

### Class Action Settlement Agreement

This Settlement Agreement and Release (“Agreement”), effective upon the date of the signatories below, is made by and between Celsius Holdings, Inc. (“Celsius”) and the Class Representatives (defined below) on behalf of the Class (defined below) (individually a “Party,” and collectively the “Parties”), in the matters of *Prescod v. Celsius Holdings, Inc.*, LASC No. 19STCV09321 (Los Angeles Cty. Super. Ct.) (“*Prescod*”), and *Hezi v. Celsius Holdings, Inc.*, No. 1:21-cv-9892-VM (SDNY) (“*Hezi*”) (individually an “Action,” and collectively the “Actions”).

**WHEREAS**, on March 19, 2019, Class Representative Daniel Prescod filed *Prescod*. On November 23, 2021, Class Representatives Amit Hezi and Joseph Nina filed *Hezi*. Plaintiffs allege in the Actions that Defendant deceptively and unlawfully labeled, packaged, and marketed the Products (as defined below) as containing “No Preservatives.” The Products contain citric acid, and Plaintiffs allege that, contrary to Defendant’s representations, citric acid is a “preservative.” Defendant contends that the Products used citric acid only to add flavor and not as a preservative.

**WHEREAS**, on August 2, 2021, the Hon. Kenneth R. Freeman, Judge of the Superior Court, certified the following class in the *Prescod* Action:

All persons who purchased [the Products] in California for personal use and not for resale during the time period March 19, 2015, through the present. Excluded from the Class are Defendants’ officers, directors, and employees, and any individual who received remuneration from Defendant in connection with that individual’s use or endorsement of the Products.

**WHEREAS**, in the *Hezi* Action, no class has yet been certified, but Plaintiffs have sought to represent a class comprising:

All persons who purchased the Product[s] in the United States, for personal use and not for resale, during the time period of four years prior to the filing of the complaint through the present [defined term deleted]. Excluded from the class are Defendant’s officers, directors, and employees, and any individual who received remuneration from Defendant in connection with that individual’s use or endorsement of the Products; or in the alternative, a subclass of individuals who purchased the Product[s] in the State of New York.

**WHEREAS**, collectively, the Actions allege claims under the consumer fraud laws of California and New York (specifically, Cal. Bus. & Prof. Code §§ 17200 and 17500, Cal. Civ. Code § 1770, and N.Y. Gen. Bus. Law §§ 349 and 350), breach of express warranty, and unjust enrichment. Plaintiffs were prepared to allege claims, too, under the similar consumer protection laws of other (and, potentially, all) of the 50 states plus the District of Columbia, and Plaintiffs advised Defendant that other potential class representatives would become involved in the case. Plaintiffs were preparing to file new lawsuits similar to the Actions in Illinois, Texas, and other large states, and had the Actions continued, would have asked courts in each of those states to certify multi-state classes with the intention of achieving effective nationwide certification in the event that no single court would have certified a nationwide class. Defendant would have opposed

these efforts to obtain class certification beyond California and anticipated seeking decertification of the California class prior to trial.

**WHEREAS**, although the Actions as presently pleaded focus on the “No Preservatives” statement on the Products’ labels, Plaintiffs advised Defendant of their intention to pursue claims respecting other aspects of the labeling, packaging, and marketing of the Products. Defendant denies that the labeling, packaging, and marketing of the Products is misleading in any respect, but it is the intention of this Agreement to resolve *all* potential claims with respect to the Products’ labeling, packaging, and marketing, and to provide compensation to all purchasers of the Products with respect to any statement by Defendant on the Products’ labels or packages, or in its marketing of the Products, that a purchaser could contend was misleading.

**WHEREAS**, because of Defendant’s insistence that any nationwide settlement of Plaintiffs’ claims must be presented in federal court, the Parties will stipulate to the filing of an amended complaint in *Hezi* to facilitate the *Prescod* and *Hezi* Plaintiffs’ pursuit and resolution of claims on behalf of all Settlement Class Members in a single action, before the Honorable Victor Marrero of the United States District Court for the Southern District of New York.

**WHEREAS**, since the *Prescod* Action was filed, Defendant has made changes to some of the business practices at issue in the Actions, including by adding a qualifier to the Labeling (defined below) advising consumers of the Products containing citric acid that citric acid is present in the Products as a flavoring and does not operate as a preservative. As set forth in this Agreement, moreover, Defendant will implement significant additional labeling changes as part of the consideration for the Agreement and the Releases to be provided by Settlement Class Members.

**WHEREAS**, the Parties and their counsel have analyzed and evaluated the merits of all Parties’ contentions and this Settlement as it affects all Parties and the Settlement Class Members and, after taking into account the foregoing, along with the risks and costs of further litigation, are satisfied that the terms and conditions of this Agreement are fair, reasonable, adequate, and equitable, and that a settlement of the Action and the prompt provision of effective relief to the Settlement Class are in the best interests of the Settlement Class Members.

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

**WHEREAS**, to reach this Agreement, the Parties engaged in substantial direct discussions and two separate mediations, the second of which was overseen by the Hon. Peter Lichtman (Ret.), former Judge of the Superior Court, Los Angeles County, State of California.

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

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

**WHEREAS**, this Agreement reflects a compromise between the Parties and shall in no event be construed as or be deemed an admission or concession by any Party of the truth, or lack thereof, of any allegation or the validity, or lack thereof, of any purported claim or defense asserted in any of the pleadings or filings in the Actions, any threatened but not yet filed claim, or of any fault on the part of Defendant, and all such allegations are expressly denied. Nothing in this Agreement shall constitute an admission of liability or be used as evidence of liability by or against any Party.

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

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

**1. DEFINITIONS.**

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

**1.1.** “**Actions**” means *Prescod v. Celsius Holdings, Inc.*, LASC No. 19STCV09321 (Los Angeles Cty. Super. Ct.) (“*Prescod*”) and *Hezi v. Celsius Holdings, Inc.*, No. 1:21-cv-9892-VM (SDNY) (“*Hezi*”).

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

**1.3. “Cash Award”** means a cash payment from the Settlement Fund to a Settlement Class Member with an Approved Claim.

**1.4. “Celsius” or “Defendant”** means Celsius Holdings, Inc., the defendant in the Actions.

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

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

**1.5.2. “Claimant”** means any Class Member who submits a Claim Form for the purpose of claiming benefits, in the manner described in Section 4 of this Agreement.

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

**1.5.4. “Claims Deadline”** means the date by which a Claimant must submit a Claim Form to be considered timely. The Claims Deadline shall be sixty (60) calendar days after the Settlement Notice Date.

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

**1.6. “Class” or “Settlement Class”** means all persons in the United States who, between January 1, 2015 and the date of entry of preliminary approval of this Agreement (the “Class Period”), purchased in the United States, for personal or household consumption and not for resale or distribution, one of the Class Products, as defined below. Excluded from the Settlement Class are: (1) the presiding judges in the Actions; (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) counsel for the Parties; and (6) any persons who timely opt-out of the Settlement Class.

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

**1.8. “Class Period”** means January 1, 2015 to the date of entry of preliminary approval of this Agreement.

**1.9. “Class Products” or “Products”** means any Celsius beverage, including the original Celsius beverages (at times labeled “Celsius Live Fit”), Celsius Heat, Celsius BCAA+Energy, and Celsius with Stevia), as well as Celsius On-The-Go and Flo Fusion powdered drinks.

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

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

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

Ryan J. Clarkson  
Bahar Sodaify  
Zachary Chrzan  
Clarkson Law Firm, PC  
22525 Pacific Coast Highway  
Malibu, CA 90265  
Phone: (213) 802-2132

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

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

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

**1.13.3. “Notice Plan”** means the plan for dissemination of Class Notice to be submitted to the Court in connection with a motion for preliminary approval of this Settlement, attached to this Agreement as Exhibit 3

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

**1.14. “Class Representative(s)”** means named plaintiffs Daniel Prescod, Amit Hezi, and Joseph Nina.

**1.15. “Court”** means the United States District Court for the Southern District of New York.

**1.16. “Effective Date”** means the date on which the Judgment becomes final. For purposes of this definition, the Judgment shall become final: (a) if no appeal from the Judgment is filed, the date of expiration of the time for filing or noticing any appeal from the Judgment; or (b) if an appeal from the Judgment is filed, and the Judgment is affirmed or the appeal dismissed, the date on which the latest deadline for seeking discretionary review from any and all higher courts

has passed without such a petition being filed or, if such a petition for discretionary review is filed, the date on which the petition is fully disposed of, either through denial or issuance of a mandate following its granting.

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

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

**1.19. “Final Approval Order”** means the order to be submitted to the Court in connection with a motion for final approval and the Final Approval Hearing, substantially in the form attached hereto as Exhibit 4.

**1.20. “Judgment”** means the Court’s act of entering a final judgment on the docket.

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

**1.21.1. “Label Changes Deadlines”** means the date by which Celsius will remove the statements as specified in Section 5 from the Class Products internally and is set as six (6) months after the date that the Final Approval Order is issued.

**1.21.2. “Label Changes End Date”** means the date through which Celsius will not produce the Class Products with labels that contain the statements specified in Section 5.

**1.22. “Notice and Other Administrative Costs”** means all costs and expenses actually incurred by the Class Administrator in administering the Settlement, including the publication of Class Notice, establishment of the Settlement Website, the processing, handling, reviewing, and paying of claims made by Claimants, and paying taxes and tax expenses related to the Settlement Fund (including all federal, state, or local taxes of any kind and interest or penalties thereon, as well as expenses incurred in connection with determining the amount of and paying any taxes owed and expenses related to any tax attorneys and accountants). All taxes on the income of the Settlement Fund, and any costs or expenses incurred in connection with the taxation of the Settlement Fund shall be paid out of the Settlement Fund, shall be considered to be a Notice and Other Administrative Cost, and shall be timely paid by the Class Administrator without prior order of the Court. The Parties shall have no liability or responsibility for the payment of any such taxes.

**1.23. “Objection Deadline”** means the date by which Class Members must file with the Court a written statement objecting to any terms of the Settlement or to Class Counsel’s request



for fees or expenses. The Parties will request that the Court set the Objection Deadline to be sixty (60) calendar days after the Settlement Notice Date.

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

**1.25. “Party” or “Parties”** means the Class Representatives, on behalf of the Class, and Celsius.

**1.26. “Person”** means any individual, corporation, partnership, association, or any other legal entity.

**1.27. “Plaintiffs”** means the Class Representatives, either individually or on behalf of the Class.

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

**1.29. “Preliminary Approval Order”** means the proposed order to be submitted to the Court in connection with the motion for preliminary approval, substantially in the form attached hereto as Exhibit 5.

**1.30. “Programmatic Relief”** means the relief as set forth in detail in paragraph 5.1 below.

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

**1.32. “Released Claims”** means the claims released by the Class Members via this Agreement.

**1.33. “Released Parties”** means all manufacturers, distributors, retailers, sellers, and resellers of any of the Products, together with each of their direct and indirect parent companies, predecessor entities, successor entities, related companies, direct and indirect subsidiaries, divisions, holding entities, past and present affiliates and banners, franchisees, distributors, wholesalers, retailers, advertising and production agencies, licensors, and agents, including all current and former officers, directors, managers, members, partners, owners, employees, shareholders, consultants, attorneys, legal representatives, insurers, agents, assigns, and other equity interest holders of any of the foregoing, and their heirs, executors, administrators, and assigns.

**1.34. “Releasing Parties”** means Plaintiffs, all Settlement Class Members, and any Person claiming by or through them, including any Person claiming to be their spouse, parent, child, heir, guardian, associate, co-owner, agent, insurer, administrator, devisee, predecessor, successor, assignee, equity interest holders or representatives of any kind (other than Class Counsel), shareholder, partner, member, director, employee or affiliate, and their heirs, executors, administrators, and assigns.

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

**1.36. “Service Award”** means any award approved by the Court that is payable to the Class Representatives from the Settlement Fund.

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

**1.38. “Settlement Fund”** means the qualified settlement fund this Agreement obligates Celsius to fund in the amount of \$7,800,000, which is in the form of a non-reversionary common fund and is established in accordance with 26 C.F.R. §§ 1.468B-1(c) and (e)(1).

**1.39. “Settlement Payment”** means the amount to be paid to valid Claimants as detailed in Section 4.

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

## **2. SETTLEMENT FUND.**

**2.1 Settlement Consideration.** Celsius agrees to establish a non-reversionary common fund of \$7,800,000 (the “Settlement Fund”), which shall be used to pay all Settlement expenses, including Notice and Other Administrative Costs; Fees and Costs Award; Service Awards; and Class Members’ Claims. The Settlement Fund will not include any costs related to the Programmatic Relief. Except for costs related to the Programmatic Relief, Celsius shall not be liable to pay more than the amount of the Settlement Fund or to pay anything apart from the Settlement Fund.

**2.2 Creation and Administration of Qualified Settlement Fund.** The Class Administrator is authorized to establish the Settlement Fund under 26 C.F.R. §§ 1.468B-1(c) and (e)(1), to act as the “administrator” of the Settlement Fund pursuant to 26 C.F.R. § 1.468B-2(k)(3), and to undertake all duties as administrator in accordance with the Treasury Regulations promulgated under § 1.468B of the Internal Revenue Code of 1986. All costs incurred by the Class Administrator operating as administrator of the Settlement Fund shall be construed as costs of



Claims Administration and shall be borne solely by the Settlement Fund. Interest on the Settlement Fund shall inure to the benefit of the Class.

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

**2.3.1 Notice and Other Administrative Costs.** Amounts for the Notice and Other Administrative Costs, to be paid at a time agreed upon between Celsius and the Class Administrator.

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

**2.3.3 Payment of Service Awards and Valid Cash Claims.** An amount equal to \$7,800,000 less the sum of all prior payments made into the Settlement Fund, to be paid seven (7) calendar days after the Effective Date.

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

**3.1. Application for Attorneys' Fees and Costs and Service Awards.** At least thirty (30) calendar days before the Objection Deadline, Class Counsel and Class Representatives shall file a motion, set for hearing on the same date as the Final Approval Hearing, requesting a Fees and Costs Award and Service Awards, to be paid from the Settlement Fund. Class Counsel shall apply for attorneys' fees no greater than one-third of the Settlement Fund. Class Counsel shall also apply for reimbursement of reasonable litigation costs and expenses not to exceed Three Hundred Thousand Dollars (\$300,000). Class Counsel shall apply for a Fees and Costs Award not to exceed Two Million Nine Hundred Thousand Dollars (\$2,900,000). Class Counsel shall also apply for Service Awards to the Class Representatives not to exceed Twenty Thousand Dollars (\$20,000) total.

**3.2. Distribution of Attorneys' Fees and Costs.** The Class Administrator shall pay to Class Counsel from the Settlement Fund the amount of attorneys' fees and costs awarded by the Court within twenty-one (21) calendar days of entry of Judgment, notwithstanding the filing of any appeals, or any other proceedings which may delay the Effective Date of the Settlement or a final Judgment in the case, subject to Class Counsel providing full payment details for Clarkson Law Firm IOLTA account ending in -5363 via routing number and tax ID number for Clarkson Law Firm, PC. Payment of the Fees and Costs Award will be made from the Settlement Fund by wire transfer to Clarkson Law Firm IOLTA ending in -5363 for distribution in accordance with the wire instructions to be provided by Clarkson Law Firm, PC, and completion of necessary forms, including but not limited to Form W-9. Notwithstanding the foregoing, if for any reason, the Fees and Costs Award is overturned, reduced, vacated, or otherwise modified, Class Counsel shall be obligated to return any difference between the amount of the original award and any reduced award. If the Settlement remains in force, the difference shall be returned to the Settlement Fund; if the Settlement is not in force, the difference shall be returned to Celsius.

**3.3. Distribution of Service Awards.** Any Service Award approved by the Court for the Class Representatives shall be paid from the Settlement Fund in the form of a check to the Class Representatives that is sent care of Class Counsel within the earlier of thirty (30) calendar days after the Effective Date, or the date the Class Administrator begins making distributions to Claimants.

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

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

**4.1. General Process.** To obtain monetary relief as part of the Settlement, a Class Member must fill out and submit a Claim Form, completed online or in hard copy mailed to the Class Administrator. The claim made via the Claim Form will proceed through the following general steps as described in Exhibit 6:

**4.1.1.** The Claimant will be asked to provide identifying information. The Claimant will have the opportunity to upload or otherwise provide receipts evidencing his or her purchases.

**4.1.2.** The Claimant will be asked to identify how many cans of Class Products he or she has purchased for personal or household consumption since January 1, 2015 and to certify that such products were purchased for personal or household consumption and not for distribution or resale. With respect to Celsius beverages, the Claimant will receive One Dollar (\$1.00) for every can of Product purchased. For avoidance of doubt, if a Settlement Class Member purchased a four-pack of Products, that Settlement Class Member may submit a claim for having purchased four cans of Products. With respect to Celsius On-The-Go and Flo Fusion powdered drinks, which typically are sold in packages of 14, the Claimant will receive \$5.00 per package of 14.

**4.1.3.** Approved Claims submitted with receipts will be capped at a Cash Award of Two Hundred Fifty Dollars (\$250) per Claimant.

**4.1.4.** Approved Claims submitted without receipts will be capped at a Cash Award of Twenty Dollars (\$20) per Claimant.

**4.2. The Claim Form and Timing.** The Claim Form will be available on the Settlement Website, and may be submitted to the Class Administrator online. A maximum of one Claim Form may be submitted for each Claimant and subsequent Claim Forms received from persons residing

at the same address without receipts will be rejected. Claim Forms must be submitted or postmarked on or before the Claims Deadline to be considered timely. The Claims Deadline shall be clearly and prominently stated in the Preliminary Approval Order, the Class Notice, on the Settlement Website, and on the Claim Form.

**4.3. Substance of the Claim Form.** In addition to information about the number of Class Products as set forth in Paragraph 4.1 above, the Claim Form will request customary identifying information (including the Claimant's name, address, email address, and telephone number), and may seek limited additional information from Claimants to provide reasonable bases for the Class Administrator to monitor for and detect fraud. Such additional information may include, for example, retailers and locations (city and state) at which the Class Products were purchased. The Claim Form also will require the Claimant to declare that the Class Products were not purchased for resale or distribution. In addition, the Claim Form will require the Claimant to declare that the information provided is true and correct to the best of the Claimant's memory and understanding.

**4.4. Claim Validation.** The Class Administrator shall be responsible for reviewing all claims to determine their validity. The Class Administrator shall reject any Claim that does not comply in any material respect with the instructions on the Claim Form or with the terms of this Section 4, that is submitted after the Claims Deadline, or that the Class Administrator identifies as fraudulent. The Class Administrator shall retain sole discretion in accepting or rejecting claims.

**4.5. Pro Rata Adjustment of Cash Awards.** If the total value of all approved Claims either exceeds or falls short of the funds available for distribution to Class Members, then the amounts of the cash payments will be reduced or increased pro rata, as necessary, to use all of the funds available for distribution to Class Members. Any such pro rata adjustment will be calculated prior to distribution of funds (*i.e.*, will be made in a single distribution). Any pro rata upward adjustment shall be capped at two times the claimed amount. For avoidance of doubt, this means that under no circumstances shall a person who submits a claim with receipts for \$250 or more in purchases receive more than \$500, or a person who submits a claim without receipts for \$20 or more in purchases receive more than \$40.

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

**4.7. Uncleared Payments: Cy Pres.** Those Class Members whose payments are not cleared within one hundred and eighty (180) calendar days after issuance will be ineligible to receive a cash settlement benefit and the Class Administrator will have no further obligation to make any payment from the Settlement Fund pursuant to this Settlement Agreement or otherwise to such Class Member. Any funds that remain unclaimed or remain unused after the initial distribution, including 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. If the organization(s) is/are not acceptable to the Court, the parties shall meet and confer in good faith, and consult with the Court, to identify one or more suitable alternatives.

**4.8. Taxes on Distribution.** Any person that receives a Cash Award will be solely responsible for any taxes or tax-related expenses owed or incurred by that person by reason of that Award. Such taxes and tax-related expenses will not be paid from the Settlement Fund. In no event will Celsius, the Class Representatives, Class Counsel, the Class Administrator, or any of the other Released Parties have any responsibility or liability for taxes or tax-related expenses arising in connection with the issuance of Cash Awards or other payments made from the Settlement Fund to Class Representatives, Settlement Class Members, or any other person or entity.

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

## **5. PROGRAMMATIC RELIEF.**

**5.1. Programmatic Relief.** No later than the Label Changes Deadline of six (6) months after the Effective Date, Celsius shall adopt new Labeling for the Products substantially similar to the sample labeling attached hereto as Exhibit 7. From that point forward, Defendant shall not produce Products with the prior Labeling challenged in the Actions. Among other things, the new Labeling reflected in Exhibit 7 does not contain a representation that the Product contains no preservatives, changes other marketing statements respecting the Product, and adopts a “nutrition facts panel” as opposed to the current Products’ use of a “dietary supplement” label. Defendant agrees to use the new Labeling for a period of at least three years from the adoption of the new Labeling (“Restricted Period”), except that in the event of a change of majority ownership of Defendant, this requirement will not be binding on a successor owner. During that period of no less than three years, commencing on the date that Celsius first ships products with the new Labeling, Defendant may adopt changes to the Labeling of the Products, but such changes (i) shall not include a representation that the Products contain “no preservatives” unless the formulation of the subject Product changes in a manner warranting such a representation; and (ii) shall not restore any other claim respecting the Products removed from the current labeling unless the formulation of the subject Product changes in a manner warranting such a claim. During the time period intervening the Label Changes Deadline and the Label Changes End Date, in addition to maintaining the revised Labeling, Defendant shall not advertise the Products inconsistently with (or containing representations removed from) the revised Labeling.

**5.1.1. Exhaustion of Inventory.** For the avoidance of doubt, the Released Parties, including Defendant, (i) shall be permitted to continue packaging newly produced units of the Products using the current version of the Products’ Labeling, to the extent such labels remain in Defendants’ inventory; (ii) shall be permitted to sell existing Product inventory and Products manufactured prior to the commencement of the Restricted Period in the ordinary course of business; (iii) shall not be required to withdraw, destroy, or recall any Products in connection with the Programmatic Relief described herein; and (iv) shall not be obligated to modify or replace existing promotional materials already in the hands of third parties.

**5.1.2.** If, after Defendant has effectuated the label change to remove the challenged statements, Class Representatives believe the Labeling of any Product does not comply with this section, Class Representatives shall provide written notice to Defendant of the specific facts and circumstances of any alleged noncompliance and discuss in good faith with Defendant appropriate changes, if any, to the then-existing Labeling; to the extent agreed, Defendant will then have one hundred twenty (120) calendar days from the date of such agreement to bring its practices into compliance with this Section 5.1 and will not be deemed to be in breach of this Agreement if it does so within such 120-day period. If no agreement is reached, Class Counsel may apply to the Court to enforce the Agreement and may seek an award of fees in the event of a successful enforcement effort.

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

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

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

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

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

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

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

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

**6.1.7.** Establishing a Settlement Website;

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

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

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

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

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

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

**6.3. Timing of Class Notice.** Class Notice will commence no later than twenty-one (21) calendar days following entry of the Preliminary Approval Order (“Settlement Notice Date”).

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

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

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

**6.5.2. Form of Written Objection.** Any objection regarding or related to the Settlement must contain (i) a caption or title that clearly identifies the Action and that the document is an objection, (ii) information sufficient to identify and contact the objecting Class Member or his or her attorney if represented, (iii) information sufficient to establish the person’s standing as a Settlement Class Member, (iv) a clear and concise statement of the Class Member’s objection, as well as any facts and law supporting the objection, (v) identification of the case name, case number, and court for any prior class action lawsuit in which the objector and the objector’s attorney (if applicable) has objected to a proposed class action settlement, the general nature of such prior objection(s), and the outcome of said prior objection(s), (vi) the objector’s signature, and (vii) the signature of the objector’s counsel, if any (the “Objection”). The Court may, but is not required to, hear Objections in substantial compliance with these requirements, so Settlement Class Members should satisfy all requirements.

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



or execute a separate declaration stating that the Class Member authorizes the filing of the Objection.

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

**6.5.5. Appearance at Final Approval Hearing.** Objecting Class Members may appear at the Final Approval Hearing and be heard. If an objecting Class Member chooses to appear at the Final Approval Hearing, a notice of intention to appear must be filed with the Court or postmarked no later than the Objection Deadline.

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

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

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

## **7. COURT APPROVAL.**

**7.1. Preliminary Approval.** By December 1, 2022, unless otherwise agreed in writing, Plaintiffs will submit to the Court this Agreement, and will request via unopposed motion that the Court enter the Preliminary Approval Order in substantially similar form as the proposed order attached as Exhibit 5. In the motion for preliminary approval, Plaintiffs will request that the Court grant preliminary approval of the proposed Settlement, provisionally certify the Class for settlement purposes and appoint Class Counsel, approve the forms of Notice and find that the Notice Plan satisfies Due Process, and schedule a Final Approval Hearing to determine whether the Settlement should be granted final approval, whether an application for attorneys' fees and costs should be granted, and whether an application for service awards should be granted.

**7.2. Final Approval.** A Final Approval Hearing to determine final approval of the Agreement shall be scheduled as soon as practicable, subject to the calendar of the Court, but no sooner than one hundred twenty (120) calendar days after the Preliminary Approval Date. If the Court issues the Preliminary Approval Order and all other conditions precedent of the Settlement have been satisfied, no later than twenty-five (25) calendar days before the Final Approval Hearing and fourteen (14) calendar days after the Objection Deadline all Parties will request, individually or collectively, that the Court enter the Final Approval Order in substantially similar form as the proposed order attached as Exhibit 4, with Class Counsel filing a memorandum of points and

authorities in support of the motion. Celsius may, but is not required to, file a memorandum in support of the motion.

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

## **8. RELEASE.**

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

**8.2. Scope of Release.** The Releasing Parties hereby fully release and forever discharge the Released Parties from any and all actual, potential, filed, known or unknown, fixed or contingent, claimed or unclaimed, suspected or unsuspected, asserted or unasserted, claims, demands, liabilities, rights, debts, obligations, liens, contracts, agreements, judgments, actions, suits, causes of action, contracts or agreements, extra-contractual claims, damages, punitive, exemplary or multiplied damages, expenses, costs, penalties, fees, attorneys' fees, and/or obligations of any nature whatsoever (including "Unknown Claims" as defined below), whether at law or in equity, accrued or unaccrued, whether previously existing, existing now or arising in the future, whether direct, individual, representative, or class, of every nature, kind and description whatsoever, based on any federal, state, local, statutory or common law or any other law, rule or regulation, including the law of any jurisdiction outside the United States, against the Released Parties, or any of them, relating in any way to any conduct prior to the date of the Preliminary Approval Order and that: (a) is or are based on any act, omission, inadequacy, misstatement, representation (express or implied), harm, matter, cause, or event related to any Product; (b) involves legal claims related to the Products that have been asserted in the Actions or could have been asserted in the Actions; or (c) involves the advertising, marketing, promotion, purchase, sale, distribution, design, testing, manufacture, application, use, performance, warranting, packaging or Labeling of the Products (collectively, the "Released Claims"). The Parties acknowledge and agree

that bodily injury, wrongful death, and/or emotional distress claims arising from bodily injury, are not part of any of the facts alleged by Class Representatives and that such claims are not included within the Released Claims.

**8.3. Waiver.** Without limiting the foregoing, the Released Claims specifically extend to and include claims related to the Products that the Releasing Parties do not know or suspect to exist in their favor at the time that the Settlement, and the releases contained herein, becomes effective, including, without limitation, any Released Claim that if known, might have affected the Plaintiffs' settlement with and release of the Releasees, or might have affected a decision not to object to or Opt-Out of this Settlement (the "Unknown Claims"). This paragraph constitutes a waiver of, without limitation as to any other applicable law, section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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

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

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

**8.7. Covenant Not to Sue.** Plaintiffs agree and covenant, and each Class Member who has not opted out will be deemed to have agreed and covenanted, not to sue any of Released Parties, with respect to any of the Released Claims, or otherwise to assist others in doing so, and agree to be forever barred from doing so, in any court of law or equity, or any other forum.

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

## **9. TERMINATION.**

**9.1. Celsius's Option to Terminate.** If more than 1,000 Class Members opt out, Celsius has the right in its sole discretion, but not the obligation, to terminate the Settlement Agreement and revert to the status quo ante, provided, however, that (i) the time for Celsius to exercise this right shall expire fifteen (15) calendar days after the Opt-Out Deadline, and (ii) Celsius may only exercise the option after meeting and conferring in good faith with Class Counsel.

## **10. NO ADMISSION OF LIABILITY.**

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

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

**11.1. Celsius's Position on the Conditional Certification of Settlement Class.** Celsius disputes that class certification in this Action was proper and maintains that the decision to certify a class in *Prescod* would be reversed either by the *Prescod* court prior to or after trial, or on appeal. Solely for purposes of avoiding the expense and inconvenience of further litigation, Celsius does not oppose the certification of the Class for the purposes of this Settlement only. Preliminary certification of the Class will not be deemed a concession that certification of a litigation class or subclass is appropriate, nor will Celsius be precluded from challenging class certification in further proceedings in this Action or in any other action if the Settlement Agreement is not finalized or finally approved. If the Settlement Agreement is not finally approved by the Court for any reason whatsoever, and said failure to obtain final approval is conclusive after any and all appeals, Celsius' stipulation to certification only for purposes of effectuating this Settlement will be automatically rescinded, and no doctrine of waiver, estoppel, or preclusion will be asserted in any litigated certification proceedings in this Action or any other judicial proceeding. No agreements made by or entered into by Celsius in connection with the Settlement Agreement may be used by Plaintiffs, any Class Member, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in this Action or any other judicial proceeding. In such event, the first amended complaint shall be deemed withdrawn and the original complaint shall be deemed the operative complaint when litigation resumes.

**12. MISCELLANEOUS.**

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

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

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

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

***If to Class Representatives or Class Counsel***

Ryan Clarkson  
*rclarkson@clarksonlawfirm.com*  
Clarkson Law Firm, P.C.  
25525 Pacific Coast Highway  
Malibu, CA 90265

***If to Celsius or Defense Counsel***

Jeffrey S. Jacobson  
*Jeffrey.Jacobson@faegredrinker.com*  
Faegre Drinker Biddle & Reath LLP  
1177 Avenue of the Americas  
New York, New York 10036

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

**12.6. Binding on Successors.** This Agreement shall be binding upon and inure to the benefit of the heirs, successors, assigns, executors, and legal representatives of the Parties to the Agreement and the released Parties and persons.

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

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

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



assigns. All Released Parties other than Defendant, which are Parties, are intended to be third-party beneficiaries of this Agreement.

**12.10. Evidentiary Preclusion.** The Parties agree that, to the fullest extent permitted by law, neither this Agreement nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of this Agreement or the Settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any claim or of any wrongdoing or liability of the Released Parties; or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any Released Party or the appropriateness of class certification in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. In addition, any failure of the Court to approve the Settlement and/or any objections or interventions may not be used as evidence in the Action or any other proceeding for any purpose whatsoever. However, the Released Parties may file this Agreement and Final Approval Order in any action or proceeding that may be brought against them in any jurisdiction to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

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

**12.12. Arms'-Length Negotiations.** This Agreement compromises claims that are contested, and the Parties agree that the consideration provided to the Class and other terms of this Agreement were negotiated in good faith and at arms' length by the Parties, and reflect an Agreement that was reached voluntarily, after consultation with competent legal counsel, and guided in part by the Parties' private mediations with two respected former judges of the Superior Court of Los Angeles County, most recently, the Honorable Judge Peter Lichtman (Ret.) of Signature Resolution.

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

**12.14. Publicity.** Until the Settlement is finally approved by the Court, the Parties and their counsel will not make any public statements about this Settlement inconsistent with announcements made in Celsius' 8-K and the Parties' Joint Notices of Settlement filed with the Court.

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

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

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

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

**12.19. Non-assignment.** Plaintiffs represent and warrant, severally and not jointly, that no portion of any claim, right, demand, action, or cause of action against any of the Released Parties that Plaintiffs have or may have arising out of the Action or pertaining to their purchase and/or use of the Products and/or the design, manufacture, testing, marketing, Labeling, packaging, or sale of the Product otherwise referred to in this Agreement, and no portion of any recovery or settlement to which Plaintiffs may be entitled, has been assigned, transferred, or conveyed by or for Plaintiffs in any manner; and no Person other than Plaintiffs have any legal or equitable interest in the claims, demands, actions, or causes of action referred to in this Agreement as those of Plaintiffs themselves.

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

**12.21. Stay Pending Court Approval.** Plaintiffs' Counsel and Defendant's Counsel agree to stay all proceedings in the Actions, other than those proceedings necessary to carry out or

enforce the terms and conditions of the Settlement, until the Effective Date of the Settlement has occurred. If, despite the Parties' best efforts, this Agreement should fail to become effective, the Parties will return to their prior positions in the Actions.

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

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

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

**12.25. Modification in Writing Only.** This Agreement and any and all parts of it may be amended, modified, changed, or waived only by a writing signed by duly authorized agents of Celsius and Plaintiffs.

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

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

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

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

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

Dated: 11/17/2022  
\_\_\_\_\_

*Amit Hezi*

Amit Hezi

Dated: 11/17/2022  
\_\_\_\_\_

*Joseph Nina*

Joseph Nina

Dated: 11/17/2022  
\_\_\_\_\_

*Daniel Prescod*

Daniel Prescod

Dated: 11/21/2022  
\_\_\_\_\_

DocuSigned by:

*Jarrold Langhans*

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Celsius Holdings, Inc.

By: Jarrold Langhans

Its: CFO

**APPROVED AS TO FORM:**

11/17/2022

DATED: November \_\_, 2022

**CLARKSON LAW FIRM, P.C.**

*Ryan Clarkson*

Ryan J. Clarkson

Bahar Sodaify

Zachary Chrzan

*Attorneys for Plaintiffs and the  
Settlement Class*

**FAEGRE DRINKER BIDDLE &  
REATH LLP**

DATED: November \_\_, 2022

Jeffrey S. Jacobson

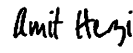
Lawrence G. Scarborough

Tarifa B. Laddon

Maria S. Downham

*Attorneys for Defendant*

Dated: 11/17/2022

  
AMIT MEZI

Dated: 11/17/2022

  
JOSEPH NIMA

Dated: 11/17/2022

  
DANIEL P. RESCUU

Dated: \_\_\_\_\_


\_\_\_\_\_  
Celsius Holdings, Inc.  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

**APPROVED AS TO FORM:**

11/17/2022

DATED: November \_\_\_\_, 2022

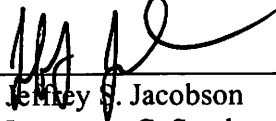
**CLARKSON LAW FIRM, P.C.**

  
Ryan S. Clarkson  
Bahar Sodaify  
Zachary Chrzan

*Attorneys for Plaintiffs and the  
Settlement Class*

DATED: November 18, 2022

**FAEGRE DRINKER BIDDLE &  
REATH LLP**

  
Jeffrey S. Jacobson  
Lawrence G. Scarborough  
Tarifa B. Laddon  
Maria S. Downham

*Attorneys for Defendant*