object	Write to the Court about why you do not like the settlement.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement.
Do Nothing	If the settlement is approved by the Court, then you cannot bring a new lawsuit for injunctive, declaratory, or equitable relief challenging vitamin water labeling and marketing. You will release all injunctive, declaratory, or equitable relief claims that this settlement resolves.

BASIC INFORMATION

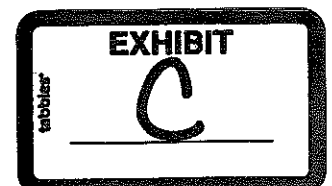
Does this Notice apply to me?

This notice applies to you if you purchased **vitamin**water brand beverages (the “Product”) from January 1, 2003, to _____, 2014. This notice does not apply to you if you only purchased the product line(s) manufactured and distributed as “**vitamin**water 10,” “**vitamin**water zero,” the sparkling energy beverage “**vitamin**water energy,” or any other product manufactured, marketed, distributed, or sold by Defendants.

What is this lawsuit about?

Plaintiffs in the States of Florida, Ohio, Illinois, and Missouri, and the U.S. Virgin Islands, on behalf of themselves and other individuals who purchased the Product in those jurisdictions, brought a class action lawsuit against Defendants for alleged deceptive labeling and marketing of the Product. The Court in charge of this case is the United States District Court for the Southern District of Ohio, and the case is Volz v. The Coca-Cola Co., No. 1:10-cv-00879-MRB-SKB.

Defendants deny that they did anything wrong and believe they would have prevailed at trial, while Plaintiffs believe Plaintiffs would have prevailed at trial.



Why is this a class action?

In a class action, one or more persons called Class Representatives sue for all individuals with similar claims. All of those individuals are Class Members; together, they are called a Class. The Court decides the fairness, reasonableness, and adequacy of the settlement for all Class Members.

Why is there a settlement?

The Court did not decide which side was right. There was no trial. Plaintiffs and Defendants agreed to the settlement to avoid the costs and risks of a trial.

WHO IS IN THE SETTLEMENT

How do I know if I am part of the settlement?

The Court decided that the following individuals are Class Members: All persons who purchased the Product in the States of Florida, Ohio, Illinois, and Missouri, and the U.S. Virgin Islands from January 1, 2003 up to and including _____, 2014, except Defendants' officers, directors, employees, and agents.

THE SETTLEMENT BENEFITS

What benefits does the settlement provide?

The settlement provides that Defendants will make certain statements and refrain from making other statements on the Product's labeling and marketing (the "Injunctive Relief"). All Class Members will receive this benefit equally. Specifically, Defendants will state the amount of calories per bottle of the Product on the front label of the Product; will place in bold type the reference "see nutrition facts for more detail" on the front label of the Product; and will refrain from making certain statements on the Product's labeling and marketing regarding the Product and the effect of the Product on the structure and function of the body.

What am I giving up in exchange for this benefit?

If the settlement is approved by the Court, then you cannot bring a new lawsuit against Defendants to seek changes to Defendants' labeling and marketing of the Product raising the injunctive, declaratory, or equitable claims that were raised in this Action or that could have been raised in this Action. It also means that the Court's order will apply to you and bind you even if you have objected and even if you have another claim, lawsuit, or proceeding pending against Defendants. You will release Defendants from all injunctive, declaratory, or equitable claims that this settlement resolves. For more details on the terms of the release, please see the Attachment to this Notice of Class Action Settlement and the "More Information" section below.

Can I exclude myself from the settlement?

Because the Injunctive Relief will benefit all Class Members equally, you cannot exclude yourself from the Settlement Class or this settlement.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with all or some part of the settlement.

How do I tell the Court that I object to the settlement?

If you are a Class Member, you can object to the settlement and give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to the Settlement in Volz v. The Coca-Cola Co., No. 1:10-cv-00879-MRB-SKB. Be sure to include your name, address, telephone number, signature and the reasons why you object to the settlement. You must mail the objection to the following four places and it must be postmarked no later than [30 days prior to final hearing date], 2014, or your objection will not be valid and will not be considered by the Court.

Objections – Vitaminwater Notice

Administrator

Angeion Group
[Address TBD]

Court

Office of the Clerk
Potter Stewart U.S. Courthouse
100 East Fifth Street
Cincinnati, OH 45202

Lead Class Counsel

Richard S. Wayne
STRAUSS TROY CO. LPA
The Federal Reserve Building
150 East Fourth Street
Cincinnati, OH 45202-4018

Defendants' Counsel

Shon Morgan
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
865 S. Figueroa Street, 10th Floor
Los Angeles, CA 90017

THE LAWYERS REPRESENTING YOU

The Court has approved the request of the following law firms to represent you and the other Class Members: STRAUSS TROY CO. LPA and STATMAN HARRIS & EYRICH LLC. These lawyers are called Lead Class Counsel. Additionally, DESAI LAW FIRM, P.C. and THE LAW OFFICES OF WILLIAM C. WRIGHT, P.A. represent the Florida Class; DESAI LAW FIRM, P.C., and NEWPORT TRIAL GROUP represent the Illinois Class; SHANK & HAMILTON, P.C. represents the Missouri Class; and THE PATE LAW FIRM represents the Virgin Islands Class (together, "Class Counsel"). If you want to be represented by your own lawyer, you may hire one at your expense.

How will the lawyers be paid?

Class Counsel will request the Court for an award of attorneys' fees, costs, and expenses in an amount to be paid entirely by Defendants. The Court will decide whether to award such fees, costs, and expenses and how much to award.

What benefits will the Class Representatives receive from the settlement?

The Class Representatives will receive the same benefits as Class Members, but may get an additional benefit if the Court approves any motions that may be brought for incentive awards to compensate the Class Representatives for their time and to provide incentives for persons in the future to act as Class Representatives. Those motions must be filed by ___, 2014. Any incentive awards will be paid by Defendants and not by Class Members.

Are there any limits on the award of attorneys' fees, costs, and expenses or Class Representative incentive awards?

Any awards of attorneys' fees, costs, or expenses to Class Counsel or of incentives for Class Representatives will be paid by Defendants, not by Class Members. Such awards must be approved by the Court. Under the Settlement Agreement, Defendants' total liability for all attorneys' fees, costs, and expenses of Class Counsel, including Class Counsel's employees, consultants, experts, and other agents who may have performed work in connection with this Action, and for all incentive awards for Class Representatives cannot exceed \$1,200,000. Defendants have agreed that they will not oppose any motions for such fees, costs, expenses and incentive awards provided that cumulatively the requested awards do not exceed \$1,200,000.

THE COURT'S HEARING TO APPROVE THE SETTLEMENT

When and where will the Court hold its hearing?

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak at the hearing, but you do not have to do so. The Court will hold the hearing at ___ a.m./p.m. on ___, 2014, at the United States District Court for the Southern District of Ohio, 100 East Fifth Street, Cincinnati, Ohio 45202. At the hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections that were received by the deadline, the Court will consider them. If you submit a timely objection, the Court will also listen to you speak at the hearing, if you so request.

Do I have to attend the hearing?

No. If you send an objection, then you can, but are not obligated, to come to Court to discuss it. You may also pay your own lawyer to attend or discuss your objection, but that is not necessary.

May I speak at the hearing?

You may ask the Court to speak at the hearing. To do so, you must send a letter saying that it is your "Notice of Intention to Appear" in Volz v. The Coca-Cola Company, No. 1:10-cv-00879-MRB-SKB. Include your name, address, telephone number, and signature. Your Notice of Intention to Appear must be postmarked no later than [30 days prior to final hearing date], 2014, and must be sent to the Clerk of Court, Lead Class Counsel, and Defendants' Counsel at their addresses above. You cannot speak at the hearing if your Notice of Intention to Appear is late.

MORE INFORMATION

How can I get more information?

This Notice summarizes the proposed settlement. More details are in a Settlement Agreement filed with the Court. You may examine the Court's file in the Clerk's Office at the United States District Court for the Southern District of Ohio, Potter Stewart U.S. Courthouse, East Fifth Street, Cincinnati, Ohio 45202, for more complete information about the details of the lawsuit and the proposed settlement. You also may visit the website of the Notice Administrator at [www.vitaminwaterclassactionsettlement.com].

ATTACHMENT TO NOTICE OF CLASS ACTION SETTLEMENT

TERMS OF RELEASE

Upon the Effective Date, Plaintiffs and Settlement Class Members forever release and discharge all Released Claims against Released Parties.

“Released Claims” are injunctive, declaratory, or equitable Claims, and all claims whatsoever of the Plaintiffs in their individual capacities, that have been brought, could have been brought, are currently pending, or are ever brought in the future, by any Settlement Class Member against Released Parties, in any forum in the United States (including their territories and Puerto Rico), whether known or unknown, asserted or unasserted, under or pursuant to any statute, regulation or common law, that relate in any way to the distribution, sale, purchase, labeling, packaging, marketing or advertising of the Product and all equitable Claims for relief, of whatever type or description arising or that may have arisen as a result of, or relate in any way to any of the facts, acts, events, transactions, occurrences, courses of conduct, representations, omissions, circumstances or other matters referenced in any Claim raised (including, but not limited to, any Claim that was raised against Defendants) in this Action.

“Released Parties” means Defendants, as well as their respective past, present, and future predecessors, successors, and assigns, the past, present, and future, direct and indirect, parents, subsidiaries, divisions, corporate affiliates, or associates of any of the above; and the past, present, and future members, principals, partners, officers, directors, trustees, control persons, employees, agents, attorneys, shareholders, advisors, insurers and representatives of the above, and any and all entities and individuals that are alleged to have handled, distributed, purchased for resale and/or redistribution, supplied, manufactured and/or sold or offered for sale the Product.

“Effective Date” means the date on which all appellate rights with respect to the Final Approval Order and Judgment have expired or have been exhausted in such a manner as to affirm the Final Approval Order and Judgment, and when no further appeals are possible, including review by the United States Supreme Court.