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7 Attorneys for Defendant
 MONSTER BEVERAGE CORPORATION

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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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SAN FRANCISCO DIVISION

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13 OSIE MARSHALL, YASNA CUEVAS,
 JOHN VAN ES, on behalf of themselves and
 14 others similarly situated,

15

Plaintiffs,

16

v.

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MONSTER BEVERAGE CORPORATION,
 d/b/a HANSEN BEVERAGE COMPANY, and
 DOES 1 through 50, inclusive

19

Defendants.

Case No.

**DEFENDANT MONSTER
 BEVERAGE CORPORATION'S
 NOTICE OF REMOVAL**

[San Francisco County Superior Court
 Case No. CGC-14-538447]

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NOTICE OF REMOVAL

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE**
2 **NORTHERN DISTRICT OF CALIFORNIA:**

3 **PLEASE TAKE NOTICE** that pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453,
4 Defendant Monster Beverage Corporation (“Monster”) respectfully submits this Notice of
5 Removal of this case from the Superior Court of the State of California for the County of San
6 Francisco to the United States District Court for the Northern District of California.

7 **PROCEDURAL HISTORY AND TIMELINESS OF REMOVAL**

8 1. On April 4, 2014, Plaintiffs Osie Marshall, Yasna Cuevas, and John Van Es,
9 purportedly on behalf of themselves and all others similarly situated, filed a civil action in the
10 Superior Court of the State of California for the County of San Francisco entitled *Osie Marshall,*
11 *et al. v. Monster Beverage Corporation d/b/a Hansen Beverage Company*, Case No. CGC-14-
12 538447. (Declaration of Purvi G. Patel, Ex. A.)

13 2. Plaintiffs have erroneously sued Monster Beverage Corporation, a Delaware
14 corporation. (Declaration of Thomas J. Kelly ¶ 2.) Monster Beverage Corporation is a holding
15 company that conducts no operating business except through its wholly owned subsidiaries. (*Id.*)
16 Monster Energy Company is a wholly-owned subsidiary of Monster Beverage Corporation, and is
17 the entity responsible for marketing and distributing the Hansen’s-brand products at issue in this
18 action.

19 3. Service of the summons and complaint was completed on April 18, 2014, when
20 counsel for Monster signed and returned a Notice of Acknowledgment and Receipt. (Patel Decl.
21 ¶ 3; Ex. B.)

22 4. Monster’s removal notice is timely. *See* 28 U.S.C. § 1446(b) (removal is timely if
23 filed within 30 days of defendant’s receipt of the pleading).

24 5. Pursuant to 28 U.S.C. § 1446(a), copies of all state court pleadings, processes, and
25 orders served on Monster are attached as Exhibit A to the Patel Declaration.

26 **BASIS OF REMOVAL JURISDICTION**

27 6. Generally. The action is removable pursuant to the Class Action Fairness Act of
28 2005 (CAFA), 28 U.S.C. §§ 1332(d) and 1453(b), for at least the following reasons:

1 7. Covered Class Action Consisting of More than 100 Members. Plaintiffs purport to
2 bring the action on behalf of “all consumers in the United States within four years of the filing of
3 this lawsuit who within the last four years have purchased any of the ‘Misbranded Products,’
4 which include all Hansen’s Juices or Juice Box products, all Hansen’s Smoothie Nectar products,
5 all Hubert’s Lemonade products, all Aguas Frescas products, all Hansen’s Natural Fruit and Tea
6 Stix products, all Vidration products, all Hansen’s sodas, all Blue Sky sodas, Energy Pro, Diet
7 Red, and all Blue Energy products (energy, juice, coffee).” (Compl. ¶ 1.) Plaintiffs allege that
8 “[a]lthough the precise number of putative class members has not been determined at this time,
9 Plaintiffs are informed and believe that the proposed classes include thousands of members.” (*Id.*
10 at ¶ 61); *see* 28 U.S.C. §§ 1332(d)(1) & (2), 1453(a) & (b).

11 8. Diversity. The minimal diversity standard of CAFA is met as long as any one
12 defendant is a citizen of a different state than any member of the class of plaintiffs. 28 U.S.C.
13 § 1332(d)(2)(A).

14 a. The putative nationwide class includes members from every state. (*See*
15 Compl. ¶¶ 1, 57.)

16 b. Monster is a Delaware corporation with its principal place of business in
17 the State of California. (Kelly Decl. ¶ 2.) *See Hertz Corp. v. Friend*, 130 S.Ct 1181, 1186 (2010)
18 (adopting the “nerve center test,” which locates a corporation’s principal place of business in the
19 place “where the corporation’s high level officers direct, control, and coordinate the corporation’s
20 activities,” “typically” the corporation’s headquarters). Accordingly, pursuant to 28 U.S.C.
21 § 1332(c)(1), Monster is, and at all relevant times was, a citizen of Delaware and California.

22 c. The citizenship of defendants sued as “Does” is disregarded for purposes of
23 removal. 28 U.S.C. § 1441.

24 Thus, this putative nationwide class action satisfies the diversity requirements of 28
25 U.S.C. § 1332(d)(2)(A) because any member of a class of plaintiffs (all States) is a citizen of a
26 state different from any defendant (Delaware and California).

27 9. Amount in Controversy – Alleged Damages. Under CAFA, the claims of
28 individual class members are aggregated to determine if the amount in controversy exceeds the

1 required “sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. §§ 1332(d)(2),
2 (d)(6). Plaintiffs allege seven causes of action: three claims for violations of the Unfair
3 Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*), two claims for violation of the False
4 Advertising Law (Cal. Bus. & Prof. Code § 17500 *et seq.*), violation of the Consumers Legal
5 Remedies Act (Cal. Civ. Code § 1750 *et seq.*), and for breach of quasi-contract. (Compl. ¶¶ 66-
6 121.) Plaintiffs seek, on behalf of themselves and the putative nationwide class, *inter alia*,
7 restitution, disgorgement, damages, injunctive relief, and imposition of a constructive trust. (*Id.*
8 at Prayer for Relief following ¶ 121.) Without conceding any merit to Plaintiffs’ damages
9 allegations or causes of action, the amount in controversy here satisfies CAFA’s jurisdictional
10 threshold.

11 10. Plaintiffs bring this action on behalf of a nationwide class who, within the past
12 four years, purchased any of the “‘Misbranded Products,’ which include all Hansen’s Juices or
13 Juice Box products, all Hansen’s Smoothie Nectar products, all Hubert’s Lemonade products, all
14 Aguas Frescas products, all Hansen’s Natural Fruit and Tea Stix products, all Vidration products,
15 all Hansen’s sodas, all Blue Sky sodas, Energy Pro, Diet Red, and all Blue Energy products
16 (energy, juice, coffee).” (Compl. ¶ 1.)

17 11. In the four years preceding the filing of this action, Monster Energy Company’s
18 sales in the United States of the Hansen’s-brand products identified in the Complaint have
19 exceeded \$5,000,000. (Kelly Decl. ¶ 4.) While Monster disputes that it is liable to Plaintiffs or to
20 the putative class (or that Plaintiffs or the putative class suffered injury or incurred damages in
21 any amount whatsoever) and makes no admission as to whether class action treatment is
22 appropriate or warranted in this case, for purposes of satisfying the jurisdictional prerequisite of
23 CAFA, the amount in controversy exceeds \$5,000,000.

24 12. Amount in Controversy – Attorneys’ Fees. Plaintiffs also seek an award of
25 attorneys’ fees. (Compl. Prayer for Relief ¶ G.) This amount should also be included in the
26 amount in controversy. *See Goldberg v. CPC Int’l, Inc.*, 678 F.2d 1365 (9th Cir. 1982).

27 13. No CAFA Exclusions. This action does not fall within any exclusion to removal
28 jurisdiction recognized by 28 U.S.C. § 1332(d). Plaintiffs bring this action on behalf of a

1 nationwide class of “all consumers in the United States within four years of the filing of this
2 lawsuit who within the last four years have purchased any of the ‘Misbranded Products [.]’
3 (Compl. ¶ 1.) Plaintiffs do not allege that over one third of the putative class comprises citizens
4 of California. Nor can the complaint as pleaded support such a conclusion. Therefore, even
5 though Monster is a citizen of California (and Delaware), the exclusions to removal jurisdiction
6 do not apply. *See* 28 U.S.C. § 1332(d).

7 **DEMAND FOR JURY TRIAL**

8 14. Monster demands trial by jury on all issues raised on this action upon which a jury
9 trial is permitted.

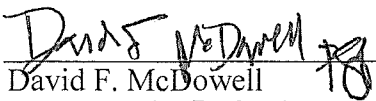
10 **NOTICE TO STATE COURT**

11 15. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed
12 with the Clerk of the Superior Court for the County of San Francisco. (*See* Patel Decl., Ex. C,
13 attaching without exhibits the Notice of Filing of Notice of Removal.)

14 Accordingly, Monster respectfully submits that this action is removed properly pursuant to
15 the Class Action Fairness Act.

16 Dated: May 13, 2014

MORRISON & FOERSTER LLP

17 By: 
18 David F. McDowell
19 *Attorneys for Defendant*
20 *Monster Beverage Corporation*

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JS 44 (Rev. 12/12) cand rev (1/15/13)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS Osie Marshall, Yasna Cuevas, John Van Es, on behalf of themselves and others similarly situated</p> <p>(b) County of Residence of First Listed Plaintiff <u>Los Angeles County, CA</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Anthony J. Orshansky (SBN 199364), CounselOne, P.C. 9301 Wilshire Boulevard, Suite 650 Beverly Hills, CA 90210; Telephone 310.277.9945</p>	<p>DEFENDANTS Monster Beverage Corporation</p> <p>County of Residence of First Listed Defendant <u>Riverside County, CA</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i> Dan Marmalefsky (SBN 95477), David F. McDowell (SBN 125806) Morrison & Foerster LLP, 707 Wilshire Boulevard, Suite 6000 Los Angeles, CA 90017; Telephone 213.892-5200</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT <i>(Place an "X" in One Box Only)</i>				
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157
		<p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District *(Specify)* 6 Multidistrict Litigation

VI. CAUSE OF ACTION

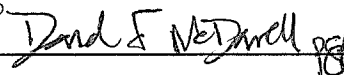
Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
 Removal under 28 USC §§ 1332, 1441, 1446, 1453

Brief description of cause:
 Plaintiffs allege that Defendant's sale of food products violates California's consumer protection statutes.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint.
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE _____ DOCKET NUMBER _____

DATE: 05/13/2014 SIGNATURE OF ATTORNEY OF RECORD: 

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA