

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

OCT 17 2012

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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF RIVERSIDE**
15

16 **WENDY CROSSLAND AND RICHARD**
17 **FOURNIER; individually, and as surviving**
18 **parents of ANAIS FOURNIER,**

19 Plaintiffs,

20 v.

21 **MONSTER BEVERAGE**
22 **CORPORATION**

23 Defendants.
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Case No.: **RIC 1215551**

COMPLAINT FOR:

- (1) Strict Product Liability (Design Defect);
- (2) Strict Product Liability (Failure to Warn);
- (3) Negligence (Design, Sale, Manufacturing);
- (4) Negligence (Failure to Warn);
- (5) Fraudulent Concealment;
- (6) Breach of Implied Warranties; and
- (7) Wrongful Death

1 Plaintiffs, Wendy Crossland and Richard Fournier, Individually and as Surviving
2 Parents of Anais Fournier ("Plaintiffs"), by their undersigned counsel, hereby sue Defendant,
3 Monster Beverage Corporation ("Defendant" or "Monster"), and in support thereof, state as
4 follows:

5 **NATURE OF THE CASE AND PARTIES**

6 1. Plaintiffs bring the instant survival and wrongful death actions for personal
7 injuries suffered as a result of the December 23, 2011 passing of their 14-year-old daughter,
8 Anais Fournier, following her ingestion of a toxic amount of caffeine and other stimulants
9 through her consumption of two (2) 24-oz. "MONSTER ENERGY" drinks within a 24-hour
10 period.

11 2. Plaintiffs are residents of the State of Maryland. Plaintiffs, as Surviving Parents
12 of Anais Fournier, seek to recover all damages allowed by law for personal injuries suffered by
13 their daughter prior to her death. Additionally, Plaintiffs seek to recover all damages allowed
14 by law as a result of the wrongful death of their daughter.

15 3. Defendant is a corporation organized under the laws of the State of Delaware,
16 with its principal place of business located at 550 Monica Circle, Suite 201, Corona, California
17 92880. At all times pertinent hereto, Defendant was engaged in and responsible for the design,
18 manufacture, production, testing, study, inspection, mixture, labeling, marketing, advertising,
19 sales, promotion, and/or distribution of the energy drink named MONSTER ENERGY.
20 Defendant, Monster Beverage Corporation, may be served with process by service on its
21 registered agent: CSC – Lawyers Incorporating Service, 2710 Gateway Oaks Drive,
22 Suite 150N, Sacramento, California 95833.

23 **JURISDICTION AND VENUE**

24 4. Jurisdiction and venue are proper in the Superior Court of California for
25 Riverside County because, at all times relevant hereto, Defendant maintained a principal place
26 of business and was engaged in the design, manufacture, production, testing, study, inspection,
27 mixture, labeling, marketing, advertising, sales, promotion, and/or distribution of the energy
28

1 drink named MONSTER ENERGY in the State of California and regularly conducted business
2 in the County of Riverside.

3 5. This is an action for damages that exceeds twenty-five thousand dollars
4 (\$25,000.00), the minimum jurisdictional requirement.

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6 **FACTUAL ALLEGATIONS**

7 6. On or about the evening of December 16, 2011, 14-year-old Anais Fournier went
8 to the Valley Mall in Hagerstown, Maryland with her friends, where she purchased and
9 consumed a 24-oz. MONSTER ENERGY from Gardner's Candies store, a retail establishment
10 located within the complex. The following afternoon or evening, December 17, 2011, Anais
11 went back to the mall and purchased and consumed another 24-oz. can of MONSTER
12 ENERGY. In addition to other stimulants (some of which contained hidden amounts of
13 additional caffeine), the two cans of MONSTER ENERGY, together, contained 480 milligrams
14 of caffeine—the equivalent caffeine content of fourteen (14) 12-oz. cans of Coca-Cola.

15 7. At approximately 8:55 p.m. on December 17, 2011, only a few hours after
16 drinking the second MONSTER ENERGY, Anais Fournier went into cardiac arrest. Anais
17 Fournier was unconscious when emergency personnel arrived at her home, at which time she
18 was taken to the Meritus Medical Center before being transferred to Johns Hopkins Hospital.
19 Doctors at Johns Hopkins Hospital placed Anais Fournier in an induced coma in an effort to
20 reduce brain swelling, a state in which she remained for nearly six (6) days until the decision
21 was made to terminate life support. Anais Fournier never regained consciousness and was
22 ultimately pronounced dead at 5:37 p.m. on December 23, 2011. According to the autopsy
23 report and the death certificate, the cause of death was "cardiac arrhythmia due to caffeine
24 toxicity complicating mitral valve regurgitation in the setting of Ehlers-Danlos syndrome."
25 (emphasis supplied).

26 8. Anais Fournier was survived by her parents, a twin brother, Dorian, and a
27 younger sister Jade.

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1 9. At all relevant times, Defendant was responsible for the design, manufacture,
2 production, testing, study, inspection, mixture, labeling, marketing, advertising, sales,
3 promotion, and/or distribution of the MONSTER ENERGY drinks that Anais consumed and
4 from which she ultimately died.

5 10. MONSTER ENERGY drinks are marketed as products that provide benefits to
6 consumers in the form of “increased energy and stamina, weight loss, and enhanced physical
7 and/or mental performance.” SUBSTANCE ABUSE AND MENTAL HEALTH SERVS. ADMIN.,
8 CENTER FOR BEHAVIORAL HEALTH STATISTICS AND QUALITY, THE DAWN REPORT:
9 EMERGENCY DEPARTMENT VISITS INVOLVING ENERGY DRINKS 2 (NOV. 22, 2011) [hereinafter,
10 the “DAWN REPORT”].

11 11. In order to provide the marketed benefits, MONSTER ENERGY contains and
12 relies primarily upon massive amounts of caffeine, a substance known for imposing adverse
13 health effects upon consumers. Committee on Nutrition and the Council on Sports Medicine
14 and Fitness, *Sports Drinks and Energy Drinks for Children and Adolescents: Are They*
15 *Appropriate?*, 127 PEDIATRICS 1183 (2011) [hereinafter, “PEDIATRICS”]. Caffeine affects
16 various organ systems by, *inter alia*, increasing heart rate, blood pressure, speech rate, motor
17 activity, attentiveness, gastric secretion, diuresis, and body temperature. *Id.* at 1185. Most
18 importantly, caffeine is known to play a role in triggering arrhythmias. *Id.*; *see also* Adam J.
19 Burger and Kevin Alford, *Cardiac Arrest in a Young Man Following Excess Consumption of*
20 *Caffeinated “Energy Drinks”*, 190 MED. J. OF AUS. 41, 43 (2009) [hereinafter, “*Burger and*
21 *Alford*”] (“The role of caffeine in triggering arrhythmia is well established.”).

22 12. Caffeine can be lethal in doses ranging from 200–400 milligrams. PEDIATRICS at
23 1185; *Burger and Alford* at 43. Adverse health effects, including arrhythmia, typically
24 manifest with ingestion of higher than 200 milligrams of caffeine. John P. Higgins, *et al.*,
25 *Energy Beverages: Content and Safety*, Mayo Clinic Proc., Nov. 2010 at 1033, 1034
26 [hereinafter, “*Higgins*”]. One 24-oz. can of MONSTER ENERGY contains 240 milligrams of

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1 caffeine. Caffeine Content of Drinks, <http://www.energyfiend.com/the-caffeine-database> (last
2 visited July 15, 2012). Two 24-oz. cans of MONSTER ENERGY contain 480 milligrams of
3 caffeine. *Id.*

4 13. In addition to caffeine, MONSTER ENERGY drinks contain guarana and taurine.
5 Guarana is a plant extract that contains caffeine. PEDIATRICS at 1186. Taurine has an effect on
6 cardiac muscles similar to that of caffeine. *Burger and Alford* at 43. Studies have shown that
7 the synergistic effect of caffeine, guarana, taurine and/or other like substances can produce
8 significant adverse health effects, including cardiac arrest. *Higgins* at 1034.

9 14. Defendant has successfully avoided meaningful regulation of its product by the
10 U.S. Food and Drug Administration. By classifying MONSTER ENERGY as a “dietary
11 supplement”—in other words, not a “food”—Defendant manufactures its MONSTER
12 ENERGY drinks without any restrictions on caffeine content. MSNBC.msn.com, *Teen Girl*
13 *Dies of “Caffeine Toxicity” after Downing 2 Energy Drinks*,
14 [http://todayhealth.today.msnbc.msn.com/news/2012/03/21/10780958-teen-girl-dies-of-](http://todayhealth.today.msnbc.msn.com/news/2012/03/21/10780958-teen-girl-dies-of-caffeine-toxicity-after-downing-2-energy-drinks?lite)
15 [caffeine-toxicity-after-downing-2-energy-drinks?lite](http://todayhealth.today.msnbc.msn.com/news/2012/03/21/10780958-teen-girl-dies-of-caffeine-toxicity-after-downing-2-energy-drinks?lite) (last visited July 15, 2012).

16 15. From 2004 to 2009, energy drink sales increased 240 percent. DAWN REPORT at
17 2. Not surprisingly, this spike in energy drink sales coincided with a reported increase in the
18 number of annual emergency room visits due to caffeine overdoses, up from 1,128 in 2005 to
19 16,055 in 2008 and 13,114 in 2009. *Id.* at 3. Fifty-six percent of these emergency room visits
20 were made by adolescents and young adults aged 12 to 25. *Id.*

21 16. Today, MONSTER ENERGY drinks are part of a dangerous yet still growing
22 array of energy drink products in the marketplace. DAWN REPORT at 2. In 2011, MONSTER
23 ENERGY, just one line of Defendant’s vast collection of energy drink products, accounted for
24 \$1.3 billion in revenue, commanding 31.5% market share in convenience-store sales, the
25 primary outlet for MONSTER ENERGY products. Gary M. Stern, *Monster Beverage Courts*
26 *Young With Unique Ad Tack* (Feb. 24, 2012),
27 [http://news.investors.com/article/602190/201202241434/mnst-stirs-buzz-spikes-](http://news.investors.com/article/602190/201202241434/mnst-stirs-buzz-spikes-sales.htm?p=full)
28 [sales.htm?p=full](http://news.investors.com/article/602190/201202241434/mnst-stirs-buzz-spikes-sales.htm?p=full) (last visited July 15, 2012).

1 17. MONSTER ENERGY, can increase the risk of caffeine overdose in both caffeine
2 abstainers and habitual consumers of caffeine for a variety of reasons. “Lack of adequate
3 labeling,” results in consumption by consumers who may be “completely unaware of the
4 amount of caffeine they are ingesting” because the packaging fails to disclose the caffeine
5 content of the product. Chad J. Reissig, *et al.*, *Caffeinated Energy Drinks: A Growing*
6 *Problem*, 99(1-3) DRUG ALCOHOL DEPEND. 4 (2009) [hereinafter, “Reissig”]. The labeling of
7 MONSTER ENERGY drinks does nothing to attempt to warn of these severe health risks, as
8 the cans utterly fail to provide adequate information as to the total caffeine content of the
9 product.

10 18. Despite the well-known health risks associated with excessive caffeine
11 consumption, MONSTER ENERGY, is heavily marketed towards teenagers and young adults,
12 the individuals most susceptible to caffeine-related injury. *See, e.g.*, DAWN REPORT at 2
13 (“Although consumed by a range of age groups, energy drinks are marketed to appeal to youth
14 and are consumed by 30 to 50 percent of children, adolescents, and young adults.”);
15 PEDIATRICS at 1182 (“Sports and energy drinks are a large and growing beverage industry now
16 marketed to children and adolescents for a variety of uses.”); Leah Steinke, *et al.*, *Effect of*
17 *“Energy Drink” Consumption on Hemodynamic and Electrocardiographic Parameters in*
18 *Healthy Young Adults*, 43 ANNALS OF PHARMACOTHERAPY 596, 599 (2009) (“Energy drink
19 marketing often employs nontraditional methods of advertising, such as word-of-mouth
20 campaigns on college campuses, to attract teenagers and young adults.”). With names like
21 “Assault,” “Khaos” and “Dub Edition” assigned to variations within the MONSTER ENERGY
22 product line, and references in marketing material to “jungle juice,” a known concoction of
23 juices and grain alcohol served at college parties, Defendant’s efforts to target teenagers and
24 young adults are readily transparent.

25 Monster Energy, <http://www.monsterenergy.com/us/en/products/> (last visited July 15, 2012).

26 19. Despite Defendant’s knowledge of the significant risks associated with
27 consumption of MONSTER ENERGY drinks, particularly with respect to its target audience,
28 Defendant’s product masks and otherwise fails to alert consumers like Anais of the significant

1 risks associated with the consumption of MONSTER ENERGY. To the contrary, the
2 packaging expressly prides itself on “deliver[ing] twice the buzz of a regular energy drink,”
3 and encourages consumers to “tear into” this product. Indeed, Defendant describes its
4 MONSTER ENERGY product as one that consumers “can really pound down,” thereby
5 encouraging consumers to speedily and hastily ingest this dangerous product.

6 20. Though championing the benefits provided by MONSTER ENERGY, Defendant
7 entirely failed to warn or disclose to consumers like Anais the known risks and side effects of
8 consuming MONSTER ENERGY products, including the risk of cardiac arrhythmia, from
9 which Anais Fournier ultimately died.

10 21. Beyond its failure to warn of or disclose to consumers information related to the
11 significant risks associated with consuming MONSTER ENERGY, Defendant intentionally
12 withheld, suppressed and concealed from consumers information relating to the risks of adverse
13 health effects upon consumption of this product.

14 22. Defendant failed to conduct adequate testing, studies or clinical testing and
15 research, and similarly failed to conduct adequate marketing surveillance regarding MONSTER
16 ENERGY’s adverse effects upon the cardiovascular health of consumers.

17 23. Despite Defendant’s representations to the contrary, the MONSTER ENERGY
18 drinks consumed by Anais were not safe or fit for the use for which they were intended.

19 24. Had Defendant properly disclosed and warned of the significant risk of suffering
20 adverse cardiac episodes, including cardiac arrhythmias, due to the consumption of MONSTER
21 ENERGY, a product containing exorbitant levels of caffeine, taurine and guarana, Anais
22 Fournier would not have purchased and consumed two 24-oz. MONSTER ENERGY drinks
23 within a 24-hour period.

24 25. Defendant’s failures in designing, manufacturing, marketing, distributing,
25 warning and/or selling MONSTER ENERGY drinks directly and proximately caused Anais
26 Fournier to suffer the cardiac arrhythmia that ultimately led to her death.

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1 **I. SURVIVAL ACTION CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**
3 **(Strict Liability: Design Defect)**

4 26. Plaintiffs, as Surviving Parents of Anais Fournier, re-allege each and every
5 allegation contained in this Complaint with the same force and effect as if fully set forth herein.

6 27. Defendant manufactured, sold, and supplied MONSTER ENERGY and had
7 significant involvement in distribution including the capability of exercising control over
8 quality.

9 28. Defendant placed MONSTER ENERGY into the stream of commerce.
10 MONSTER ENERGY was expected to, and did, reach Anais Fournier without substantial
11 change in its condition. Anais Fournier consumed MONSTER ENERGY and it caused her
12 cardiac arrhythmia and death.

13 29. Anais Fournier consumed the MONSTER ENERGY drinks that caused her death
14 in the way that Defendant intended all MONSTER ENERGY drinks to be used – she ingested
15 them orally.

16 30. The MONSTER ENERGY products that Anais Fournier consumed, and that
17 caused her death, did not perform as safely as an ordinary consumer would have expected it to
18 perform when used or misused in an intended or reasonably foreseeable way.

19 31. At the time the MONSTER ENERGY drinks consumed by Anais Fournier left
20 Defendant's control, they were in a condition not contemplated by her and were unreasonably
21 dangerous and defective. MONSTER ENERGY was at the time of Anais Fournier's
22 consumption (and remains to this day) dangerous to an extent beyond that which would be
23 contemplated by the ordinary consumer in her position.

24 32. The risks associated with ingesting MONSTER ENERGY outweigh any claimed
25 or perceived benefits. There are practicable, feasible and safer alternatives to achieve "energy"
26 and increased awareness that do not present the severe health risks that accompany MONSTER
27 ENERGY.

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1 33. The failure of the MONSTER ENERGY drinks that Anais Fournier consumed,
2 and that caused her death, to perform safely was a substantial factor in causing her harm.

3 34. As a direct and proximate result of Defendant's design, manufacture, marketing,
4 and/or sale of MONSTER ENERGY, Plaintiffs and their decedent suffered the injuries herein
5 described.

6 35. As a direct and proximate result of Defendant's design, manufacture, marketing,
7 and/or sale of MONSTER ENERGY, it became necessary for Plaintiffs and their decedent to
8 incur expenses for doctors, hospitals, nurses, pharmaceuticals, and other reasonably required
9 and medically necessary supplies and services.

10 36. As a direct and proximate result of Defendant's design, manufacture, marketing,
11 and/or sale of MONSTER ENERGY, Plaintiffs and their decedent suffered serious and
12 permanent physical injury, harm, damages and economic loss.

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14 **SECOND CAUSE OF ACTION**

15 **(Strict Liability: Failure to Warn)**

16 37. Plaintiffs, as Surviving Parents of Anais Fournier re-allege each and every
17 allegation contained in this Complaint with the same force and effect as if fully set forth herein.

18 38. Prior to Anais Fournier's consumption of the MONSTER ENERGY drinks,
19 Defendant designed, manufactured, marketed, distributed and/or sold MONSTER ENERGY,
20 and at all material times was in the business of doing so. Defendant placed MONSTER
21 ENERGY into the stream of commerce. MONSTER ENERGY was expected to, and did, reach
22 Anais Fournier without substantial change in its condition. Anais Fournier consumed
23 MONSTER ENERGY and it caused her cardiac arrhythmia and death.

24 39. MONSTER ENERGY had potential risks and side effects that were known or
25 knowable to Defendant by the use of scientific knowledge available at and after the time of
26 design, manufacture, marketing, distribution and/or sale of the MONSTER ENERGY
27 consumed by Anais Fournier. Defendant knew or should have known of the defective
28 condition, characteristics, and risks associated with MONSTER ENERGY, as previously set
forth herein.

1 40. The potential risks and side effects associated with MONSTER ENERGY
2 presented, and continues to present, a substantial danger when the drinks are used or misused in
3 an intended or reasonably foreseeable way – *i.e.* ingested orally.

4 41. Ordinary consumers would not have recognized the potential risks and side
5 effects associated with ingesting MONSTER ENERGY.

6 42. When placing MONSTER ENERGY into the stream of commerce, Defendant
7 failed to provide adequate warnings as to the risks associated with the product. Defendant
8 failed to warn consumers of the true risks and dangers – and of the symptoms, scope and
9 severity of the potential side effects of the MONSTER ENERGY drinks that Anais Fournier
10 consumed, such as significantly increased risk of strokes, blood clots, heart attacks and cardiac
11 arrhythmias.

12 43. As detailed herein, Defendants failed to adequately warn and instruct of the
13 potential risks and side effects associated with ingesting MONSTER ENERGY. Examples of
14 the inadequacies of Defendant's warnings include, but are not limited to, the following:

15 a. The warnings were insufficient to alert Anais Fournier of the significant
16 risk, scope, duration and severity of adverse events and/or reactions associated
17 with MONSTER ENERGY, subjecting her to risks which far exceeded the
18 benefits of MONSTER ENERGY;

19 b. Defendant marketed and sold MONSTER ENERGY using misleading
20 marketing materials emphasizing the efficacy of the drinks while downplaying
21 the risks associated with it, thereby making the use of MONSTER ENERGY
22 more dangerous than any consumer would reasonably expect; and

23 c. Defendants failed to disclose the increased risks of adverse cardiac
24 episodes associated with the consumption of MONSTER ENERGY by children
25 and adolescents like Anais Fournier.

26 44. The lack of sufficient instructions or warnings was a substantial factor in causing
27 Anais Fournier's death.

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45. As a direct and proximate result of Defendant's failure to provide adequate warnings in connection with its design, manufacture, marketing, distribution and/or sale of MONSTER ENERGY, Plaintiffs and their decedent suffered the injuries herein described.

46. As a direct and proximate result of Defendant's failure to provide adequate warnings in connection with its design, manufacture, marketing, distribution and/or sale of MONSTER ENERGY, it became necessary for Plaintiffs and their decedent to incur expenses for doctors, hospitals, nurses, pharmaceuticals, and other reasonably required and medically necessary supplies and services.

47. As a direct and proximate result of Defendant's failure to provide adequate warnings in connection with its design, manufacture, marketing, distribution and/or sale of MONSTER ENERGY, Plaintiffs and their decedent suffered serious and permanent physical injury, harm, damages and economic loss.

THIRD CAUSE OF ACTION
(Negligence – Design, Manufacture and Sale)

48. Plaintiffs, as Surviving Parents of Anais Fournier re-allege each and every allegation contained in this Complaint with the same force and effect as if fully set forth herein.

49. Defendant owed a duty to Plaintiffs' decedent and all consumers of MONSTER ENERGY to exercise reasonable care in the design, formulation, testing, manufacture, labeling, marketing, distribution, promotion and/or sale of MONSTER ENERGY. This duty required Defendant to ensure that its product did not pose an unreasonable risk of bodily harm to Plaintiffs' decedent and all other consumers, and similarly required Defendant to warn of side effects, risks, dangers and potential for adverse cardiac episodes associated with the ingestion of MONSTER ENERGY.

50. Defendant failed to exercise reasonable care in the design, formulation, testing, manufacture, labeling, marketing, distribution, promotion and/or sale of MONSTER ENERGY in that Defendant knew or should have known that MONSTER ENERGY could cause significant bodily harm, including cardiac arrhythmia, and was not safe for use by those who ingest the product.

1 51. Defendant was negligent in the design, formulation, testing, manufacture,
2 labeling, marketing, distribution, promotion and/or sale of MONSTER ENERGY and breached
3 its duties to Plaintiffs and their decedent. Specifically, Defendant:

4 a. Failed to use due care in the preparation and design of MONSTER
5 ENERGY drink to prevent the previously-described risks, especially as they
6 relate to children and young adults;

7 b. Failed to conduct adequate testing of MONSTER ENERGY;

8 c. Failed to cease manufacturing or otherwise alter the composition of
9 MONSTER ENERGY to produce a safer alternative despite the fact that
10 Defendant knew or should have known that such drinks posed a serious risk of
11 bodily harm to consumers;

12 d. Failed to conduct post-marketing surveillance to determine the safety of
13 MONSTER ENERGY;

14 e. Failed to exercise reasonable care with respect to post-sale warnings and
15 instructions for safe use by consumers;

16 f. Failed to exercise ordinary care in the labeling of MONSTER ENERGY;
17 and

18 g. Was otherwise careless and negligent.

19 52. At all relevant times, it was foreseeable to Defendant that consumers, like
20 Plaintiffs' decedent, would suffer injury as a result of Defendant's failure to exercise ordinary
21 care.

22 53. As a direct and proximate result of Defendant's negligence, Plaintiffs and their
23 decedent suffered the injuries herein described.

24 54. As a direct and proximate result of Defendant's negligence, it became necessary
25 for Plaintiffs and their decedent to incur expenses for doctors, hospitals, nurses,
26 pharmaceuticals, and other reasonably required and medically necessary supplies and services.

27 55. As a direct and proximate result of Defendant's negligence, Plaintiffs and their
28 decedent suffered serious and permanent physical injury, harm, damages and economic loss.

FOURTH CAUSE OF ACTION
(Negligence – Failure to Warn)

56. Plaintiffs, as Surviving Parents of Anais Fournier re-allege each and every allegation contained in this Complaint with the same force and effect as if fully set forth herein.

57. Prior to, on, and after the date of Plaintiffs' decedent's ingestion of MONSTER ENERGY, and at all relevant times, Defendant was engaged in the design, manufacture, production, testing, study, inspection, mixture, labeling, marketing, advertising, sales, promotion, and/or distribution of MONSTER ENERGY, which were intended for consumption by consumers like Anais Fournier.

58. Prior to, on, and after the date of Plaintiffs' decedent's ingestion of MONSTER ENERGY, Defendant knew or should have known that the drinks were dangerous or were likely to be dangerous when used in a reasonably foreseeable manner. Such dangers include, but are not limited to, significantly increased risk of strokes, blood clots, heart attacks and cardiac arrhythmias.

59. Prior to, on, and after the date of Plaintiffs' decedent's ingestion of MONSTER ENERGY, Defendant knew or should have known that consumers of MONSTER ENERGY, including Plaintiffs' decedent, would not realize the dangers presented by the product.

60. Prior to, on, and after the date of Plaintiffs' decedent's ingestion of MONSTER ENERGY, Defendant failed to adequately warn of the dangers associated with consumption of MONSTER ENERGY and/or failed to adequately instruct consumers on the safe use of the product. Such failures to warn and/or instruct included, but were not limited to: failing to issue adequate warnings to consumers concerning the risks of serious bodily harm associated with the ingestion of MONSTER ENERGY; failing to supply adequate warnings regarding all potential adverse health effects associated with the use of its product and the comparative severity of these side effects; and failing to set forth adequate warnings directed to consumers with common underlying cardiac conditions that are more susceptible to adverse cardiac reactions.

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61. It was foreseeable to Defendant that consumers, including Plaintiffs' decedent, might suffer injury as a result of its failure to exercise ordinary care in providing adequate warnings concerning the dangers associated with consumption of MONSTER ENERGY.

62. As a direct and proximate result of Defendant's negligence, Plaintiffs and their decedent suffered the injuries herein described.

63. As a direct and proximate result of Defendant's negligence, it became necessary for Plaintiffs and their decedent to incur expenses for doctors, hospitals, nurses, pharmaceuticals, and other reasonably required and medically necessary supplies and services.

64. As a direct and proximate result of Defendant's negligence, Plaintiffs and their decedent suffered serious and permanent physical injury, harm, damages and economic loss.

FIFTH CAUSE OF ACTION
(Fraud: Concealment, Suppression or Omission of Material Facts)

65. Plaintiffs, as Surviving Parents of Anais Fournier re-allege each and every allegation contained in this Complaint with the same force and effect as if fully set forth herein.

66. Defendant withheld and suppressed facts in its advertising, labeling, packaging, marketing and promotion of MONSTER ENERGY that led consumers to falsely believe that the product posed no greater risk to the health of those who consumed it than did natural supplements containing similar ingredients.

67. Due to the potential risks associated with consumption of MONSTER ENERGY, Defendant owed a duty to disclose the truth about the significant adverse health effects associated with the consumption of these drinks, but failed to do so.

68. Despite Defendant's knowledge of the health risks associated with consumption of energy drinks like MONSTER ENERGY as a result of the high caffeine content, Defendant concealed these dangers and took steps in the advertising, packaging, marketing, promotion and/or sale of MONSTER ENERGY to prevent consumers from learning the true facts about the product.

69. The concealment of the true facts about MONSTER ENERGY was done with the intent to induce Plaintiffs' decedent to purchase and consume MONSTER ENERGY.

1 Defendant intended for consumers, like Plaintiffs' decedent, to rely on its advertising, labeling,
2 packaging, marketing, promotion and/or sale of MONSTER ENERGY, as well as its
3 suppression of the true facts about the risks and dangers associated with consuming MONSTER
4 ENERGY.

5 70. The reliance by Plaintiffs' decedent in consuming MONSTER ENERGY was
6 reasonable and justified in that Defendant appeared to be, and represented itself to be, a
7 reputable business that would disclose the truth about any potential harmful health effects of
8 consuming its product.

9 71. As a direct and proximate result of the fraud and deceit alleged, Plaintiffs and
10 their decedent suffered the injuries herein described.

11 72. As a direct and proximate result of the fraud and deceit alleged, it became
12 necessary for Plaintiffs and their decedent to incur expenses for doctors, hospitals, nurses,
13 pharmaceuticals, and other reasonably required and medically necessary supplies and services.

14 73. As a direct and proximate result of the fraud and deceit alleged, Plaintiffs and
15 their decedent suffered serious and permanent physical injury, harm, damages and economic
16 loss.

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18 **SIXTH CAUSE OF ACTION**
(Breach of Implied Warranties)

19 74. Plaintiffs, as Surviving Parents of Anais Fournier re-allege each and every
20 allegation contained in this Complaint with the same force and effect as if fully set forth herein.

21 75. Anais Fournier consumed two cans of MONSTER ENERGY within 24 hours,
22 which caused her death.

23 76. At the time of Anais Fournier's purchase of the MONSTER ENERGY products
24 that caused her death, Defendant was in the business of selling the drink products.

25 77. The MONSTER ENERGY products that Anais Fournier consumed, and that
26 caused her death, were harmful when consumed.

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1 78. The harmful condition of the MONSTER ENERGY products that Anais Fournier
2 consumed, and that caused her death, would not reasonably be expected by the average
3 consumer.

4 79. The MONSTER ENERGY drinks were a substantial factor in causing Anais
5 Fournier's death.

6 80. Prior to Plaintiffs' decedent's consumption of MONSTER ENERGY, Defendant
7 impliedly warranted to Plaintiffs' decedent and other consumers that MONSTER ENERGY
8 was of merchantable quality and safe and fit for the use for which it was intended.

9 81. Plaintiffs' decedent reasonably relied entirely on the expertise, knowledge, skill,
10 judgment, and implied warranty of Defendant in choosing to purchase and consume
11 MONSTER ENERGY.

12 82. The MONSTER ENERGY drinks Plaintiffs' decedent consumed were neither
13 safe for their intended use, nor of merchantable quality, in that they possessed a dangerous
14 mixture of ingredients that, when put to its intended use, caused severe, permanent and fatal
15 injuries to Plaintiffs' decedent. As such, the MONSTER ENERGY drinks were not of the same
16 quality as those energy drinks generally acceptable in the trade and they were not fit for the
17 ordinary purposes for which such goods are used.

18 83. By selling, delivering and/or distributing the defective MONSTER ENERGY
19 drinks to Plaintiffs' decedent, Defendant breached the implied warranty of merchantability and
20 the implied warranty of fitness.

21 84. As a direct and proximate result of Defendant's breach of the implied warranty of
22 merchantability and the implied warranty of fitness, Plaintiffs and their decedent suffered the
23 injuries herein described.

24 85. As a direct and proximate result of Defendant's breach of the implied warranty of
25 merchantability and the implied warranty of fitness, it became necessary for Plaintiffs and their
26 decedent to incur expenses for doctors, hospitals, nurses, pharmaceuticals, and other reasonably
27 required and medically necessary supplies and services.

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1 86. As a direct and proximate result of the fraud and deceit alleged, Plaintiffs and
2 their decedent suffered serious and permanent physical injury, harm, damages and economic
3 loss.

4 **PUNITIVE DAMAGES ALLEGATIONS**

5 87. Plaintiffs, as Surviving Parents of Anais Fournier, re-allege each and every
6 allegation contained in this Complaint with the same force and effect as if fully set forth herein.

7 88. Section 377.34 of the California Code of Civil Procedure allows for “penalties or
8 punitive or exemplary damages that the decedent would have been entitled to recover had the
9 decedent lived.”

10 89. At all relevant times, Defendant knew that MONSTER ENERGY contained
11 dangerous levels of caffeine and other stimulants, and knew the serious health risks to
12 consumers associated with the consumption of MONSTER ENERGY.

13 90. With such knowledge and in furtherance of its own financial interests, Defendant
14 willfully, wantonly and maliciously engaged in the design, manufacture, production, testing,
15 study, inspection, mixture, labeling, marketing, advertising, sales, promotion, and/or
16 distribution of MONSTER ENERGY while simultaneously failing to warn potential consumers
17 if its dangerous propensities, and targeting consumers most vulnerable (including but not
18 limited to, children, teenagers, and young adults) to the known serious health risks associated
19 with the consumption of their product.

20 91. With such knowledge and in furtherance of its own financial interests, Defendant
21 willfully, wantonly and maliciously, and with conscious disregard for, and indifference to, the
22 health and safety of consumers, including Plaintiffs’ decedent, failed and refused to supply
23 adequate warnings and/or information to protect consumers and/or otherwise reduce or
24 eliminate the health risks to consumers associated with the consumption of MONSTER
25 ENERGY.

26 92. In addition to such conduct, Defendant has knowingly, intentionally and
27 deliberately marketed its product as an “Energy Supplement” so as to avoid limitations imposed
28 upon soft drink and other beverage manufacturers by the U.S. Food and Drug Administration

1 restricting the caffeine content of such soft drinks or beverage. In classifying its product as an
2 "Energy Supplement," Defendant avoids meaningful regulation by the FDA and uses amounts
3 of caffeine in its MONSTER ENERGY that far exceed such regulations imposed upon other
4 beverages.

5 93. As a direct and proximate result of such conduct, and because the acts and
6 omissions of Defendant were willful, wanton, malicious, intended and in conscious disregard
7 for, and indifference to, the health and safety of potential consumers, like Plaintiffs' decedent,
8 an award of exemplary or punitive damages is appropriate and necessary to punish Defendant,
9 and to deter Defendant from engaging in such misconduct in the future and to affect significant
10 change in the way Defendant designs, manufactures, markets, promotes, warns about,
11 distributes and/or sells its product.

12 13 **II. WRONGFUL DEATH CAUSE OF ACTION**

14 **SEVENTH CAUSE OF ACTION** 15 **(Wrongful Death)**

16 94. Plaintiffs re-allege each and every allegation contained in this Complaint with the
17 same force and effect as if fully set forth herein.

18 95. Plaintiffs, Wendy Crossland and Richard Fournier are the surviving heirs of and
19 successors in interest to the decedent, Anais Fournier, and do hereby bring any and all
20 Wrongful Death causes of action pursuant to California Code of Civil Procedure § 377.60 and
21 California Probate Code § 6402(b).

22 96. The wrongful actions of Defendant described in the preceding paragraphs, and the
23 defects in the MONSTER ENERGY product designed, manufactured, marketed, distributed
24 and/or sold by Defendant, caused the death of Plaintiffs' daughter, Anais Fournier. As a direct
25 and proximate result of the strict liability, negligence, fraud, and breach of warranty described
26 above, Anais Fournier purchased and consumed MONSTERY ENERGY, which resulted in her
27 death.

28 ////

97. As a result of the death of their daughter, Plaintiffs were deprived of the love, companionship, comfort, affection, support, and society of their decedent.

98. Plaintiffs are entitled to recover economic and non-economic damages against Defendant for the wrongful death proximately caused by their daughter's consumption of MONSTER ENERGY and directly attributable to Defendant's failures as described in the preceding paragraphs.

PRAYER FOR RELIEF AS TO ALL CLAIMS

WHEREFORE, Plaintiffs pray judgment against Defendant for all claims asserted herein as follows:

1. Compensatory damages in excess of the jurisdictional amount, including, but not limited to, pain, suffering, emotional distress, loss of enjoyment of life, and other non-economic damages in an amount to be determined at trial of this action;

2. Past medical expenses and other economic damages to be determined at trial of this action;

3. Funeral and burial expenses according to proof at the time of trial;

4. Past and future mental and emotional distress according to proof at the time of trial;

5. Pre- and post-judgment interest;

6. Attorneys' fees, expenses, and costs; and

7. Such further relief as this Court deems necessary, just, and proper.

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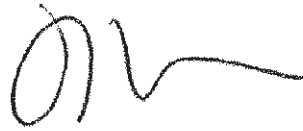


1 **PUNITIVE DAMAGES PRAYER**

2 As to the First, Second and Fifth Causes of Action against Defendant, Plaintiffs pray for
3 punitive or exemplary damages in an amount to be determined at trial.
4

5 Date: October 16, 2012

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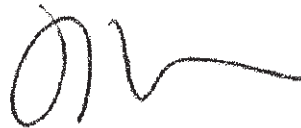
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8 By: _____
9 Alexander R. Wheeler
10 Attorneys for Plaintiffs
11

12 **DEMAND FOR JURY TRIAL**

13 Plaintiffs demand a jury a trial on all issues.
14
15

16 Date: October 16, 2012

R. REX PARRIS LAW FIRM

17 

18
19 By: _____
20 Alexander R. Wheeler
21 Attorneys for Plaintiffs
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