

1 AZRA Z. MEHDI (220406)
2 THE MEHDI FIRM
3 9107 Wilshire Blvd., Suite 450
4 Beverly Hills, CA 90210
5 Telephone: (310) 853-8010
6 Facsimile: (310) 853-8011
7 azram@themehdifirm.com
8 Attorney for Plaintiff and the [Proposed] Class

2012 DEC 12 PM 1:12
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

FILED

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11 ALEC FISHER, Individually and on) Case No.: **EDCV12 - 02188 VAP (OPx)**
12 Behalf of All Others Similarly Situated,) Class Action
13)
14 Plaintiff,) COMPLAINT
15 vs.)
16) DEMAND FOR JURY TRIAL
17 MONSTER BEVERAGE)
18 CORPORATION, MONSTER ENERGY)
19 COMPANY, and DOES 1-20, inclusive,)
20)
21 Defendants.)
22
23
24
25
26
27
28

Paid
ILS-21

1 Plaintiff, Alec Fisher, by and through the undersigned counsel, brings this
2 consumer class action both individually and on behalf of all others similarly
3 situated, against defendants Monster Beverage Corporation ("MBC") and Monster
4 Energy Company ("MEC") (collectively, "Defendants" or the "Company").
5 Plaintiff's allegations are based on information and belief formed after an inquiry
6 reasonable under the circumstances and are likely to have evidentiary support after
7 reasonable opportunity for further investigation and discovery, except where
8 specifically so identified as being based on personal knowledge:

9 **NATURE OF THE ACTION**

10 1. This is a consumer class action seeking redress for Defendants' unfair
11 and deceptive business and trade practices on behalf of anyone who purchased for
12 personal consumption any of the Monster-branded energy drinks, including any of
13 the following ("Monster Energy Drinks"):

14 Monster Energy®	Java Monster® Kona Blend
15 Lo-Carb Monster Energy®	Java Monster® Loca Moca®
16 Monster Energy® Assault®	Java Monster® Mean Bean®
17 Monster Khaos®	Java Monster® Vanilla Light
18 Monster M-80®	Java Monster® Irish Blend®
19 Monster MIXXD®	Java Monster® Toffee
20 Monster Energy® Absolutely Zero	Monster Energy Extra Strength
21 Monster Energy® Import	Nitrous Technology® Super Dry™
22 Monster Energy® Import Light	Monster Energy Extra Strength
23 Monster Energy® Dub Edition	Nitrous Technology® Anti-Gravity®
24 Monster Rehab™ Tea + Lemonade	Monster Energy Extra Strength
25 + Energy	Nitrous Technology® Killer B®
26 Monster Rehab™ Rojo Tea +	
27 Energy	
28 Monster Rehab™ Green Tea +	Monster Energy Extra Strength
	Nitrous Technology® Black Ice™
Monster Rehab™ Protean + Energy	
Monster Energy® M3™ Super	X-Presso Monster® Hammer
Concentrate	
	X-Presso Monster® Midnite

1 2. The Company develops, markets, sells, and distributes beverages and
2 soft drinks in the United States and internationally. Defendants falsely or
3 misleadingly label, market and advertise for sale a highly caffeinated concoction –
4 the Monster Energy Drinks – as if it were a conventional beverage or food.

5 3. The Company does not disclose the caffeine content in its drinks and
6 has chosen to categorize the Monster Energy Drinks as a “dietary supplement,”
7 rather than as a beverage or as a conventional food item. The Company’s own
8 public filings, however, do not describe the Monster Energy Drinks as a dietary
9 supplement, but rather indicate that it is a “carbonated energy *drink*.” As detailed
10 further below, such labeling, marketing and advertising is an attempt to circumvent
11 the safety standards applicable to food and beverage additives and creates a false
12 perception by the consumer that these products are safe.

13 4. Monster Energy Drinks, in fact, contain a dangerously high amount of
14 caffeine that have never been subjected to any kind of pre-market review by any
15 regulatory authority prior to them being put in the stream of commerce. Numerous
16 scientific studies have shown that the consumption of large amounts of caffeine, in
17 combination with other active ingredients like guarana, taurine, carnitine, sugar,
18 among others, by youth and adolescents can have serious health consequences.
19 Yet, Defendants knowingly or with reckless indifference, market, advertise and sell
20 Monster Energy Drinks as completely safe via playful/seductive advertising
21 designed to attract pre-teens and teens and via product placement.

22 5. Notwithstanding the high caffeine levels in Monster Energy Drinks
23 and the scientific evidence of serious health risks these levels may pose for
24 adolescents and youth, Defendants’ advertising, marketing and promotions
25 expressly target the 13 to 21-age group. Defendants intend to and do, in fact,
26 capture teenagers and other youth by designing and disseminating their marketing
27 campaigns to specifically target and attract such youth. Yet, defendants’
28

1 advertising and labeling fails miserably at providing any warning regarding the
2 dangers of frequent or excessive consumption of caffeine to this very same group
3 that they target. As a result of the false and misleading labeling, marketing and
4 advertising, and failure to warn of risks, the Company has profited immensely
5 from its Monster Energy Drinks' sales, capturing almost 35% of the market share
6 and generating sales of almost \$2 billion annually in 2011.

7 JURISDICTION AND VENUE

8 6. This Court has jurisdiction over all the causes of action asserted
9 herein. The Court has jurisdiction over the Magnuson-Moss Warranty Act
10 ("MMWA") claim pursuant to 28 U.S.C. §1331 because a federal question is
11 involved and pursuant to 15 U.S.C. §2310(d) because (a) the amount in
12 controversy of any individual claim is less than the sum or value of \$25.00; (b) the
13 amount in controversy is greater than the sum or value of \$50,000 computed on the
14 basis of all claims in the suit; and (c) the number of plaintiffs is more than 100.
15 The Court has supplemental jurisdiction over state law claims under 28 U.S.C.
16 §1367(a) as claims herein arise under the same set of facts comprising a single case
17 or controversy.

18 7. This Court has jurisdiction over the subject matter presented by this
19 complaint because it is a class action arising under the Class Action Fairness Act
20 of 2005 ("CAFA"), 28 U.S.C. §1332, *et seq.*, which explicitly provides for the
21 original jurisdiction of the federal courts over any class action in which any
22 member of the plaintiff class is a citizen of a state different from any defendant,
23 and in which the matter in controversy exceeds in the aggregate the sum of \$5
24 million, exclusive of interest and costs.

25 8. More than two-thirds of the members of the class are citizens of a
26 state other than California and, as set forth below, the Company is a citizen of
27
28

1 California. Therefore, diversity of citizenship exists under CAFA, as required by
2 28 U.S.C. §1332(d)(2)(A).

3 9. The total claims of the individual members of the class in this action
4 are in excess of \$5 million in the aggregate, exclusive of interest and costs, as
5 required by 28 U.S.C. §1332(d)(2), (6).

6 10. As stated above, more than two-thirds of all of the members of the
7 proposed class in the aggregate are citizens of a state other than California, where
8 this action was originally filed, and the total number of members of the proposed
9 class is greater than 100, pursuant to 28 U.S.C. §1332(d)(5)(B).

10 11. The Court has personal jurisdiction over Defendants because they
11 have purposefully availed themselves of the privilege of conducting business
12 within the State of California by marketing, advertising and selling the Monster
13 Energy Drinks to plaintiff and members of the proposed class, as well as generally
14 maintaining systematic and continuous business contacts within the State of
15 California.

16 12. Venue is proper pursuant to 28 U.S.C. §1391(a) because the Company
17 conducts substantial business in this District, has sufficient minimum contacts with
18 this District, and otherwise purposely avails itself of the markets in this District,
19 through the promotion, sale, marketing and administration of its products in this
20 District. Filed concurrently with this Complaint is the Declaration of Azra Z.
21 Mehdi Pursuant to California Civil Code Section 1780(c) of the Consumer Legal
22 Remedies Act, Cal. Civ. Code §1750, *et seq.*, which is incorporated by reference
23 herein.

24 13. California has numerous contacts with the conduct alleged herein and
25 a strong interest in applying its laws to that conduct. The Company is found, does
26 business or transacts business within California. The Company maintains its
27 principal offices, as well as agents, in California and is licensed to do, has done,
28

1 and continues to do business in California. Defendants' advertising, marketing,
2 pricing, sales and distribution operations for their Monster-branded energy drinks
3 sold throughout the United States, which form the basis of this litigation,
4 originated from and/or are controlled by, Defendants' offices in California. In
5 addition, the Company directly advertised, marketed and sold its energy drinks to
6 consumers in California as well as the other states in the country. As such,
7 California's interest in applying California law in this litigation outweighs any
8 interests other states or their laws may have.

9 **PARTIES**

10 14. Plaintiff Alec Fisher is a citizen of California who currently resides in
11 Baltimore, Maryland. Plaintiff has been purchasing and consuming a variety of the
12 Monster Energy Drinks for the past five (5) years, since he was about 16 years old.
13 Mr. Fisher has consumed the original Monster Energy Drink with the green tab and
14 the Lo-Carb version most frequently. At various times, he also has consumed
15 Absolutely Zero, Mixxed, Assault, Khaos as well as a number of other varieties
16 depending on what was available at the store. Going back five years, Mr. Fisher
17 consumes an average of two to three cans per week, with that number going up
18 significantly during the weeks prior to and during exams, as well as on the
19 weekends. Mr. Fisher first tried Monster Energy Drinks when he was a junior in
20 high school. The Company was parked outside his high school in trucks handing
21 out free cans of Monster Energy Drinks to everyone. Mr. Fisher believed that
22 Monster Energy Drinks were safe for consumption by persons of all ages since the
23 guys in the Monster Energy Drink truck were not asking kids how old they were
24 prior to handing out the Monster Energy Drinks. Further, Mr. Fisher saw nothing
25 on the labeling of the Monster Energy Drink can that would lead him to believe
26 that drinking the Monster Energy Drink could be bad for his health. Had Mr.
27 Fisher known these facts, he would not have accepted Defendants' freebie cans or
28

1 subsequently continued to purchase and consume Monster Energy Drinks for years
2 after.

3 15. Defendant Monster Beverage Corporation, f/k/a Hansen Natural
4 Corporation, is a Delaware corporation with its principal place of business at 550
5 Monica Circle, Suite 201, Corona, California 92880. MBC is a publicly traded
6 company whose stock trades on the NASDAQ under the ticker symbol MNST.
7 MBC's business is listed under the Consumer Goods category and identifies its
8 operations as falling in the beverage and soft drink industry. MBC is a holding
9 company that carries no operating business, except through its wholly owned
10 subsidiaries. MBC through its subsidiaries, develops, markets, sells, and
11 distributes alternative beverage category beverages in the United States and
12 internationally.

13 16. Defendant Monster Energy Company, f/k/a Hansen Beverage
14 Company, is a Delaware corporation with its principal place of business at 550
15 Monica Circle, Suite 201, Corona, California 92880. MEC is a wholly owned
16 subsidiary of MBC. MEC produces and distributes a variety of sodas, fruit juices,
17 teas, energy drinks and waters. MEC conducts substantially all of MBC's
18 operating business and generates substantially all of the Company's operating
19 revenues.

20 17. The Company was engaged in and continues to be engaged in and
21 responsible for the design, manufacture, production, testing, study, inspection,
22 mixture, labeling, marketing, advertising, sales, promotion, and/or distribution of
23 variety of Monster Energy Drinks under the brand "Monster," as described in ¶1,
24 *supra*.

25 18. Plaintiff is currently unaware of the true names, capacities, or basis
26 for liability of defendants Does 1 through 20, inclusive, and therefore sues said
27 defendants by their fictitious names. Does 1-20 are individuals, associations or
28

1 corporations who/that are affiliated or related to the Company, who will be
2 specifically identified and named as discovery progresses and their roles in the
3 wrongdoing at issue is revealed. At all times mentioned in the Counts alleged
4 herein, each and every defendant was an agent, representative, affiliate, or
5 employee of each and every other defendant, and in doing the things alleged in the
6 Counts stated herein, each and every defendant was acting within the course and
7 scope of such agency, representation, affiliation, or employment and was acting
8 with the consent, permission and authorization of the other defendants. During the
9 relevant time period, defendants agreed to misrepresent to the class members the
10 material facts at issue herein and/or not to notify class members about the scope
11 and nature of the illegal business practices as detailed herein, thus engaging in a
12 conspiracy that resulted in injury in fact to members of the class, which conspiracy
13 is still on-going. All actions of each defendant, as alleged in the Counts stated
14 herein, were ratified and approved by the other defendants or their respective
15 directors, officers and/or managing agents, as appropriate for the particular time
16 period alleged herein. Plaintiff is informed and believes, and on that basis alleges,
17 that defendants Does 1 through 20, inclusive, and each of them, are in some
18 manner liable to Plaintiff, and/or are proper and necessary parties to this action in
19 light of the relief requested. Plaintiff will amend the Complaint (if necessary) to
20 allege their true names, capacities or basis for liability when the same have been
21 ascertained.

22 **FACTUAL ALLEGATIONS**

23 **A. Company Background**

24 19. The Company's beverage business is divided into Direct Store
25 Delivery ("DSD"), whose principal products comprise Monster Energy Drinks, and
26 Warehouse, whose principal products comprise juice based and soda beverages
27 under many different brand names. Defendants have generated just under \$2
28

1 billion, \$1.5 billion and \$1.3 billion in gross sales in 2011, 2010 and 2009,
2 respectively. The Company's gross sales for the first three quarters of 2012 have
3 already surpassed \$1.8 billion. Over 90% of Defendants' sales figures and gross
4 profits are attributable to the Company's Monster Energy Drinks division.
5 Monster Energy Drinks have recently become the number one top selling energy
6 drink world-wide, knocking off rival Red Bull.

7 20. Although energy drinks generally make up only a tiny portion of the
8 entire beverage market, it is the fastest-growing segment. The growth of energy
9 drinks is directly attributable to its popularity among pre-teens and teens. Energy
10 drink sales rose by more than 16% in 2011 and Defendants were in the lead with
11 35% of the market.

12 21. In fact, to capitalize on the success of its Monster Energy Drinks, the
13 Company which used to be known as the Hansen Natural Corporation and Hansen
14 Beverage Company, officially changed its name to Monster Beverage Corporation
15 and Monster Energy Company, respectively, on January 5, 2012.

16 **B. Ingredients in Monster Energy Drinks**

17 22. Energy drinks have surged in popularity in recent years, especially
18 among high school and college students. The most common ingredient in energy
19 drinks, including in Monster Energy Drinks, is caffeine, which is often combined
20 with taurine, glucuronolactone, L-carnitine, guarana, and B vitamins to form what
21 is referred to by the Company as an "energy blend."

22 23. Energy drinks often contain additional amounts of caffeine through
23 additives, including guarana, kola nut, yerba mate, and cocoa. Guarana (Paullinia
24 cupana) is a plant that contains caffeine, theobromine (a chronotrope), and
25 theophylline (an inotrope). Each gram of guarana can contain 40 to 80 mg of
26 caffeine, and it has a potentially longer half-life because of interactions with other
27 plant compounds. Monster Energy Drinks contain guarana.

28

1 **C. Defendants' Labeling, Advertising and Marketing of the Monster**
2 **Energy Drinks Targets, Is Intended to and Does Connect Directly with**
3 **Teenagers and Youth**

4 24. Defendants designed the marketing, advertising and labeling of the
5 Monster Energy Drinks for an intended audience of adolescents and youth.
6 Indeed, the Company reportedly selected the name "Monster Energy" after
7 consulting with a focus group of teenage males. The dominant audience for
8 Monster Energy Drinks is made up of teens and people in their early 20s. As
9 detailed below, the Company's unique marketing approach designed to be
10 attractive to adolescents and youth, has caused Monster Energy Drinks to become
11 No. 1 in energy-drink convenience-store sales, generating \$1.3 billion in 2011
12 revenue and taking market share from Red Bull.

13 25. The Company eschews mainstream advertising on TV, radio, and
14 billboards, instead sponsoring huge extreme sporting events – skateboarding,
15 motorcycle racing, surfing, NASCAR racing, professional bull riding – and music
16 festivals as well as getting endorsements from music celebrities and popular sports
17 figures. The core of Defendants' marketing strategy is prize promotions, price
18 promotions, competitions, endorsements from selected public and extreme sports
19 figures, personality endorsements (including from television and other well-known
20 sports personalities), coupons, sampling and sponsorship of selected causes,
21 events, athletes and teams.

22 26. The Company also admits in its public filings that its sales and
23 marketing strategy is to develop "brand awareness through image enhancing
24 programs and product sampling." Defendants use branded and other promotional
25 vehicles at events and schools where they hand out samples of Monster Energy
26 Drinks to consumers. In fact, Plaintiff was first introduced to Monster Energy
27 Drinks outside his high school where the Company was handing out free samples
28

1 to all present, age no bar. Similarly, the Company goes into small local towns and
2 cities – at sports and music festivals – handing out Monster Energy Drinks to
3 everyone – age being no bar to the freebie handout.

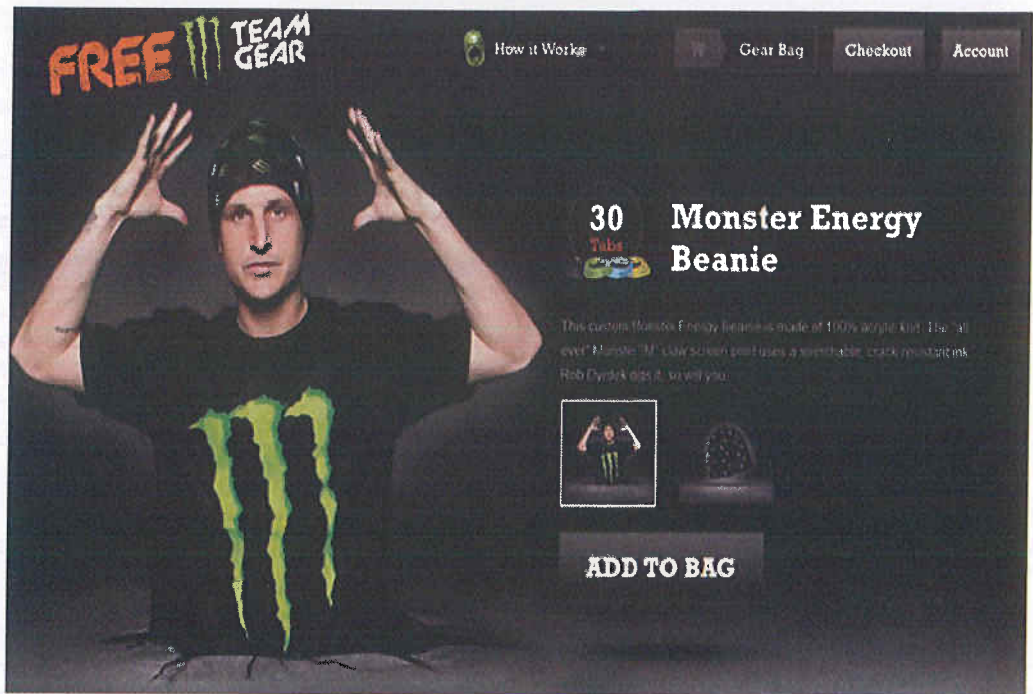
4 27. Defendants' promotions include extreme sports, music and the
5 Monster Girls. Reproduced below are screen shots of the Monster Girls from the
6 Company's website – beautiful, sexy and scantily clad young women. What
7 sexually curious adolescent male (i.e. the Company's focus group) would not be
8 drawn to Monster Energy Drinks with this kind of marketing?



19 28. The Company's promotions offering free Monster gear require a
20 person to "Drink Monster," "Save Tabs," and "Trade for Gear. See below. The
21 gear includes Monster-branded clothing and apparel, accessories as well as the
22 Monster Girl 18-Month Calendar:

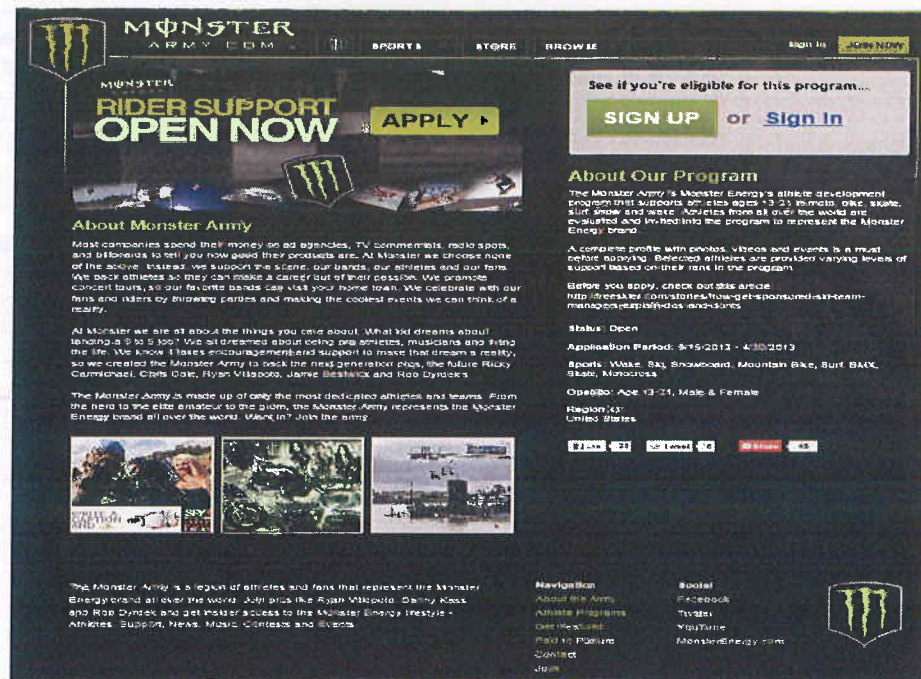


In this manner, Defendants not only encourage, but aggressively promote the consumption of Monster Energy Drinks by teenagers and other youth. For example, in order to get a “free” Monster Beanie (with the florescent Monster logo) or a short-sleeve T-shirt, one has to consume and send in 30 Monster Energy Drink tabs!! A hoodie demands consumption of 75 Monster Energy Drinks!! So, in effect, the gear is not actually “free.” One has to pay for and consume a monstrous number of Monster Energy Drinks.



29. The “Monster Music” and “Monster Gaming” Facebook pages are most popular with persons ages 13-17. Indeed, the Monster Army website sponsored by Defendants invites “13-21” year-old action sports athletes to apply for sponsorships, and ages 13-24 is the most popular age group of those who

1 “Like” the “Monster Army” on Facebook. Monster Army is the Company’s
2 athlete development program that supports athletes ages 13-21 in moto, bike, skate,
3 surf, snow and wake. Athletes from all over the world are evaluated and invited
4 into the program to represent the Monster Energy brand. See
5 <http://www.monsterarmy.com/programs/>, reproduced below:



17 30. In keeping with a young fan-base, the Company has nurtured a strong
18 following on social networks. It counts over 20 million enthusiasts on Facebook
19 and has over 408,000 Twitter followers. The Company, thus, specifically targets
20 the 13-21 age group in its marketing and advertising knowing full well that the
21 fans of the athletes in this age group will most likely also be 13-21 or younger.

22 31. Jeff Cioletti, editor of industry trade publication *Beverage World*,
23 attributes Monster Energy Drinks’ success to the Company “knowing its audience
24 and finding a way to connect with them, in what they perceive as an authentic way,
25 and not talking down to them.” On the Company’s marketing strategy, Mark Hall,
26 president of the Monster Energy division, remarked: “There has to be some
27
28

1 connection with the consumer – they have to feel good about what they hold in
2 their hand and that’s the elusive part of marketing.”

3 32. There’s no question that the Company has done a remarkable job of
4 connecting with its young audience. According to a 2011 article by the American
5 Academy of Pediatrics, 30% to 50% of adolescents and young adults consume
6 energy drinks.

7 33. Ads in magazines and on billboards with slogans like “unleash the
8 beast” and “the meanest energy supplement on the planet” ensure that consumers
9 have brand awareness. And one certainly cannot miss Monster Energy Drinks on
10 the shelves; with the goth-inspired logo, lurid colors, and names like Java Monster,
11 Lo-Carb Monster, Monster Rehab, and others, they tend to stand out. And
12 Defendants’ banners adorn pretty much every big extreme sports event. The
13 “coolness factor” and the caffeine in Monster Energy Drinks are what the
14 Company is banking on to keep its young consumers coming back for more.

15 **D. The Labeling on Monster Energy Drinks Is Designed to Be Attractive**
16 **Primarily to Adolescents and Youth**

17 34. The label on a can of Monster Energy Drinks states:

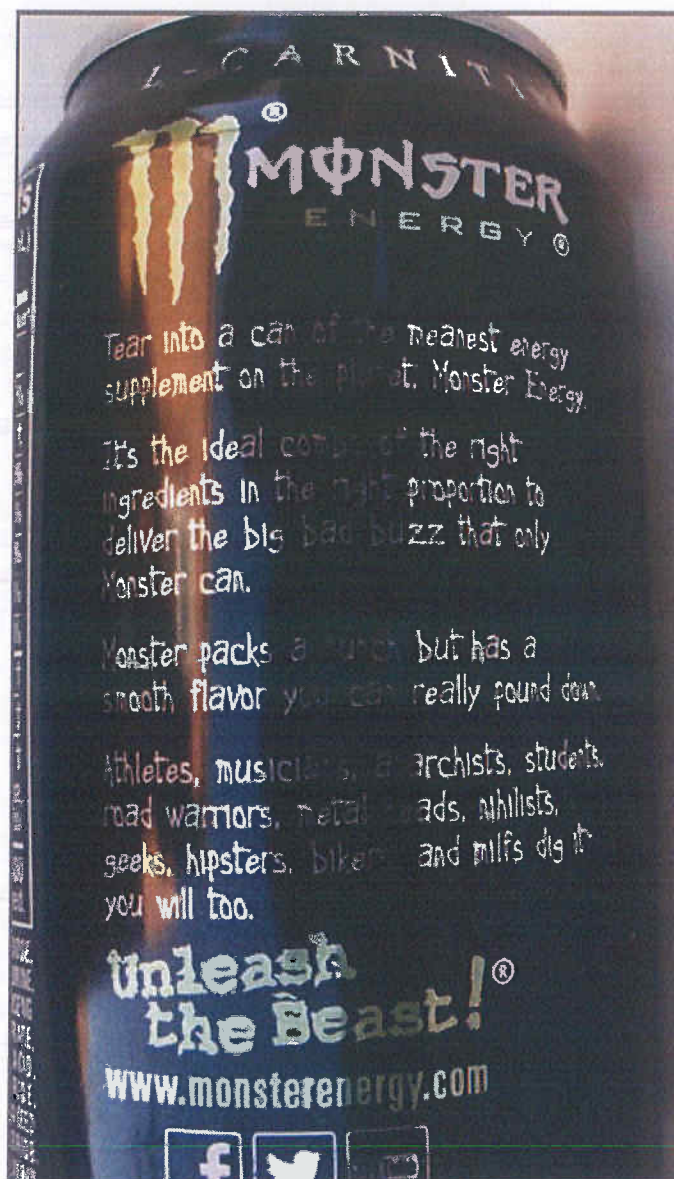
18 Tear into a can of the meanest energy
19 supplement on the planet, Monster energy.

20 It’s the *ideal combo of the right*
21 *ingredients in the right proportion to*
22 *deliver the big bad buzz that only*
23 *Monster can.*

24 Monster packs a vicious punch but has a
25 smooth flavor you can really pound down.
26 *Athletes, musicians, anarchists, students,*
27 *road warriors, metal heads, nihilists,*
28

1 *geeks, hipsters, bikers, and milfs dig it.*

2 *You will too.*



23 It is commonly known that MILF is an acronym for "Mother/Mom I'd Like to
24 F*#k." See en.wikipedia.org/wiki/MILF. One can only imagine what message the
25 Company is conveying with labeling like that and the Company's intended target
26 audience of sexually curious adolescents with raging hormones.

27 35. In its web advertising, the Company also states: "It's a wicked mega
28 hit that delivers *twice the buzz* of a regular energy drink." The Company's

1 repeated reference to “buzz,” a term generally used to describe the intoxicating
2 effect one has from drinking alcohol, gives the impression to the consumer that
3 Monster Energy Drinks can similarly deliver the intoxicating feeling that comes
4 from drinking alcohol.

5 36. Consumers may, thus, falsely believe that “more is better” and ingest
6 multiple servings of the energy drinks. Moreover, since there are no restrictions on
7 the sale of energy drinks, adolescents and children (who may be inexperienced and
8 less tolerant to the effects of caffeine) may be at an increased risk for caffeine
9 intoxication. Indeed, the Company’s 24 oz. can of the original Monster Energy
10 Drink states: “[B]igger is better . . . because you can never get too much of a good
11 thing.”



26 37. Some examples of the labeling and advertising for the Company’s
27 other Energy Drinks that convey similar messages include:
28

- 1 • LO-CARB Slogan: Tear into a can of the meanest energy
2 supplement on the planet, Lo-Carb MONSTER energy. We
3 went down to the lab and performed major surgery on the
4 Monster. We hacked out carbohydrates and calories,
5 *transplanted the wicked Buzz* and dialed in the flavor. Lo-
6 Carb MONSTER energy still *delivers twice the Buzz* of a
7 regular Energy drink, but only has a fraction of the calories.
- 8 • Cuba Lima Monster Energy Slogan: As legend has it *a*
9 *buzzed up Cuban hears his country has been liberated*
10 *holds up his drink, yells "CUBA-LIBRE" and the famous*
11 *cocktail is born. As big fans of the drink we decided to*
12 *make our own, substituting our tried and true energy blend*
13 *for the alcohol and adding a squeeze of sweet lime.* We
14 know it sounds crazy but don't knock it till you try it.
15 *You're gonna love it cause it's a new kind buzz.* Energy
16 Liberated!
- 17 • Übermonster Monster Energy Slogan: Über: (oo-ber) From
18 the German meaning superior, above the norm, or the
19 ultimate. *No regular bottle could handle this evil energy*
20 *brewski.* So we designed our own with the biggest *chugger*
21 *friendly* wide mouth we could make. The big ass cap is a
22 little hard to pry off, but it's sorta like, if you can't open it
23 you shouldn't be able to drink it! Cheers, This energy
24 brew's for you!
- 25 • M3 Monster Energy Slogan: This little bottle of super
26 concentrated Monster madness packs a 16oz. punch into
27 only 5oz. of liquid. Our unique nitrous technology mellows
28

1 out the flavor. *A shot it's not . . . but then you don't have*
2 *to plug your nose to drink it!*

- 3 • Super Dry Nitrous Slogan: Don't let the skinny can fool
4 you, Monster Extra Strength packs our biggest punch! Call
5 us crazy, but we supercharged our Monster Energy base then
6 injected it with Nitrous Oxide for a unique texture, smooth
7 drinkable flavor and *buzz that's bigger than ever. This is no*
8 *"Whip-it" but it will whip you good...*
- 9 • Green Tea Rehab Slogan: *Our friends at the Rehab pool*
10 *party in Vegas know all about recovering from a long*
11 *night* and together we came up with Monster Rehab® Green
12 Tea + Energy. Naturally loaded with EGCG antioxidants,
13 infused with coconut water, quercetin, acai berry and goji
14 berry. Monster Rehab® Green Tea + Energy delivers a triple
15 threat that quenches thirst, hydrates like a sports drink, and
16 brings you back after a hard day's night. Monster Rehab®
17 Green Tea + Energy: RE-FRESH, RE-HYDRATE, RE-
18 VIVE, or in other words, Re-habilitate with a killer mix of
19 green tea, pineapple juice, electrolytes, and our bad-ass
20 Monster Rehab® energy blend to fire you up. Rehab The
21 Beast!
- 22 • Tea+Lemonade Rehab Slogan: *While chillin' at the Vegas*
23 *Rehab® pool party, contemplating a cure for cotton*
24 *mouth, admiring the flesh parade,* and pondering the
25 wisdom of doubling down when the dealer shows a face
26 card, it HIT ME! We need a new drink. One that can do it
27 all – a triple threat that quenches thirst, hydrates like a sports
28

1 drink, and brings you back after a hard day's night. Monster
2 Rehab: Re-Fresh, Re-hydrate, Re-store, or in other words,
3 Re-habilitate with a killer mix of tea, lemonade, electrolytes,
4 and *our bad-ass Rehab® energy blend* to fire you up.
5 Rehab the Beast!

6 38. In sum, the Company's labeling conveys the following:

- 7 • Monster Energy Drink is some magic formula with "the
8 right ingredients in the right proportion;"
- 9 • Monster Energy Drink delivers "a big bad buzz" like you
10 get from drinking alcohol; and
- 11 • You can become part of the "cool" or "Über-cool" crowd
12 by imbibing Monster Energy Drinks.

13 **E. Defendants' Labeling, Advertising and Marketing of Their Energy**
14 **Drinks Is False and Misleading and Fails Adequately to Warn of**
15 **Dangers of Frequent and Excessive Consumption of Caffeine**

16 39. Monster Energy Drinks contain significantly high amounts of
17 caffeine, in addition to other stimulants, like guarana, which contain hidden
18 amounts of additional caffeine. The amino acid – taurine – is also found in the
19 Monster Energy Drinks. Although the Company does not identify the amount of
20 caffeine in each can, it has disclosed through other sources that one 16 oz. can of
21 Monster Energy Drink contains approximately 160 milligrams of caffeine – the
22 equivalent of four (4) 12 oz. cans of Coca-Cola, while the 24 oz. can contains 240
23 milligrams of caffeine, or the equivalent of seven (7) cans of Coke. But health
24 experts have voiced concerns about energy drinks over the past few years, saying
25 the caffeine content can be as high as 550 mg.¹

26 _____
27 ¹ Many of the Monster Energy Drinks have the same caffeine content per ounce,
28 but some are slightly higher due to the same energy blend being used in drinks

1 40. Defendants have proven that they have marketing genius and this
2 genius has been resoundingly rewarded by the market – both its shareholders as
3 well as by the Company’s target group – adolescents. Notwithstanding the high
4 caffeine levels in Monster Energy Drinks and scientific evidence of the serious
5 health risks that they pose, especially for the teenagers and youth that the Company
6 specifically targets (as detailed *supra*), Monster Energy Drinks fail miserably in
7 providing any warnings on its product as to the effects of frequent or excessive
8 caffeine consumption to the teenagers and youth it targets.

9 41. The only notation that the Company has on Monster Energy Drink can
10 is hidden in fine print:

11 Consume responsibly – Max 1 can per four hours, with limit 3
12 cans per day. Not recommended for children, people sensitive
13 to caffeine, pregnant women or women who are nursing.
14
15
16
17
18
19
20
21
22
23
24
25

26 with less volume. The caffeine content is less per ounce in countries with stricter
27 caffeine laws such as Australia and New Zealand which indicates Defendants’
28 knowledge and awareness of the impact of excessive caffeine consumption.

1 lower – no more than 100 mg of caffeine per day from all sources. According to
2 the University of California, teenagers who consume more than 100 mg of caffeine
3 per day are at an increased risk for high blood pressure. One study in *Pediatrics*, a
4 medical journal, says, “Caffeine can be lethal in doses ranging from 200 to 400
5 milligrams,” and affects various organ systems by increasing heart rate, blood
6 pressure, speech rate, motor activity, attentiveness and body temperature. Thus,
7 drinking even one can of a Monster Energy Drink is unhealthy for an adolescent.

8 44. Remarkably, in a recent press release, the Company contends that
9 “more than eight billion cans of Monster Energy® that have been sold and *safely*
10 *consumed* in the United States and around the world since 2002.” That statement
11 is simply untrue.

12 45. Monster Energy Drinks have been cited in the deaths of five people in
13 the past year, according to incident reports that doctors and companies submit to
14 the FDA. According to Shelly Burgess, an FDA spokeswoman, the reports said
15 the victims consumed Monster Energy Drinks prior to their deaths. The five death
16 reports, and a sixth in 2009, were among 37 adverse reaction reports since 2004
17 that mentioned Monster Energy Drinks, according to a log of incidents that health
18 professionals, companies and the public voluntarily recorded with the FDA. *See*
19 excerpt attached hereto as Exhibit A. The event reports linked to the Company
20 claimed that some of the life-threatening illnesses were characterized by heart
21 attack, chest pain and vomiting.

22 46. A November 2011 report by the Drug Abuse Warning Network,
23 produced under the auspices of the Department of Health and Human Services,
24 showed a tenfold increase in emergency room visits linked to energy drinks from
25 2005 (1,128 visits) and 2008 and 2009 (16,053 and 13,114 visits, respectively),
26 representing about a tenfold increase, with about half those trips made by patients
27 18 to 25 years old. Meanwhile, sales of energy drinks have increased 240% in the
28

1 same period. "Consumption of energy drinks is a rising public health problem
2 because medical and behavioral consequences can result from excessive caffeine
3 intake," the report concluded. "A growing body of scientific evidence documents
4 harmful effects, particularly for children, adolescents and young adults."

5 47. Recently, the parents in Maryland sued MBC claiming the drinks led
6 to caffeine toxicity that killed their daughter. Fourteen year-old Anais Fournier,
7 who had a pre-existing heart condition, went into cardiac arrest after drinking two
8 24-ounce cans of the Monster Energy Drinks two days in a row in December 2011.
9 She was pronounced brain dead six days later.

10 48. Health advocates and experts have been concerned about the use of
11 energy drinks among adolescents and trying for some time now to draw attention
12 to the issue of energy drink consumption by kids. In 2011, the *Journal of*
13 *Pediatrics* published a report titled, "Health Effects of Energy Drinks on Children,
14 Adolescents, and Young Adults" warning that the consequences of energy drink
15 consumption included "palpitations, seizures, strokes, and even sudden death."
16 The authors also specifically warned parents that the drinks could be dangerous for
17 kids with heart problems, diabetes, or ADHD.

18 49. Earlier this year, the National Council of Sports and Fitness issued a
19 report, "Youth and Energy Drinks," warning that kids confuse energy drinks like
20 Monster Energy Drinks with the sports drinks marketed by their sports heroes.
21 Sports drinks contain water, salt and sugar, and are designed to replenish the
22 electrolytes and energy one's body loses during exercise. Sports drinks do not
23 contain chemicals that directly increase one's energy levels as energy drinks do.
24 Defendants' product placement in the vicinity of sports drinks is by design. See
25 product placement below:
26
27
28



50. According to the 2009 Mayo Clinic study, convenience stores display energy drinks next to the sports drinks, which can mislead the consumer into thinking that they are similar products. The study notes that whereas sports drinks can indeed provide hydration and replenishment of electrolytes and carbohydrates, the elevated levels of caffeine in energy drinks have diuretic effects that increase urinary output and natriuresis (excretion of an excessively large amount of sodium in the urine). Additionally, according to the National Federation of High School Associations, energy drinks supply an amount of carbohydrate far beyond that is

1 recommended for physically active people, which can slow the rate at which fluid
2 is absorbed into the bloodstream or lead to gastrointestinal distress.

3 51. Amelia M. Arria, Ph.D., an epidemiologist who serves as director of
4 the Center on Young Adult Health and Development at the University of Maryland
5 School of Public Health stated: "In my opinion, some of the marketing messages
6 go overboard about the health benefits of these drinks. The term 'energy drink' is
7 misleading. Energy should come from calories – this is more about stimulation."
8 Studies have shown almost 30% of college students consume energy drinks
9 regularly, Dr. Arria said. The high concentrations of caffeine they contain can
10 produce cardiovascular complications, especially in young people or those who are
11 sensitive to caffeine, she said.

12 52. According to a 2011 article by the American Academy of Pediatrics,
13 of the 5,448 U.S. caffeine overdoses reported in 2007, 46% occurred in those
14 younger than 19 years. The researchers of the 2011 study concluded, among other
15 things that:

- 16 • *energy drinks have no therapeutic benefit*, and both the known and
17 unknown pharmacology of various ingredients, combined with reports
18 of toxicity, suggest that these drinks may put some children at risk for
19 serious adverse health effects;
- 20 • typically, energy drinks contain high levels of caffeine, taurine, and
21 guarana, which have stimulant properties and cardiac and hematologic
22 activity, but manufacturers claim that energy drinks are nutritional
23 supplements, which shields them from the caffeine limits imposed on
24 sodas and the safety testing and labeling required of pharmaceuticals;
25 and
- 26 • youth-aimed marketing and risk taking adolescent developmental
27 tendencies combine to increase over-dose potential.

1 53. According to medical experts at the Department of Psychiatry and
2 Behavioral Sciences at The Johns Hopkins University School of Medicine, the
3 consumption of energy drinks may increase the risk for caffeine overdose in
4 caffeine abstainers as well as habitual consumers of caffeine from coffee, soft
5 drinks, and tea due to the lack of adequate labeling. Many energy drinks do not
6 label their product with the amount of caffeine or display warning labels advising
7 proper use. Consequently, consumers may be completely unaware of the amount
8 of caffeine they are ingesting.

9 54. Additionally, the potential for acute caffeine toxicity due to
10 consumption of energy drinks may be greater than other dietary sources of caffeine
11 since many energy drinks are marketed with claims of performance enhancing
12 effects although the existence and extent of such effects has not been conclusively
13 established.

14 55. The Federal Food, Drug and Cosmetics Act provides in section 201(n)
15 (21 U.S.C. §321(n)) that affirmative representations are not the only factor relevant
16 to whether labeling is misleading. Rather, in determining whether the labeling of
17 an article is misleading,

18 there shall be taken into account (among other things) . . . the
19 extent to which the labeling fails to reveal facts material in the
20 light of such representations or material with respect to
21 consequences which may result from the use of the article to
22 which the labeling relates under the conditions of use
23 prescribed in the labeling thereof or under such conditions of
24 use as are customary or usual.

25 21 U.S.C. §321(n).

26 56. While touting the questionably positive qualities of Monster Energy
27 Drinks, the Company fails to adequately warn of the dangers of consuming even
28

1 one can of the Monster Energy Drinks to the adolescents and youth that they target
2 with their promotions and overall marketing strategy. Thus, Company's labeling
3 of its Monster Energy Drinks is false and misleading.

4 **F. Defendants' Failure to Properly Label Monster Energy Drinks Has**
5 **Caused Serious Bodily Injury to Some Consumers and Continues to**
6 **Pose a Danger to the Adolescents and Youth that They Target in the**
7 **Company's Marketing Campaign**

8 57. Monster Energy Drinks are targeted towards people with active
9 lifestyles, especially teenagers and young adults. They are, however, a potent
10 beverage that can cause adverse health conditions, especially in teenagers and
11 adolescents who are still in the process of developing.

12 58. Monster Energy Drinks can raise one's heart rate. The University of
13 Washington reports that caffeine is a central nervous system stimulant and can
14 increase one's heart rate. According to the University of Alabama at Birmingham,
15 guarana has three times the caffeine content as caffeine in coffee. According to
16 Johns Hopkins University, in a survey of 496 college undergraduate students, 19%
17 of students indicated that they experienced heart palpitations from energy drinks.
18 The American Heart Association confirms this, noting that people consuming two
19 energy drinks everyday experienced blood pressure and heart rate increases. The
20 American Heart Association states that energy drinks can pose an increased risk of
21 heart problems during exercise, as one's heart rate naturally increases on its own
22 during physical activity. High blood pressure, also known as hypertension, puts
23 one's body at risk for numerous additional illnesses. Having high blood pressure
24 can harden one's arteries, strain one's kidneys and cause permanent damage to
25 one's heart.

26 59. In 2007, Wayne State University in Michigan conducted a study on
27 how energy drinks might affect blood pressure and the heart. Participants, who
28

1 were in their 20s, drank two energy drinks a day for seven days straight. The
2 participants did not consume caffeine for two days prior to the study. Heart rates
3 were measured each day within two hours of consuming the energy drinks, while
4 the participants were sitting down and not engaged in any strenuous activity. The
5 results showed that there was an average heart rate increase of 11% on the seventh
6 day, an increase of up to seven beats per minute. Blood pressure also increased by
7 over 7%, which signified the added pressure to the heart.

8 60. James Kalus, Pharm.D., senior manager of Patient Care Services at
9 Henry Ford Hospital in Detroit, Michigan, and a former Wayne State University
10 researcher who led the study, feels that the increases in blood pressure and heart
11 rate may be due to the caffeine and taurine in the drinks. "Thousands of young
12 adults are using these drinks," Dr. Kalus said. "Some are mixing the energy drinks
13 with alcohol. We don't necessarily know how much they are drinking at a time or
14 whether they are drinking before exerting themselves playing basketball or
15 dancing." This is especially so since the marketing for energy drinks is combined
16 with extreme sports, he said.

17 61. Dr. Suzanne Steinbaum, a preventive cardiologist at Lenox Hill
18 Hospital in New York City. "People may think that these energy drinks are
19 healthy by the way they're marketed," she said. There are, however, 240
20 milligrams of caffeine in some of these drinks, Dr. Steinbaum said. "That's seven
21 times the amount of caffeine in a can of soda," she added. Caffeine can increase
22 the heart rate tremendously and drive blood pressure up, Dr. Steinbaum explained.

23 62. Energy drinks cause drastic changes in energy levels. Caffeine's
24 primary effect on the body is to stimulate the nervous system, producing a burst of
25 energy, but this is followed by a period of diminished energy. These episodes
26 were referred to as jolts and crashes, respectively, in a study published by
27 "Nutrition Journal" in October 2007. Results of this study, which included almost
28

1 500 college students, indicated that jolts and crashes were experienced by 29% of
2 subjects who drank energy drinks. In addition, 22% experienced headaches and
3 19% experienced heart palpitations.

4 63. The high sugar and caffeine content in Monster Energy Drinks can
5 keep one wired for hours and cause sleep deprivation. Medline Plus reports that
6 caffeine is absorbed by one's body quickly and distributed through the
7 bloodstream. From this point, it quickly accesses one's brain. This can cause the
8 caffeine to have an effect for hours after one drinks it. Monster Energy Drinks also
9 contain additional ingredients such as carnitine, guarana, ginseng and taurine, each
10 of which is believed to increase one's energy which may be disruptive to sleep.


11 64. Another side effect of Monster Energy Drinks is dehydration. Amy
12 Peak, an assistant professor at Butler University's College of Pharmacy and Health
13 Sciences, reports that the combination of caffeine and guarana in energy drinks can
14 lead to dehydration. According to Brown University, the caffeine in energy drinks
15 acts as a diuretic and can leave you severely dehydrated. This is particularly
16 concerning where one uses Monster Energy Drinks as a pre-workout dietary
17 supplement.

18 65. According to a 2009 study by the Mayo Clinic, regulation of energy
19 drinks, including content labeling and health warnings are the laxest in the United
20 States.² According to the study, this absence of oversight has resulted in
21

22
23 ² This is underscored by the FDA's response to certain senators' requests on the
24 FDA to investigate health risks associated with mixing caffeine and other
25 stimulants. The FDA said it had not found any safety studies that showed the mix
26 of ingredients in energy drinks to be dangerous, but conceded that their preliminary
27 review may be greatly enhanced by engaging specialized expertise outside the
28 FDA, focusing particularly on the *vulnerability of certain populations to
stimulants and the incidence and consequence of excessive consumption of
energy drinks, especially by young people*. The FDA assured the senators that it
was continuing its investigation and that if it did find such risks in its ongoing
research into the products, it would consider taking regulatory action. Most
importantly, the FDA acknowledged that resource and capacity constraints

1 aggressive marketing of energy drinks, targeted primarily toward young men and
2 openly promoting psychoactive, performance-enhancing, and stimulatory effects.
3 Alarmingly, energy drink consumption has been shown to be positively associated
4 with high-risk behavior, including marijuana use, sexual risk taking, fighting,
5 failure to use seat belts, and taking risks on a dare, as well as with smoking,
6 drinking, problems stemming from alcohol abuse, and illicit drug use.

7 66. There appears to be no alcohol in Monster Energy Drinks. However,
8 some clinical studies have demonstrated a relationship between energy drink
9 consumption and alcohol abuse. According to a study published in the February
10 2011 issue of "Alcoholism, Clinical and Experimental Research," energy drink
11 consumption appears to be a risk factor for alcohol dependence. Specifically,
12 college students who reportedly drank energy drinks daily or weekly, were more
13 likely to report consuming alcohol more frequently and in greater amounts, than
14 students who drank energy drinks less than once a week or not at all.

15 67. Monster Energy Drinks' addiction can be a problem for teens,
16 adolescents and older working adults since caffeine is known to be addictive.
17 Adolescents and adults may be consuming this beverage and the drug it contains –
18 caffeine – to fight for increased energy and stamina. Monster Energy Drinks
19 abound, including lo-cal and lo-carb mixes, all packaged in the conspicuous black
20 can sporting the .

21
22
23
24
25
26 preclude the government or government-funded toxicity testing of all possible
27 combinations.
28

1 **G. Defendants Have Profited Immensely from Their False and Misleading**
2 **Labeling and Advertising**

3 68. Defendants' unique approach to labeling, print and internet
4 advertising, promotion and general marketing of the Monster Energy Drinks has
5 been immensely profitable. MBC is one of the fastest growing public companies.

6 69. Defendants boast that more than 8 billion cans of Monster Energy®
7 have been sold and consumed in the United States and around the world since
8 2002.

9 70. Indeed, of the Company's two reportable segments – DSD, whose
10 principal products comprise Monster Energy Drinks, and Warehouse, whose
11 principal products comprise juice based and soda beverages – the Company's DSD
12 segment represented 94.4%, 93.0% and 91.4% of the Company's consolidated net
13 sales for the years ended December 31, 2011, 2010 and 2009, respectively.
14 Monster Energy® Drinks represented 91.2%, 89.9% and 90.0% of the Company's
15 net sales for the years ended December 31, 2011, 2010 and 2009, respectively.
16 These figures demonstrate that Monster Energy Drinks are materially significant to
17 the very existence of the Company.

18 71. Further, in filings with the Securities and Exchange Commission, the
19 Company states that its gross profit for the year ended December 31, 2011, was
20 \$894.3 million, an increase of approximately \$214.1 million, or 31.5% higher than
21 the gross profit of \$680.2 million for the year ended December 31, 2010. The
22 Company admits that the increase in gross profit dollars was primarily the result of
23 the \$446.7 million increase in gross sales of Monster Energy® brand energy
24 drinks. Gross sales were \$1,488.5 million for the year ended December 31, 2010,
25 an increase of approximately \$179.2 million, or 13.7% higher than gross sales of
26 \$1,309.3 million for the year ended December 31, 2009. Again, the increase in the
27 gross sales of the Monster Energy® brand energy drinks represented
28

1 approximately \$162.1 million, or 90.5%, of the overall increase in gross sales in
2 2010. The increase in gross sales and hence gross profits for other relevant years is
3 also directly attributable to Monster Energy Drinks.

4 72. The Company's public filings recognize the risk that because Monster
5 Energy Drinks currently generate the vast majority of revenues (over 94% in
6 2011), any criticism of the Monster Energy Drinks, whether by healthcare
7 professionals of the nutritional benefits the Monster Energy Drink, could result in
8 decreased demand, which in turn could have an adverse effect on Defendants'
9 future business and financials.

10 73. The Company also acknowledges that there are currently pending
11 proposals to enact legislation to limit or restrict the sale of energy drinks generally
12 to minors and/or persons below a specified age and/or the venues in which energy
13 drinks can be sold and/or impose taxation on the sale of energy drinks. Defendants
14 concede that should these proposals succeed, any such legislation would result in a
15 reduction in demand for Monster Energy Drinks and adversely affect the
16 Company's profit margin. Thus, by its own admission, Monster Energy Drinks
17 and their continued availability to all – even minors, teens, and youth – are vital to
18 the Company's continued success, and even to its very existence.

19 **H. The Company's Energy Drink Labeling Has Been Under Investigation**
20 **by Various Regulators**

21 74. Defendants have so far evaded any meaningful regulation of their
22 product by the FDA primarily by classifying Monster Energy Drinks as a "dietary
23 supplement," i.e., not a conventional "food" or "beverage." Ordinarily the FDA
24 evaluates the safety of ingredients for beverages or other conventional foods
25 (including "energy drinks" represented as beverages, which are conventional
26 foods) through food additive premarket programs that generally focus on
27 individual ingredients that may be used in a range of food, rather than on a
28

1 product-specific basis. The FDA concedes that it does not have authority to
2 require a manufacturer to submit each formulated product for pre-market review.

3 75. Defendants have relied on this gray area to circumvent applicable
4 standards by marketing the Monster Energy Drinks akin to a beverage or sports
5 drink, but not being subject to regulation by classifying them as a “dietary
6 supplement.”

7 76. In July 2012, the Company was subpoenaed by the New York
8 attorney general in connection with an investigation into its advertising, marketing,
9 promotion, ingredients, usage and sale of its Monster Energy Drinks, specifically
10 whether the Company was misleading consumers about how much caffeine the
11 drinks contain and the health risks they could pose. The attorney general
12 investigation focuses, among other things, on whether Defendants (and other
13 companies) violated federal law in promoting the drinks as dietary supplements
14 rather than as foods, which are regulated more strictly.

15 77. State investigators are also examining whether all of the ingredients
16 that go into the beverages are properly disclosed particularly since some additives,
17 like black tea extract and guarana, may contain additional caffeine that is not
18 reflected when the drinks are labeled.

19 78. In an October 31, 2012 letter, the City Attorney of San Francisco,
20 Dennis J. Herrera, sent a letter to MBC demanding that it provide evidence that
21 supports the advertising and marketing claims it makes to adolescents for its
22 energy drinks and to substantiate its claim that large daily quantities of Monster
23 Energy Drinks were safe for adolescents and adult, including claims that
24 consumers of Monster Energy Drinks:

- 25 • “[C]an never get too much of a good thing!”
- 26 • “3 cans per day” of 16 oz. Monster is “responsible” or safe
- 27 consumption by adolescents and adults
- 28

- 1 • “[B]igger is better”
- 2 • “2 cans per day” of 24 oz. Monster is “responsible” or safe
- 3 consumption by adolescents and adults
- 4 • Monster and Monster Mega are safe for consumption except for
- 5 “children, pregnant women or people sensitive to caffeine.”

6 79. Mr. Herrera observed that MBC seems to have chosen to label its
7 Monster Energy Drinks as a “dietary supplement” rather than as a conventional
8 food or beverage in an attempt to circumvent the safety standards required for food
9 and beverage additives. Mr. Herrera’s letter noted that Monster Energy Drinks did
10 not meet the definition of a “dietary supplement.” He remarked:

11 As the FDA has explained, “the packaging of liquid products in
12 bottles or cans similar to those in which single or multiple
13 servings or beverages like soda, bottled water, fruit juices, and
14 iced tea are sold, suggests that the liquid product is intended for
15 use as a conventional food.” Monster is marketed in a single
16 serving can similar in size, shape and appearance to
17 conventional beverages. . . .

18 80. Mr. Herrera also pointed out that the fact that MBC refers to its
19 products as “Monster Energy *drinks*,” and states that “Monster Energy delivers
20 ‘twice the buzz of a regular energy drink,’” belied any notion that “[MBC’s]
21 products are not beverages.” Indeed, the Company’s public filings reinforce this –
22 nowhere in its public filings does the Company refer to Monster Energy Drinks as
23 a “dietary supplement.” In describing its signature Monster Energy® Drink, the
24 Company states: “In 2002, we launched a new carbonated energy drink under the
25 Monster Energy® brand name in 16-ounce cans Our Monster Energy® drinks
26 contain vitamins, minerals, nutrients, herbs and supplements (collectively,
27 ‘supplement’) and are marketed through our full service distributor network.”
28

1 81. In his letter, Mr. Herrera also noted that
2 [d]espite exceedingly high caffeine levels, Monster Beverage
3 Corporation encourages unsafe and irresponsible consumption
4 of Monster Energy products. Monster's labeling recommends
5 that individuals consume no more than three 16 oz. cans or two
6 24 oz. cans per day, which amounts to a total of 48 oz. of
7 Monster per day. But 48 oz. of Monster contains 480 mg of
8 caffeine, nearly five times the caffeine that is safe for
9 adolescents to consume in an entire day, and more than the 400
10 mg per day the FDA has indicated is safe for healthy adults.

11 82. Mr. Herrera further noted that "[r]ather than warning consumers to
12 exercise constraint or caution, Monster's marketing states that 'bigger is always
13 better' and 'you can never get too much of a good thing.'" The Company urges
14 consumers to "chug it down," or "throw [it] back." The Company states that its
15 product has a "smooth flavor you can really pound down," and that one of its
16 products has "the biggest chugger friendly wide-mouth we could make."

17 83. While Monster Energy Drink competitors like Red Bull, NOS, Full
18 Throttle and Amp are marketed as beverages, the Company continues to market
19 Monster Energy Drinks as dietary supplements.

20 84. Many other countries require the Company to sell Monster Energy
21 Drinks as food. In Canada, Monster Energy Drinks were recently reclassified as
22 food, and thus are subject to regulation by Health Canada. On January 1, 2011, the
23 Mexican legislature imposed a 25% excise tax on energy drinks based on caffeine
24 content. In response Defendants adjusted the caffeine levels in Monster Energy
25 Drinks that are sold in Mexico to address this legislation. In 2011, Hungary
26 implemented a tax on energy drinks and the Company responded by adjusting the
27 caffeine content in Monster Energy Drinks sold in Hungary.

28

1 **CLASS ACTION ALLEGATIONS**

2 85. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff brings this
3 class action and seeks certification of a class comprised of:

4 All persons who, during the Class Period (four years from the
5 date of this Complaint to the present) purchased any Monster
6 Energy Drinks for personal use and not for purposes of further
7 retail sale or distribution (referred hereinafter as the "Class").

8 86. For purposes of this class definition, the term "Monster Energy
9 Drinks" includes Monster Energy®, Lo-Carb Monster Energy®, Monster Energy®
10 Assault®, Monster Khaos®, Monster M-80®, Monster MIXXD®, Monster
11 Energy® Absolutely Zero, Monster Energy® Import Light, Monster Energy® Dub
12 Edition, Monster Rehab™ Tea + Lemonade + Energy, Monster Rehab™ Rojo Tea
13 + Energy, Monster Rehab™ Green Tea + Energy, Monster Rehab™ Protean +
14 Energy, Monster Energy® M3™ Super Concentrate, Java Monster® Kona Blend,
15 Java Monster® Loca Moca®, Java Monster® Mean Bean®, Java Monster®
16 Vanilla Light, Java Monster® Irish Blend®, Java Monster® Toffee, Monster
17 Energy® Import, Monster Energy Extra Strength Nitrous Technology® Super
18 Dry™, Monster Energy Extra Strength Nitrous Technology® Anti-Gravity®,
19 Monster Energy Extra Strength Nitrous Technology® Killer B®, Monster Energy
20 Extra Strength Nitrous Technology® Black Ice™, X-Presso Monster® Hammer,
21 X-Presso Monster® Midnite.

22 87. Excluded from the definition of the Class are: Defendants,
23 Defendants' employees, any entity in which Defendants have a controlling interest
24 or which holds a controlling interest in Defendants, including, but not limited to,
25 any warehouses or distributors in which Defendants have a controlling interest
26 during the Class Period and Defendants' legal representatives, assigns and
27 successors; all persons who make a timely election to opt out of the proposed
28

1 Class, and governmental entities, including the Judge and the judicial staff
2 assigned to this case.

3 88. Subject to additional information obtained through further
4 investigation and discovery, Plaintiff may expand or narrow the foregoing
5 definition by amendment or amended complaint, as permitted by the Court.

6 89. The Company's practices and omissions apply uniformly to all
7 members of the Class, so that the questions of law and fact are common to all
8 members of the Class. All members of the Class were and continue to be similarly
9 affected by not receiving disclosure of the risks associated with consuming
10 Monster Energy Drinks, and the relief sought herein is for the benefit of Plaintiff
11 and members of the Class. Defendants' marketing, advertising and promotional
12 practices as detailed above applied uniformly to all members of the Class
13 throughout the Class Period, so that the questions of law and fact detailed herein
14 are common to all members of the Class.

15 90. All Class members were and are similarly affected by purchasing
16 Monster Energy Drinks for their intended and foreseeable purpose as promoted,
17 advertised, packaged, and labeled by Defendants' and as set forth in detail above.

18 91. The proposed Class is so numerous that joinder of all members would
19 be impracticable. Based on the annual sales of Monster Energy Drinks and their
20 popularity, it is apparent that the number of consumers of Monster Energy Drinks
21 would be so large as to make joinder impossible. Moreover, the Company
22 concedes that it had sold over 8 billion cans of Monster Energy Drinks since 2002.

23 92. Questions of law and fact common to the Class exist that predominate
24 over questions affecting only individual members, including, *inter alia*:

25 (a) Whether Defendants' practices, representations or omissions in
26 connection with the packaging, labeling, advertising, marketing,
27
28

1 promotion and sale of Monster Energy Drinks were false,
2 misleading or likely to deceive or confuse consumers;

3 (b) Whether Defendants' practices, representations or omissions in
4 connection with the packaging, labeling, advertising, marketing,
5 promotion and sale of Monster Energy Drinks violated the
6 MMWA, 15 U.S.C. §2301, *et seq.*;

7 (c) Whether Defendants' practices, representations or omissions in
8 connection with the packaging, labeling, advertising, marketing,
9 promotion and sale of Monster Energy Drinks was unfair,
10 deceptive or unlawful or in any respect, thereby violating
11 California's Unfair Competition Law ("UCL"), Bus. & Prof. Code
12 §17200, *et seq.*;

13 (d) Whether Defendants' practices, representations or omissions in
14 connection with the packaging, labeling, advertising, marketing,
15 promotion and sale of Monster Energy Drinks was unfair,
16 deceptive or unlawful or in any respect, thereby violating
17 California's UCL, Bus. & Prof. Code §17500, *et seq.*;

18 (e) Whether Defendants' practices, representations or omissions in
19 connection with the packaging, labeling, advertising, marketing,
20 promotion and sale of Monster Energy Drinks violated California's
21 Consumer Legal Remedies Act ("CLRA"), Cal. Civ. Code §1750,
22 *et seq.*;

23 (f) Whether Defendants failed to disclose, or adequately disclose, the
24 amount of caffeine in Monster Energy Drinks or the risks
25 associated with caffeine as used in Monster Energy Drinks;
26
27
28

- 1 (g) Whether Defendants failed to disclose, withheld or misrepresented
2 material information regarding the health effects on Monster
3 Energy Drinks is an effort to deceive consumers;
- 4 (h) Whether Defendants' Monster Energy Drink labels were false and
5 misleading because they failed to warn the teenagers and youth the
6 Company was targeting with its advertising, marketing and
7 promotions, of the risks of frequent and excessive consumption of
8 energy drinks;
- 9 (i) Whether Defendants acted intentionally in their deceptive and false
10 advertising, marketing, promotion and sale of Monster Energy
11 Drinks;
- 12 (j) Whether Defendants' practices, representations or omissions
13 deceived or have the capacity to deceive;
- 14 (k) Whether Defendants breached express and implied warranties in
15 connection with the packaging, labeling, advertising, marketing,
16 promotion and sale of Monster Energy Drinks;
- 17 (l) Whether Defendants knew or should have known of the false and
18 misleading nature of its advertising and labeling before putting the
19 Monster Energy Drinks subject to such advertising and labeling
20 into the stream of commerce for purchase and use by Plaintiff and
21 the Class;
- 22 (m) Whether Defendants' conduct described above resulted in ill-
23 gotten gains and, if so, the extent of the ill-gotten gains; and
- 24 (n) Whether Defendants' conduct as set forth above injured consumers
25 and, if so, the nature and extent of the injury; and
- 26 (o) Whether, and to what extent, injunctive relief should be imposed
27 on Defendants to prevent such conduct in the future.
28

1 93. The claims asserted by Plaintiff in this action are typical of the claims
2 of the members of the Class, as the claims arise from the same course of conduct
3 by Defendants, and the relief sought is common. The misrepresentations and
4 omissions as to Plaintiff when he purchased Monster Energy Drinks are similar to
5 the misrepresentations and omissions made to other Class members across the
6 country. Plaintiff and all Class members have suffered economic injury as a result
7 of Defendants' misrepresentations and omissions, and the Company has realized
8 massive ill-gotten gains associated with the sale of its Monster Energy Drinks.
9 Absent this class action, the members of the Class will continue to suffer losses
10 and the violations of law described herein will continue without a practical remedy,
11 and Defendants would unjustly retain the proceeds of their ill-gotten gains.
12 Defendants continue to engage in the unlawful, unfair, and unconscionable conduct
13 that is the subject of this Complaint.

14 94. Plaintiff will fairly and adequately represent and protect the interests
15 of the members of the Class. Plaintiff has retained counsel competent and
16 experienced in both consumer protection and class action litigation. Plaintiff and
17 his counsel do not foresee any circumstances where the interests of Plaintiff would
18 be adverse to the interests of the Class.

19 95. Certification of this class action is appropriate under Fed. R. Civ. P.
20 23, because the questions of law or fact common to the respective members of the
21 Class predominate over questions of law or fact affecting only individual members.
22 This predominance makes a class action superior to other available methods for the
23 fair and efficient adjudication of this controversy. It would be economically
24 impractical for Plaintiff and Class members to pursue individual actions against
25 Defendants as the costs of prosecution would likely surpass their individual
26 damages. Thus, Plaintiff and Class members would be left with no effective
27 remedy for the damages they suffered and continue to suffer. Class treatment of
28

1 Plaintiff's claims will permit Plaintiff and the Class to vindicate their rights against
2 Defendants and conserve the resources of the Court and the Parties. Class
3 treatment will also avoid the possibility of inconsistent outcomes that could result
4 from a multitude of individual actions in varying jurisdictions nationwide.

5 96. Certification also is appropriate because Defendants acted or refused
6 to act on grounds generally applicable to the Class, thereby making appropriate the
7 relief sought on behalf of the Class as a whole. Further, given the large number of
8 consumers of Monster Energy Drinks, allowing individual actions to proceed in
9 lieu of a class action would run the risk of yielding inconsistent and conflicting
10 adjudications.

11 97. A class action is a manageable, fair and appropriate method for the
12 group-wide adjudication of this controversy in that it will permit a large number of
13 claims to be resolved in a single forum simultaneously, efficiently, and without the
14 unnecessary hardship that would result from the prosecution of numerous
15 individual actions and the duplication of discovery, effort, expense and burden on
16 the Courts that individual actions would engender.

17 98. Plaintiff knows of no difficulty that will be encountered in the
18 management of this litigation that would preclude maintenance as a class action.
19 Moreover, the benefits of proceeding as a class action, including providing a
20 method for obtaining redress for claims that would not be practical to pursue
21 individually, outweigh any difficulties that might be argued with regard to the
22 management of this class action.

23 **COUNT I**

24 **For Violations of the UCL, Cal. Bus. & Prof. Code Section 17200, *et seq.***

25 99. Plaintiff repeats each and every allegation contained in the paragraphs
26 above and incorporates by reference each preceding paragraph as though fully set
27 forth at length herein.
28

1 100. This cause of action is brought pursuant to California Business &
2 Professions Code §17200, *et seq.*, which provides that “unfair competition shall
3 mean and include any unlawful, unfair or fraudulent business act or practice and
4 unfair, deceptive, untrue or misleading advertising and any act prohibited by
5 Chapter I (commencing with Section 17500) of the Business and Professions
6 Code.”

7 101. Defendants’ practices, representations and omissions, as set forth
8 above, were intended to promote the sale of Monster Energy Drinks and constitute
9 unfair, deceptive and/or unlawful business practices within the meaning of
10 California Business & Professions Code §17200, *et seq.*

11 102. Defendants committed unfair business acts and/or practices.

12 103. Nothing in Monster’s packaging, labeling, advertising, marketing,
13 promotion or sale of Monster Energy Drinks disclosed, or adequately disclosed, the
14 amount of caffeine in Monster Energy Drinks or the risks associated with caffeine
15 as used in Monster Energy Drinks, as set forth in detail above.

16 104. Statements on Defendants’ Monster Energy Drinks labels lack proper
17 warnings, and are thus considered false, misleading and/or deceptive
18 representations, practices or omissions. Defendants have consistently failed to
19 disclose or warn consumers that Monster Energy Drinks may increase blood
20 pressure and/or heart rate of consumers who ingest Monster Energy Drinks or that
21 such drinks may cause nervousness, irritability, and/or sleeplessness, and that this
22 failure to disclose or warn deceives or tends to deceive consumers.

23 105. Consequently, consumers who purchase Defendants’ Monster Energy
24 Drinks may experience an increase in blood pressure and/or an increase in their
25 heart rate without having knowledge of such adverse reactions associated with
26 drinking Monster Energy Drinks.

1 106. Plaintiff relied on the truth and accuracy of the labeling on Monster
2 Energy Drinks, but based on the label's failure to disclose, or adequately disclose,
3 the amount of caffeine in the Energy Drinks or the risks associated with caffeine as
4 used in Monster Energy Drinks, material facts that would have been substantial
5 factors in his decision to purchase and consume Monster Energy Drinks for the
6 reasons set forth above, Plaintiff was deceived by Defendants into purchasing and
7 paying for the Monster Energy Drinks as set forth above.

8 107. The utility of Defendants' practices, representations and omissions
9 related to the packaging, labeling, advertising, marketing, promotion and sale of
10 Monster Energy Drinks without disclosing, or adequately disclosing, that the
11 amount of caffeine in Monster Energy Drinks or the risks associated with caffeine
12 as used in Monster Energy Drinks, is negligible, if there is any utility at all, when
13 weighed against the harm to the general public, Plaintiff and members of the Class.

14 108. The harmful impact upon members of the general public and the Class
15 – particularly the teenagers and youth the Company targets in its advertising,
16 marketing and promotion campaign – who purchased and used Monster Energy
17 Drinks outweighs any reasons or justifications by Defendants for the unfair
18 business practices they employed to sell Monster Energy Drinks described herein,
19 particularly considering the reasonably available alternatives.

20 109. Defendants had an improper motive (profit before accurate marketing)
21 at their intended audience in their practices, representations and omissions related
22 to the packaging, labeling, advertising, marketing, promotion and sale of Monster
23 Energy Drinks, specifically by implementing promotions and other marketing
24 strategies designed to attract adolescents and youth, as set forth above.

25 110. The use of such unfair business acts and practices was and is under
26 the sole control of Defendants, and was deceptively hidden from members of the
27
28

1 Class and the general public in their packaging, labeling, advertising, marketing,
2 promotion and sale of Monster Energy Drinks.

3 111. Defendants engaged in deceptive acts or practices by failing to
4 disclose, or adequately disclose, to the consumers targeted by Defendants'
5 advertising and promotional campaign, the amount of caffeine in Monster Energy
6 Drinks or the risks associated with caffeine as used in Monster Energy Drinks, as
7 set forth in detail above.

8 112. Defendants also engaged in deceptive acts or practices in labeling and
9 describing Monster Energy Drinks in a manner as to appeal to pre-teens and teens,
10 and by comparing favorably the "buzz" one gets from drinking Monster Energy
11 Drinks to that obtained by drinking alcohol.

12 113. Defendants engaged in deceptive acts or practices by promoting the
13 stocking of Monster Energy Drinks near sports drinks.

14 114. These deceptive acts and practices had a capacity, tendency, and/or
15 likelihood to deceive or confuse reasonable consumers into believing that Monster
16 Energy Drinks posed no greater risk to the health of those who drank it than did
17 other sports drinks, particularly given the existence of peer-reviewed scientific
18 studies indicating the dangers of caffeinated energy beverages.

19 115. Defendants also engaged in unlawful business practices by violating
20 California's False Advertising Law ("FAL"), the CLRA, the MMWA as well as
21 state warranty laws, as set forth in detail below. The violations of these laws serve
22 as predicate violations of this prong of the UCL.

23 116. As a purchaser and consumer of Monster Energy Drinks, and as a
24 member of the general public who purchased and used Monster Energy Drinks,
25 Plaintiff has standing and is entitled to and does bring this class action seeking all
26 available remedies under the UCL.

27
28

117. Pursuant to California Business & Professions Code §17203, Plaintiff seeks an order of this Court for injunctive relief and disgorging from Defendants and restoring to Plaintiff and members of the Class all monies that may have been acquired by Defendants as a result of such unfair, deceptive and/or unlawful business acts or practices.

118. Plaintiff, members of the Class and the general public may be irreparably harmed and/or denied an effective and complete remedy if such relief is not granted.

119. As a result of Defendants' violations of the UCL, Plaintiff and members of the Class are entitled to restitution for out-of-pocket expenses and economic harm in terms of the price they paid for Monster Energy Drinks.

120. Pursuant to California Civil Code §3287(a), Plaintiff and members of the Class are further entitled to pre-judgment interest as a direct and proximate result of Defendants' wrongful conduct. The amount on which interest is to be applied is a sum certain and capable of calculation, and Plaintiff and members of the Class are entitled to interest in an amount according to proof.

COUNT II

For Violations of the FAL, Bus. & Prof. Code Section 17500, *et seq.*

121. Plaintiff repeats each and every allegation contained in the paragraphs above and incorporates by reference each preceding paragraph as though fully set forth at length herein.

122. In violation of California Business & Professions Code Section 17500, Defendants have disseminated, or caused to be disseminated advertising, labeling, packaging, marketing, and promotion of Monster Energy Drinks that is deceptive because of its failure to warn of the particular dangers inherent in consuming a highly caffeinated beverage by adolescents and youth.

1 123. Defendants compounded this deception by likening the effect of
2 drinking Monster Energy Drinks to consuming alcohol in the advertising,
3 packaging and labeling of Monster Energy Drinks, and by promoting the stocking
4 of Monster Energy Drinks near sports drinks.

5 124. These acts deceptively represented Monster Energy Drinks as posing
6 no greater risk to the health of those who drank it than did sports drinks.

7 125. Defendants' representations and omissions for Monster Energy Drinks
8 are by their very nature unfair, deceptive and/or unlawful within the meaning of
9 California Business & Professions Code Section §17500, *et seq.*, and were likely to
10 deceive reasonable consumers.

11 126. In making and disseminating the representation and omissions alleged
12 herein, Defendants knew or should have known they were misleading, particularly
13 given the existence of peer-reviewed scientific studies indicating the dangers of
14 caffeinated energy drinks. Accordingly, Defendants acted in violation of
15 California Business & Professions Code Section §17500, *et seq.*

16 127. As a direct and proximate result of Defendants' wrongful conduct,
17 Plaintiff and the Class members have suffered substantial harm.

18 128. Pursuant to California Business & Professions Code Section §17535,
19 Plaintiff, on behalf of himself and others similarly situated, seeks an order of this
20 Court restoring all monies that may have been acquired by Defendants as a result
21 of such deceptive acts and/or practices.

22 129. As a result of Defendants' violations of the FAL, Plaintiff and the
23 Class are entitled to restitution for out-of-pocket expenses and economic harm.

24 130. Pursuant to California Civil Code Section 3287(a), Plaintiff and
25 members of the Class are further entitled to pre-judgment interest as a direct and
26 proximate result of Defendants' wrongful conduct. The amount on which interest
27
28

1 is to be applied is a sum certain and capable of calculation, and Plaintiff and
2 members of the Class are entitled to interest in an amount according to proof.

3 **COUNT III**

4 **For Violations of the CLRA, Cal. Civ. Code Section 1750, *et seq.***

5 131. Plaintiff repeats each and every allegation contained in the paragraphs
6 above and incorporates by reference each preceding paragraph as though fully set
7 forth at length herein.

8 132. This cause of action is brought pursuant to the CLRA.

9 133. Plaintiff and each member of the Class are “consumers” within the
10 meaning of California Civil Code §1761(d).

11 134. The purchases of Monster Energy Drinks by Plaintiff and each
12 member of the Class were and are “transactions” within the meaning of California
13 Civil Code §1761(e).

14 135. Defendants have violated the CLRA by, among other things, their
15 representations, practices and omissions in the labeling, advertising, marketing,
16 promotion and sales of Monster Energy Drinks that Monster Energy Drinks were
17 safe for consumption when they knew or had access to information that indicated
18 that Defendants’ representations were false and misleading.

19 136. Defendants’ labeling, advertising, marketing, promotion and sales of
20 Monster Energy Drinks as alleged herein, violated Section 1770(a) of the CLRA in
21 at least the following respects for the reasons set forth in detail above:

22 (a) Misrepresenting the source, sponsorship, approval, or certification
23 of goods or services (Cal. Civ. Code §1770(a)(2));

24 (b) Representing that goods or services have sponsorship, approval,
25 characteristics, ingredients, uses, benefits, or quantities which they
26 do not have (Cal. Civ. Code §1770(a)(5));
27
28

- 1 (c) Representing that goods or services are of a particular standard,
2 quality, grade, or that goods are of a particular style or model, if
3 they are of another (Cal. Civ. Code §1770(a)(7));
4 (d) Advertising goods or services with intent not to sell them as
5 advertised (Cal. Civ. Code §1770(a)(9));
6 (e) Representing that a transaction confers or involves rights,
7 remedies, or obligations which it does not have or involve, or
8 which are prohibited by law (Cal. Civ. Code §1770(a)(14)); and
9 (f) Representing that the subject of a transaction has been supplied in
10 accordance with a previous representation when it has not (Cal.
11 Civ. Code §1770(a)(16)).

12 137. As a result of the use or employment by Defendants of methods, acts
13 or practices declared unlawful by the above provisions of Cal. Civ. Code §1770,
14 Plaintiff suffered damage in that he bought the Monster Energy Drinks and thus
15 paid monies that he would not have expended had the true facts been accurately
16 disclosed to him and had Monster Energy Drinks not been promoted as they were
17 in light of the material adverse facts set forth above, or spent more money on
18 Monster Energy Drinks than he otherwise would have. Plaintiff therefore seeks
19 and is entitled to, on behalf of both himself and members of the Class, equitable
20 relief in the form of an order for injunctive relief and requiring Monster to make
21 full restitution of all monies wrongfully obtained as a result of the conduct
22 described above.

23 138. Pursuant to California Civil Code §1780(d), Plaintiff requests that this
24 Court enjoin Defendants from continuing to employ the unlawful methods, acts,
25 and practices alleged herein. If Defendants are not restrained from engaging in
26 these types of practices in the future, Plaintiff and other members of the Class will
27 continue to suffer harm.
28

1 139. This cause of action does not, at this point, seek monetary damages
2 but is confined solely to injunctive relief. Plaintiff will seek to amend this class
3 action Complaint to seek damages in accordance with the CLRA after providing
4 Defendants with notice pursuant to California Civil Code §1782.

140. Regardless of an award of damages, Plaintiff also separately seeks and is entitled to, pursuant to section 1780(d) of the CLRA, an order for the equitable relief described above, as well as costs, attorneys' fees and any other relief which the Court deems proper.

COUNT IV

Breach of Express and Implied Warranty

11 141. Plaintiff repeats each and every allegation contained in the paragraphs
12 above and incorporates by reference each preceding paragraph as though fully set
13 forth at length herein.

14 142. Plaintiff and the Class purchased Monster Energy Drinks. By virtue
15 of their purchases and the payment of monies, they formed a contract that included
16 promises and affirmations made by Defendants through the labeling, packaging
17 and accompanying advertising and marketing of the Monster Energy Drinks.

18 143. The labeling and packaging of Monster Energy Drinks constitutes
19 express warranties that Monster Energy Drinks are the “ideal combo of the right
20 ingredients in the right proportion,” and “bigger is better . . . because you can never
21 get too much of a good thing.” These warranties became part of the bargain
22 between Plaintiff and the Class on the one hand and Defendants on the other.

144. Plaintiff and the members of the Class relied upon Defendants’ statements and Defendants’ research and investigation regarding the safety of the Monster Energy Drinks in purchasing and consuming them.

145. Defendants intended to and did in fact, and continue to the present,
target their marketing to teenagers and adolescents by handing out free samples of

1 Monster Energy Drinks outside high schools, sports and music events without
2 regard to the age of the recipient.

3 146. Monster Energy Drinks were not fit for the purposes for which they
4 were intended, particularly not to the audience that Defendants was targeting with
5 their Monster Energy Drinks. The Monster Energy Drinks Plaintiff consumed
6 were neither safe for their intended use, nor of merchantable quality, in that they
7 do not contain “the right ingredients in the right proportions” for adolescents and
8 youth. Defendants, thus, breached their express warranties with Plaintiff and the
9 Class, and they have been injured as a result.

10 147. Whether or not expressly made, such warranties that the Monster
11 Energy Drinks are fit for the purposes intended and are safe is implied by law in all
12 consumer transactions.

13 148. Unless excluded or modified, a warranty that the goods shall be
14 merchantable is implied in a contract for their sale if the seller is a merchant with
15 respect to goods of that kind. *See* U.C.C. §2-314; Cal. Com. Code §2314.

16 149. Monster Energy Drinks are “goods,” as defined in the Uniform and
17 California Commercial Code. U.C.C. §2-105(1).

18 150. Plaintiff and members of the Class are each a “Consumer” meaning an
19 individual who buys or contracts to buy goods that, at the time of contracting, are
20 intended by the individual to be used primarily for personal, family, or household
21 purposes. U.C.C. §2-314.

22 151. As designers, manufacturers, licensors, producers, marketers, and
23 sellers of the Monster Energy Drinks, the Company is a “merchant” within the
24 meaning of the U.C.C. and California Commercial Code. U.C.C. §2-104(1); Cal.
25 Com. Code §2104(1).

26 152. By placing the Monster Energy Drinks in the stream of commerce,
27 Defendants impliedly warranted that the Monster Energy Drinks are reasonably
28

1 safe, effective and adequately tested for its intended use, i.e., are fit for the
2 ordinary purposes for which goods of that description are used and are adequately
3 contained, packaged, and labeled.

4 153. Defendants marketed and sold Monster Energy Drinks using
5 misleading marketing materials emphasizing the positive aspects of the Energy
6 Drinks while neglecting to inform the consumer of the risks associated with its
7 consumption, including increase heart rate, high blood pressure, arrhythmia,
8 dehydration, sleep deprivation and diarrhea.

9 154. As merchants of the Monster Energy Drinks, Defendants knew that
10 purchasers relied upon them to design, manufacture, license and sell products that
11 were reasonably safe and effective. Defendants impliedly warranted to Plaintiff
12 and members of the Class that Monster Energy Drinks were of merchantable
13 quality and safe and fit for the use for which they was intended. Plaintiff and the
14 Class reasonably relied entirely on Defendants' expertise, knowledge, skill,
15 judgment, and implied warranty in choosing to purchase and consume Monster
16 Energy Drinks.

17 155. Plaintiff and the Class members purchased the Monster Energy Drinks
18 for its intended purpose i.e. for consumption.

19 156. In breach of Defendants' implied warranties, the Monster Energy
20 Drinks are unsafe, ineffective and not merchantable for ways which include, but
21 are not limited to the fact, that it can cause serious and even fatal health problems,
22 that the caffeine content in the Monster Energy Drinks is dangerously high for
23 consumption by adolescents and children, that frequent and excessive consumption
24 may result in increasing heart rate, blood pressure, other cardiovascular
25 complications, sleep deprivation and diarrhea, among others.

26 157. Monster Energy Drinks are not reasonably safe for their intended use
27 and the labels do not adequately warn of such dangers or even disclose the caffeine
28

1 content, especially for teenager and youth targeted by the Company's advertising,
2 marketing and promotion campaign.

3 158. Plaintiff and the Class, who could not have known about the nature of
4 the risks and side effects associated with Monster Energy Drinks until after they
5 purchased or used it. Moreover, the risks associated with consuming Monster
6 Energy Drinks far outweigh any perceived benefits.

7 159. By selling, delivering and/or distributing the defective Monster
8 Energy Drinks to Plaintiff and the Class, Defendants breached the implied
9 warranty of merchantability and the implied warranty of fitness.

10 160. As a direct and proximate result of Defendants' breach of implied
11 warranties, Plaintiff and Class members have sustained injuries by purchasing the
12 Monster Energy Drinks which were not safe or effective as represented, thus
13 entitling Plaintiff to judgment and equitable relief against Defendants, as well as
14 restitution, including all monies paid for the Monster Energy Drinks.

15 **COUNT V**

16 **For Violations of the MMWA, 15 U.S.C. Section 2301, *et seq.***

17 161. Plaintiff repeats each and every allegation contained in the paragraphs
18 above and incorporates by reference each preceding paragraph as though fully set
19 forth at length herein.

20 162. Plaintiff and Class members are "consumers" within the meaning of
21 the MMWA.

22 163. The Company is a "supplier" and "warrantor" within the meaning of
23 the MMWA.

24 164. Monster Energy Drinks are "consumer products" within the meaning
25 of the MMWA.

26 165. Defendants' written affirmations of fact, promises and/or descriptions,
27 as alleged herein, are each a "written warranty" and/or there exists an implied
28

1 warranty for the sale of Monster Energy Drinks within the meaning of the
2 MMWA, i.e., that they are safe for consumption.

3 166. The Company breached its warranties as Monster Energy Drinks were
4 not fit for their intended use, and thereafter the Company has refused to honor any
5 applicable warranties by refunding the price paid for such products despite demand
6 therefor. Defendants' conduct thereby caused damages to Plaintiff and members
7 of the Class.

8 167. The amount in controversy meets or exceeds the sum or value of \$5
9 million (exclusive of interest and costs) computed on the basis of all claims to be
10 determined in this suit.

11 168. As a result of the Company's breach of warranties, Plaintiff and Class
12 members have sustained damages and other losses in an amount to be determined
13 at trial, as well as attorneys' fees, rescission, and/or other relief as is deemed
14 appropriate.

15 **COUNT VI**

16 **Unjust Enrichment**

17 169. Plaintiff repeats each and every allegation contained in the paragraphs
18 above and incorporates by reference each preceding paragraph as though fully set
19 forth at length herein.

20 170. At all times relevant hereto, Defendants designed, manufactured,
21 licensed, produced, promoted, marketed and/or sold the ineffective, dangerous and
22 improperly labeled Monster Energy Drinks.

23 171. Plaintiff and members of the Class conferred a benefit upon
24 Defendants by paying for a product with benefits that could not be provided or
25 delivered and were not safe and effective as advertised. By means of their material
26 misrepresentations and omissions, as set forth above, Defendants induced Plaintiff
27 and the Class to purchase Monster Energy Drinks provided no substantial benefit
28

1 to consumers, but actually may have caused significant detriment to their health
2 and mental well-being. As a consequence of such misrepresentations and
3 misconduct, Plaintiff and the members of the Class paid monies to obtain the
4 Monster Energy Drinks.

5 172. Defendants voluntarily accepted and retained the benefit of the
6 monies paid by Plaintiff and the Class with full knowledge of the dangers of the
7 Monster Energy Drinks and without adequately disclosing those risks.

8 173. Defendants have been enriched, at the expense of Plaintiff and the
9 Class, by retaining monies for benefits, which they did not provide.

10 174. Plaintiff and the Class have no adequate remedy at law.

11 175. It would be unjust and inequitable for Defendants to retain the profits,
12 benefits, and other compensation obtained from its wrongful conduct as alleged
13 herein.

14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, Plaintiff, on behalf of himself and all others similarly
16 situated, prays for judgment against Defendants as follows:

17 A. Certifying the Class as requested for all claims asserted herein;

18 B. Awarding Plaintiff and the proposed Class members actual, statutory
19 and punitive damages;

20 C. Awarding declaratory and injunctive relief as permitted by law or
21 equity, including corrective labeling, advertising and marketing;

22 D. Ordering that Defendants be required to make full restitution of all
23 monies wrongfully obtained as a result of the conduct described above and
24 disgorge all ill-gotten gains flowing from the conduct described above;

25 E. Ordering that Defendants be required to pay pre- and post-judgment
26 interest on all such sums;

27 F. Providing such further relief as may be just and proper;
28

1 G. Other legal and equitable relief permitted with respect to the causes of
2 action stated herein;

3 H. A trial by jury on all issues so triable; and;

4 I. Such other and further relief as the Court may deem just and proper.

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff hereby demands a trial by jury with respect to any claims so triable.

7
8 DATED: December 12, 2012

THE MEHDI FIRM


9
10 AZRA Z. MEHDI

11 9107 Wilshire Blvd., Suite 450
12 Beverly Hills, CA 90210
13 Telephone: (310) 853-8010
14 Facsimile: (310) 853-8011
15 azram@themehdifirm.com

16 Attorney for Plaintiff and the [Proposed]
17 Class
18
19
20
21
22
23
24
25
26
27
28