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8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN DIEGO

11 MARCY KRINSK *et al.*, Individually and on
Behalf of All Others Similarly Situated,

12 Plaintiffs,

13 v.

14 MONSTER BEVERAGE CORPORATION, a
15 Delaware corporation, MONSTER ENERGY
COMPANY, a Delaware corporation, f/k/a
16 Hansen Beverage Company, and DOES 1
through 50, inclusive,

17 Defendants.
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Case No. 37-2014-20192-CU-BT-CTL

**DEFENDANT MONSTER ENERGY
COMPANY'S ANSWER TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT**

Judge: Hon. Joel R. Wohlfeil
Courtroom: C-73

Complaint filed: June 19, 2014
FAC filed: March 10, 2015

1 Defendant Monster Energy Company (“Monster Energy”) answers as follows, for itself
2 alone, the allegations set forth in Plaintiffs Marcy Krinsk, Chayla Clay, and Mayan Mooney’s
3 unverified First Amended Complaint (“FAC”).

4 **GENERAL DENIAL**

5 In accordance with section 431.30 of the California Code of Civil Procedure, Monster
6 Energy denies generally and specifically each and every allegation in the FAC, and further denies
7 that Plaintiffs have been damaged in the amounts alleged or in any other amount, or that Plaintiffs
8 are, were or will be entitled to any of the relief sought in the FAC. Monster Energy further denies
9 that class certification is appropriate or warranted in this case. Monster Energy further contends
10 that Plaintiff Marcy Krinsk cannot resolve the conflict of interest between herself, putative class
11 counsel (her husband’s law firm), and absent members of the putative class by proceeding in this
12 case in her individual capacity.

13 **AFFIRMATIVE DEFENSES**

14 Without undertaking any burden of proof not otherwise assigned to it by law or equity,
15 Monster Energy asserts the following separate and affirmative defenses to the purported causes of
16 action alleged against it by Plaintiffs. All such defenses are pled in the alternative, do not
17 constitute an admission of liability, and do not entitle Plaintiffs or the putative class to any relief
18 whatsoever through the FAC.

19 **FIRST AFFIRMATIVE DEFENSE**

20 **(Lack of Standing)**

21 The claims are barred, in whole or in part, because Plaintiffs and the putative class lack
22 standing to assert any or all of the causes of action alleged in the FAC, including, but not limited
23 to, because they have sustained no damages, and if they have sustained damages, such damages
24 were not related to or caused by Monster Energy’s conduct.

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SECOND AFFIRMATIVE DEFENSE

(Consent or Authorization)

Plaintiffs expressly or by their conduct approved, authorized, ratified, permitted, voluntarily agreed to, or consented to the conduct alleged in the FAC. Accordingly, Plaintiffs are barred from recovery.

THIRD AFFIRMATIVE DEFENSE

(Satisfaction of Guarantees, Representations, and/or Warranties)

If any warranty, guarantee, or other representation with respect to any of the products involved in this case was made by Monster Energy, then each such warranty, guarantee, or representation was fully satisfied.

FOURTH AFFIRMATIVE DEFENSE

(Waiver, Laches, or Estoppel)

The claims are barred, in whole or in part, by the doctrines of waiver, laches, and/or estoppel.

FIFTH AFFIRMATIVE DEFENSE

(No Entitlement to Damages)

Plaintiffs and the putative class are barred from any recovery because Plaintiffs cannot show that they or members of the putative class are entitled to damages as a result of any acts or omissions by Monster Energy. Plaintiffs' claim for restitution is further barred because the amount of damages, if any, is speculative, and because of the impossibility of ascertaining and allocating these alleged damages.

SIXTH AFFIRMATIVE DEFENSE

(Unjust Enrichment/Offset)

Plaintiffs are barred from recovery to the extent they would be unjustly enriched by any recovery. As such, any claims for damages or other monetary relief must be offset and reduced by the value received.

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SEVENTH AFFIRMATIVE DEFENSE

(Preemption)

The claims should be dismissed, in whole or in part, by reason of express, implied, and field preemption by the Food, Drug, and Cosmetic Act, 21 U.S.C. § 341, *et seq.*

EIGHTH AFFIRMATIVE DEFENSE

(Primary Jurisdiction)

The claims are barred, in whole or in part, pursuant to the doctrine of primary jurisdiction because the labeling claims raise issues that should be addressed in the first instance by the United States Food and Drug Administration. The acts at issue are subject to direct, comprehensive federal government regulation.

NINTH AFFIRMATIVE DEFENSE

(Good Faith/Bona Fide Error)

The claims against Monster Energy are barred, in whole or in part, because Monster Energy acted reasonably and in good faith at all times relevant to the FAC. The claims are further barred because, although Monster Energy denies each and every claim and denies that it engaged in wrongdoing of any kind, any alleged error on Monster Energy's part was a bona fide error notwithstanding Monster Energy's use of reasonable procedures to avoid any such error.

PRAYER FOR RELIEF

WHEREFORE, Monster Energy requests the following relief:

1. That Plaintiffs take nothing by their FAC;
- 2, That judgment be rendered in favor of Monster Energy;
3. That the Court award Monster Energy its reasonable costs, expenses, and attorneys' fees incurred in defense of this action; and
4. For such other and further relief as the Court deems just and proper.

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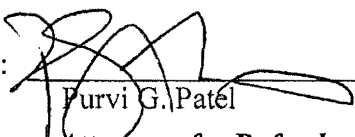
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DEMAND FOR JURY TRIAL

Monster Energy hereby demands a jury trial on all issues raised in this action upon which a jury trial is permitted.

Dated: April 9, 2015

MORRISON & FOERSTER LLP

By: 
Purvi G. Patel
*Attorneys for Defendant
Monster Energy Company*