

## SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims (“Agreement”) is entered into by and between plaintiffs Mayan Mooney and Chayla Clay, individually and in their representative capacity on behalf of all others similarly situated, (“Plaintiffs”), and Defendants Monster Beverage Corporation and Monster Energy Company (“Monster” or “Defendants”) (collectively referred to as the “Parties”) as follows:

### **I. RECITALS**

1. Plaintiffs Mayan Mooney and Chayla Clay (“Plaintiffs”) are the named plaintiffs in the above-captioned action (“Action”).
2. Defendants Monster Beverage Corporation and Monster Energy Company are the sole defendants in the Action.
3. The operative First Amended Complaint (“FAC”) was filed on March 11, 2015. The FAC includes causes of action based on violations of the Unfair Competition Law (Bus. & Prof. Code, §§ 17200-17209), the False Advertising Law (Bus. & Prof. Code, §§ 17500-17509), the Consumers Legal Remedies Act (Civ. Code, §§ 1750-1784), and unjust enrichment.
4. On November 28, 2016, the Court granted Plaintiffs’ Motion for Class Certification and certified two classes that include California purchasers of 37 products. The two classes are: (1) California consumers who purchased any of 21 Hansen’s juice products (sold in bottles and boxes) or any of four Hansen’s Smoothie Nectar products between June 19, 2010 and June 12, 2015, and (2) California consumers who purchased any of 12 Hubert’s lemonade or lemonade-tea products between June 19, 2010 and January 1, 2014.
5. Plaintiffs allege that during the relevant time periods, Defendants’ products were labeled as being “natural” even though they contained synthetic or

artificial ingredients and/or added colors.

6. Defendants dispute all factual and legal allegations contained in the FAC and deny any liability to Plaintiffs or any members of the putative classes.

7. This Agreement is entered into after the Parties completed fact and expert discovery, and engaged in extensive arms-length discussions and negotiations between class counsel and counsel for Defendants. This included a full-day mediation session with the Honorable Ronald S. Prager (Ret.) that was conducted on February 16, 2018, in San Diego, California. While the mediation did not immediately result in settlement, the Parties have continued to negotiate and have reached a settlement, the terms of which are set forth in this Agreement.

8. The Parties desire to compromise and settle all issues and claims that have been brought or could have been brought against Monster in the Action. Class Counsel and counsel for Defendants agree that the settlement contemplated by this Agreement is a fair, adequate, and reasonable resolution of the Action.

9. The Parties agree that this Agreement shall not be deemed or construed to be an admission or evidence of any violation of any federal or state statute, rule, or regulation, principle of common law or equity, or of any liability or wrongdoing whatsoever by Defendants.

10. It is agreed that in consideration of the promises and mutual covenants set forth in this Agreement and the foregoing Recitals, and the entry by the Court of a Final Approval Order and Judgment approving the terms and conditions of the settlement as set forth herein, this Action shall be deemed settled and compromised under the following terms and conditions.

## II. DEFINITIONS

As used in this Agreement and the related documents attached as exhibits, the terms set forth below shall have the meanings set forth below. The singular will include the plural and vice versa.

1. “Action” means *Marcy Krinsk (dismissed), Mayan Mooney and Chayla Clay v. Monster Beverage Corp. et al.*, San Diego Superior Court Case No. 37-2014-20192-CU-BT-CTL (Complaint filed June 19, 2014; First Amended Complaint filed March 11, 2015).
2. “Agreement” means this Stipulation and Settlement Agreement.
3. “Authorized Claimant” means any Class Member who validly and timely submits a Claim according to the terms of this Agreement and does not request exclusion from the Classes.
4. “Claim” means a request for reimbursement from a Class Member.
5. “Claim Form” means the form a Class Member must submit to receive a Settlement Benefit under this Agreement. The Claim Form will be substantially similar to the form attached as Exhibit C.
6. “Claimant” means any Class Member who submits a Claim under this Agreement.
7. “Class” or “Classes” and “Settlement Class” or “Settlement Classes” means:
  - a. All persons who made a purchase in California between June 19, 2010 and June 12, 2015 of either Hansen’s Natural Juices (64 oz.

bottles or 6.75 oz. boxes)<sup>1</sup> or Hansen's Smoothie Nectars<sup>2</sup> (11.5 oz. cans); and/or

b. All persons who made a purchase in California between June 19, 2010 and January 1, 2014 of either Hubert's Lemonade<sup>3</sup> or Hubert's Half & Half Lemonade Tea<sup>4</sup> products.

8. "Class Counsel" means Gomez Trial Attorneys and Finkelstein & Krinsk LLP.

9. "Class Member" means a member of either Class.

10. "Class Representatives" mean Mayan Mooney and Chayla Clay.

11. "Court" means the Superior Court of California, County of San Diego.

12. "Day or Days" means calendar days.

13. "Final Order and Judgment" means the order and judgment entered by the Court approving this Agreement as fair, reasonable, and adequate, and in the best interests of the classes as a whole, as well as making such other

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<sup>1</sup> Hansen's Natural Juices flavors include: Awesome Apple, Burstin' Berry, Strawberry Banana, Totally Tropical, Apple Grape, Loud Lemonade, Apple Orange Pineapple Juice, Apple Strawberry Juice, Apple Juice, Cranberry Apple Juice, Cranberry Grape Juice, Cranberry Juice, Grape Juice, Orange Juice, Pineapple Juice, White Grape Juice, Apple Trio Juice, Ruby Red Grapefruit Juice, Organic Apple Juice, Organic Apple Berry Juice, Organic Fruit Punch Raspberry.

<sup>2</sup> Hansen's Smoothie Nectars flavors include: Energy Island Blast; Hansen's Smoothie Nectar: Mango Pineapple; Hansen's Smoothie Nectar: Peach Berry; Hansen's Smoothie Nectar: Strawberry Banana.

<sup>3</sup> Hubert's Lemonade flavors include: Original Lemonade, Blackberry Lemonade, Cherry Limeade, Raspberry Lemonade, Strawberry Lemonade, Mango Lemonade, Honey Lemonade, and Limeade.

<sup>4</sup> Hubert's Lemonade Tea flavors include: Original Black Tea, Peach, Original Green Tea, and Raspberry.

findings and determinations as the Court deems necessary and appropriate to effectuate the terms of this Agreement.

14. “Fairness Hearing” means the hearing on final approval of the Settlement.

15. “Household” means all persons residing at the same physical address.

16. “Monster” refers to Defendants Monster Beverage Corporation and Monster Energy Company, and their successors, assigns, predecessors, parents, subsidiaries, divisions, departments, or affiliates; and any of its or their past or present officers, directors, attorneys, stockholders, partners, agents, servants, subrogees, insurers, employees, or representatives.

17. “Monster’s Counsel” means Shook, Hardy & Bacon L.L.P.

18. “Notice” means the proposed long notice in a form substantially similar to Exhibit A.

19. “Notice Plan” means the method of providing notice to the Settlement Classes as approved by the Court in its Preliminary Approval Order.

20. “Objection Deadline” means the deadline by which any Class Members must file and serve any objection to the Agreement or to Class Counsel’s request for attorneys’ fees and costs or request for incentive fees to Plaintiffs. The Objection Deadline shall be no more than 120 days after entry of the Preliminary Approval Order.

21. “Opt-Out Deadline” means the deadline by which a person who otherwise falls within the definition of the Classes must request exclusion from the Classes and thereby opt-out of the Settlement under Section VII and as set forth in the Preliminary Approval Order. The Opt-Out Deadline shall be no more than 120 days after entry of the Preliminary Approval Order.

22. “Party” or “Parties” means Plaintiffs Mayan Mooney and Chayla Clay and/or Defendants Monster Beverage Corporation and Monster Energy Company.

23. “Person” means any natural person, corporation, partnership, business organization or association, or other type of legal entity.

24. “Preliminary Approval Motion” means a motion to be filed by Class Counsel requesting the Court to enter an order granting preliminary approval of the Settlement and Notice Plan as set forth in this Agreement.

25. “Publication Notice” means the proposed short notice in a form substantially similar to Exhibit B.

26. “Released Claims” means any and all actions, causes of action, claims, demands, liabilities, obligations, fees, costs, sanctions, proceedings, or rights of any nature and description whatsoever, including, without limitation, violations of any state or federal statutes, rules, or regulations, or principles of common law, whether liquidated or unliquidated, that are based on, arise out of, or relate to any of the facts or claims alleged in the Action.

27. “Releasing Parties” means Plaintiffs and Class Members and their respective heirs, administrators, devisees, predecessors, successors, attorneys, representatives, shareholders, partners, directors, officers, owners, affiliates, subrogees, assignees, or insurers.

28. “Settled Claims” means all claims that were brought or could have been brought by Plaintiffs in the Action related to any of the facts identified in the Recitals (Section I) above and are the subject of this Agreement, except personal injury claims.

29. “Settlement” means the settlement of this Action and related claims effectuated by this Agreement.

30. “Settlement Administrator” means CPT Group.

31. “Settlement Benefit” or “Settlement Benefits” means the benefits provided to Authorized Claimants as set forth in Paragraphs III.1.a-d of this Agreement. Monster agrees to pay up to \$3 million total for the Settlement Benefits to the Settlement Classes.

32. “Settlement Date” means the later of the date on which (1) the Final Order and Judgment becomes final by expiration of the time for appeal with no appeal being taken; (2) if the Final Order and Judgment is appealed, all appellate court proceedings, including intermediate appellate review and California Supreme Court review, whether by right or through discretionary means, are completed and all time periods for further appellate court proceedings have passed and the Final Order and Judgment is affirmed in full; or (3) the Parties elect to proceed with the Agreement even if the Final Order and Judgment is appealed and is not affirmed in full.

33. “Settlement Website” means a website approved by the Court as part of the Notice Plan that provides information about the Agreement to Class Members and others.

### **III. RELIEF TO CLASS MEMBERS AND CLAIMS PROCEDURE**

This Agreement is for settlement purposes only. Neither the fact of Settlement nor any provisions contained in this Agreement or its attachments nor any action taken hereunder shall constitute, be construed, or be admissible in evidence as an admission by any of the Parties to the validity or lack thereof of any claim, allegation, or defense asserted in the Action or in any other action. If this Agreement for any reason is not fully approved by the Court or is otherwise terminated, Monster reserves the right to assert any and all objections

and defenses to Plaintiffs' claims.

In consideration of a full, complete, and final settlement of the Action, and the release of claims set forth in Section IV below, and subject to the Court's approval, the Parties agree to the following Settlement:

**1. Relief to Class**

Every Authorized Claimant is entitled to receive a Settlement Benefit. A Claim shall be valid only if submitted electronically on the Claim Form pursuant to the procedures set forth in this Agreement. Monster agrees to pay up to \$3 million in Settlement Benefits to the Settlement Classes. If the sum of all Claims by Authorized Claimants equals or is less than \$3 million, the Settlement Benefit for each Authorized Claimant shall be calculated as described in Sections III.1(a) & (b) of this Agreement. If the sum of all Claims by Authorized Claimants exceeds \$3 million, the Settlement Benefit for each Authorized Claimant shall be calculated as described in Sections III.1(a) & (b) of this Agreement but adjusted and distributed pro rata based on the amount claimed. In no event shall Monster be required to pay any money in excess of \$3 million for Settlement Benefits to the Settlement Classes.

a. Class Members who provide proof of purchase of their Claim in the form of a receipt or other valid proof of purchase will receive a refund for the purchase price(s) paid up to a maximum of \$15 in total per Claimant. Only one Authorized Claimant per Household is entitled to receive a Settlement Benefit unless otherwise agreed to by the parties.

b. Class Members who do not provide proof of purchase can submit an electronic declaration under penalty of perjury verifying:

(1) They purchased Hansen's Natural Juices (64 oz. bottles or 6.75 oz. boxes) between June 19, 2010 and June 12, 2015, and will receive a refund of \$1.25 per purchase up to a maximum of \$5 in total per



Household; and/or

(2) They purchased Hansen's Smoothie Nectars (11.5 oz. cans) between June 19, 2010 and June 12, 2015, and will receive a refund of \$0.50 per purchase up to a maximum of \$5 in total per Household; and/or

(3) They purchased Hubert's Lemonade or Hubert's Half & Half Lemonade Tea products between June 19, 2010 and January 1, 2014, and will receive a refund of \$1.00 per purchase up to a maximum of \$5 in total per Household.

c. To be clear, Class Members who do not provide proof of purchase under Section III.1.b are limited to a Settlement Benefit of \$5 in total.

d. Only one Authorized Claimant per Household is entitled to receive a Settlement Benefit unless otherwise agreed to by the parties. If more than one Claim is received from a Household, the Settlement Administrator may contact any Claimant to request additional information and documentation to determine the validity of any Claim as described in Section III.2. However, in no event following the Settlement Administrator's investigation shall Monster be required to pay more than two Claims from one Household.

e. All Settlement Benefits discussed in Sections III.1(a) & (b) will be issued in the form of a check or electronic check or gift card by the Settlement Administrator.

f. Authorized Claimants who receive a check or electronic check or gift card shall have 180 calendar days from the date of issuance to negotiate the check or electronic gift card. If checks or gifts card are not negotiated within 120 days, the Settlement Administrator shall send via email a reminder notice with the deadline to negotiate or redeem all checks or gift cards. Any checks or gift cards not negotiated within the 180 day period shall be cancelled

or expired.

In addition to funding up to \$3 million for the Settlement Benefit to Authorized Claimants, Monster will also be responsible for Plaintiffs' reasonable attorneys' fees and costs up to \$1,175,000 and Class Representatives' incentive awards up to \$2,500 each or \$5,000 total, subject to Court approval, along with administrative expenses and costs related to Notice including the costs of the Settlement Administrator (as described in Section XI). Monster shall have no other financial obligations under this Agreement.

**2. Claims Procedure**

a. Claims by Class Members shall be submitted through the Settlement Website and shall be made in a form substantially similar to Exhibit C within 120 days after the Court enters the Preliminary Approval Order. Class Members who are unable to submit a Claim Form through the Settlement Website may request a paper Claim Form by contacting the Settlement Administrator via the toll-free telephone number (identified in Section VI.6).

b. The Settlement Benefit issued to Authorized Claimants identified in Sections III.1(a) & (b) shall be made within 90 days after the Settlement Date.

c. The Settlement Administrator shall be responsible for processing Claim Forms submitted by Claimants and administering the Settlement Website, opt-out and objection process, and issuing the Settlement Benefit to Authorized Claimants described herein. Class Counsel shall monitor the administration of the Settlement, including without limitation any issues or problems in the processing of Claims or other procedures described herein.

d. The Settlement Administrator shall review all Claim Forms for completeness, validity, accuracy, and timeliness, and may contact any Claimant to request additional information and documentation to determine the

validity of any Claim. Should the Settlement Administrator propose to reject any Claim, the reason for rejection shall be provided to Class Counsel.

e. Monster shall have the right to audit all submitted Claim Forms for completeness, validity, accuracy, and timeliness.

f. Should Plaintiffs dispute the rejection of any Claim, Plaintiffs and Monster will meet and confer in good faith to attempt to resolve the dispute. Any unresolved disputes between Plaintiffs and Monster regarding Claims Administration or the reimbursement of a Claim shall be resolved by the Court.

#### **IV. RELEASING PARTIES AND CLAIMS RELEASED**

##### **1. Class Members' Release of Claims**

Upon entry of the Final Order and Judgment, Plaintiffs and Class Members (except any person who has filed a proper and timely request for exclusion from the Settlement Class) shall be deemed to release and forever discharge Monster from any and all of the Settled Claims.

##### **2. Plaintiffs' Release of Claims**

Upon entry of the Final Order and Judgment, Plaintiffs shall be deemed to release and forever discharge Monster from any and all of the Settled Claims.

##### **3. Waiver of California Civil Code Section 1542**

Plaintiffs understand and acknowledge, and Class Members (except any person who has filed a proper and timely request for exclusion from the Settlement Class) shall be deemed to understand and acknowledge, that they waive all rights against Monster under California Civil Code Section 1542, which reads as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**

THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

By executing this Agreement, Plaintiffs expressly acknowledge: (a) they are represented by Class Counsel; (b) they have read and fully understands the provisions of California Civil Code Section 1542; and (c) they have been specifically advised by Class Counsel of the consequences of the above waiver.

## V. PRELIMINARY APPROVAL

Class Counsel shall apply to the Court through a Preliminary Approval Motion seeking a Preliminary Approval Order that addresses the following: (1) preliminary approval of the Settlement as set forth in this Agreement as fair, reasonable, adequate, and in the best interests of the Settlement Classes; (2) approval of the Notice Plan; (3) a schedule for a hearing by the Court after the Notice period has expired to approve the Agreement and to consider Class Counsel's applications for attorneys' fees and expenses and an incentive award; (4) a stay of all proceedings in the Action until such time as the Court renders a final decision regarding approval of the Agreement; and (5) confirm the appointment of Gomez Trial Lawyers and Finkelstein & Krinsk LLP as Class Counsel. Monster shall be permitted, but not required, to file a statement of non-opposition to the Motion for Preliminary Approval.

## VI. NOTICE PLAN

### 1. Activation of Notice Plan

The Notice Plan and the schedule for the Fairness Hearing shall be approved by the Court in the Preliminary Approval Order. Monster will activate

the Notice Plan no later than 30 days after the Court enters the Preliminary Approval Order.

**2. Notice**

The Form of Notice of the Settlement will be substantially similar to that in Exhibit A. The notice shall be maintained until 120 days after the Court enters the Preliminary Approval Order. The Settlement Website shall be maintained for 90 days after the Court enters the Final Approval Order and Judgment and the Final Approval Order and Judgment shall be posted to the Settlement Website thereby providing notice of final judgment to the Class.

**3. Publication Notice Plan**

Notice shall be provided as follows: Publication Notice to Class Members shall be made through publication in the San Diego Tribune (three insertions, 1/8 page) and People Magazine (one insertion, 1/2 page), and through PR Newswire's California network. All of these forms of Notice shall be substantially similar to Exhibit B and have links or references to the Settlement Website established by the Settlement Administrator. Notice shall also be provided through online and mobile media banner ads with links or references to the Settlement Website.

**4. Confirmation of Notice**

The Settlement Administrator shall prepare a declaration attesting to compliance with the Notice requirements set forth above. The declaration will be provided to Class Counsel and Monster's Counsel and filed with the Court no later than 10 days prior to the Fairness Hearing.

**5. Notice Complies With Applicable Law**

The Parties agree and the Preliminary Approval Order shall state that compliance with the procedures described in this section for Notice to the Settlement Classes of the pendency of the Action, certification of the Settlement Classes, the terms of the Agreement, and the Fairness Hearing satisfy the

requirements of the Consumers Legal Remedies Act in Civil Code section 1781, subdivisions (d) and (e), the California Rules of Court, the California Code of Civil Procedure, the Constitution of the State of California, the United States Constitution, and any other applicable law.

**6. Toll-Free Telephone Number**

The Settlement Administrator will establish a toll-free telephone number that will be included in the Notice. The toll-free telephone number will provide pre-recorded information, agreed to by the Parties, of the following: (1) a statement on the status of the Class Settlement and its terms; (2) a reference to the Settlement Website for further information; and (3) the address of Class Counsel to whom Class Members may write for additional information. The Settlement Administrator's obligation to maintain the toll-free telephone number will continue until the Agreement receives final approval by the Court.

**VII. REQUEST FOR EXCLUSION FROM THE CLASS**

**1. Requests for Exclusion**

Anyone who wishes to be excluded from the Settlement Classes must submit a written request for exclusion by first-class United States Mail, postage paid, to the Settlement Administrator. Any request for exclusion from the Settlement Classes must be postmarked on or before the deadline specified in the Notice, which shall be no later than 120 days after the Court enters the Preliminary Approval Order, which is the Opt-Out Deadline. Anyone submitting a request for exclusion must set forth his or her full name and current address. The request for exclusion must be in writing and signed by the requesting person under penalty of perjury in a form substantially similar to Exhibit D.

**2. Challenges to Requests for Exclusion**

The Parties shall have the right to challenge the timeliness and validity of any exclusion request. Class Counsel shall also have the right to obtain withdrawal of any exclusion request submitted in error and any exclusion request that the submitter wishes to withdraw for purposes of participating in the Settlement. The Court shall determine whether any contested exclusion request is valid.

**3. Report from Settlement Administrator**

Not later than 10 days before the Fairness Hearing, the Settlement Administrator will prepare and deliver to Monster's Counsel, who shall file with the Court and serve on Class Counsel, a report stating: (1) the total number of persons who have submitted timely and valid requests for exclusion from the Settlement Classes and the names of such persons; and (2) the total number of persons who have submitted timely valid claims, and the aggregate value of those claims. Any person who has submitted a timely and valid Request for Exclusion will not be entitled to receive any relief under this Agreement.

**4. Response to Settlement Inquiries**

It shall be the responsibility of Class Counsel to establish procedures for receiving and responding to all inquiries from Class Members with respect to this Agreement. Monster and Monster's Counsel may but are not required to respond to such inquiries.

**VIII. OBJECTIONS TO SETTLEMENT**

**1. Procedures for Objections**

Any Class Member may object to the fairness, reasonableness, or adequacy of the Agreement. A person who validly requests exclusion from the classes may

not file an objection. Any Class Member who wishes to object to any aspect of the Agreement must submit a written statement by first-class United States Mail, postage paid, to the Settlement Administrator that describes the Class Member's objection in specific terms and the reasons for any such objection, including any evidence and legal authority the Class Member wishes to bring to the Court's attention and any evidence the Class Member wishes to introduce in support of his or her objection, as well as the Class Member's name, email and postal addresses, and telephone number, and information demonstrating that the Class Member is entitled to be included as a Member of the Class.

The Settlement Administrator shall promptly deliver any objections to Class Counsel, and not later than 10 days before the Fairness Hearing, Class Counsel shall file with the Court and serve on Monster's Counsel, all objections received.

**2. Timing**

All objections to the Settlement must be submitted at least 30 days before the date of the Fairness Hearing (the "Objection Deadline").

**3. Waiver of Objections**

Any Class Member who fails to comply with this section shall waive and forfeit any and all rights he or she may have to appear separately or to object to the Agreement and shall be bound by all the terms of this Agreement and by all proceedings, orders, and judgments in the Action and shall have no right to file any appeal from any order or judgment entered by the Court.

**4. Appearance at Fairness Hearing**

Any objecting Class Member may appear at the Fairness Hearing, in person or through counsel, to show cause why the proposed Settlement should not be approved as fair, adequate, and reasonable, or to object to any petition or application for attorneys' fees, Class Representatives' incentive fees, or



reimbursement of litigation costs and expenses. The objecting Class Member must file with the Court and serve upon Class Counsel and Monster's Counsel a Notice of Intention to Appear at the Fairness Hearing at least 30 days before the Fairness Hearing date. The Notice of Intention to Appear at the Fairness Hearing must include copies of any papers, exhibits, or other evidence that the objection Class Member will present to the Court.

## **IX. FINAL APPROVAL**

### **1. Request for Final Approval**

The Parties shall request that the Court, on the date set forth in the Preliminary Approval Order, or on such other date as the Court may set, conduct a Fairness Hearing to determine (a) whether to grant final approval to this Agreement; (b) consider any timely objections to this Settlement and the Parties' responses to such objections; and (c) rule on any petition or request for attorneys' fees, recovery of costs and expenses, and Class Representatives' incentive fee.

### **2. Final Approval Order and Judgment**

At the Fairness Hearing, the Parties shall ask the Court to give final approval to this Agreement. If the Court grants final approval to this Agreement, the Parties shall ask the Court to enter a Final Approval Order and Judgment, which approves this Settlement and authorizes entry of a final judgment.

## **X. EXCLUSIVE REMEDY; JURISDICTION OF COURT**

### **1. Exclusive Remedy**

This Agreement shall provide the sole and exclusive remedy for any and all claims asserted in the Action and any and all claims that could be brought by Class Members with respect to any of the facts alleged in the Action or set forth in Section I above. Upon entry of the Final Order and Judgment, each Class

Member shall be barred from initiating, asserting, or prosecuting against Monster any of the Settled Claims. In the event any Class Member attempts to prosecute an action in contravention of the Final Order and Judgment in this Agreement, counsel for any of the Parties may forward this Agreement and the Final Order and Judgment to such Class Member and advise the Class Member of the release provided in this Agreement. If so requested by Monster or Monster's Counsel, Class Counsel shall provide such notice.

**2. Continuing Jurisdiction of Court**

The Court shall retain exclusive and continuing jurisdiction over the Action and over all Parties to interpret and enforce the terms, conditions, and obligations of this Agreement.

**XI. ATTORNEYS' FEES AND COSTS, INCENTIVE FEE;  
ADMINISTRATIVE EXPENSES**

**1. Payment of Notice and Administration Costs**

All costs of providing Notice under the terms of this Agreement and all costs of administering this Settlement, including all fees of the Settlement Administrator, shall be paid by Monster.

**2. Attorneys' Fees Award and Costs**

Class Counsel may apply to the Court for an award of reasonable attorneys' fees and costs in a petition or application to be filed with the Court prior to the Fairness Hearing that seeks an award of attorneys' fees consistent with California law, but not more than \$1,175,000, which includes the reimbursement of costs. Attorneys' fees and costs shall be paid separate and apart from the Settlement Benefit to Authorized Claimants. If the Court approves the Settlement of this Action and an award of attorneys' fees and costs to Class Counsel, Monster agrees

to pay up to \$1,175,000 to Class Counsel, by wire transfer within 30 days after both of the following: (1) the Settlement Date; and (2) Class Counsel, specifically Gomez Trial Attorneys and Finkelstein & Krinsk, provides Monster with its completed Form W9 and wiring information. No interest shall be paid on any portion of the attorneys' fees and costs award.

**3. Incentive Fees**

The Class Representatives, through Class Counsel acting on her behalf, may seek incentive awards in an amount not to exceed \$2,500, or \$5,000 total for both representatives. If the Court approves the Settlement of this Action and incentive awards to Class Representatives, Monster agrees to pay up to \$5,000 total (up to \$2,500 each) to Class Representatives, by check within 30 days after both of the following: (1) the Settlement Date; and (2) Class Representatives provide Monster with their completed Form W9. No interest shall be paid on any portion of the incentive awards.

**4. Ruling on Attorneys' Fees and Costs and Incentive Fee Shall Not Impact Settlement**

The Parties agree that the rulings by the Court regarding the amount of attorneys' fees and costs and any incentive awards, and any claim or dispute relating thereto, should be considered by the Court separately from the remaining matters to be considered at the Fairness Hearing as provided for in this Agreement. Any order or proceedings related to the amount of attorneys' fees or costs or incentive award, including any appeals from or modifications to or reversals of any orders related thereto, shall not operate to modify, reverse, terminate, or cancel the Agreement or affect the release provided for in this Agreement or any other provision of this Agreement.

## **XII. TERMINATION OF THE SETTLEMENT AGREEMENT**

### **1. Dependent on Entry of Final Order and Judgment**

The performance of this Agreement is expressly contingent upon entry of the Final Order and Judgment. If the Court declines to issue the Final Order and Judgment, this Agreement will be terminated. If the Final Order and Judgment is vacated, modified, or reversed, in whole or in part, the Agreement will be deemed terminated unless the Parties acknowledge in writing their intent to proceed with the Agreement as modified.

### **2. Effect of Termination**

If this Agreement is terminated, it will have no force or effect whatsoever, and shall be deemed null and void, and will not be admissible as evidence for any purpose in any pending or future litigation in any jurisdiction.

## **XIII. PUBLICITY**

Class Representatives and Class Counsel agree not to initiate any publicity relating to or make any public comment regarding this Agreement or the negotiations leading to this Agreement without prior consent by Monster, which will not be unreasonably withheld. But subsequent to the Court granting Preliminary Approval of the Settlement, Class Counsel may publicize only information contained in the Notice on its website. Class Representatives and Class Counsel further agree to not make any public statements disparaging of Monster.

#### XIV. MISCELLANEOUS PROVISIONS

1. **Stay of Action**

The Parties agree the Action shall be stayed pending approval of the Settlement.

2. **Entire Agreement**

This Agreement, including all attached exhibits, constitutes the entire agreement among the Parties with regard to the subject matter of this Agreement and shall supersede any and all previous agreements and understandings between the Parties.

3. **Modification Must Be in Writing**

This Agreement may not be changed, modified, or amended, except in writing signed by Class Representatives, Class Counsel, and Monster or Monster's Counsel, subject to Court approval if required by law.

4. **Arm's Length Negotiations; Mutual Drafting**

This Agreement has been negotiated at arms' length by Class Counsel and Monster's Counsel. In the event of any dispute arising out of this Agreement or any proceeding to enforce any of its terms, neither Party shall be deemed to be the drafter of the Agreement or any of its particular provision or provisions, and no part of this Agreement shall be construed against either Party on the basis of that Party's identity as the drafter of any part of this Agreement.

5. **Authority to Settle**

Each Party represents and warrants that it enters into this Agreement of her or its own free will. Each Party is relying solely on its own judgment and knowledge and is not relying on any statement or representation made by the other Party or the other Party's agents or attorneys, except that Class Counsel has relied upon information provided by Monster in verified discovery responses in the

Action. The signatories to this Agreement represent that they are duly authorized to execute it.

**6. No Assignment or Transfer**

Each Party represents and warrants that she or it has not directly or indirectly assigned, transferred, or purported to assign or transfer any portion of any liability, claim, demand, cause of action, or rights that are the subject of the Action and this Agreement.

**7. Binding Effect**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, successors, and assigns.

**8. Cooperation**

The Parties agree to cooperate fully and to take additional action that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Agreement.

**9. Headings**

The headings of the sections in this Agreement are included for convenience only and shall not be deemed to constitute part of this Agreement or to impact its construction.

**10. California Law Controls**

This Agreement will be construed in accordance with the laws of the State of California.

**11. Partial Invalidity**

With the sole exception of Section IV (Release of Claim), if any provision of this Agreement is found to be void, all the remaining provisions of this Agreement shall remain in full force and effect.

**12. Notice**

Any notice, instruction, court filing, or other document given to any Party or their counsel under or relating to this Agreement shall be in writing and delivered personally or sent by registered or certified mail with postage prepaid, overnight delivery service, or by email to the respective representatives identified below or to other recipients as the Court may specify. As of the date of this Agreement, these respective representatives are as follows:

**For the Classes:**

John H. Gomez  
Deborah S. Dixon  
GOMEZ TRIAL ATTORNEYS  
655 West Broadway, Suite 1700  
San Diego, CA 92101

Jeffrey R. Krinsk  
Trenton R. Kashima  
Lauren R. Presser  
FINKELSTEIN & KRINSK  
550 West C. Street, Suite 1760  
San Diego, CA 92101

**For Monster:**

Marc P. Miles  
Frank C. Rothrock  
Naoki S. Kaneko  
SHOOK, HARDY & BACON L.L.P.  
Jamboree Center  
5 Park Plaza, Suite 1600  
Irvine, California 92614