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MONSTER BEVERAGE CORPORATION

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 BEVERAGE  
CORPORATION'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 Beverage Corporation (“MBC”), a holding company that conducts no  
2 operating business, answers as follows, for itself alone, the allegations set forth in Plaintiffs  
3 Marcy Krinsk, Chayla Clay, and Mayan Mooney’s unverified First Amended Complaint  
4 (“FAC”). Plaintiffs have improperly named MBC as a defendant in this case.

5 **GENERAL DENIAL**

6 In accordance with section 431.30 of the California Code of Civil Procedure, MBC denies  
7 generally and specifically each and every allegation in the FAC, and further denies that Plaintiffs  
8 have been damaged in the amounts alleged or in any other amount, or that Plaintiffs are, were or  
9 will be entitled to any of the relief sought in the FAC. MBC further denies that class certification  
10 is appropriate or warranted in this case. MBC further contends that Plaintiff Marcy Krinsk cannot  
11 resolve the conflict of interest between herself, putative class counsel (her husband’s law firm),  
12 and absent members of the putative class by proceeding in this 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 MBC asserts the following separate and affirmative defenses to the purported causes of action  
16 alleged against it by Plaintiffs. All such defenses are pled in the alternative, do not constitute an  
17 admission of liability, and do not entitle Plaintiffs or the putative class to any relief whatsoever  
18 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 MBC’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 MBC, 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 MBC. 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 MBC are barred, in whole or in part, because MBC acted reasonably and in good faith at all times relevant to the FAC. The claims are further barred because, although MBC denies each and every claim and denies that it engaged in wrongdoing of any kind, any alleged error on MBC's part was a bona fide error notwithstanding MBC's use of reasonable procedures to avoid any such error.

**PRAYER FOR RELIEF**

WHEREFORE, MBC requests the following relief:

1. That Plaintiffs take nothing by their FAC;
2. That judgment be rendered in favor of MBC;
3. That the Court award MBC 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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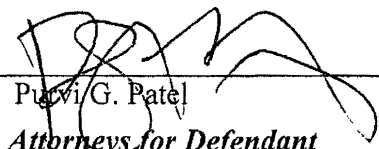
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**DEMAND FOR JURY TRIAL**

MBC 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:   
Pooji G. Patel  
*Attorneys for Defendant  
Monster Beverage Corporation*