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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
SOUTHERN DIVISION

14 FRANK FALAT, derivatively on behalf of
15 MONSTER BEVERAGE CORPORATION,
16 Plaintiff,

17 vs.

18 RODNEY CYRIL SACKS, HILTON
19 HILLER SCHLOSBERG, GUY P.
20 CARLING, THOMAS J. KELLY, EMELIE
21 C. TIRRE, MARK J. HALL, KATHLEEN E.
22 CIARAMELLO, GARY P. FAYARD,
23 JEANNE P. JACKSON, STEVEN G.
24 PIZULA, BENJAMIN M. POLK, SYDNEY
SELATI, MARK S. VIDERGAUZ, and
DOES 1-10,

25 Defendants,

26 - and -

27 MONSTER BEVERAGE CORPORATION,
28 Nominal Defendant.

Case No. _____

**VERIFIED SHAREHOLDER
DERIVATIVE COMPLAINT**

DEMAND FOR JURY TRIAL

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1 Plaintiff Frank Falat (“Plaintiff”) submits this Verified Shareholder
2 Derivative Complaint against certain directors and officers of nominal
3 defendant Monster Beverage Corporation (“Monster” or the “Company”)
4 for, *inter alia*, violations of the Securities Exchange Act of 1934 (“Exchange
5 Act”) and breaches of fiduciary duties. In support of these claims, Plaintiff
6 alleges the following upon (1) personal knowledge with respect to the
7 matters pertaining to himself; and (2) information and belief with respect to
8 all other matters, based upon the investigations undertaken by his counsel,
9 which include a review of legal and regulatory filings, press releases,
10 analyst reports, and media reports about the Company. Plaintiff believes
11 that substantial additional evidentiary support will exist for the allegations
12 set forth below after a reasonable opportunity for discovery.

13 I. INTRODUCTION

14 “The diversity of the Company’s employees, officers and
15 directors is a tremendous asset.”¹

16 “Monster Energy is a global company, and wherever we
17 operate, and across every part of the business, we strive to
18 create an inclusive culture in which differences are recognized
19 and valued. ... We seek to capture diversity in our candidates,
20 including diversity of gender, race and ethnicity, and veteran
21 status.”²

23 ¹ Code of Business Conduct and Ethics, Monster Beverage Corp.,
24 available at [https://investors.monsterbevcorp.com/static-files/2cb26535-
baa4-4101-9a1e-d1b24af8ec27](https://investors.monsterbevcorp.com/static-files/2cb26535-baa4-4101-9a1e-d1b24af8ec27), last visited Aug. 24, 2020.

25 ² See <https://www.monsterbevcorp.com/team.php>, last visited August
26 17, 2020.

1 1. Despite Monster’s statement that it is committed to diversity
2 and inclusion, Monster has failed to create any diversity at the very top of
3 the Company — the Board of Directors (the “Board”). The Monster Board
4 has lacked diversity at all relevant times, and is one of the few publicly-
5 traded companies without a single African American director.

6 2. Back in the 1960s, almost every corporate board looked like the
7 following:



19 Board of directors attend a meeting in 1960. CENTRAL PRESS GETTY.

20 3. While most of corporate America has made substantial
21 progress in diversification since the 1960s, Monster still does not have a
22 single African American on its Board. The following are the current
23 members of the Board:

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<p>Kathleen E. Ciaramello Director</p>	<p>Gary P. Fayard Independent Director</p>	<p>Mark J. Hall Director</p>
		
<p>Jeanne P. Jackson Director</p>	<p>Steven G. Pizula Director</p>	<p>Mark S. Vidergauz Lead Independent</p>
		
<p>Rodney C. Sacks Chairman & Chief Executive Officer</p>	<p>Hilton H. Schlosberg Vice Chairman, President, COO, CFO & Secretary</p>	
		

4. At Monster, it is not just the Board that lacks any African American individuals; there are no African Americans among the

1 Company's senior executives:

<p>2 Rodney Cyril Sacks Chairman & CEO</p>	<p>3 Hilton Hiller Schlosberg Vice Chairman, President, COO, CFO & Secretary</p>	<p>4 Emelie C. Tirre President-America Region</p>
<p>5 </p>	<p>6 </p>	<p>7 </p>

11

12 **II. NATURE AND SUMMARY OF THE ACTION**

13 5. Monster's Directors, wishing to avoid public backlash, have

14 repeatedly made misrepresentations in the Company's public statements by

15 claiming to have a policy of being committed to diversity and inclusion at

16 the Company.

17 6. In reality, though, Monster's Board and senior executive officers

18 remain devoid of any Blacks and any meaningful representation of other

19 minorities, and the Defendants have repeatedly resisted efforts to increase

20 diversity at the top of the Company.

21 7. Monster's top two executives are Rodney Sacks and Hilton

22 Schlosberg, friends and fellow white billionaires from South Africa, where

23 apartheid and racial discrimination persisted until the 1990s.

24 8. At Monster, the Company's workforce and Board remain

25 conspicuously devoid of any meaningful percentage of Black and minority

26 individuals, despite the fact that diverse companies perform better. *See, e.g.,*

27 David Rock, "Diverse Teams Feel Less Comfortable — and That's Why

28

1 They Perform Better,” HARVARD BUSINESS REVIEW, Sept. 22, 2016 (“a 2009
2 analysis of 506 companies found that firms with more racial or gender
3 diversity had more sales revenue, more customers, and greater profits.”).
4 *See also* Christopher Mims, “What the Google Controversy Misses: The
5 Business Case for Diversity,” THE WALL STREET JOURNAL, Aug. 13, 2017
6 (“Research has established the business case for diversity. This isn’t an
7 argument about redressing historical inequities or even present-day
8 fairness. More diverse companies have better financial returns, are more
9 innovative and are just plain smarter than their more homogenous
10 competitors”).

11 9. In reality, Monster has made no real efforts to promote diversity
12 on its Board and among its senior executives. Indeed, the word “diversity”
13 only appears two (2) times in Monster’s April 21, 2020 Proxy Statement.

14 10. The Company’s April 21, 2020 Proxy stated:

15 “In connection with the process of selecting and nominating
16 candidates for election to the Board, the Nominating and
17 Corporate Governance Committee reviews the desired
18 experience, mix of skills and other qualities to assure
19 appropriate Board composition, taking into account the current
20 Board members and the specific needs of the Company and the
21 Board. Among the qualifications to be considered in the
22 selection of candidates, the Nominating and Corporate
23 Governance Committee considers the experience, knowledge,
24 skills, expertise, diversity, personal and professional integrity,
25 character, business judgment, time available in light of other
26 commitments and dedication of any particular candidate, as
27 well as such candidate’s past or anticipated contributions to the
28

1 Board and its committees so that the Board includes members,
2 where appropriate, with diverse backgrounds, knowledge and
3 skills relevant to the business of the Company. *The charter for*
4 *the Nominating and Corporate Governance Committee*
5 *specifically states that diversity of race, ethnicity, gender,*
6 *sexual orientation and gender identity are factors in evaluating*
7 *suitable candidates for Board membership."*

8 11. Despite this affirmative statement, Monster Beverage
9 Corporation, which was founded in 1935 as Hansen's Juices, has: (1) zero
10 African American individuals and zero other minorities on its Board; and
11 (2) zero African-Americans and zero other minorities among its senior
12 executive ranks.

13 12. As stated by Crystal Ashby, president and CEO of the Executive
14 Leadership Council, an organization of black senior executives that works
15 to increase inclusivity in business leadership: "Companies need to be
16 intentional about increasing the diversity of their executive leadership
17 teams. The culture of an organization is cultivated by its leaders."

18 13. As one individual aptly stated recently: "We've seen anemic
19 progress to date but *this is a watershed moment that must spur private and*
20 *public boards into accelerated action,"* says Janet Foutty, executive chair of
21 the board for Deloitte, which has separately researched board diversity
22 among Fortune 500 companies.³ Moreover, a company's statements about
23
24

25 ³ See Kerri Anne Renzulli, "The 20 Largest U.S. Companies Without a
26 Black Person on Their Board," NEWSWEEK, June 17, 2020.
27
28

1 Board diversity are highly material to investors.⁴

2 14. The Director Defendants named herein all signed each of
3 Monster's annual proxy statements. With such signatures come an
4 obligation to ensure that the statements in the Proxy were true and accurate,
5 and to correct any misleading statements. They failed to do so.

6 15. Monster's Directors have deceived stockholders and the market
7 by claiming to have diversity and inclusion programs that have been
8 successful, so much so that the Company represents that diversity is a
9 "tremendous asset" at Monster. In doing so, the Directors have breached
10 their duty of candor and have also violated the federal securities laws.
11 Their conduct has also irreparably harmed Monster.

12 16. Moreover, greater diversity is in Monster's own interest.
13 Studies show that greater board diversity is associated with increased
14 profits. *A McKinsey report found that companies with the most ethnically*
15 *or culturally diverse boards worldwide were 43 percent more likely to*
16 *experience higher profits.*

17 17. Moreover, as one commentator has noted:

18 "We are a country suffering from racial inequality. And we
19 want the inequality and suffering to end. Enough people agree
20 with these points that this issue has become a matter that will
21 impact every corporation doing business in this country.

22 Companies that are capable of understanding their roles in

23 ⁴ See Arleen Jacobius, "Calpers Turns Focus to Board Diversity in
24 Proxy Voting," PENSIONS & INVESTMENTS, Sept. 17, 2018 (in 2018, Calpers
25 voted against 438 directors at 141 different companies based on the
26 companies' failure to respond to Calpers' efforts to increase board
27 diversity).
28

1 taking effective action to end inequality will benefit
2 operationally and reputationally; those that refuse to
3 acknowledge their exposure to this massive problem or that are
4 incapable of swift and effective action will struggle to maintain
5 their competitive positions as employers and with consumers.”⁵

6 18. In reality, contrary to the statements in the Company’s Proxy
7 Statements and Code of Business and Ethics that diversity is a “tremendous
8 asset,” Monster is a company run by white males who discriminate and
9 demean women and minorities.

10 19. Monster is best known for aggressively marketing energy drinks
11 to boys and men. “Unleash the Beast” is one slogan. Its hyper-caffeinated
12 drinks have names like Assault and Maxx. The Company’s scantily clad
13 “Monster Girls” are used to market the Company’s products.



23
24 ⁵ See John Streur, “More Engagement Needed to Get Companies to Address
25 Racial Inequality Risks and Issues,” CALVERT RESEARCH AND MANAGEMENT,
26 June 19, 2020, available at [https://www.calvert.com/impact.php?post=more-
27 engagement-needed-to-get-companies-to-address-racial-inequality-risks-
28 and-issues-&sku=35910](https://www.calvert.com/impact.php?post=more-engagement-needed-to-get-companies-to-address-racial-inequality-risks-and-issues-&sku=35910), last visited June 29, 2020.

1 20. In 2018, five former female employees of Monster sued the
2 Company over its discriminatory, abusive culture. One of the women was
3 Sara Rabuse, who worked as a make-up artist at Monster. She sued
4 Monster and one of its executives, Brent Hamilton, who choked her, bit her
5 thumb, and pulled her hair so violently that clumps of her hair came out.
6 The two were in Tennessee in 2016 for work on behalf of Monster at the
7 Country Music Awards. As an article describing Hamilton’s disgusting and
8 demeaning conduct noted: “Rabuse had red marks around her neck from
9 Hamilton trying to strangle her, according to the police report. Her thumb
10 was bloody from where Hamilton bit her. Her nails were broken from
11 fighting him off.”⁶ Hamilton was arrested, and Rabuse was hospitalized
12 after a hotel guest found her crumpled on the floor of their room.

13 21. Amazingly, for over three years, including even as he awaited a
14 criminal trial for strangling Ms. Rabuse during the business trip in 2016,
15 Brent Hamilton was still allowed to keep his job as the Head of Music
16 Marketing at Monster. And after he strangled and bit Rabuse, Hamilton
17 continued to sexually harass women at Monster. It was only after he was
18 caught sending sexually explicit texts to a co-worker that Hamilton was
19 finally let go in 2019.

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25 ⁶ See Emily Peck, “5 Women Sue Monster Energy Over Abusive,
26 Discriminatory Culture,” HUFFINGTON POST, Jan. 23, 2018.



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DAVIDSON COUNTY COURT -- Brent Hamilton on the night he was arrested in 2016.

22. Monster stood by Hamilton, even after his arrest. Hamilton was allowed to keep his job while Rabuse lost hers. “My impression was they weren’t taking things seriously. Or my allegations seriously,” said Rabuse.⁷

23. According to the women who have sued Monster, Brent Hamilton’s conduct was by no means an exception.

24. John Kenneally was also allowed to remain a Vice President at Monster despite three women accusing him of bullying, harassment and retaliation. The women alleged that Kenneally actively undermined their reputations and forced them out of the Company. The Huffington Post obtained text messages he sent to one of these women (Paige Zeringue), in

⁷ *Id.*

1 which he described her as a “whore,” made a racially charged comment
2 about “black dicks,” and used the term “bitch” to refer to both her and
3 another female employee.⁸ Zeringue told ABC News that she was initially
4 in a consensual sexual relationship with her former boss at the Company,
5 John Kenneally.

6 25. After beginning their relationship, Zeringue was promoted
7 twice by Kenneally. But later Kenneally threatened to fire her if she broke
8 up with him.

9 26. “I realized very soon that it was absolutely the worst mistake of
10 my life,” Zeringue said.⁹ She added that she told him she wanted out of the
11 relationship, and angry texts and verbal abuse soon followed. “He would
12 call me names, and things that no one in my life would ever call me,” she
13 said. “He would call me a whore.”

14 27. Another former employee, Fran Pulizzi, told ABC News that she
15 had heard Kenneally call *another* female employee a “whore.”¹⁰ “And it
16 wasn’t uncommon for him to discuss sexual relations among employees,”
17 Pulizzi added.

18 28. Pulizzi also alleged that she faced unlawful retaliation by
19 Monster executives after she participated in an internal investigation at
20 Monster where she was promised that her comments would be treated

21 ⁸ See Emily Peck, “5 Women Sue Monster Energy Over Abusive,
22 Discriminatory Culture,” HUFFINGTON POST, Jan. 23, 2018.

23 ⁹ See Catherine Thorbecke, “Women Suing Monster Energy Share
24 Stories of Alleged Discrimination, Harassment,” ABC NEWS, Feb. 4, 2018,
25 available at <https://abcnews.go.com/GMA/News/women-suing-monster-energy-share-stories-alleged-discrimination/story?id=52746025>, last visited Aug. 24, 2020.

26 ¹⁰ *Id.*

1 confidentially. Pulizzi alleged in a lawsuit she filed against Monster that
2 after she had been working at the Company for five years, she was
3 subjected to hostile and harassing behavior from Kenneally when she
4 participated in an investigation by HR into another employee's sexual
5 harassment complaint. "I thought for sure they were going to keep my
6 statements confidential," Pulizzi said. "When I found out within a few days
7 that John had been made aware of everything I said, I was in shock."

8 29. Pulizzi alleges that Kenneally then began to bully and harass
9 her at work before ultimately freezing her out. "He refused to talk to me,
10 and our open communication was a key part of my job," she said. "He
11 refused to work with me, refused to acknowledge me."¹¹

12 30. Another former employee, Jamie Hogan, argued in court
13 documents filed in August 2017 that her former supervisor at Monster
14 would "publicly insult and berate her for having children." "He would
15 make comments about, 'Oh, we'd have to move our meeting so that Jamie
16 could go home at night and see her kids,'" Hogan told ABC News.¹² She
17 added that he would also schedule "impromptu meetings." "I didn't show
18 up because I wasn't aware of it," she said. "It just became increasingly
19 difficult to do my job."

20 31. Hogan said she felt retaliated against after she reported her
21 concerns to the human resources department, and eventually left the
22 Company.

23 32. Female employees at Monster have also alleged they were paid
24

25 ¹¹ *Id.*

26 ¹² *Id.*

1 less than men and passed over for promotions. While underpaying
2 minorities and women, Monster's CEO and executives have used the
3 money saved to pay themselves huge amounts. *In fiscal year 2019, the*
4 *Company paid its CEO, Rodney C. Sacks, total compensation of*
5 *\$13,982,434; its CFO, COO, President, Secretary and Director, Hilton H.*
6 *Schlosberg, total compensation of \$13,939,299; and its President, EMEA,*
7 *Guy P. Carling, total compensation \$1,885,951. In fiscal year 2018, the*
8 *Company paid Rodney Sacks total compensation of \$13,914,931; Hilton*
9 *Schlosberg total compensation of \$13,885,207, and Guy Carling, total*
10 *compensation of \$3,039,171.*

11 33. As set forth below, Defendants' conduct constitutes bad faith
12 and disloyal conduct, giving rise to claims that fall outside the scope of the
13 business judgment rule and outside of permissible indemnification by
14 Monster. As a result, all members of the Board face a substantial likelihood
15 of liability and any demand on them to bring this case would be a futile and
16 useless act.

17 34. The shareholder derivative lawsuit has been the only judicial
18 mechanism for shareholders to hold directors accountable for engaging in
19 wrongdoing. Courts have long recognized that derivative suits play an
20 important role in corporate governance where directors fail to do their jobs:

21 The derivative action is practically the only remedy for
22 calling the management to account for its wrongs against the
23 corporation and to obtain restitution. Where a derivative suit is
24 against outsiders for wrongs against the corporation the
25 directors can usually be expected to decide impartially on the
26 advisability of suing. But the management cannot be expected to
27 sue themselves for their own misdeeds.

1 *Pearce v. Super. Ct.*, 149 Cal. App. 3d 1058, 1065 (1983); *see also Vega v. Jones,*
2 *Day, Reavis & Pogue*, 121 Cal. App. 4th 282, 297 (2004); *accord Kamen v.*
3 *Kemper Fin. Servs.*, 500 U.S. 90, 95 (1991) (quoting *Cohen v. Beneficial Indus.*
4 *Loan Corp.*, 337 U.S. 541, 548 (1949)). As the California Supreme Court
5 recognized in *Jones v. H. F. Ahmanson & Co.*, where, as here, the company's
6 board and management fail to perform their duties, stockholders have a
7 "right" to bring derivative actions. *See* 1 Cal. 3d 93, 107 (1969). The courts
8 of Delaware, Monster's state of incorporation, likewise acknowledge that
9 derivative actions serve an important function: "The machinery of corporate
10 democracy and the derivative suit are potent tools to redress the conduct of
11 a torpid or unfaithful management." *Aronson v. Lewis*, 473 A.2d 805, 811
12 (Del. 1984), *overruled in part on other grounds by Brehm v. Eisner*, 746 A.2d 244
13 (Del. 2000).

14 35. Plaintiff, derivatively on behalf of Monster, seeks the following
15 relief from the Director Defendants:

16 (a) The Company should immediately create a
17 substantive plan for diversity and inclusion for the Board, upper
18 management levels, and throughout the corporation with the
19 authority to implement such a plan;

20 (b) The Company should replace its Human Resources
21 director, who has allowed unlawful sexual harassment and
22 discrimination, and retaliation for reporting the wrongdoing, to
23 persist for years, and the Company should eliminate mandatory
24 arbitration and confidentiality agreements pertaining to claims
25 of sexual harassment and discrimination;

26 (c) At least one of Monster's directors should immediately
27 resign prior to the Company's annual meeting set for April 2021
28

1 and a Black person nominated to the Board at that time.
2 Thereafter, within a year and prior to the next annual meeting at
3 least one other person from an underrepresented community
4 should be nominated to the Board;

5 (d) All Director Defendants named in this suit should
6 return all of their 2020 compensation received from Monster
7 (including any stock grants), and donate the money to an
8 acceptable charity or organization whose efforts include the
9 advancement of Blacks and minorities in corporate America;

10 (e) Monster should agree to publish an annual Diversity
11 Report that contains particularized information about the hiring,
12 advancement, promotion, and pay equity of all minorities at
13 Monster;

14 (f) Monster should create a \$800 million fund to hire
15 Blacks and minorities, promote minorities to more management
16 positions at the Company, establish and maintain a mentorship
17 program at Monster for minorities that is committed to
18 providing the skills and mentorship necessary to succeed in
19 corporate America;

20 (g) Monster should require annual training of its entire
21 Board and all Section 16 executive officers, which training
22 should at a minimum focus on diversity, affirmative action, anti-
23 discrimination and anti-harassment, and other relevant topics;

24 (h) Monster should establish a Board-level Diversity
25 Equity and Inclusion Council;

26 (i) Monster should establish the position of a Chief
27 Diversity Officer who reports directly to the Board; and
28

1 (j) Monster should immediately set specific goals with
2 respect to the number of Blacks and minorities to hire at the
3 Company over the next five years, and Monster should adopt a
4 revised executive compensation program that makes 30% of
5 executives' compensation tied to the achievement of the
6 diversity goals.

7 36. The Individual Defendants' misconduct has caused severe
8 financial and reputational damage to Monster.

9 **III. JURISDICTION AND VENUE**

10 37. This Court has subject matter jurisdiction over this action under
11 Article III of the U.S. Constitution and 28 U.S.C. § 1331 because of claims
12 arising under Section 14(a) of the Exchange Act, 15 U.S.C. § 78n(a), and SEC
13 regulation 14a-9 promulgated thereunder. The Court has exclusive
14 jurisdiction under Section 27 of the Exchange Act, 15 U.S.C. § 78aa. The
15 Court has jurisdiction over the state-law claims in accordance with 28 U.S.C.
16 § 1367.

17 38. This Court also has subject matter jurisdiction over this action
18 under Article III of the U.S. Constitution and 28 U.S.C. § 1332 because
19 Plaintiff and Defendants are citizens of different States and the amount in
20 controversy exceeds the sum or value of \$75,000, exclusive of interest and
21 costs.

22 39. This Court has jurisdiction over Defendants. Each Defendant is
23 either a resident of California or otherwise has sufficient contacts with
24 California in order to render the exercise of jurisdiction by this Court over
25 them permissible under traditional notions of fair play and substantial
26 justice. Additionally, in connection with the misconduct alleged herein,
27 Defendants, directly or indirectly, used the means and instrumentalities of
28

1 interstate commerce, including the United States mails, interstate telephone
2 communications, and the facilities of the national securities markets. The
3 Court has jurisdiction over Monster because the Company was
4 headquartered in Corona, California for the time relevant to this complaint
5 and has substantial business operations in California.

6 40. Venue is proper in this District pursuant to Section 27 of the
7 Exchange Act. Venue is also proper under 28 U.S.C. § 1391(b) because
8 many of the acts and conduct that constitute the violations of law
9 complained of herein, including the preparation and dissemination to the
10 public of materially false and misleading information, occurred in this
11 District, and many of the Defendants reside in this District.

12 **IV. INTRADISTRICT ASSIGNMENT**

13 41. Plaintiff requests that this action be assigned to the Southern
14 Division of this District because a substantial part of the events or conduct
15 giving rise to the claims in this action occurred in the County of Orange,
16 California and a substantial number of Defendants are residents of Orange
17 County, California.

18 **V. THE PARTIES**

19 **A. Plaintiff**

20 42. Plaintiff is a current shareholder of Monster, and has
21 continuously held Monster stock at all relevant times. Plaintiff is a citizen
22 of Oregon.

23 **B. Nominal Defendant**

24 43. Monster Beverage Corporation is a holding company, which
25 engages in the development, marketing, sale and distribution of energy
26 drink beverages and concentrates. It operates through the following
27 segments: Monster Energy Drinks, Strategic Brands and Other. The Monster
28

1 Energy Drinks segment sells ready-to-drink packaged energy drinks to
2 bottlers and full-service beverage distributors. The Strategic Brands
3 segment sells concentrates and beverage bases to authorized bottling and
4 canning operations. The Other segment comprises of certain products sold
5 by its subsidiary, American Fruits and Flavors LLC to independent third-
6 party customers. The Company was founded on April 25, 1990, is a
7 Delaware Corporation, and is headquartered in Corona, California.

8 **C. Executive Officer Defendants**

9 44. Defendant Rodney Cyril Sacks is a white billionaire from South
10 Africa and a close confidant and business partner of Defendant Schlosberg.
11 He has served as Chairman of the Board of the Company, Chief Executive
12 Officer and a director of the Company from November 1990 to the present.
13 He is a member of the Executive Committee of the Board (the “Executive
14 Committee”) since October 1992 and serves as Chairman of the Board of
15 Directors and a director of Monster Energy Company (“MEC”). Sacks has
16 led the Company for over 30 years. Sacks is a resident of Laguna Beach,
17 California, in Orange County, California.

18 45. Defendant Hilton Hiller Schlosberg is a white billionaire from
19 South Africa and a close confidant and business partner of Defendant Sacks.
20 He has served as Vice Chairman of the Board of the Company, President,
21 Chief Operating Officer, Secretary and a director of the Company from
22 November 1990 to the present. He has served as Chief Financial Officer of
23 the Company since July 1996, a member of the Executive Committee since
24 October 1992, and Vice Chairman, President, Chief Financial Officer and a
25 director of MEC. Schlosberg has held senior leadership positions with the
26 Company for over 30 years, and has been the Company’s Chief Financial
27 Officer for 23 years.

1 46. Defendant Guy P. Carling has served as President of EMEA
2 since 2018. In his position as President of EMEA, Carling oversees the
3 Company's sales, development and expansion in markets in Europe, the
4 Middle East, Africa, and Central Asia, and frequently reports directly to the
5 Executive Committee and the Board of Directors. Carling joined MEC in
6 December 2007, and previously served as Chief Commercial Officer &
7 Managing Director of EMEA. Carling has worked in the beverage business
8 for over 22 years. He is a resident of London, England.

9 47. Defendant Thomas J. Kelly has served as Executive Vice
10 President, Finance, and/or Controller and Secretary of MEC since 1992. In
11 his position as Executive Vice President, Finance, Mr. Kelly frequently
12 reports directly to the Executive Committee and the Board of Directors.
13 Prior to joining MEC, Kelly served as controller for California Copackers
14 Corporation. Kelly is a Certified Public Accountant (inactive) and has
15 worked in the beverage business for over 34 years. He is a resident of San
16 Diego County, California.

17 48. Defendant Emelie C. Tirre has served as President of the
18 Americas since July 2018. In her position as President of the Americas, Tirre
19 oversees the Company's sales, development and expansion in markets in
20 the United States, Canada, Latin America, Oceania and the Caribbean. She
21 frequently reports directly to the Executive Committee and the Board of
22 Directors. Tirre joined MEC in July 2010, and previously served as Chief
23 Commercial Officer and the Senior Vice President of Sales for North
24 America. Tirre has worked in the beverage business for over 28 years. She
25 is a resident of Laguna Beach, California in Orange County, California.

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D. Director Defendants

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49. Defendant Mark J. Hall has served as a Director of the Company since January 1, 2014 and an employee of MEC focusing on ideation, design and development of new products since May 1, 2017. He has also served as Chief Marketing Officer of MEC from January 2015 to May 1, 2017, Chief Brand Officer of MEC from January 2014 to December 2014, and President of the Monster Beverage Division from January 2007 to December 2013. Hall joined MEC in 1997 as a Senior Vice President. Prior to joining MEC, Mr. Hall was employed by the Arizona Beverage Co. as Vice President of Sales, where he was responsible for sales and distribution of products through a national network of beer distributors and soft drink bottlers in the United States. Hall has detailed knowledge of and valuable perspectives and insights into both the business and the beverage business in general. Hall is a resident of San Diego County, California.

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50. Defendant Kathleen E. Ciaramello has served as a Director of the Company since June 2019, and President of Foodservice and On-Premise Business Unit of The Coca-Cola Company from 2013 to the present. Ciaramello joined The Coca-Cola Company in 1985 and has served in various account management, sales and marketing roles of increasing responsibility, including Group Vice President, Strategic Partnership Marketing from 2006 to 2009 and Vice President East Zone from 2009 to 2013, as well as one of the inaugural members of Coca-Cola's Women's Leadership Council. Ciaramello has served on the Board of Directors and other various roles of the National Restaurant Association since 2016, the Women's Foodservice Forum Board of Directors since 2016, and the Board of Directors of the Jack & Jill Late Stage Cancer Foundation. Ciaramello is European Refreshments' (an indirect wholly-owned subsidiary of The Coca-Cola Company) designee to the Board. Ciaramello has substantial business

1 and leadership experience in the beverage industry. She is a resident of
2 Georgia.

3 51. Defendant Gary P. Fayard has served as a Director of the
4 Company since June 2015, and a member of the Audit Committee of the
5 Board (the "Audit Committee") since February 2016. He has also served as
6 Executive Vice President and Chief Financial Officer of The Coca-Cola
7 Company from February 2003 to April 2014. Fayard joined The Coca-Cola
8 Company in 1994, and in July 1994, he was elected Vice President and
9 Controller, a position he held until December 1999 when he was elected
10 Senior Vice President and Chief Financial Officer. Fayard has also served
11 on the board of directors of Coca-Cola FEMSA, S.A.B. de C.V., the largest
12 bottler in the world of Coca-Cola trademark beverages by unit case volume
13 operating in territories in Mexico, Central and South America and the
14 Philippines, from 2004 to March 2016. Fayard has been on the board of
15 directors of Genuine Parts Company since 2014. Fayard has a background
16 in accounting and finance. He is a resident of Tennessee.

17 52. Defendant Jeanne P. Jackson has served as a Director of the
18 Company since June 2019. At Nike, Inc., Jackson served as President and
19 Senior Strategic Advisor to the Chief Executive Officer from June 2016 to
20 August 2017, President of Product & Merchandising from July 2013 to April
21 2016, and President of Direct to Consumer from March 2009 to July 2013.
22 She also served as a Director of Delta Air Lines, Inc. since January 2017 and
23 director of The Kraft Heinz Company since July 2015 (previously director of
24 Kraft Foods Group, Inc. from October 2012 to July 2015). Jackson has
25 previously served on the boards of McDonald's Corporation, Nike, Inc.,
26 Nordstrom, Inc., Williams-Sonoma, Inc., Motorola Mobility Holdings, Inc.,
27 Harrah's Entertainment Inc. and others. Jackson is the founder of MSP
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1 Capital and served as its Chief Executive Officer from 2002 to 2009, and is
2 again serving as its Chief Executive Officer from 2017 to present. Jackson
3 has served in senior leadership roles in many organizations, including Wal-
4 Mart.com USA, LLC, the Gap, Inc., Banana Republic, Victoria's Secret, Saks
5 Fifth Avenue, Walt Disney Attractions, Inc. and Federated Department
6 Stores, Inc. Jackson brings knowledge and experience of over thirty years as
7 a senior executive and director in an array of large, public companies. She
8 is a resident of Orange County, California.

9 53. Defendant Steven G. Pizula has served as a Director of the
10 Company and member of the Audit Committee since June 2019, and a
11 Partner at Deloitte & Touche LLP from September 1977 to June 2018. Since
12 joining Deloitte & Touche LLP (then Haskins & Sells) in 1977, Pizula served
13 as the supervising audit partner on a number of large, multinational public
14 companies in a wide range of industries, including consumer products.
15 Pizula held various leadership positions at Deloitte & Touche LLP, most
16 recently as Practice Growth Leader for the Pacific Southwest Region and as
17 a Member of the National Committee for Audit Quality, and National
18 Partner Admissions Committee. Pizula is currently a board member of The
19 Whittier Trust Company, the Arnold and Mabel Beckman Foundation and
20 the Forum for Corporate Directors. Pizula is a Certified Public Accountant
21 and member of the American Institute of Certified Public Accountants and
22 the California Society of Certified Public Accountants. Pizula brings
23 extensive experience in accounting and audit matters. He is a resident of
24 Irvine, California, in Orange County, California.

25 54. Defendant Benjamin M. Polk has served as a Director of the
26 Company since November 1990, member of the Nominating and Corporate
27 Governance Committee since June 2019 (Chairman since June 2019), and
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1 member of the Compensation Committee since June 2019. He has served as
2 a Director of MEC from July 1992 to February 2016 and a Partner with
3 Veritas Capital, a private equity firm, since July 2011. Additionally, Polk
4 has served as a Director of Aeroflex Holding Corp. from November 2012 to
5 September 2014, Director of CPI International, Inc. from October 2012 to
6 July 2017, and a Director of Truven Health Analytics, Inc. from October
7 2012 to April 7, 2016. Polk was a partner with the law firm of Schulte Roth
8 & Zabel LLP from May 2004 to July 2011 and prior to that, a partner with
9 the law firm of Winston & Strawn LLP, where Polk practiced law with that
10 firm and its predecessor firm from August 1976 to May 2004. Polk has
11 gained detailed knowledge of the Company during his service as a director
12 since 1990 and as outside counsel from 1990 to July 2011. Polk has extensive
13 experience in matters relating to mergers, acquisitions and corporate
14 finance. He is a resident of New York.

15 55. Defendant Sydney Selati has served as a Director of the
16 Company and member of the Audit Committee since September 2004
17 (Chairman since February 2015), a member of the Compensation Committee
18 of the Board (the "Compensation Committee") since March 2007, and
19 member of the Nominating and Corporate Governance Committee since
20 April 2009. Selati was a director of the San Diego Jewish Community
21 Foundation from July 2010 to June 2017 and was Chairman of its Audit
22 Committee from August 2011 to June 2019. Selati was Chairman of the
23 board of directors of the San Diego Jewish Community Foundation from
24 July 2016 to June 2017. Selati was a director of Barbeques Galore Ltd. from
25 1997 to 2005 and was President and Chairman of the board of directors of
26 The Galore Group (U.S.A.), Inc. from 1988 to 2005. Selati was President of
27 Sussex Group Limited from 1984 to 1988. Selati has extensive experience as
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1 a chief executive and board member of companies in other industries,
2 which allows him to bring additional perspective to the Board. Selati is a
3 Chartered Accountant (South Africa). He is a resident of La Jolla,
4 California, in San Diego County, California.

5 56. Defendant Mark S. Vidergauz has served as a Director of the
6 Company and member of the Compensation Committee since June 1998
7 (Chairman since June 2019), a member of the Audit Committee from April
8 2000 through May 2004, a member of the Nominating and Corporate
9 Governance Committee since June 2019, and Lead Independent Director
10 since March 2014. He has also served as Chief Executive Officer of The Sage
11 Group LLC, an investment banking firm, from April 2000 to the present.
12 The Sage Group, LLC provides merger, acquisition and capital formation
13 advisory services to a wide range of companies in the consumer sector. He
14 was the Managing Director at the Los Angeles office of ING Barings LLC, a
15 diversified financial service institution headquartered in the Netherlands,
16 from April 1995 to April 2000. Vidergauz brings strong merger and
17 acquisition, corporate finance, corporate governance and leadership
18 experience to the Board. He is a resident of Los Angeles, California.

19 57. The defendants identified in paragraphs 43 through 47 are
20 referred to herein as the "Executive Officer Defendants." The defendants
21 identified in paragraphs 48 through 55 are referred to herein as "Director
22 Defendants." The defendants identified above are referred to collectively
23 herein as the "Individual Defendants."

24 **E. Doe Defendants**

25 58. Except as described herein, Plaintiff is ignorant of the true
26 names of defendants sued as Does 1 through 10, inclusive, and therefore,
27 Plaintiff sues these defendants by such fictitious names. Following further
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1 investigation and discovery, Plaintiff will seek leave of this Court to amend
2 this Complaint to allege their true names and capacities when ascertained.
3 These fictitiously named defendants are Monster officers, other members of
4 management, employees, and/or consultants or third parties who were
5 involved in the wrongdoing detailed herein. These defendants aided and
6 abetted, and participated with and/or conspired with the named defendants
7 in the wrongful acts and course of conduct or otherwise caused the
8 damages and injuries claimed herein and are responsible in some manner
9 for the acts, occurrences, and events alleged in this Complaint.

10 **F. Unnamed Participants**

11 59. Numerous individuals and entities participated actively during
12 the course of and in furtherance of the wrongdoing described herein. The
13 individuals and entities acted in concert by joint ventures and by acting as
14 agents for principals, to advance the objectives of the scheme and to provide
15 the scheme to benefit Defendants and themselves to the detriment of
16 Monster.

17 **VI. RESPONSIBILITIES AND DUTIES OF THE INDIVIDUAL**
18 **DEFENDANTS**

19 **A. Responsibilities of the Individual Defendants**

20 60. Corporate officers and directors owe the highest fiduciary duties
21 of care and loyalty to the corporation they serve.

22 61. Board Members and Executive Officers are held to the highest
23 level of ethics and compliance with the law.

24 62. The Company's corporate governance guidelines state:

25 The Board is elected by the stockholders to oversee their interest
26 in the long-term health and overall success of the business and
27 its financial strength. The Board serves as the ultimate decision-
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1 making body of the Company, except for those matters reserved
2 to or shared with the stockholders. The Board selects and
3 oversees the members of senior management, who are charged
4 by the Board with conducting the business of the Company.

5 63. Monster also states that:

6
7 The following are the Board's primary responsibilities, some of
8 which may be carried out by one or more committees of the
9 Board or the independent directors, as appropriate:

- 10 a. Exercise business judgment to act in what it reasonably
11 believes to be in the best interests of the Company and its
12 stockholders.
- 13
14 b. Fulfill its responsibilities consistent with its fiduciary duties
15 to the stockholders, in compliance with all applicable laws
16 and regulations.
- 17
18 c. As appropriate, take into consideration the interests of other
19 stakeholders, including employees and the members of
20 communities in which the Company operates.
- 21
22 d. Provide advice and counsel to the Chief Executive Officer
23 and other senior officers of the Company.
- 24
25 e. Oversee the proper safeguarding of the assets of the
26 Company, the maintenance of appropriate financial and
27 other internal controls, and the Company's compliance with
28 applicable laws and regulations and proper governance.

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- f. Hire independent legal, financial or other advisors as it may deem necessary.
- g. In discharging its duties, the Board may rely on the Company's senior executives and outside advisors and auditors. Accordingly, skill and integrity will be important factors in selection of the Company's senior executives and other advisors.
- h. Devote the time and effort necessary to fulfill its responsibilities.
- i. Hold regularly scheduled meetings at least four times a year.
- j. The chairperson of the Board will provide information important to directors' understanding of issues to come before the Board or a committee of the Board sufficiently in advance of meetings to permit directors to inform themselves.
- k. Review meeting materials in advance of Board and Board committee meetings. Suggest additional topics to be included on meeting agendas by contacting the chairperson of the Board, the Lead Independent Director or the relevant Board committee chairperson.
- l. Directors are expected to attend all meetings of the Board and of the Board committees on which they serve.

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m. The chairperson of the Board will set the agenda for Board meetings. Any director may raise a subject that is not on the agenda at any meeting.

n. Regularly bring to the Board certain items pertinent to the oversight and monitoring function of the Board.

o. Review the Company's long-term strategic plans and the most significant financial, accounting and risk management issues facing the Company in at least one Board meeting each year.

p. Non- management directors will meet in regular executive sessions. Normally, such meetings will occur during regularly scheduled Board meetings.

q. Meetings of the non-management directors will be chaired by the Lead Independent Director.

64. The Board is responsible for oversight and compliance with the Company's internal controls regarding diversity, anti-discrimination, pay equity, hiring and promotion. As alleged herein, the Company's Board failed to act in good faith by failing to ensure compliance with these policies and controls. These policies existed on paper, but were knowingly disregarded.

65. The Company's 2020 Proxy Statement stated the following with respect to the Board's role in risk oversight:

The Board's Role in Risk Oversight

The Board of Directors plays an active role in overseeing and managing the Company's risks. The full Board and its

1 Executive Committee regularly review the Company's results,
2 performance, operations, competitive position, business
3 strategy, liquidity, capital resources, product distribution and
4 development, material contingencies and senior personnel, as
5 well as the risks associated with each of these matters. The
6 Board implements its risk oversight function both as a whole
7 and through its standing committees. Certain of the work is
8 delegated to committees, which meet regularly and report back
9 to the full Board. The Compensation Committee reviews the
10 Company's compensation practices and discerns the
11 relationship among risk, risk management and compensation in
12 light of the Company's objectives. The Audit Committee
13 reviews and discusses with management the risks faced by the
14 Company and the policies, guidelines and process by which
15 management assesses and manages the Company's risks,
16 including the Company's major financial risk exposures and
17 risks related to financial statements, the financial reporting
18 process and accounting and legal matters, as well as the steps
19 management has taken to monitor and control such exposures.
20 The full Board also discusses risk throughout the year during
21 meetings in relation to specific proposed actions including risks
22 related to cybersecurity and reputation. These processes are
23 designed to ensure that risks are taken knowingly and
24 purposefully. The Board believes that its role in oversight of risk
25 management (as well as the role of the Compensation
26 Committee and the Audit Committee) has not adversely
27 affected its leadership structure or results of operations.
28

1 66. The Board has obviously been aware at all relevant times that it
2 is all-white and lacks diversity. The Board and the Executive Officers also
3 knew that diversity was lacking in the Company's workforce. The
4 Defendants' knowledge of the problems is reflected by their efforts to
5 conceal the lack of diversity and discrimination, in its duplicitous conduct
6 in misrepresenting to CALSTERS in 2011 that it would change the charter of
7 the Company's Nominating & Corporate Governance Committee to state
8 that diversity is an important goal in the Board nomination process, and in
9 its continued resistance to adding racially and ethnically diverse candidates
10 to its Board and senior executives.

11 67. The Board's conduct represented hypocrisy, bad faith, and
12 disloyal conduct. The Board had a duty to cause the Company to comply
13 with the law and its own Corporate Governance Principles, and failed to do
14 so.

15 68. The direct involvement of Monster's Board makes them
16 interested in the outcome of this litigation because they face a substantial
17 likelihood of liability. Demand is thus futile.

18 **B. The Company's Code of Business and Ethics States that**
19 **Diversity of the Company's Employees, Officers, and**
20 **Directors is A "Tremendous Asset"**

21 69. When a company makes specific affirmative representations, it
22 has a duty to ensure that subsequent statements are not misleading. With
23 respect to Monster Beverage, the Company has repeatedly told employees,
24 customers, and shareholders that Monster prizes diversity and is actively
25 attempting to increase diversity.

26 70. In fact, Monster has specifically stated that the diversity of its
27 employees, officers, and directors is a "*tremendous asset*."

28 71. The Board itself drafted and adopted the Code of Business and

1 Ethics of Monster Beverage Corporation, which states:

2 *The diversity of the Company's employees, officers and directors is a*
3 *tremendous asset.*¹³

4 72. Moreover, the Code of Business and Ethics is applicable to each
5 employee of the Company, including each officer and director of the
6 Company, and all such persons are required to acknowledge and abide by
7 its terms:

8 This Code of Business Conduct and Ethics (this "Code") has
9 been adopted by the Board of Directors of Monster Beverage
10 Corporation (the "Company") . . . It is applicable to all
11 employees, officers and directors of the Company . . . Each
12 employee is required to acknowledge this Code of Business
13 Conduct and Ethics.¹⁴

14 **C. The Charter of Monster's Nominating & Corporate**
15 **Governance Committee Says the Company Considers Racial**
16 **and Ethnic Diversity When Nominating Directors**

17 73. The Charter of Monster's Nominating & Corporate Governance
18 Committee states as follows:

19 In connection with the process of selecting and nominating
20 candidates for election to the Board, the Committee shall review
21 the desired experience, mix of skills and other qualities to assure
22 appropriate Board composition, taking into account the current
23 Board members and the specific needs of the Company and the

24 ¹³ Code of Business Conduct and Ethics, Monster Beverage Corp.,
25 available at [https://investors.monsterbevcorp.com/static-files/2cb26535-
26 baa4-4101-9a1e-d1b24af8ec27](https://investors.monsterbevcorp.com/static-files/2cb26535-baa4-4101-9a1e-d1b24af8ec27), last visited Aug. 24, 2020.

27 ¹⁴ *Id.*

1 Board. Among the qualifications to be considered in the
2 selection of candidates, *the Committee shall consider the*
3 *following attributes and criteria of candidates: experience,*
4 *knowledge, skills, expertise, diversity,* personal and professional
5 integrity, character, business judgment, time available in light of
6 other commitments, dedication, independence and such other
7 factors that the Committee considers appropriate so that the
8 Board includes members, where appropriate, with diverse
9 backgrounds, skills and experience, including appropriate
10 financial and other expertise relevant to the business of the
11 Company. *Diversity of race, ethnicity, gender, sexual*
12 *orientation and gender identity are factors in evaluating*
13 *suitable candidates for Board membership.* The Committee will
14 consider diverse candidates in the pool from which Board
15 nominees are chosen, including, without limitation, nominees
16 from both corporate positions beyond the executive suite and
17 nontraditional environments.¹⁵

18 **D. Fiduciary Duties of the Individual Defendants**

19 74. By reason of their positions as officers and directors of the
20 Company, each of the Individual Defendants owed and continue to owe
21 Monster and its shareholders fiduciary obligations of trust, loyalty, good
22 faith, and due care, and were and are required to use their utmost ability to
23 control and manage Monster in a fair, just, honest, and equitable manner.
24

25 ¹⁵ Available at [https://investors.monsterbevcorp.com/static-](https://investors.monsterbevcorp.com/static-files/9aa8b2ab-c80a-448b-a764-7263cdb2acf0)
26 [files/9aa8b2ab-c80a-448b-a764-7263cdb2acf0](https://investors.monsterbevcorp.com/static-files/9aa8b2ab-c80a-448b-a764-7263cdb2acf0), last visited Aug. 21, 2020.

1 The Individual Defendants were and are required to act in furtherance of
2 the best interests of Monster and not in furtherance of their personal interest
3 or benefit.

4 75. To discharge their duties, the officers and directors of the
5 Company were required to exercise reasonable and prudent supervision
6 over the management, policies, practices, and controls of the affairs of the
7 Company. By virtue of such duties, the officers and directors of Monster
8 were required to, among other things:

9 (a) conduct the affairs of the Company in compliance
10 with all applicable laws, rules, and regulations so as to make it
11 possible to provide the highest quality performance of its
12 business, to avoid wasting the Company's assets, and to
13 maximize the value of the Company's stock; and

14 (b) remain informed as to how Monster conducted its
15 operations, and, upon receipt of notice or information of
16 imprudent or unsound conditions or practices, make reasonable
17 inquiry in connection therewith, and take steps to correct such
18 conditions or practices and make such disclosures as necessary
19 to comply with applicable laws.

20 **E. Breaches of Fiduciary Duties by the Individual Defendants**

21 76. The conduct of the Individual Defendants complained of herein
22 involves a knowing and culpable violation of their obligations as officers
23 and directors of Monster, the absence of good faith on their part, and a
24 reckless disregard for their duties to the Company.

25 77. The Individual Defendants breached their duty of loyalty and
26 good faith by allowing defendants to cause, or by themselves causing, the
27 Company to cover up Monster's discrimination, and caused Monster to
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1 incur substantial damage.

2 78. The Individual Defendants, because of their positions of control
3 and authority as officers and/or directors of Monster, were able to and did,
4 directly or indirectly, exercise control over the wrongful acts complained of
5 herein. The Individual Defendants also failed to prevent the other
6 Individual Defendants from taking such improper actions. As a result, and
7 in addition to the damage the Company has already incurred, Monster has
8 expended, and will continue to expend, significant sums of money.

9 **F. Conspiracy, Aiding and Abetting, and Concerted Action**

10 79. At all relevant times, the Individual Defendants were agents of
11 the remaining Individual Defendants, and in doing the acts alleged herein,
12 were acting within the course of scope of such agency. The Individual
13 Defendants ratified and/or authorized the wrongful acts of each of the other
14 Individual Defendants. The Individual Defendants, and each of them, are
15 individually sued as participants and as aiders and abettors in the improper
16 acts, plans, schemes, and transactions that are the subject of this Complaint.

17 80. In committing the wrongful acts alleged herein, the Individual
18 Defendants have pursued, or joined in the pursuit of, a common course of
19 conduct, and have acted in concert with and conspired with one another in
20 furtherance of the improper acts, plans, schemes, and transactions that are
21 the subject of this Complaint. In addition to the wrongful conduct herein
22 alleged as giving rise to primary liability, the Individual Defendants further
23 aided and abetted and/or assisted each other in breaching their respective
24 duties.

25 81. The Individual Defendants engaged in a conspiracy, common
26 enterprise, and/or common course of conduct, by failing to maintain
27 adequate internal controls at the Company and covering up discrimination
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1 at the Company.

2 82. During all times relevant hereto, the Individual Defendants,
3 collectively and individually, initiated a course of conduct that was
4 designed to and did circumvent the internal controls at the Company and
5 caused the Company to cover up Monster executives' discrimination. In
6 furtherance of this plan, conspiracy, and course of conduct, the Individual
7 Defendants, collectively and individually, took the actions set forth herein.

8 83. The purpose and effect of the Individual Defendants'
9 conspiracy, common enterprise, and/or common course of conduct was,
10 among other things, to disguise the Individual Defendants' violations of
11 law, breaches of fiduciary duty, and waste of corporate assets, and to
12 conceal adverse information concerning the Company's operations.

13 84. The Individual Defendants accomplished their conspiracy,
14 common enterprise, and/or common course of conduct by intentionally
15 circumventing internal controls at the Company and causing the Company
16 to cover up discrimination at the Company. Because the actions described
17 herein occurred under the authority of the Board, each of the Individual
18 Defendants was a direct, necessary, and substantial participant in the
19 conspiracy, common enterprise, and/or common course of conduct
20 complained of herein.

21 85. Each of the Individual Defendants aided and abetted and
22 rendered substantial assistance in the wrongs complained of herein. In
23 taking such actions to substantially assist the commission of the
24 wrongdoing complained of herein, each Individual Defendant acted with
25 knowledge of the primary wrongdoing, substantially assisted in the
26 accomplishment of that wrongdoing, and was aware of his or her overall
27 contribution to and furtherance of the wrongdoing.

G. The Directors’ Roles and Committees at Monster

86. The following chart sets forth the directors of Monster as set forth in the Company’s website and the committees on which they serve:

>> Board of Directors and Committee Composition

Chair Member

Name	Audit Committee	Nominating and Corporate Governance	Compensation
Kathleen E. Ciaramello			
Gary P. Fayard	Member		
Mark J. Hall			
Jeanne P. Jackson			
Steven G. Pizula	Member		
Benjamin M. Polk		Chair	Member
Rodney C. Sacks			
Hilton H. Schlosberg			
Sydney Selati	Chair	Member	Member
Mark S. Vidergauz*		Member	Chair

*Lead Independent Director

<https://investors.monsterbevcorp.com/static-files/1f848283-e17d-4bba-af07-359a6a39f3f8>. Last visited August, 19, 2020.

VII. SUBSTANTIVE ALLEGATIONS

87. Monster Beverage Corporation is a holding company, which engages in the development, marketing, sale and distribution of energy drink beverages and concentrates. It operates through the following segments: Monster Energy Drinks, Strategic Brands and Other. The Monster Energy Drinks segment sells ready-to-drink packaged energy drinks to bottlers and full-service beverage distributors. The Strategic Brands segment sells concentrates and beverage bases to authorized bottling and canning operations. The Other segment comprises of certain products sold

1 by its subsidiary, American Fruits and Flavors LLC to independent third-
2 party customers. The Company was founded in 1935 as Hansen's Juices, is a
3 Delaware Corporation, and is headquartered in Corona, California.

4 88. Monster's Board enjoys the undesirable distinction of having no
5 African Americans or other minorities on its Board and among its senior
6 executives.

7 89. The lack of diversity at the top at Monster is significant. The
8 Board bears ultimate responsibility for ensuring the Company's compliance
9 with federal and state laws prohibiting discrimination based on race,
10 gender, and other factors. Diversity in the workforce is a strong indication
11 of a lack of discrimination; conversely, a lack of diversity provides a strong
12 indication that discrimination is present.

13 90. If the Monster Board is vested with the responsibility of
14 "Leading by Example," it has failed miserably at that role with respect to
15 diversity; the Board still, in 2020, lacks any Black or minority individuals.

16 **A. Monster Has Falsely Represented That It Has Made**
17 **Substantial Progress Towards Diversity and Inclusion in Its**
18 **Workplace and on the Board and That the Diversity It Has**
Allegedly Achieved Is a "Tremendous Asset"

19 91. Monster has represented that it promotes and achieves diversity
20 and inclusion at the Company. For example, the Company's website states:

21 *[W]e strive to create an inclusive culture in which differences*
22 *are recognized and valued.* It is the Company's belief that
23 bringing together diverse backgrounds and giving each
24 employee the opportunity to contribute their skills, experience
25 and perspectives develops strong and sustainable relationships
26 throughout the organization.

1 Accordingly, *we embrace a diverse workforce and value diverse*
2 *perspectives, leveraging varied thinking, skills experience and*
3 *work styles. We understand that maximizing the business*
4 *impact of global diversity and inclusion will empower our*
5 *employees to:*

- 6 ● Make good decisions and allows us to optimize
7 resources by eliminating cultural barriers to work together
8 effectively
- 9 ● *Deliver strong performance and growth by attracting,*
10 *engaging and retaining diverse talent*
- 11 ● *Innovate by utilizing the diverse perspectives,* skills and
12 experience of our employees
- 13 ● Adapt and respond effectively to changes, challenges,
14 and expectations on a global level

15
16 We are committed to equality of opportunity, and do not
17 tolerate discrimination or harassment, particularly on the basis
18 of race, religion, color, national origin, ancestry, physical
19 disability, mental disability, medical condition, genetic
20 information, marital status, sex, gender, gender identity, gender
21 expression, age, sexual orientation, military or veteran status, or
22 any other characteristics protected by federal or state law. The
23 basis for recruitment, hiring, placement, training, compensation,
24 and advancement should be qualifications, skills, performance,
25 and experience.

26
27 92. Monster's website also states:

28

1 *We seek to capture diversity in our candidates, including*
2 *diversity of gender, race and ethnicity, and veteran status. This*
3 *applies across the organization, including at the senior*
4 *management level.*

5 93. Moreover, Monster Beverage tells its employees, customers, and
6 shareholders that diversity is extremely important to the Company. In fact,
7 Monster has specifically stated that the diversity of its employees, officers,
8 and directors is a “tremendous asset.”

9 94. The Board itself drafted and adopted the Code of Business and
10 Ethics of Monster Beverage Corporation, which states:

11 *“The diversity of the Company’s employees, officers and*
12 *directors is a tremendous asset.”¹⁶*

13 95. The Code of Business and Ethics is applicable to each employee
14 of the Company, including each officer and director of the Company, and
15 all such persons are required to acknowledge and abide by its terms

16 96. The Individual Defendants have caused the Company to make
17 specific, concrete statements about the Company’s allegedly strong
18 diversity efforts, but have taken no measurable actions to support these
19 statements.

20 97. The Individual Defendants have also caused Monster to
21 represent that the Company has taken active and concerted steps to recruit
22 African American individuals by stating that “We seek to capture diversity
23

24 ¹⁶ Code of Business Conduct and Ethics, Monster Beverage Corp.,
25 available at [https://investors.monsterbevcorp.com/static-files/2cb26535-](https://investors.monsterbevcorp.com/static-files/2cb26535-baa4-4101-9a1e-d1b24af8ec27)
26 [baa4-4101-9a1e-d1b24af8ec27](https://investors.monsterbevcorp.com/static-files/2cb26535-baa4-4101-9a1e-d1b24af8ec27), last visited Aug. 24, 2020.

1 in our candidates, including diversity of gender, race and ethnicity, and
2 veteran status.”

3 98. The Company’s Code of Business Conduct and Ethics states:

4 **Diversity, Discrimination and Harassment**

5 *The diversity of the Company’s employees, officers and*
6 *directors is a tremendous asset.* The Company is firmly
7 committed to providing equal opportunity in employment, and
8 does not tolerate discrimination on the basis of race, religion,
9 color, national origin, ancestry, physical disability, mental
10 disability, medical condition, genetic information, marital status,
11 sex, gender, gender identity, gender expression, age, sexual
12 orientation, military or veteran status, or any other
13 characteristics protected by federal or state law. Equal
14 employment opportunity will be extended to all persons in all
15 aspects of the employer-employee relationship, including
16 recruitment, hiring, training, promotion, transfer, discipline and
17 termination. *The Company prohibits harassment of any*
18 *individual* on any of the bases listed above. *Examples include*
19 *derogatory comments based on race, gender or ethnicity and*
20 *unwelcome sexual advances.*

21
22 99. The Individual Defendants knew these statements were false
23 and misleading. The Defendants were well aware of the lack of diversity on
24 the Board and among senior management, and knew that the Company’s
25 statements regarding an allegedly strong commitment to diversity were
26 false. The Defendants also had actual knowledge of rampant sexual
27 harassment of women by the male executives at Monster, including the
28

1 assault by Brent Hamilton. Amazingly, for over three years, including even
2 as he awaited a criminal trial for strangling Ms. Rabuse during the business
3 trip in 2016, Brent Hamilton was still allowed to keep his job as the Head of
4 Music Marketing at Monster Energy. Therefore, far from having a strong
5 policy prohibiting sexual harassment, including “unwanted sexual
6 advances,” the Defendants protected sexual predators such as Mr. Hamilton
7 at the expense of female employees of the Company. The Defendants’
8 conduct represents bad faith, and disloyal conduct which cannot be
9 indemnified by the Company.

10 100. In short, the Company’s affirmative statement that it has a “zero
11 tolerance policy” regarding sexual harassment and discrimination is totally
12 false, and the Director Defendants have known so at all relevant times
13 because, as demonstrated herein, they have known of and have condoned
14 rampant retaliation against female employees who report sexual
15 harassment and discrimination, while at the same time protecting and
16 financially rewarding the male employees who engage in the wrongful
17 conduct.

18 **B. The Nominating and Governance Committee is Responsible**
19 **for Nominating Individuals to the Company’s Board**

20 101. In 2019 and 2020, Directors Epstein, Taber, Polk, Selati, and
21 Vidergauz served on Monster’s Nominating & Governance Committee.

22 102. As set forth in the Company’s Nominating and Corporate
23 Governance Committee Charter:

24 **Purpose**

25 The purpose of the Nominating and Corporate
26 Governance Committee (the “*Committee*”) of Monster Beverage
27 Corporation (the “*Company*”) is to recommend to the Board of
28 Directors of the Company (the “*Board*”) director nominees for

1 the annual meeting of stockholders, to identify and recommend
2 candidates to fill vacancies occurring between annual
3 stockholder meetings.

4 The Committee shall have the authority to undertake the
5 specific duties and responsibilities described hereinafter and the
6 authority to undertake such other duties as are assigned by law,
7 the Company's charter or bylaws, or by the Board.

8 **Specific Duties**

- 9 1. The Committee shall be responsible for:
- 10 (1) making recommendations to the Board regarding the size
11 and composition of the Board;
- 12 (2) establishing procedures for the nomination process;
- 13 (3) screening and recommending candidates for election to
14 the Board;
- 15 (4) developing and recommending to the Board criteria to
16 identify and evaluate prospective candidates for the Board;
- 17 (5) considering nominations of candidates for election to the
18 Board validly made by stockholders in accordance with
19 applicable laws, rules and regulations and provisions of the
20 Company's charter documents;
- 21 (6) reviewing and making recommendations to the Board
22 regarding the status of emeritus directors;
- 23 (7) establishing and administering an annual assessment
24 procedure relating to the performance of both the Board as a
25 whole and its individual members;
- 26 (8) annually reviewing the composition of each committee
27 and presenting recommendations for committee memberships
28

1 to the Board as needed;

2

3 (9) reviewing the compensation paid to non-employee
4 directors for annual retainers (including Board and committee
5 chairpersons) and meeting fees, if any, and making
6 recommendations to the Board for any adjustments; provided
7 that no member of the Committee will act to fix his or her own
8 compensation except for uniform compensation to directors for
9 their services as such;

10 (10) developing and recommending to the Board corporate
11 governance guidelines and other corporate governance policies,
12 and periodically reviewing these guidelines and policies,
13 identifying best practices and recommending any changes to
14 documents, policies and procedures in the Company's corporate
15 governance framework, including to the Company's charter and
16 bylaws; and

17 2. In connection with the process of selecting and nominating
18 candidates for election to the Board, the Committee shall review
19 the desired experience, mix of skills and other qualities to assure
20 appropriate Board composition, taking into account the current
21 Board members and the specific needs of the Company and the
22 Board. Among the qualifications to be considered in the
23 selection of candidates, the Committee shall consider the
24 following attributes and criteria of candidates: experience,
25 knowledge, skills, expertise, diversity, personal and professional
26 integrity, character, business judgment, time available in light of
27 other commitments, dedication, independence and such other
28

1 factors that the Committee considers appropriate so that the
2 Board includes members, where appropriate, with diverse
3 backgrounds, skills and experience, including appropriate
4 financial and other expertise relevant to the business of the
5 Company. Diversity of race, ethnicity, gender, sexual orientation
6 and gender identity are factors in evaluating suitable candidates
7 for Board membership. The Committee will consider diverse
8 candidates in the pool from which Board nominees are chosen,
9 including, without limitation, nominees from both corporate
10 positions beyond the executive suite and nontraditional
11 environments.

12 103. With respect to the nominating process to select individuals to
13 serve on the Company's Board, and the desired characteristics of the Board,
14 the 2020 Proxy stated:

15 **Process for Selection and Nomination of Directors**

16 In connection with the process of selecting and
17 nominating candidates for election to the Board, the Nominating
18 and Corporate Governance Committee reviews the desired
19 experience, mix of skills and other qualities to assure
20 appropriate Board composition, taking into account the current
21 Board members and the specific needs of the Company and the
22 Board. Among the qualifications to be considered in the
23 selection of candidates, the Nominating and Corporate
24 Governance Committee considers the experience, knowledge,
25 skills, expertise, diversity, personal and professional integrity,
26 character, business judgment, time available in light of other
27 commitments and dedication of any particular candidate, as
28

1 well as such candidate's past or anticipated contributions to the
2 Board and its committees so that *the Board includes members,*
3 *where appropriate, with diverse backgrounds,* knowledge and
4 skills relevant to the business of the Company. *The charter for*
5 *the Nominating and Corporate Governance Committee*
6 *specifically states that diversity of race, ethnicity, gender,*
7 *sexual orientation and gender identity are factors in evaluating*
8 *suitable candidates for Board membership.*¹⁷

9 104. In reality, Monster has made no real efforts to promote diversity
10 on its Board and among its senior executives. Indeed, in the 2019 and 2020
11 Proxy the word "diversity" only appears two (2) times. The Board and
12 Compensation Committee has also breached its duty of candor and acted in
13 bad faith by continuing to reward the Company's executives with increased
14 salaries, bonuses, and long-term equity compensation notwithstanding the
15 executives' failure to ensure the Company's compliance with the law in the
16 areas of sexual harassment and discrimination, and failure to promote and
17 achieve diversity at the Company and on the Board itself.

18 105. As alleged herein, the Board and Compensation Committee
19 have done so by filing Proxy Statements that conceal the fact that the
20 Company's executive compensation program places no weight on
21 compliance with the law, maintenance of effective internal controls, and
22 success (or lack thereof) in enforcing the Company's supposed "zero
23 tolerance" policy regarding sexual harassment and discrimination.

25 ¹⁷ See Monster 2020 Proxy Statement at pp. 51-52.

1 **C. At All Relevant Times, the Individual Defendants Have Had**
2 **Actual Knowledge That, Contrary to Its Public Statements,**
3 **Monster Was Not Achieving Success with Respect to**
4 **Diversity, Inclusion, and the Company's Supposed Zero**
5 **Tolerance Policy Regarding Sexual Harassment and**
6 **Discrimination**

7 106. Monster, led by its Board, has consistently refused to appoint
8 Black and minority individuals to the Board and to management positions
9 within the Company. The Company was called out all the way back in 2009
10 for its refusal to do so, but has persisted in its intransigence. Beginning in
11 2009, some of the Company's major shareholders, including CALSTRS, the
12 State of New York, the Connecticut Retirement Plans, and the City of
13 Philadelphia Public Employees Retirement System began calling on
14 Monster to diversify its Board.

15 107. In 2009, CALSTRS and Calvert Investments, a mutual fund
16 company, withdrew a shareholder proposal at Monster Beverage aimed at
17 increasing Board diversity. Monster had agreed to add diversity to the list
18 of factors to be considered by the group of directors nominating new Board
19 candidates.¹⁸ While Monster did make that change, its Board is no more
20 diverse now in terms of racial and ethnic diversity than it was eleven years
21 ago.

22 108. In 2009, CALSTRS approached Monster about increasing the
23 diversity of its Board. After the Company agreed to add a formal diversity
24 policy to its nominating committee charter, CALSTRS withdrew a proposal
25 that it was hoping to put to a shareholder vote. But Monster never increased

26 ¹⁸ See Gretchen Morgenson, "Not Walking the Walk on Board
27 Diversity," THE NEW YORK TIMES, May 31, 2014, available at
28 [https://www.nytimes.com/2014/06/01/business/not-walking-the-walk-on-
board-diversity.html](https://www.nytimes.com/2014/06/01/business/not-walking-the-walk-on-board-diversity.html), last visited Aug. 24, 2020.

1 diversity on its Board, reflecting bad faith by the Board, which at the time
2 included Defendants Sacks, Polk, Schlosberg, Selati, and Vidergauz.¹⁹
3 When the New York Times ran an article three years later about Monsters'
4 failure to change its Nominating & Corporate Governance Committee
5 charter, Roger Pondel, a Monster spokesman, declined to say why the
6 company did not use the opportunity for a new board appointment to
7 increase diversity among its directors.²⁰

8 109. On January 8, 2015, the Comptroller of the City of New York,
9 Mr. DiNapoli, issued the following press release:

10 New York State Comptroller Thomas P. DiNapoli today
11 announced that the New York State Common Retirement Fund
12 (Fund) has filed a shareholder proposal with Monster Beverage
13 Corporation calling on the company to report on plans to
14 increase gender and racial diversity on its board. The Fund's
15 proposal is co-sponsored by the Connecticut Retirement Plans
16 and Trust Funds, The City of Philadelphia Public Employees
17 Retirement System and Calvert Investments. The filers hold
18 combined shares of Monster Beverage with an approximate
19 value of \$57 million.

20 "It's unsettling that Monster Beverage has ignored repeated,
21 widespread investor support for increased board diversity,"
22

23 ¹⁹ See Gretchen Morgenson, "Not Walking the Walk on Board
24 Diversity," THE NEW YORK TIMES, May 31, 2014, available at
25 [https://www.nytimes.com/2014/06/01/business/not-walking-the-walk-on-
board-diversity.html](https://www.nytimes.com/2014/06/01/business/not-walking-the-walk-on-board-diversity.html), last visited Aug. 24, 2020.

26 ²⁰ *Id.*
27
28

1 DiNapoli said. "Company value and board diversity are linked.
2 Businesses that rely on consumers should be particularly
3 mindful that their boards should reflect the men and women
4 who purchase their products. When a board fails to be
5 responsive to its shareholders, it is often symptomatic of larger,
6 systemic problems in the company's governance."

7
8 *"For almost six years, Monster Beverage has failed to live up to*
9 *its promise of diversifying its Board of Directors," Connecticut*
10 *State Treasurer Denise L. Nappier said. "In 2009, in response to*
11 *investor pressure, it said diversity would be a factor in*
12 *considering board nominees. It defies belief that the company's*
13 *directors have not identified one diverse candidate to serve on*
14 *the board since then. It is past time for Monster Beverage to*
15 *follow through on its commitment."*²¹

16
17 110. In 2014, the New York State Retirement Fund submitted a
18 shareholder proposal for Monsters' annual shareholder meeting which
19 called for efforts to increase Board diversity at Monster. The proposal
20 stated, among other things, that:

21 "We believe that diversity, inclusive of gender and race, is an
22 essential measure of sound governance and a critical attribute to
23 a well-functioning board. A growing body of academic research

24 _____
25 ²¹Available at
26 [https://www.osc.state.ny.us/press/releases/2015/01/dinapoli-monster-](https://www.osc.state.ny.us/press/releases/2015/01/dinapoli-monster-beverage-needs-diversify-board?redirect=legacy)
27 [beverage-needs-diversify-board?redirect=legacy](https://www.osc.state.ny.us/press/releases/2015/01/dinapoli-monster-beverage-needs-diversify-board?redirect=legacy), last visited Aug. 23, 2020.
28

1 shows that there is a significant positive relationship between
2 firm value and the percentage of women and minorities on
3 boards. Boardrooms need to respond to the strong
4 demographic shifts we are seeing in the United States.

5
6 BE IT RESOLVED

7 That the Board of Directors consistent with their fiduciary duties:
8

9 1. Take every reasonable step to ensure that a wide range
10 of women and minority candidates are in the pool from which
11 Board nominees are chosen;

12
13 2. Publicly commit itself to a policy of board inclusiveness
14 to ensure that:

15 • A wide range of women and minority candidates is
16 routinely sought as part of every Board search the
17 company undertakes;

18 • The Board strives to obtain diverse candidates by
19 expanding director searches to include nominees from
20 both corporate positions beyond the executive suite and
21 non-traditional environments, including government,
22 academia, and non-profit organizations; and

23 • Board composition is reviewed periodically to ensure
24 that the Board reflects the knowledge, experience,
25 skills, and diversity required for the Board to fulfill its
26 duties.

27 3. To report to shareholders, at reasonable expense and
28

1 omitting proprietary information, its efforts to encourage
2 diversified representation on the Board.

3 As both employees and consumers, women and minorities
4 increasingly account for a larger portion of profits and revenues
5 for many companies;

6 Therefore, we believe it is critical for Monster Beverage
7 Corporation to have a board of directors that reflects the
8 diversity that exists within its target markets”

9 111. The Individual Defendants caused Monster to oppose this
10 shareholder proposal, and to cause the Company to include the following
11 statement in the 2014 Proxy:

12 **The Company’s Statement in Opposition**

13 *The Board* has carefully considered the Board Diversity
14 Proposal and, for the reasons described below, *believes that*
15 *adopting the Board Diversity Proposal is not in the best*
16 *interest of the Company or its stockholders.*

17 The Board believes that the Company’s existing nominating
18 process is designed to identify the best possible nominees for
19 director, regardless of the nominee’s gender, racial background,
20 religion or ethnicity. The Board acknowledges the benefits of
21 achieving broad diversity throughout the Company, but
22 believes the Board Diversity Proposal could impede its ability to
23 select the most suitable and qualified candidates for
24 membership on the Board and would impose unnecessary
25 administrative burdens and costs.

26 *The Company’s employment policies and practices*, including
27 recruitment, promotion and compensation, *are guided* by the
28

1 fundamental principle that decisions are made on the basis of
2 whether the individual's capabilities and qualifications fit the
3 Company's needs and meet the requirements of the position,
4 *without regard to gender, race, religion, ethnicity or other*
5 *classification*. The Company also applies these policies and
6 practices to its selection of directors.

7
8 When identifying and evaluating candidates for director,
9 diversity is a part of the overall mix of factors that the Board and
10 the Nominating Committee consider. The Nominating
11 Committee seeks individuals who are qualified to be directors
12 based on the candidate's experience, skills and knowledge of
13 business and management practices. The Board and the
14 Nominating Committee consider diversity broadly to include
15 viewpoint, professional experience, individual characteristics,
16 qualities and skills resulting in the inclusion of naturally
17 varying perspectives among the directors. In addition, the
18 Nominating Committee Charter specifically includes diversity
19 among the factors to be considered when evaluating candidates.
20 The Board and the Nominating Committee also consider
21 whether these capabilities and characteristics will enhance and
22 complement the full Board so that, as a unit, the Board possesses
23 the appropriate skills and experience to oversee the Company's
24 business and serve the long-term interests of our stockholders.
25 Finally, the Board and Nominating Committee believe that no
26 single criterion, category or trait, such as gender or minority
27 status, is determinative in obtaining diversity on the Board.

28

1 The Company's approach is consistent with amendments the
2 SEC adopted to its rules governing proxy statement disclosure.
3 The amendments, which were adopted in December 2009,
4 require companies to disclose whether, and if so how, their
5 nominating committees consider diversity in identifying
6 nominees for director. In its adopting release, the SEC explicitly
7 acknowledged that companies may define diversity in different
8 ways. The SEC states:

9
10 "We recognize that companies may define diversity in various
11 ways, reflecting different perspectives. For instance, some
12 companies may conceptualize diversity expansively to include
13 differences of viewpoint, professional experience, education,
14 skill and other individual qualities and attributes that contribute
15 to board heterogeneity, while others may focus on diversity
16 concepts such as race, gender and national origin. We believe
17 that for purposes of this disclosure requirement, companies
18 should be allowed to define diversity in ways that they consider
19 appropriate. As a result, we have not defined diversity in the
20 amendments."

21
22 The Board and the Nominating Committee seek qualified
23 candidates for director, and consider diversity as a factor, but
24 believe that *the Board Diversity Proposal is unnecessarily*
25 *restrictive and would not maintain the necessary flexibility in*
26 *the nominating process to ensure that the most qualified*
27 *candidates are selected as directors.* In addition, the reporting
28

1 obligations contemplated by the Board Diversity Proposal
2 would be expensive and time consuming, without any
3 corresponding benefit to our stockholders. The Board believes
4 that the Company's existing nominating process, including the
5 factors considered by the Nominating Committee in evaluating
6 director candidates, is the best approach. The imposition on the
7 nominating process of gender and minority requirements and
8 affirmative search obligations would undermine the Company's
9 holistic evaluation of candidates, unduly restrict the
10 Nominating Committee in the performance of its duties and add
11 administrative burdens and costs, without necessarily resulting
12 in the selection of the best director candidates for the Company.

13
14 For the reasons stated above, the Board believes that instituting
15 the change called for by the Board Diversity Proposal is
16 unnecessary and not in the best interests of our stockholders.

17
18 **THE BOARD OF DIRECTORS RECOMMENDS THAT**
19 **STOCKHOLDERS VOTE "AGAINST" THE ADOPTION OF**
20 **THE BOARD DIVERSITY PROPOSAL.**

21 112. Thus, from at least 2009 to the present, the Individual
22 Defendants have actively opposed proposals from major shareholders of
23 the Company to nominate racial and ethnic minorities to the Board, as well
24 as women. And they have done so with statements to the effect that
25 Monster Beverage does not consider diversity of race and ethnicity to be
26 important factors, or at least more important factors than other factors,
27 when choosing Board candidates, and that increasing diversity on the Board
28

1 was “unnecessarily restrictive” and would prevent the Company from
2 ensuring that “the most qualified candidates are selected as directors.”
3 These comments obviously reflected a racist attitude by the Individual
4 Defendants since the implied premise of the statements was that choosing
5 women and minorities as Board members would necessarily mean passing
6 over more qualified white candidates.

7 113. To this day, there are no racial or ethnic minorities on the
8 Company’s Board and the Defendants’ discriminatory and exclusionary
9 attitudes persist.

10 114. The lack of diversity at the top at Monster has resulted in
11 economic discrimination. The pay of the Company’s CEO in fiscal year
12 2020 was 253 times as high as the median pay of all other employees:

13 **CEO Pay Ratio:**

14 Pursuant to Item 402(u) of Regulation S-K and Section
15 953(b) of the Dodd-Frank Wall Street Reform and Consumer
16 Protection Act, the Company is required to provide the ratio of
17 the annual total compensation of Mr. Sacks, who has served as
18 the Company’s Chief Executive Officer since November 1990, to
19 the annual total compensation of the median employee of the
20 Company.

21 As reported in the Summary Compensation Table, **Mr.**
22 **Sacks’ annual total compensation for 2019 was \$13,982,434.** In
23 accordance with Item 402(u), we are using the same “median
24 employee” identified in our 2019 and 2018 pay ratio
25 calculations, as we believe that there has been no change in our
26 employee population or employee compensation arrangements
27 that we believe would result in a significant change to our pay
28

1 ratio disclosure. See our 2019 and 2018 proxy statements for
2 information regarding the process we utilized to identify our
3 “median employee.” We then identified and calculated the
4 elements of this employee’s total compensation for 2019 in
5 accordance with the requirements of Item 402(c)(2)(x) of
6 Regulation S-K, resulting in *a median annual total*
7 *compensation of all employees of the Company and its*
8 *subsidiaries (other than the Chief Executive Officer) of \$55,169.*
9 *Based on this information, for 2019, the ratio of the*
10 *compensation of the Chief Executive Officer to the median*
11 *annual total compensation of all other employees (other than*
12 *the Chief Executive Officer) was estimated to be 253:1.*²²

13 115. The racial pay gap is well-documented and persistent.
14 According to data from the Economic Policy Institute, Black workers “have
15 been losing ground since 2000, with larger [B]lack-white wage gaps across
16 the entire distribution of earnings.”²³ For example, Black wages at the
17 median in 2019 were only 75.6 percent of white wages, a 3.6 percent
18 increase from 2000, when Black wages at the median were 79.2 percent of
19 white wages.²⁴ Even when looking at wages by education level, Blacks are
20 paid less than whites. Blacks with advanced degrees are paid 82.4 cents for
21 each dollar earned by whites with an advanced degree.

22 ²² See Monster 2020 Proxy Statement at p. 47.

23 ²³ See Elise Gould, “State of Working America Wages 2019,” ECONOMIC
24 POLICY INSTITUTE, Feb. 20, 2020, available at
25 <https://www.epi.org/publication/swa-wages-2019/>, last visited August 4,
2020.

26 ²⁴ *Id.*

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On average, white workers are paid more than black and Hispanic workers at nearly every education level

Average hourly wages, by race/ethnicity and education, 2019

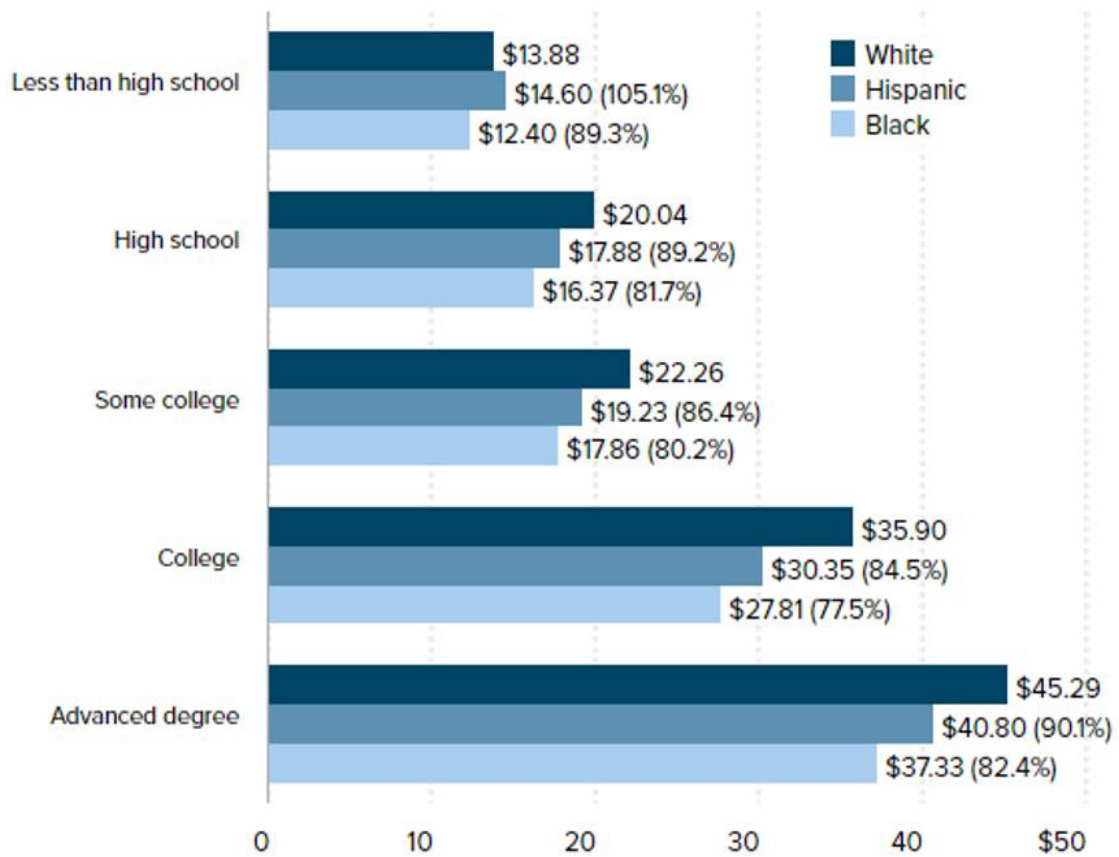


Chart Data

Source: Author's analysis of EPI Current Population Survey Extracts, Version 1.0 (2020), <https://microdata.epi.org>

Economic Policy Institute

116. The practice of asking job applicants for their salary history has also perpetuated lower compensation for Blacks and minorities.

1 117. In 2016, Massachusetts enacted the first ban, preventing
2 employers from asking job candidates about their salary history. Since then
3 18 other states, as well as many cities, have implemented salary history
4 bans.²⁵ The goal of these bans is to prevent initial wage disparities from
5 multiplying as individuals move from one job to another. “Employers
6 should be hiring and paying potential employees for the experience and
7 qualifications they have,” said New Jersey Senator Loretta Weinberg in
8 discussing the law that New Jersey enacted. “Knowing how much they
9 were paid in the past is irrelevant and often times leads to a cycle of pay
10 inequity. By eliminating inquiries of salary history, we can help curb wage
11 discrimination based not only on gender, but also race, age and other
12 characteristics,” Weinberg added.

13 118. While each state’s bill is slightly different in terms of the scope
14 of employers covered and the explicit intent, the overall goal is to prevent
15 employers from anchoring salary offers on previous salaries and
16 unintentionally perpetuating the wage gap.

17 119. In a recently released working paper, researchers at Boston
18 University found that, following the implementation of salary history bans
19 (SHB), pay for job switchers increased by 5 percent more than for
20 comparable job changers.²⁶ Moreover, they found even larger benefits for
21 Black and female job switchers, who saw pay increases of 13 percent and 8
22 percent, respectively. “Salary histories appear to account for much of the
23

24 ²⁵ See Shahar Ziv, “Salary History Bans Reduce Racial and Gender Wage
25 Gaps; Every CEO Should Use Them,” FORBES, June 23, 2020.

26 ²⁶ *Id.*

1 persistence of residual wage gaps,” the authors note. “For women and
2 African-Americans, the pay increases following an SHB represent a sizeable
3 portion of the residual wage gap measured for job-changing employees,
4 suggesting that most of this gap is not related to productivity differences
5 between workers.²⁷

6 120. The study’s authors note that wage gaps may not be caused by
7 individual and overt discrimination, but that “salary histories enable a form
8 of institutional discrimination. Even if employers do not individually
9 discriminate, the use of salary histories appears to perpetuate the effects of
10 past discrimination or other group inequities.”²⁸

11 121. With respect to the false statements in Monster’s Proxy
12 Statement about diversity in the Board nomination process, Defendants had
13 actual knowledge of the specific requirements regarding diversity that were
14 required by law to be included in the Company’s Proxy Statements because,
15 after the 2008-2009 stock market crash, the SEC passed a major set of rules
16 mandating additional proxy disclosures regarding the board nomination
17 process.

18 ///

19 ///

20 ///

21 ///

22 ///

23

24

25 ²⁷ *Id.*

26 ²⁸ *Id.*

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D. Facts Demonstrate the Board Had Knowledge That, Far From Enforcing the Company’s Supposed “Zero Tolerance” Policy Regarding Sexual Harassment and Discrimination, the Company Fostered and Condoned a Testosterone-Charged Culture Which Protected Male Executives Who Engaged in Rampant Sexual Harassment, While at the Same Time Retaliating Against Female Workers Who Reported Harassment

122. In reality, contrary to the statements in the Company’s Proxy Statements and Code of Business and Ethics that diversity is a “tremendous asset,” Monster Beverage is a company run by white males who discriminate and demean women and minorities.

123. Monster is best known for aggressively marketing energy drinks to boys and men. “Unleash the Beast” is one slogan. Its hyper-caffeinated drinks have names like Assault and Maxx. The Company’s scantily clad “Monster Girls” are used to market the Company’s products.



1 124. In 2018, five former female employees of Monster Beverage sued
2 the company over its discriminatory, abusive culture. One of the women
3 was Sara Rabuse, who worked as a make-up artist at Monster. She sued
4 Monster Beverage and one of its executives, Brent Hamilton, who choked
5 her, bit her thumb, and pulled her hair so violently that clumps of her hair
6 came out. The two were in Tennessee in 2016 for work on behalf of Monster
7 at the Country Music Awards. As an article describing Hamilton’s
8 disgusting and demeaning conduct noted: “Rabuse had red marks around
9 her neck from Hamilton trying to strangle her, according to the police
10 report. Her thumb was bloody from where Hamilton bit her. Her nails were
11 broken from fighting him off.”²⁹ Hamilton was arrested, and Rabuse was
12 hospitalized after a hotel guest found her crumpled on the floor of their
13 room.

14 125. Amazingly, for over three years, including even as he awaited a
15 criminal trial for strangling Ms. Rabuse during the business trip in 2016,
16 Brent Hamilton was still allowed to keep his job as the Head of Music
17 Marketing at Monster Energy. And after he strangled and bit Rabuse,
18 Hamilton continued to sexually harass women at Monster Beverage. It was
19 only after he was caught sending sexually explicit texts to a co-worker that
20 Hamilton was finally let go in 2019.

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25 ²⁹ See Emily Peck, “5 Women Sue Monster Energy Over Abusive,
26 Discriminatory Culture,” HUFFINGTON POST, Jan. 23, 2018.



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DAVIDSON COUNTY COURT -- Brent Hamilton on the night he was arrested in 2016

126. Monster stood by Hamilton, even after his arrest. Hamilton was allowed to keep his job while Rabuse lost hers. “My impression was they weren’t taking things seriously. Or my allegations seriously,” said Rabuse.³⁰

127. According to the women who have sued Monster Beverage, Brent Hamilton’s conduct was by no means an exception.

128. John Kenneally was also allowed to remain a Vice President at Monster despite three women accusing him of bullying, harassment and

³⁰ *Id.*

1 retaliation. The women alleged that Kenneally actively undermined their
2 reputations and forced them out of the Company. The Huffington Post
3 obtained text messages he sent to one of these women (Paige Zeringue), in
4 which he described her as a “whore,” made a racially charged comment
5 about “black dicks,” and used the term “bitch” to refer to both her and
6 another female employee.³¹ Zeringue told ABC News that she was initially
7 in a consensual sexual relationship with her former boss at the Company,
8 John Kenneally.

9 129. “I realized very soon that it was absolutely the worst mistake of
10 my life,” Zeringue said.³² She added that she told him she wanted out of
11 the relationship, and angry texts and verbal abuse soon followed. “He
12 would call me names, and things that no one in my life would ever call me,”
13 she said. “He would call me a whore.”

14 130. Another former employee, Fran Pulizzi, told ABC News that she
15 had heard Kenneally call *another* female employee a “whore.”³³ “And it
16 wasn't uncommon for him to discuss sexual relations among employees,”
17 Pulizzi added.

18 131. Pulizzi also alleged that she faced unlawful retaliation by
19 Monster executives after she participated in an internal investigation at
20 Monster where she was promised that her comments would be treated

21 ³¹ See Emily Peck, “5 Women Sue Monster Energy Over Abusive,
22 Discriminatory Culture,” HUFFINGTON POST, Jan. 23, 2018.

23 ³² See Catherine Thorbecke, “Women Suing Monster Energy Share
24 Stories of Alleged Discrimination, Harassment,” ABC NEWS, Feb. 4, 2018,
25 available at <https://abcnews.go.com/GMA/News/women-suing-monster-energy-share-stories-alleged-discrimination/story?id=52746025>, last visited
26 Aug. 24, 2020.

27 ³³ *Id.*

1 confidentially. Pulizzi alleged in a lawsuit she filed against Monster that
2 after she had been working at the Company for five years, she was
3 subjected to hostile and harassing behavior from Kenneally when she
4 participated in an investigation by HR into another employee's sexual
5 harassment complaint. "I thought for sure they were going to keep my
6 statements confidential," Pulizzi said. "When I found out within a few days
7 that John had been made aware of everything I said, I was in shock."

8 132. Pulizzi alleges that Kenneally then began to bully and harass
9 her at work before ultimately freezing her out. "He refused to talk to me,
10 and our open communication was a key part of my job," she said. "He
11 refused to work with me, refused to acknowledge me."³⁴

12 133. Another former employee, Jamie Hogan, argued in court
13 documents filed in August 2017 that her former supervisor at Monster
14 Energy would "publicly insult and berate her for having children." "He
15 would make comments about, 'Oh, we'd have to move our meeting so that
16 Jamie could go home at night and see her kids,'" Hogan told ABC News.³⁵
17 She added that he would also schedule "impromptu meetings." "I didn't
18 show up because I wasn't aware of it," she said. "It just became increasingly
19 difficult to do my job."

20 134. Hogan said she felt retaliated against after she reported her
21 concerns to the human resources department, and eventually left the
22 Company.

23 135. Moreover, in 2018, a sixth female employee at Monster (Karen
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25 ³⁴ *Id.*

26 ³⁵ *Id.*

1 Simmons) came forward with allegations of sexual harassment,
2 discrimination, and retaliation. Ms. Simmons, a 50-year-old former sales
3 representative based in Alabama, spent nearly two years with Monster. She
4 amassed a strong track record, even as she fended off one of her Atlanta-
5 based managers, Ted Cook, who hit on her, made comments about her
6 breasts, tried to get her drunk and invited her more than once for an
7 “evening nightcap” in his hotel room on work trips. According to
8 Simmons, given the Company’s cultural penchant for partying, drinking
9 alcohol at Company events was a given. She didn’t drink, and repeatedly
10 rebuffed Cook’s efforts to “get her drunk,” she said. She declined his
11 invitations for a “nightcap” in his hotel room.³⁶

12 136. “The more Ted drank, the more handsy he got,” Simmons told
13 HuffPost. On one occasion when he asked for a hug, Simmons said she
14 uncomfortably gave him a half-hug. He wasn’t satisfied, and pulled her in
15 for a do-over, she said. “He said, ‘I felt that,’” Simmons said, meaning he
16 could feel the pressure of her breasts on his chest.

17 137. Once Ms. Simmons reported the harassment, she was retaliated
18 against and fired, in violation of the Company’s alleged “zero tolerance”
19 policy. “I knew saying things gets you retaliation,” Simmons later stated.³⁷

20 138. At a dinner in New Orleans that Simmons attended with Cook,
21 Duck and several other male Monster employees, she heard them joking
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23 ³⁶ See Emily Peck, “Trapped Inside the Monster Energy Frat House,”
24 HUFFINGTON POST, Mar. 29, 2018.

25 ³⁷ *Id.*
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1 about “having to go to HR classes,” if they misbehaved. “It was just like a
2 big joke,” Simmons said.

3 139. Simmons’ last few months at Monster played out like a
4 corporate gaslighting. In February 2017, less than two months after she had
5 received a decent performance review from Duck, he asked to meet up with
6 her in Florida where they had both traveled for business.³⁸

7 140. What happened next came as a total shock. Duck showed her a
8 disciplinary write-up. The write-up claimed she was unwilling to leave her
9 hometown for work. Yet, she was in Florida on a business trip at the time
10 she was given the write-up. “I was out of town every week,” she said. The
11 writeup also claims that Duck spoke with Simmons in January about these
12 issues. Simmons said the only feedback she got that month came when she
13 downloaded her performance review from the Company’s internal website.
14 Monster provided HuffPost with a copy of the document.

15 141. Dated Dec. 31, 2016, the review judges Simmons’ performance
16 as “Meets Standards,” giving her a 2.14 rating out of 4, and was generally
17 upbeat and positive but is peppered with constructive criticism. “At this
18 point the only thing I can ask Karen to improve on is slowing down,” Duck
19 wrote. “She also needs a little more work on time management.” He called
20 her a “great problem solver,” who sometimes needs help prioritizing, “I
21 have asked her to make sure when she schedules a meeting...to ALWAYS
22 make sure she can do it...”

23 142. In the category of “job knowledge and skill,” Duck gave
24 Simmons a rating of 3 or “exceeds expectations.” As a result, the negative

25 ³⁸ *Id.*

1 write-up baffled Simmons. She cried. “Where is this coming from?” she
2 asked him. She wanted to understand what she did wrong, so she could fix
3 things. Duck refused to provide more details. “He said I was making things
4 worse and to go home and forget about it,” Simmons said.³⁹

5 143. For about a month-and-a-half after that, Duck, still Simmons’
6 direct supervisor, did not talk to Simmons. She said he wouldn’t respond to
7 texts or calls. One thing he apparently did do: update Simmons’ Dec. 31
8 performance review — topping the document off with an extremely harsh
9 “summary paragraph” slamming her for poor performance. The added
10 paragraph is dated March 3, 2017. The tone of this text is vastly different
11 from the rest of the document. “At this point, Karen has lost the trust of
12 some of her bottlers and needs to ‘fix’ this soon or she will struggle,” Duck
13 wrote. “Karen acts disconnected in meetings and face to face with her Coke
14 partners.” Duck used gender-coded words like “abrasive” and
15 “demanding” to describe her demeanor with outside contacts at Coca-Cola
16 bottlers Simmons worked with.

17 144. Simmons, meanwhile, took her dismissal very hard. She was so
18 embarrassed about being fired that she stopped leaving her home during
19 the day, not wanting anyone in her small Alabama hometown to ask her
20 why she wasn’t working. “The first six months were awful,” she said. “If I
21 needed to go out, I’d go at three or four in the morning or ten or 11 at
22 night.”⁴⁰

23 145. Because she lost her job, Simmons’ husband, a 68-year-old who
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25 ³⁹ *Id.*

26 ⁴⁰ *Id.*

1 supervises utility crews in Tampa, has had to put off his retirement. He had
2 relocated to Tampa temporarily to make a little extra cash before finishing
3 his career. Now it's unclear when he can come home.

4 146. "This has affected my marriage, my life. It's been really tough
5 on my family," she said, breaking down in tears. Simmons is responsible for
6 paying college tuition for her 21-year-old daughter.

7 147. The Board was fully aware of all these allegations and failed to
8 take action to protect the female employees. Even worse, demonstrating
9 their bad faith, the Director Defendants financially rewarded the male
10 executives who engaged in the wrongdoing and knowingly condoned the
11 Company's wrongful retaliation against the women who had reported the
12 harassment.

13 148. The Board cannot disavow knowledge of the wrongful
14 harassment and retaliation because the wrongful conduct was publicly
15 reported, beginning in at least 2018. Moreover, when Ms. Simmons'
16 allegations were publicly reported in 2018, Monster hired a third party to
17 "investigate" the allegations and required the investigator to report directly
18 to the Board:

19 "Monster announced it was hiring a third party to review its
20 human resource policies and procedures. The investigators will
21 report straight to the company's board of directors."

22 *See* Emily Peck, "Trapped Inside the Monster Energy Frat House,"
23 HUFFINGTON POST, Mar. 29, 2018.

24 149. Egregiously, Defendants Sacks and Schlosberg, the two most
25 senior executives at the Company, absolved the Company's executives of
26 wrongdoing before the third-party investigator had even begun its work:
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1 “We are confident that the recent portrayal of the company in
2 the media is not representative of [our] culture and practices,”
3 Monster chairman and CEO Rodney Sacks and vice chair and
4 president Hilton Schlosberg said in a statement. But they added
5 that “in the context of the allegations made by the women
6 bringing these lawsuits, we believe it is prudent.”

7 *See* Emily Peck, “Trapped Inside the Monster Energy Frat House,”
8 HUFFINGTON POST, Mar. 29, 2018.

9 150. In other words, Sacks and Schlosberg, far from keeping an open
10 mind about the investigation that the Board had ordered, stated they were
11 sure the allegations were false and that the Company would be vindicated,
12 but that a kangaroo court would nonetheless be convened. A clearer case of
13 a pre-ordained result for the investigation could not be imagined. Before
14 the work of the investigator had even begun, the Director Defendants
15 themselves directed Company spokesmen to make statements denigrating
16 the women and calling them “disgruntled former employees.” They also
17 allowed Ms. Simmons’ direct boss to make a public statement to the effect
18 that Ms. Simmons had never complained to him about the wrongful
19 conduct, thus attempting to undermine Ms. Simmons’ allegations from the
20 outset. As reported by the Huffington Post at the time:

21 • *Robert Duck, Simmons’ direct boss* who works out of
22 Monster’s office in Florida, also witnessed Cook’s behavior, but
23 *told her to brush it off*, she said. “*He said Ted was harmless, ‘a*
24 *dirty old man,*” Simmons recalled.

25 • *Through a company spokesman, Duck said Simmons never*
26 *complained.* When reached by phone by HuffPost, he hung up.
27 He did not respond to follow-up texts. Cook also did not
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1 respond to a call, text or LinkedIn message.

2 • In public statements at the time, *the company painted the*
3 *women as disgruntled employees and said that the suits [by the*
4 *other five former female employees] were unrelated.*

5 • Simmons' former boss Duck, who she said witnessed Cook's
6 behavior, is still working at Monster.

7 151. The Director Defendants not only knew that such conduct was
8 in flagrant violation of the Company's alleged "zero tolerance" policy, they
9 directly participated in the wrongful conduct and retaliation by allowing
10 the women who were harmed to be fired and then publicly denigrated them
11 before the work of the supposedly independent third party (who reported
12 directly to the Board) had even begun.

13 152. The Director Defendants have known at all relevant times that
14 Monster Energy markets its drinks primarily to men using cliched tropes
15 about masculinity. Scantly clad Monster Girls in leather bikini tops serve as
16 brand ambassadors. One beverage is actually called "Assault." The
17 company has given out Monster branded condoms as a promotional
18 gimmick.

19 153. That toxic male culture translates into policy where sexual
20 harassment is not taken seriously. The Director Defendants are well aware
21 that Monster's employee guidelines require that managers who observe
22 sexual misconduct must report it. But in Ms. Simmons' case, her direct boss,
23 Duck, admitted that he observed the harassment of Simmons, but he never
24 informed Monster's HR department about Cook's conduct. Duck was never
25 reprimanded for his violation of Company policy; instead, Simmons was
26 retaliated against for reporting the conduct, in compliance with Company
27 policy.

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1 154. According to the Huffington Post, as of 2018 only 13 percent of
2 the Company's 505-person U.S. sales team are women. If you include
3 administrative assistants, the percentage rises to 18 percent female,
4 according to an internal employee directory from January obtained by
5 HuffPost. None of the Company's 11 vice-presidents in sales are women.

6 155. Monster said some of the numbers HuffPost obtained were
7 incorrect, but declined to offer specifics or provide its own data.⁴¹

8 156. Sales is such a male-dominated department at Monster that at a
9 2016 national sales meeting in Las Vegas — even with human resources
10 representatives in attendance — a vice-president told a blatantly
11 misogynistic joke to a packed room, according to three separate accounts
12 from current and former employees. The joke that the male Monster
13 executive told was as follows: There is an old bull and a young bull on a
14 hill, overlooking a field of cows. Young bull says to the old bull: "Let's run
15 down there and fuck a cow." Old bull says, nah: "Let's walk down there
16 and fuck them all."⁴²

17 157. The joke was allegedly told to inspire the sales personnel.

18 **E. Background of Additional Disclosures Mandated by the SEC**
19 **in Proxy Statements Relating to the Process by Which**
20 **Individuals Are Nominated to the Boards of Directors of**
21 **Publicly-Traded Companies**

22 158. In 2008-2009, the stock market plunged by over 50% due to
23 mortgage-related fraud. The Dow Jones Industrial Average ("DJIA") hit a

24 ⁴¹ See Emily Peck, "Trapped Inside the Monster Energy Frat House,"
25 HUFFINGTON POST, Mar. 29, 2018.

26 ⁴² *Id.*

1 market low of 6,469.95 on March 6, 2009, having lost over 54% of its value
2 since the October 9, 2007 high. In the ensuing years, the United States
3 suffered a massive recession. Many corporations such as Countrywide,
4 Lehman Brothers, Merrill Lynch, Fannie Mae, Freddie Mac, and American
5 International Group collapsed or had to be rescued by the government due
6 to fraud or exposure to the subprime mortgage market. But for a massive
7 governmental intervention to save companies and inject unprecedented
8 liquidity into the market, many commentators at the time believe another
9 great depression would have ensued.

10 159. But before the 2008-2009 stock market crash, another major stock
11 market crash had occurred in 2001-2002. Between 1995 and its peak in
12 March 2000, the Nasdaq Composite stock market index rose 400%, only to
13 fall 78% from its peak by October 2002, giving up all its gains during the
14 bubble. During the “dot.com” crash, many online shopping companies,
15 such as Pets.com, Webvan, and Boo.com, as well as several communication
16 companies, such as Worldcom, NorthPoint Communications, and Global
17 Crossing, failed and shut down. Some companies, such as Cisco, whose
18 stock declined by 86%, and Qualcomm, lost a large portion of their market
19 capitalization but survived. The “Internet bubble” that preceded the crash
20 was fueled by speculation on new Internet companies and by widespread
21 but temporary abandonment by Wall Street and analysts of “traditional”
22 and allegedly “outdated” analytic tools such as price earnings ratios, which
23 supposedly were irrelevant to the new-fangled dot.com companies, (which
24 of course had no profits, such that ignoring price earnings ratios proved
25 convenient for the analysts touting the companies and the investment banks
26 seeking to profit from bringing the companies public). At the time, there
27 was also a widespread lack of any type of “Chinese wall” between the
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1 underwriting and analyst departments at major Wall Street firms.
2 Securities analysts at brokerage firms were frequently influenced by their
3 partners at the firm who were making much more money from the
4 underwriting business and who thus did not want to “alienate” their clients
5 by having their colleagues write negative analyst reports.

6 160. When the dot.com bubble burst, it had a major negative effect
7 on the economy and the value of Americans’ pension funds, retirement
8 accounts, and investment savings. In light of these devastating effects,
9 Congress and the SEC passed major legislation to try to provide additional
10 protection to investors.

11 161. The Sarbanes–Oxley Act of 2002 (Pub.L. 107–204, 116 Stat. 745,
12 enacted July 30, 2002), also known as the “Public Company Accounting
13 Reform and Investor Protection Act” (in the Senate) and “Corporate and
14 Auditing Accountability, Responsibility, and Transparency Act” (in the
15 House) and more commonly called Sarbanes–Oxley or SOX, established
16 new or expanded requirements for all U.S. public company boards,
17 management and public accounting firms. A number of provisions of the
18 Act also apply to privately held companies, such as the willful destruction
19 of evidence to impede a federal investigation. The bill was enacted to
20 protect investors in light of massive fraud at a number of companies,
21 including Enron and WorldCom.

22 162. Due to Congressional recognition that a company’s Board of
23 Directors and senior management should bear ultimate responsibility for
24 wrongdoing, the Sarbanes-Oxley Act added responsibilities to a public
25 corporation’s board of directors, added criminal penalties for certain
26 misconduct, and required the SEC to create regulations to define how
27 public corporations are to comply with the law. In addition, it added a
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1 requirement that a company's CEO and CFO certify a company's financial
2 results in Form 10-Ks and 10-Qs.

3 163. In 2003, the SEC passed a final rule aimed at providing
4 shareholders with additional disclosures in companies' proxy statements
5 regarding the persons nominated to serve on Boards of Directors and the
6 process by which they are nominated. The final rule was entitled
7 "Disclosure Regarding Nominating Committee Functions and
8 Communications Between Security Holders and Boards of Directors." See
9 17 CFR Parts 228, 229, 240, 249, 270 and 274 [Release Nos. 33-8340; 34-48825;
10 IC-26262; File No. S7-14-03].

11 164. In explaining the need for the rule, the SEC stated:

12 The amendments are designed to address the growing concern
13 among security holders over the accountability of corporate
14 directors and the lack of sufficient security holder input into
15 decisions made by the boards of directors of the companies in
16 which they invest. Currently, companies must state whether
17 they have a nominating committee and, if so, must identify the
18 members of the nominating committee, state the number of
19 committee meetings held, and briefly describe the functions
20 performed by such committees. In addition, if a company has a
21 nominating or similar committee, it must state whether the
22 committee considers nominees recommended by security
23 holders and, if so, must describe how security holders may
24 submit recommended nominees. The amendments are designed
25 to build upon existing disclosure requirements to elicit a more
26 detailed discussion of the policies and procedures of nominating
27 committees as well as the means by which security holders can
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1 communicate with boards of directors.

2 165. Six years later, and after the 2008-2009 stock market crash, the
3 SEC passed another set of rules mandating additional proxy disclosures
4 regarding the board nomination process. At an open meeting held on
5 December 16, 2009, the SEC approved a set of proposed rules to enhance the
6 information provided to shareholders in company proxy statements
7 regarding a number of risk oversight, compensation, board leadership and
8 composition and other corporate governance matters. The SEC released the
9 text of the final rules on the same date they were adopted.

10 166. The final rules were proposed in July 2009. However, based on
11 the more than 130 comment letters that the SEC received on the proposals,
12 the final rules reflect a number of changes that result in clearer and more
13 precisely defined, but in some cases broader, disclosure standards than
14 what the SEC had initially proposed. Among the more significant changes
15 from the rule proposals are the following:

16 **Director qualifications.** The final rules require disclosure
17 concerning the specific experience, qualifications, attributes or
18 skills of directors and director nominees that led to the
19 conclusion that the person should serve as a director. The
20 proposed rules would have required this disclosure to, in
21 addition, address how these factors related to directors' service
22 on board committees.

23 **Compensation Practices and Risk Management.** The proposed
24 rules would have required disclosure in the Compensation
25 Discussion and Analysis of any compensation policies and
26 compensation practices applicable to employees (whether or not
27 they are executive officers) if they created risks that "may have a
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1 material effect” on the company. The final rule requires
2 disclosure of employee compensation policies and practices that
3 create risks only if they “are reasonably likely to have a material
4 adverse effect on the company.” Further, pursuant to the final
5 rule, this disclosure will not be part of the Compensation
6 Discussion and Analysis, but instead will be a new and separate
7 disclosure requirement.

8 **Diversity Considerations in the Director Nomination Process.**

9 In the rule proposals, the SEC asked whether it should amend
10 its rules to require disclosure of additional factors that a
11 nominating committee considers when selecting someone for a
12 position on the board, such as diversity, and whether it should
13 amend the rules to require additional or different disclosure
14 related to board diversity. *The rules as adopted require*
15 *disclosure of whether, and if so how, a nominating committee*
16 *considers diversity in identifying nominees for directors.*
17 *Moreover, in what may be a regulatory first for disclosure of*
18 *the inner workings of a board, if a nominating committee has a*
19 *policy with regard to consideration of diversity, the rules*
20 *require disclosure of how the policy is implemented, as well as*
21 *how the nominating committee assesses the effectiveness of the*
22 *policy.*⁴³

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24 ⁴³ See “SEC Adopts Final Rules on Enhanced Proxy Statement Disclosures,”
25 HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE, Dec. 21, 2009,
26 available at <https://corpgov.law.harvard.edu/2009/12/21/sec-adopts-final-rules-on-enhanced-proxy-statement-disclosures/>, last visited July 24, 2020.

1 167. As this brief history demonstrates, in the wake of the two major
2 stock market crashes of this century, Congress and the SEC passed
3 important laws requiring significant additional responsibilities and
4 disclosures by corporate boards.

5 168. These additional Board-level responsibilities and potential
6 criminal liability were needed because of the devastating effect corporate
7 fraud has on the livelihood and retirement savings of Americans.

8 169. The additional disclosures required in proxy statements
9 regarding the qualifications and nominating process of persons nominated
10 to serve on Boards of Directors were necessary because, as the ultimate
11 decision-making body of a company, the Board bears ultimate
12 responsibility for corporate decisions. Congress and the SEC rightfully
13 determined that shareholders needed additional information about the
14 qualifications of director nominees and the process by which a company's
15 nominating and corporate governance committee identifies and selects
16 persons to serve on corporate boards.

17 170. And beginning in 2009, additional specific disclosures were
18 mandated requiring "disclosure of additional factors that a nominating
19 committee considers when selecting someone for a position on the board,
20 such as diversity, and whether it should amend the rules to require
21 additional or different disclosure related to board diversity. *The rules as*
22 *adopted require disclosure of whether, and if so how, a nominating*
23 *committee considers diversity in identifying nominees for directors."*

24 171. In passing the 2009 rule, the SEC stated:

25 In the Proposing Release, we also requested comment on
26 whether we should amend our rules to require disclosure of
27 additional factors considered by a nominating committee when
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1 selecting someone for a board position, such as board diversity.
2 A significant number of commenters responded that disclosure
3 about board diversity was important information to investors.⁴⁴
4 Many of these commenters believed that requiring this
5 disclosure would provide investors with information on
6 corporate culture and governance practices that would enable
7 investors to make more informed voting and investment
8 decisions.⁴⁵ Commenters also noted that there appears to be a
9 meaningful relationship between diverse boards and improved
10 corporate financial performance, and that diverse boards can
11 help companies more effectively recruit talent and retain staff.⁴⁶
12

13 *We agree that it is useful for investors to understand how the*
14 *board considers and addresses diversity, as well as the board's*
15 *assessment of the implementation of its diversity policy, if any.*
16 *Consequently, we are adopting amendments to Item 407(c) of*
17 *Regulation S-K to require disclosure of whether, and if so how,*
18 *a nominating committee considers*

19 _____
20 ⁴⁴ See, e.g., letters from Board of Directors Network, Boston Common
21 Asset Management, CalPERS, CalSTRS, Calvert, Council of Urban
22 Professionals, Ernst & Young LLP ("E&Y"), Greenlining Institute, Hispanic
23 Association on Corporate Responsibility, Interfaith Center on Corporate
Responsibility, InterOrganization Network, Latino Business Chamber of
Greater Los Angeles, Pax World Management Corporation, Prout Group,
Inc., RiskMetrics, Sisters of Charity BVM, Sisters of St. Joseph Carondelet,
and Trillium Asset Management Corporation.

24 ⁴⁵ See, e.g., letters from the Boston Club, Boston Common Asset
25 Management, CalPERS, Pax World Management Corporation, Trillium
Asset Management Corporation, and Social Investment Forum.

26 ⁴⁶ See, e.g., letters from Catalyst and the Social Investment Forum.
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1 *diversity in identifying nominees for director.*⁴⁷ In addition, if
2 the nominating committee (or the board) has a policy with
3 regard to the consideration of diversity in identifying director
4 nominees, disclosure would be required of how this policy is
5 implemented, as well as how the nominating committee (or the
6 board) assesses the effectiveness of its policy.⁴⁸

7 172. In further expanding on the importance and materiality to
8 investors of the new diversity disclosures mandated by the 2009 rule, the
9 SEC stated:

10 Required disclosure of whether, and if so, how a nominating
11 committee (or the board) considers diversity in connection with
12 identifying and evaluating persons for consideration as
13 nominees for a position on the board of directors may also
14 benefit investors. *Board diversity policy is an important factor*
15 *in the voting decisions of some investors.*⁴⁹ *Such investors will*
16 *directly benefit from diversity policy disclosure* to the extent the
17 policy and the manner in which it is implemented is not
18 otherwise clear from observing past and current board
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20 ⁴⁷ See Item 407(c)(2)(vi) of Regulation S-K. Funds will be subject to the
21 diversity disclosure requirement of Item 407(c)(2)(vi) of Regulation S-K
22 under Item 22(b)(15)(ii)(A) of Schedule 14A. See 17 CFR 240.14a-101, Item
23 22(b)(15)(ii)(A).

24 ⁴⁸ See United States Securities & Exchange Commission, Release Nos.
25 33-9089; 34-61175; IC-29092; File No. S7-13-09, Dec. 16, 2009, available at
26 <https://www.sec.gov/rules/final/2009/33-9089.pdf>, last visited July 25, 2020.

27 ⁴⁹ See, e.g., letters from Calvert, Trillium, Boston Common Asset
28 Management, CII, Florida State Board of Administration, and Sisters of
29 Charity BVM. See also letter from Lissa Lamkin Broome and Thomas Lee
30 Hazen.

1 selections. Although the amendments are not intended to steer
2 behavior, *diversity policy disclosure may also induce beneficial*
3 *changes in board composition.* A board may determine, in
4 connection with preparing its disclosure, that it is beneficial to
5 disclose and follow a policy of seeking diversity. Such a policy
6 may encourage boards to conduct broader director searches,
7 evaluating a wider range of candidates and potentially
8 improving board quality. *To the extent that boards branch out*
9 *from the set of candidates they would ordinarily consider, they*
10 *may nominate directors who have fewer existing ties to the*
11 *board or management and are, consequently, more independent.*
12 *To the extent that a more independent board is desirable at a*
13 *particular company, the resulting increase in board*
14 *independence could potentially improve governance.* In
15 addition, in some companies a policy of increasing board
16 diversity may also improve the board's decision-making process
17 by encouraging consideration of a broader range of views.⁵⁰

18 173. As a result of the 2009 rule enacted by the SEC, Item 407 of
19 Regulation S-K now requires all companies in their proxy statements to:

20 Describe the nominating committee's process for identifying and
21 evaluating nominees for director, including nominees
22 recommended by security holders, and any differences in the
23 manner in which the nominating committee evaluates nominees
24 for director based on whether the nominee is recommended by a

25 ⁵⁰ *Id.*

1 security holder, and whether, and if so how, the nominating
2 committee (or the board) considers diversity in identifying
3 nominees for director. If the nominating committee (or the
4 board) has a policy with regard to the consideration of diversity
5 in identifying director nominees, describe how this policy is
6 implemented, as well as how the nominating committee (or the
7 board) assesses the effectiveness of its policy.⁵¹

8 174. As set forth herein, the Company has not complied with these
9 requirements in its Proxy Statements and thus has denied its shareholders
10 key, material information about how the Company's nominating and
11 governance committee considers diversity in identifying nominees for
12 directors.

13 **F. False and Misleading 2019 and 2020 Proxy Statements**
14 **Approved by the Director Defendants**

15 175. Notwithstanding their knowledge about Monster's failure to
16 promote and achieve diversity and its discriminatory hiring and promotion
17 practices, the Director Defendants caused Monster to issue Proxy
18 Statements that were materially misleading.

19 176. The Company's 2019 Proxy Statement was filed with the SEC on
20 April 22, 2019 and was approved by Defendants Sacks, Schlosberg, Hall,
21 Ciaramello, Fayard, Jackson, Pizula, Polk, Selati, and Vidergauz. The 2019
22 annual meeting was held in California. The members of the Company's
23 Nominating and Corporate Governance Committee in 2019 at the time the
24 2019 Proxy was filed with the SEC and sent to the Company's shareholders

25 _____
26 ⁵¹ See Item 407(c)(2)(vi) of Regulation S-K, 17 CFR §229.407.

1 were Directors Selati, Taber, and Epstein.

2 177. The Company's 2020 Proxy Statement was filed with the SEC on
3 April 21, 2020 and was approved by Defendants Sacks, Schlosberg, Hall,
4 Fayard, Polk, Selati, and Vidergauz. The members of the Company's
5 Nominating and Corporate Governance Committee in 2020 at the time the
6 2020 Proxy was filed with the SEC and sent to the Company's shareholders
7 were Directors Selati, Polk, and Vidergauz.

8 178. In the 2019 and 2020 Proxy Statements, the Company stated
9 that:

10 *[T]he Nominating and Corporate Governance Committee*
11 *reviews the desired experience, mix of skills and other qualities*
12 *to assure appropriate Board composition, taking into account*
13 *the current Board members and the specific needs of the*
14 *Company and the Board. Among the qualifications to be*
15 *considered in the selection of candidates, the Nominating and*
16 *Corporate Governance Committee considers the experience,*
17 *knowledge, skills, expertise, diversity, personal and professional*
18 *integrity, character, business judgment, time available in light of*
19 *other commitments and dedication of any particular candidate,*
20 *as well as such candidate's past or anticipated contributions to*
21 *the Board and its committees so that the Board includes*
22 *members, where appropriate, with diverse backgrounds,*
23 *knowledge and skills relevant to the business of the Company.*
24 *The charter for the Nominating and Corporate Governance*

1 *Committee specifically states that diversity of race, ethnicity,*
2 *gender, sexual orientation and gender identity are factors in*
3 *evaluating suitable candidates for Board membership.*⁵²

4 179. These statements were misleading. The statement that “*The*
5 *charter for the Nominating and Corporate Governance Committee*
6 *specifically states that diversity of race, ethnicity, gender, sexual*
7 *orientation and gender identity are factors in evaluating suitable*
8 *candidates for Board membership*” misled shareholders into believing that
9 the Board considers diversity an important factor in deciding which
10 candidates to nominate for Board seats. In reality, it is not an important
11 factor and the Company is not committed to racial and ethnic diversity on
12 the Board and among the Company’s senior executives. The Company’s
13 affirmative representation that “diversity of race [and] ethnicity” are
14 “*factors in evaluating suitable candidates for Board membership*” simply
15 cannot be squared with the fact that the Company has never had an African
16 American or other minority Board member. Moreover, the Company’s
17 repeated statements about the high value that the Company places on
18 diversity in its workforce, including at the senior executive level (“*We seek*
19 *to capture diversity in our candidates, including diversity of gender, race*
20 *and ethnicity, and veteran status. This applies across the organization,*
21 *including at the senior management level*”) simply cannot be squared with
22 the fact that the Company has no racial or ethnic diversity among its senior
23 executives.

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25 ⁵² 2018 Proxy at p. 42; 2019 Proxy at p. 45; 2020 Proxy at p. 51-52.
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1 180. These statements in the 2019 and 2020 Proxy Statements were
2 also misleading because they suggested that the Governance Committee has
3 a goal of achieving diversity on the Board by seeking to achieve
4 representation of diverse persons – *i.e.*, Blacks and other minorities. In
5 reality, however, the Governance Committee does not have a goal of
6 increasing the racial diversity of applicants for Board seats and instead
7 merely seeks to create a misleading veneer of commitment to diversity.

8 181. The 2019 and 2020 Proxy Statements were also misleading
9 because they suggested that the Company was actively seeking to achieve
10 racial and ethnic diversity in its Board membership. Despite stating that the
11 Nominating and Governance Committee considers racial and ethnic
12 diversity when recommending candidates to the Board, the fact remains
13 that Monster has no African Americans on its Board, and that no African
14 American or other minority candidate has been elected to the Monster
15 Board. The undisclosed truth therefore is that Monster has no intention to
16 actually nominate African Americans or other minorities to its Board.

17 182. The false, misleading, and omitted information about diversity
18 was highly material, violated SEC rules governing proxy statements. In
19 passing the 2009 rule, the SEC stated:

20 In the Proposing Release, we also requested comment on
21 whether we should amend our rules to require disclosure of
22 additional factors considered by a nominating committee when
23 selecting someone for a board position, such as board diversity.
24 A significant number of commenters responded that disclosure
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1 about board diversity was important information to investors.⁵³
2 Many of these commenters believed that requiring this
3 disclosure would provide investors with information on
4 corporate culture and governance practices that would enable
5 investors to make more informed voting and investment
6 decisions.⁵⁴ Commenters also noted that there appears to be a
7 meaningful relationship between diverse boards and improved
8 corporate financial performance, and that diverse boards can
9 help companies more effectively recruit talent and retain staff.⁵⁵
10 *We agree that it is useful for investors to understand how the*
11 *board considers and addresses diversity, as well as the board's*
12 *assessment of the implementation of its diversity policy, if any.*
13 *Consequently, we are adopting amendments to Item 407(c) of*
14 *Regulation S-K to require disclosure of whether, and if so how,*
15 *a nominating committee considers diversity in identifying*
16 *nominees for director.*⁵⁶ In addition, if the nominating committee

17 ⁵³ See, e.g., letters from Board of Directors Network, Boston Common
18 Asset Management, CalPERS, CalSTRS, Calvert, Council of Urban
19 Professionals, Ernst & Young LLP ("E&Y"), Greenlining Institute, Hispanic
20 Association on Corporate Responsibility, Interfaith Center on Corporate
21 Responsibility, InterOrganization Network, Latino Business Chamber of
Greater Los Angeles, Pax World Management Corporation, Prout Group,
Inc., RiskMetrics, Sisters of Charity BVM, Sisters of St. Joseph Carondelet,
and Trillium Asset Management Corporation.

22 ⁵⁴ See, e.g., letters from the Boston Club, Boston Common Asset
Management, CalPERS, Pax World Management Corporation, Trillium
Asset Management Corporation, and Social Investment Forum.

23 ⁵⁵ See, e.g., letters from Catalyst and the Social Investment Forum.

24 ⁵⁶ See Item 407(c)(2)(vi) of Regulation S-K. Funds will be subject to the
25 diversity disclosure requirement of Item 407(c)(2)(vi) of Regulation S-K
26 under Item 22(b)(15)(ii)(A) of Schedule 14A. See 17 CFR 240.14a-101, Item
27 22(b)(15)(ii)(A).
28

1 (or the board) has a policy with regard to the consideration of
2 diversity in identifying director nominees, disclosure would be
3 required of how this policy is implemented, as well as how the
4 nominating committee (or the board) assesses the effectiveness
5 of its policy.⁵⁷

6 183. In further expanding on the importance and materiality to
7 investors of the new diversity disclosures mandated by the 2009 rule, the
8 SEC stated:

9 Required disclosure of whether, and if so, how a nominating
10 committee (or the board) considers diversity in connection with
11 identifying and evaluating persons for consideration as
12 nominees for a position on the board of directors may also
13 benefit investors. *Board diversity policy is an important factor*
14 *in the voting decisions of some investors.*⁵⁸ *Such investors will*
15 *directly benefit from diversity policy disclosure* to the extent the
16 policy and the manner in which it is implemented is not
17 otherwise clear from observing past and current board
18 selections. Although the amendments are not intended to steer
19 behavior, *diversity policy disclosure may also induce beneficial*
20 *changes in board composition.* A board may determine, in
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22 ⁵⁷ See United States Securities & Exchange Commission, Release Nos.
23 33-9089; 34-61175; IC-29092; File No. S7-13-09, Dec. 16, 2009, available at
<https://www.sec.gov/rules/final/2009/33-9089.pdf>, last visited July 25, 2020.

24 ⁵⁸ See, e.g., letters from Calvert, Trillium, Boston Common Asset
25 Management, CII, Florida State Board of Administration, and Sisters of
26 Charity BVM. See also letter from Lissa Lamkin Broome and Thomas Lee
27 Hazen.
28

1 connection with preparing its disclosure, that it is beneficial to
2 disclose and follow a policy of seeking diversity. Such a policy
3 may encourage boards to conduct broader director searches,
4 evaluating a wider range of candidates and potentially
5 improving board quality. *To the extent that boards branch out*
6 *from the set of candidates they would ordinarily consider, they*
7 *may nominate directors who have fewer existing ties to the*
8 *board or management and are, consequently, more independent.*
9 *To the extent that a more independent board is desirable at a*
10 *particular company, the resulting increase in board*
11 *independence could potentially improve governance.* In
12 addition, in some companies a policy of increasing board
13 diversity may also improve the board's decision making process
14 by encouraging consideration of a broader range of views.⁵⁹

15 184. As a result of the 2009 rule enacted by the SEC, Item 407 of
16 Regulation S-K now requires all companies in their proxy statements to:

17 Describe the nominating committee's process for identifying and
18 evaluating nominees for director, including nominees
19 recommended by security holders, and any differences in the
20 manner in which the nominating committee evaluates nominees
21 for director based on whether the nominee is recommended by a
22 security holder, and whether, and if so how, the nominating
23 committee (or the board) considers diversity in identifying
24

25 ⁵⁹ *Id.*

1 nominees for director. If the nominating committee (or the
2 board) has a policy with regard to the consideration of diversity
3 in identifying director nominees, describe how this policy is
4 implemented, as well as how the nominating committee (or the
5 board) assesses the effectiveness of its policy.⁶⁰

6 185. The Nominating & Governance Committee at Monster is
7 responsible for nominating candidates to the Board. The Company's 2020
8 Proxy stated that:

9 [T]he Nominating and Corporate Governance Committee
10 reviews the desired experience, mix of skills and other qualities
11 to assure appropriate Board composition, taking into account
12 the current Board members and the specific needs of the
13 Company and the Board. Among the qualifications to be
14 considered in the selection of candidates, the Nominating and
15 Corporate Governance Committee considers the experience,
16 knowledge, skills, expertise, diversity, personal and professional
17 integrity, character, business judgment, time available in light of
18 other commitments and dedication of any particular candidate,
19 as well as such candidate's past or anticipated contributions to
20 the Board and its committees so that the Board includes
21 members, where appropriate, with diverse backgrounds,
22 knowledge and skills relevant to the business of the Company.
23 The charter for the Nominating and Corporate Governance
24 Committee specifically states that diversity of race, ethnicity,

25 ⁶⁰ See Item 407(c)(2)(vi) of Regulation S-K, 17 CFR §229.407.
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1 gender, sexual orientation and gender identity are factors in
2 evaluating suitable candidates for Board membership ⁶¹

3 186. At Monster, one of the ways the Company has inhibited and
4 prevented diverse candidates from being nominated to serve on the Board
5 is through restrictive and unreasonable provisions that place a high bar on
6 shareholders' ability to nominate candidates other than the incumbent
7 directors. As admitted in the 2020 Proxy:

8 In 2018, the Board adopted the Proxy Access Bylaw. *The Proxy*
9 *Access Bylaw permits a stockholder, or a group of up to twenty*
10 *stockholders, owning three percent or more of the Company's*
11 *outstanding Common Stock continuously for at least three*
12 *years to nominate and include in the Company's proxy*
13 *materials.* Director nominees consisting of two nominees or
14 twenty percent of the Board, whichever is greater, provided that
15 the stockholder(s) and nominee(s) comply with the
16 requirements of Article 1, Section 16 of our By-Laws. To be
17 timely for inclusion in the Company's proxy materials for our
18 2020 annual meeting, pursuant to the Proxy Access Bylaw, the
19 stockholder(s) notice to nominate a Director must be delivered
20 to the Office of the Secretary at the Company's principal
21 executive offices no earlier than November 24, 2019 and no later
22 than December 24, 2019. The notice must contain the
23 information required by our By-Laws, and the stockholder(s)

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25 _____
26 ⁶¹ See 2020 Proxy at p. 51-52.

1 and nominee(s) must comply with the information and other
2 requirements in our By-Laws relating to the inclusion of
3 stockholder nominees in our proxy materials.⁶²

4 187. As this statement indicates, any Monster shareholder wanting to
5 nominate a new individual to the Board — for example, an African
6 American individual — has to own 3% of the Company’s stock, or
7 alternatively somehow get in contact with and convince 19 other
8 shareholders who collectively own 3% of the Company’s stock to agree to
9 nominate the individual. The Company’s 2020 Annual Report disclosed
10 that “Holders of record of Common Stock at the close of business on April
11 13, 2020 are entitled to notice of, and to vote at, the Annual Meeting. Each
12 share entitles its holder to one vote. As of the record date, 526,547,394 shares
13 of our Common Stock were issued and outstanding. There are no other
14 outstanding voting securities of the Company. Thus, 3% of Monster’s
15 shares equates to 15,796,422 shares.”

16 188. At Monster’s current stock price of approximately \$84.54,⁶³ a
17 shareholder would have to own \$1,335,429,516 in Monster stock in order to
18 have the right to nominate an African American individual to Monster’s
19 Board. No wonder there are no Blacks on Monster’s Board.

20 189. But the restrictions do not end there. In addition to having to
21 own 3% of Monster’s stock, a shareholder has to have owned the stock
22 “continuously for at least the last three years.” So, there is a three-year
23 waiting period even after a person buys Monster stock in order to be able to
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25 ⁶² See 2020 Proxy at p. 11.

26 ⁶³ As of August 28, 2020.

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1 nominate a director to the Board.

2 190. Monster's Proxy Statement was also materially misleading
3 because it contained material omissions: it failed to disclose that the
4 purpose and effect of its "proxy access" rules, in combination with the
5 policies of its Nominating & Governance Committee, was to inhibit the
6 nomination and election of Blacks and minorities to the Board. These
7 material omissions would have been material to a shareholder's decision as
8 to whether to re-elect the incumbent directors at the annual meeting. In the
9 2019 and 2020 Proxy Statements, the reelection of the incumbent directors
10 was Item No. 1.

11 191. In the 2019 and 2020 Proxy, the nominated directors were Sacks,
12 Schlosberg, Hall, Fayard, Polk, Selati, Jackson, Polk, Pizula, and Vidergauz.

13 192. The Proxy Statements were also materially misleading because
14 they failed to disclose that the Company does not have term limits, and that
15 the purpose of the lack of term limits is to entrench the current directors in
16 office and prevent African Americans and minorities from having fair
17 opportunities to be elected to the Board.

18 193. To attempt to justify its racism, Monster's Board has resisted
19 efforts to appoint new members to its Board by claiming that the
20 individuals who have served on the Board for, in some cases more than a
21 decade, have experience that is valuable to the Company. The Proxy was
22 false and misleading for failing to disclose the lack of term limits and the
23 true reasons and effect of the lack of term limits.

24 194. In reality, longer-tenured directors do not serve the best
25 interests of the Company, as amply demonstrated by leading academics and
26 professionals in the field of best corporate governance principles. A report
27 by the Harvard Law School Forum on Corporate Governance noted that:
28

1 Investor respondents to ISS' 2016–2017 Global Policy
2 Survey (conducted between Aug. 2, 2016 and Aug. 30, 2016)
3 were asked which tenure-related factors — with multiple
4 answers allowed — would give rise to concern about a board's
5 nominating and refreshment processes. *Among the 120*
6 *institutional investors (one-third of whom each own or manage*
7 *assets in excess of \$100 billion) who responded, 68 percent*
8 *pointed to a high proportion of directors with long tenure as*
9 *cause for concern, 53 percent identified an absence of newly-*
10 *appointed independent directors in recent years as a potential*
11 *problem, and 51 percent flagged lengthy average tenure as*
12 *problematic.* Just 11 percent of the investor respondents said
13 that tenure is not a concern, although even several of those
14 respondents indicated that an absence of newly-appointed
15 directors is a concern.⁶⁴

16 195. The Director Defendants' refusal to adopt director term limits
17 and to appoint new Black and minority members to the Board represents
18 explicit or implicit racism at Monster, and an improper pretext for failing to
19 add Black and minority individuals to the Board.

20 196. The 2019 and 2020 Proxy Statements were also materially
21 misleading because they asked shareholders to vote in favor of executive
22 compensation "say on pay" proposals, but failed to disclose that none of
23 Monster's executive compensation decisions take into consideration
24

25 ⁶⁴ Available at [https://corpgov.law.harvard.edu/2017/02/09/board-](https://corpgov.law.harvard.edu/2017/02/09/board-refreshment-trends-at-sp-1500-firms/)
26 [refreshment-trends-at-sp-1500-firms/](https://corpgov.law.harvard.edu/2017/02/09/board-refreshment-trends-at-sp-1500-firms/) (last visited June 21, 2020).

1 whether the executives have been successful in achieving the Company's
2 critical goals of increasing diversity and inclusion at the Company, ensuring
3 compliance with the law, eliminating legal and reputational risks to the
4 Company, ensuring compliance with the Company's internal controls, and
5 eliminating sexual harassment and discrimination.

6 197. The 2019 Proxy contained a report from the Compensation
7 Committee regarding executive compensation and risk management. The
8 members of the Compensation Committee at the time who issued the report
9 which was included in the 2019 Proxy were Directors Epstein, Vidergauz,
10 and Selati. The Proxy stated that "The Compensation Committee has
11 reviewed and discussed with management the Compensation Discussion
12 and Analysis required by Item 402(b) of Regulation S-K. Based on such
13 review and discussions, the Compensation Committee recommended to the
14 Board that the Compensation Discussion and Analysis referred to above be
15 included in this proxy statement."

16 198. The 2019 Proxy stated:

17 **PROPOSAL THREE**

18 **ADVISORY VOTE ON EXECUTIVE COMPENSATION**

19 The Dodd-Frank Wall Street Reform and Consumer Protection
20 Act of 2010 (the "Dodd-Frank Act") enables our stockholders to
21 approve, on a non-binding, advisory basis, the compensation of
22 our Named Executive Officers as disclosed in this proxy
23 statement in accordance with SEC rules.

24 *Our executive compensation program for our Named Executive*
25 *Officers is designed to motivate our executive talent, to reward*
26 *those individuals fairly over time for achieving performance*
27 *goals, to retain those individuals who continue to perform at or*
28

1 *above the levels that are deemed essential to ensure our long-*
2 *term success and growth* and to attract, as needed, individuals
3 with the skills necessary for us to achieve our business plan. *We*
4 *believe our compensation policies are designed to reinforce a*
5 *sense of ownership and overall entrepreneurial spirit and to link*
6 *rewards to measurable corporate and qualitative individual*
7 *performance.* In addition, the Compensation Committee has
8 made several key enhancements this year to our compensation
9 program in response to feedback from stockholders.

10 199. The 2019 Proxy acknowledged that executive compensation
11 decisions were largely based on discretionary, non-objective factors, but
12 failed to provide a full description of the factors considered (or not
13 considered) by the Compensation Committee. The 2019 Proxy stated:

14 *Compensation Philosophy*

15 *Our executive compensation program for our Named Executive*
16 *Officers (“NEOs”), as described in the following pages, is*
17 *designed to emphasize equity compensation in the form of stock*
18 *options, restricted stock and/or restricted stock units in addition*
19 *to cash compensation as a means of motivating and retaining*
20 *executive talent, rewarding executives fairly over time for*
21 *performance relative to business plan goals and creating*
22 *sustainable shareholder value through continued profitable*
23 *growth. The program is designed to reinforce ownership and*
24 *overall entrepreneurialism and to link rewards to measurable*
25 *corporate and qualitative individual performance.* The
26 program, although not formulaic in its approach, is based on
27 long-standing principles that reward sustained, relative
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1 outperformance. *When making compensation decisions, the*
2 *Company's performance versus its internal goals and external*
3 *benchmarks are considered. Consideration is also given to*
4 *operating performance and shareholder returns, as well as each*
5 *NEO's role in enhancing operating performance and shareholder*
6 *returns.* In applying these principles, we integrate cash and
7 equity incentive compensation programs with our short- and
8 long-term strategic plans in order to align the interests of our
9 NEOs with the long-term interests of our stockholders. *The*
10 *Compensation Committee annually evaluates risks and*
11 *rewards associated with the Company's overall compensation*
12 *philosophy and structure and does not believe the program*
13 *promotes excessive risk-taking.*

14 200. With respect to the award of annual bonuses to the Company's
15 executives, the 2019 Proxy stated that the bonuses were "discretionary" and
16 based on a "qualitative" review of performance, but failed to fully disclose
17 what factors were considered and which were not considered in this
18 qualitative review:

19 We provide incentive compensation to our NEOs partly in the
20 form of a *discretionary annual cash bonus based on a*
21 *qualitative review of individual and company-wide financial*
22 *and operational performance,* consistent with our emphasis on
23 pay-for-performance incentive compensation programs. The
24 Compensation Committee determines the annual bonuses for
25 Mr. Sacks and Mr. Schlosberg and the Executive Committee
26 (comprised of the Chairman and Chief Executive Officer and the
27 Vice Chairman and President) determines the annual bonuses
28

1 for the other NEOs.

2 Consistent with prior years, the 2018 cash bonuses were not
3 determined in a formulaic manner. In determining 2018 bonus
4 awards, our Compensation Committee and Executive
5 Committee considered all of our performance achievements and
6 reviewed various strategic factors, including sales revenues,
7 high relative profit growth, distribution levels, introduction of
8 new products, corporate partnerships, overall operating
9 performance, contribution margins, profitability and TSR, which
10 are used as a broad guide of overall performance. We generally
11 utilize annual cash bonuses to reward performance for the time
12 horizon of one year.

13 201. The 2019 Proxy stated the following with respect to
14 the Company's Long-Term Incentive equity awards:

15 ***Long-Term Incentive Program***

16 We believe that long-term performance is achieved through an
17 ownership culture that encourages superior performance by our
18 NEOs through the use of equity awards and, as a result, the
19 compensation program emphasizes equity awards over cash
20 compensation. *Our equity compensation plans have been*
21 *established to provide our NEOs with incentives to further*
22 *align their interests with the interests of our stockholders and*
23 *such interests are aligned through the granting of options and*
24 *restricted stock units.* Equity compensation to our NEOs
25 generally vests over three to five years.

26 202. The 2019 Proxy also affirmatively represented that the
27 Compensation Committee carefully considered risk and risk management
28

1 when making compensation decisions:

2 *The Compensation Committee reviews the Company's*
3 *compensation practices and discerns the relationship among*
4 *risk, risk management and compensation in light of the*
5 *Company's objectives.*

6 203. These statements about executive compensation were false and
7 misleading. The statements suggested that the Compensation Committee's
8 executive compensation decisions took into consideration the best long-
9 term interests of the Company, which implied that a review of the
10 executives' success or lack of success in causing the Company to comply
11 with the law and ensure that the Company was adopting and employing
12 effective internal controls and achieving the Company's strategic goals,
13 including those of increasing diversity at the Company. In reality, however,
14 those factors were not considered in any way by the Compensation
15 Committee in its qualitative and discretionary analysis of executive
16 compensation. In fact, upon information and belief, the Compensation
17 Committee's decisions were based almost 100% on the Company's financial
18 performance. As a result, the Proxy was false and misleading because it
19 misrepresented that the Compensation Committee considered risk
20 management when approving executive compensation programs and when
21 approving executive compensation.

22 204. The statement in the 2019 Proxy that "*The Compensation*
23 *Committee annually evaluates risks and rewards associated with the*
24 *Company's overall compensation philosophy and structure and does not*
25 *believe the program promotes excessive risk-taking*" was also false and
26 misleading. Because the undisclosed truth was that the Compensation
27 Committee did not factor legal compliance and compliance with the
28

1 Company's internal controls into its compensation decisions, the
2 Company's executive compensation program necessarily entailed excessive
3 risks since the Company's executives were motivated to boost financial
4 performance at any cost and regardless of legal compliance. The rampant
5 sexual harassment and lack of diversity at the Company are flagrant and
6 obvious examples of the results of the Company's compensation program
7 lacking any consideration of executives' success (or lack thereof) in ensuring
8 legal compliance and ensuring effective internal controls at the Company.
9 At Monster, even executives like Brent Hamilton who strangled and bit
10 women were allowed to remain in their posts for years after their criminal
11 conduct. Since the Company's financial performance was the only factor
12 considered by the Compensation Committee, male executives who engaged
13 in this deplorable conduct could still keep their jobs and earn bonuses
14 despite engaging in clearly illegal, unethical, immoral, and disgusting
15 conduct towards women. The Company even exalted such conduct by
16 naming one of its drinks "Assault."

17 205. At the 2019 Annual Meeting, the Company only received 64%
18 support for its "Say on Pay" proposal regarding executive compensation – a
19 very low percentage by industry standards.

20 206. In the 2020 Proxy, the Company announced that it had changed
21 its approach to executive compensation from a completely "discretionary"
22 basis to a "formulaic" one:

23 *The Compensation Committee's prior practice was to determine*
24 *annual incentive payouts on an entirely discretionary basis.*
25 *Beginning with the 2020 fiscal year, the Compensation*
26 *Committee transitioned to a formulaic approach, whereby each*
27 *NEO has a pre-established target bonus opportunity which will*
28

1 be earned based on pre-established financial and individual
2 performance, weighted 75% and 25%, respectively.⁶⁵

3 207. The 2020 Proxy further stated:

4 The key elements of the 2020 annual incentive program are as
5 follows:

6 • in March 2020, the Compensation Committee granted the
7 2020 annual incentive award to the NEOs with a target bonus
8 opportunity ranging from 50% to 120% of each NEO's 2020 base
9 salary (the "2020 Award");

10 • payouts for the 2020 Award are dependent upon adjusted
11 operating income (75% weighting) and individual performance
12 (25% weighting);

13 • with respect to both the Company's adjusted operating
14 income and the individual performance components, the payout
15 may range from 0% to 200% of target, and no payout will be
16 earned for performance below a threshold level; and

17 • achievement under either of these components are
18 independent of each other (*i.e.*, a payout can be made under one
19 component even if no payout is made under the other).

20 208. The 2020 Proxy also stated that Monster Beverage had re-
21 designed its long-term incentive compensation program:

22 ***Change #2 - Long-Term Incentive Re-Design***

23 The Compensation Committee historically made annual grants
24 to our NEOs consisting of a mix of stock options and time-

25 ⁶⁵ See 2020 Proxy Statement at p. 21.
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28

1 vested RSUs for its long-term incentive program. With the
2 assistance of F.W. Cook, the Compensation Committee
3 approved in March 2020 a new ongoing long-term incentive
4 program structure for all NEOs consisting of stock options (25%
5 weighting), time-vested RSUs (25% weighting) and performance
6 share units (“PSUs”) (50% weighting). The stock options will
7 vest ratably over three or five years, subject to continued
8 service, and will have a 10-year term. The RSUs will also vest
9 ratably over three or five years, subject to continued service. The
10 PSUs will cliff vest after three years based on performance
11 achievement versus the pre-established performance goal,
12 subject to continued service during the period.

13 209. Similar to the 2019 Proxy, the 2020 Proxy Statement contained
14 the following representation:

15 *The Compensation Committee annually evaluates risks and*
16 *rewards associated with the Company’s overall compensation*
17 *philosophy and structure and does not believe the program*
18 *promotes excessive risk-taking.*

19 210. The 2020 Proxy also affirmatively represented that the
20 Compensation Committee carefully considered risk and risk management
21 when making compensation decisions:

22 *The Compensation Committee reviews the Company’s*
23 *compensation practices and discerns the relationship among*
24 *risk, risk management and compensation in light of the*
25 *Company’s objectives.*

26 211. This statement was misleading because it led shareholders to
27 believe that the Compensation Committee’s compensation decisions were
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1 structured to ensure that the Company's executives were not incentivized to
2 take excessive risks that could lead the Company to incur liability and
3 reputational harm. The Proxy was also misleading because it omitted to
4 disclose the truth, which is that the Company's compensation programs for
5 executives completely fail to take into consideration risk or risk
6 management.

7 212. The 2020 Proxy also stated that the Board is directly responsible
8 for risk management:

9 **The Board's Role in Risk Oversight**

10 *The Board of Directors plays an active role in overseeing and*
11 *managing the Company's risks. The full Board and its Executive*
12 *Committee regularly review the Company's results,*
13 *performance, operations, competitive position, business*
14 *strategy, liquidity, capital resources, product distribution and*
15 *development, material contingencies and senior personnel, as*
16 *well as the risks associated with each of these matters. The*
17 *Board implements its risk oversight function both as a whole*
18 *and through its standing committees. Certain of the work is*
19 *delegated to committees, which meet regularly and report back*
20 *to the full Board. The Compensation Committee reviews the*
21 *Company's compensation practices and discerns the*
22 *relationship among risk, risk management and compensation in*
23 *light of the Company's objectives. The Audit Committee*
24 *reviews and discusses with management the risks faced by the*
25 *Company and the policies, guidelines and process by which*
26 *management assesses and manages the Company's risks,*
27 *including the Company's major financial risk exposures and risks*
28

1 *related to financial statements, the financial reporting process and*
2 *accounting and legal matters, as well as the steps management*
3 *has taken to monitor and control such exposures.* The full Board
4 also discusses risk throughout the year during meetings in
5 relation to specific proposed actions including risks related to
6 cybersecurity and reputation. *These processes are designed to*
7 *ensure that risks are taken knowingly and purposefully. The Board*
8 *believes that its role in oversight of risk management (as well as the*
9 *role of the Compensation Committee and the Audit Committee) has*
10 *not adversely affected its leadership structure or results of operations.*

11 213. These statements regarding executive compensation in the 2020
12 Proxy Statement were contained in the Report from the Compensation
13 Committee, whose members at the time (and currently) are Defendants
14 Vidergauz, Selati, and Polk.

15 214. The statement in the 2020 Proxy that *“The Compensation*
16 *Committee annually evaluates risks and rewards associated with the*
17 *Company’s overall compensation philosophy and structure and does not*
18 *believe the program promotes excessive risk-taking”* was false and
19 misleading. Because the undisclosed truth was that the Compensation
20 Committee did not factor legal compliance into its compensation decisions,
21 the Company’s executive compensation program necessarily entailed
22 excessive risks since the Company’s executives were motivated to boost
23 financial performance at any cost and regardless of legal compliance. The
24 rampant sexual harassment and lack of diversity at the Company are
25 flagrant and obvious examples of the results of the Company’s
26 compensation program lacking any consideration of executives’ success (or
27 lack thereof) in ensuring legal compliance and ensuring effective internal
28

1 controls at the Company.

2 215. The members of the Audit Committee at the time the 2020 Proxy
3 was filed with the SEC and sent to shareholders were Fayard, Pizula, and
4 Selati. The members in 2019 were Selati, Epstein, Taber and Fayard.

5 216. The omitted facts, had they been disclosed, would have been
6 highly material to stockholders' decisions as to whether to reelect the Board
7 nominees and vote in favor or against the "say on pay" executive
8 compensation proposals. Ensuring that a company's executive
9 compensation programs do not entail excessive risk taking is critical to
10 shareholders, since excessive risk taking may maximize compensation to
11 the executives yet result in liability to the Company that far exceeds the
12 amount of the compensation paid to the executives. A company's success
13 (or lack thereof) in achieving diversity and inclusion is also valued very
14 highly by shareholders, including Plaintiff, and the omitted fact that
15 Monster does not include any significant weight (if any) to executives'
16 success or lack thereof in achieving legal compliance and the Company's
17 diversity goals would have been very important to shareholders' voting
18 deliberations.

19 217. The false statements and material omissions in the Proxy
20 Statements had their desired effect. At Monster's annual meetings in 2019
21 and 2020 all the incumbent white directors were reelected. No competing
22 Black or minority candidates made it on the ballot or were elected. The
23 executive compensation "say on pay" proposals were approved.

24 218. The 2019 and 2020 Proxy Statements were false and misleading
25 because, among other things, they omitted and failed to disclose:

- 26 (a) That the statement in the Proxies that "the
27 Nominating and Corporate Governance Committee considers
28

1 the experience, knowledge, skills, expertise, diversity, personal
2 and professional integrity, character, business judgment, time
3 available in light of other commitments and dedication of any
4 particular candidate, as well as such candidate's past or
5 anticipated contributions to the Board and its committees so that
6 the Board includes members, where appropriate, with diverse
7 backgrounds, knowledge and skills relevant to the business of
8 the Company" was misleading because it suggested that the
9 Company was actively seeking to achieve racial and ethnic
10 diversity in its Board membership, while the undisclosed reality
11 is that Monster either has no intention to actually nominate such
12 persons to its Board or it engages in efforts to thwart the
13 nomination of such persons and prefers non-diverse applicants
14 in the pool;

15 (b) That the Company's lack of term limits is not due to
16 a desire to retain the experience of the incumbent Director
17 Defendants, but instead to keep minorities off the Board;

18 (c) That the Company's failure to disclose its median
19 salary and pay/employment data is due to a desire to conceal
20 existing, known pay disparity at the Company which adversely
21 affects women and minorities;

22 (d) That the Company's executive compensation
23 decisions do not take into consideration in any way the
24 executives' success or lack thereof in achieving the Company's
25 diversity and inclusion goals; moreover, that the Company's
26 stated policies with respect to diversity and anti-discrimination
27 were not effective and were not being complied with, and that
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1 the Company's executives were retaliating against female
2 employees such as Jamie Hogan and Fran Pulizzi;

3 (e) That the Board's Nominating and Governance
4 Committee does not take racial and ethnic diversity into
5 consideration when nominating Board candidates and instead
6 simply has attempted to create a false appearance of seeking
7 diversity among potential Board candidates;

8 (f) That Defendants had knowledge that the Company's
9 internal controls and systems were inadequate and ineffective to
10 protect women and minorities against discrimination in hiring,
11 promotion, and other critical terms of employment and equal
12 access;

13 (g) That Defendants failed to maintain appropriate
14 policies, internal controls, and procedures to ensure that the
15 Company's stated policies with respect to sexual harassment,
16 diversity and inclusion were being complied with;

17 (h) That the statement in the Proxies that "*The*
18 *Compensation Committee annually evaluates risks and*
19 *rewards associated with the Company's overall compensation*
20 *philosophy and structure and does not believe the program*
21 *promotes excessive risk-taking*" was false and misleading.
22 Because the undisclosed truth was that the Compensation
23 Committee did not factor legal compliance into its
24 compensation decisions, the Company's executive
25 compensation program necessarily entailed excessive risks since
26 the Company's executives were motivated to boost financial
27 performance at any cost and regardless of legal compliance; and
28

1 (i) That the Company's diversity and inclusion
2 programs were not achieving measurable and actionable results,
3 and needed substantial improvement.

4 219. The 2019 and 2020 Proxy Statements harmed the Company by
5 interfering with the proper governance on its behalf that requires
6 stockholders' informed voting regarding directors. As a result of the false or
7 misleading statements in the Proxies, stockholders voted to reelect all of the
8 Defendants to the Board in 2019 and 2020.

9 220. The statements in the 2019 and 2020 Proxy Statements conveyed
10 that the Company's corporate governance structure was "effective" and
11 provided "oversight of management and Board accountability." In reality,
12 the Company's corporate governance structure and defective internal
13 controls allowed senior executives and the Board to sidestep real
14 accountability and instead continue perpetuating the discriminatory
15 practices in hiring practices, and lack of diversity on both the Board and
16 management.

17 221. The 2018 and 2019 Proxies, which contained materially
18 misleading statements and thus deprived shareholders of adequate
19 information necessary to make a reasonably informed decision, caused the
20 Company's stockholders to reelect all of the Defendants to the Board and
21 approve executive compensation proposals while the Defendants were
22 breaching their fiduciary duties to the Company and deliberately
23 concealing material information concerning the Company's discrimination
24 against Black and other minority individuals and its effects on the
25 Company's business and reputation.

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1 **G. Monster’s Nominating and Governance Committee Members**
2 **Have Repeatedly Breached Their Fiduciary Duties to Ensure**
3 **Diversity on the Board**

4 222. The Charter of the Nominating and Governance Committee sets
5 forth the duties of the Board members serving on such committee. Among
6 those duties, with respect to the nomination of candidates to serve on
7 Monster’s Board, are the following:

8 In connection with the process of selecting and nominating
9 candidates for election to the Board, the Committee shall review
10 the desired experience, mix of skills and other qualities to assure
11 appropriate Board composition, taking into account the current
12 Board members and the specific needs of the Company and the
13 Board. Among the qualifications to be considered in the
14 selection of candidates, the Committee shall consider the
15 following attributes and criteria of candidates: experience,
16 knowledge, skills, expertise, diversity, personal and professional
17 integrity, character, business judgment, time available in light of
18 other commitments, dedication, independence and such other
19 factors that the Committee considers appropriate so that the
20 Board includes members, where appropriate, with diverse
21 backgrounds, skills and experience, including appropriate
22 financial and other expertise relevant to the business of the
23 Company. Diversity of race, ethnicity, gender, sexual orientation
24 and gender identity are factors in evaluating suitable candidates
25 for Board membership. The Committee will consider diverse
26 candidates in the pool from which Board nominees are chosen,

1 including, without limitation, nominees from both corporate
2 positions beyond the executive suite and nontraditional
3 environments.⁶⁶

4 223. The members of the Nominating and Governance Committee
5 (Polk, Selati, and Vidergauz) have breached their fiduciary duties as
6 directors by failing to fulfill these duties. Rather than causing Monster to
7 comply with its corporate governance principles, Polk, Selati, and
8 Vidergauz have caused Monster to merely pay lip service to these
9 principles. Instead of recommending well-qualified Black and minority
10 candidates to serve on Monster's Board, Polk, Selati, and Vidergauz have
11 perpetuated the all-white Board under the pretext that the existing
12 members' "experience" and long tenure on the Board is beneficial to
13 Monster.

14 224. Moreover, to entrench themselves and their fellow directors in
15 office, all the Director Defendants have opposed term limits in order to
16 prevent the addition of qualified African Americans and other minorities to
17 the Board.

18 225. At all relevant times, Monster Beverage has had very poor
19 corporate governance principles, as recognized by corporate governance
20 experts. For example, Censible states the following with respect to
21 Monster's corporate governance principles:

22 Monster Beverage performs *very poorly* among its competitors on
23 corporate governance. This score is determined by the company's
24

25 ⁶⁶See [https://investors.monsterbevcorp.com/static-files/9aa8b2ab-c80a-448b-](https://investors.monsterbevcorp.com/static-files/9aa8b2ab-c80a-448b-a764-7263cdb2acf0)
26 [a764-7263cdb2acf0](https://investors.monsterbevcorp.com/static-files/9aa8b2ab-c80a-448b-a764-7263cdb2acf0), last visited August 19, 2020.

1 accounting practices, executive pay, board organization and
 2 ownership structure.⁶⁷

3 226. As the saying goes, the rich get richer while the poor get poorer.
 4 Serving on Monster’s Board has enriched the already-rich elites whose
 5 profitable sinecure has been perpetuated by the Defendants’ wrongdoing.
 6 Many qualified Black and minority candidates would enjoy the prestige and
 7 compensation that comes with a position on Monster’s Board. The
 8 following chart sets forth the compensation earned by outside directors on
 9 Monster’s Board in 2020:

Name	Fees Earned or Paid in Cash (\$)	Stock Awards (\$)	Option Awards (\$)	All Other Compensation (\$)	Total (\$)
Benjamin M. Polk	60,000	164,988	-	-	224,988
Norman C. Epstein	100,000	164,988	-	-	264,988
Sydney Selati	102,500	164,988	-	-	267,488
Harold C. Taber, Jr.	92,500	164,988	-	-	257,488
Mark S. Vidergauz	87,500	164,988	-	-	252,488
Mark J. Hall (4)	-	-	1,148,305	1,011,388	2,159,693
Kathy N. Waller	60,000	164,988	-	-	224,988
Gary P. Fayard	70,000	164,988	-	-	234,988

17 227. The following table sets forth the compensation paid to the
 18 Company’s directors in fiscal year 2019:

Name	Fees Earned or Paid in Cash (\$)(1)	Stock Awards (\$)(2)	Option Awards (\$)(3)	All Other Compensation (\$)(4)	Total (\$)
Benjamin M. Polk	60,000	164,988	-	-	224,988
Norman C. Epstein	100,000	164,988	-	-	264,988
Sydney Selati	102,500	164,988	-	-	267,488
Harold C. Taber, Jr.	92,500	164,988	-	-	257,488
Mark S. Vidergauz	87,500	164,988	-	-	252,488
Mark J. Hall (4)	-	-	1,148,305	1,011,388	2,159,693
Kathy N. Waller	60,000	164,988	-	-	224,988
Gary P. Fayard	70,000	164,988	-	-	234,988

24 ⁶⁷ See <https://esg.censible.co/companies/Monster-Beverage-environmental-social-corporate-governance-profile>, last visited Aug. 24, 2020.

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228. In addition to awarding themselves substantial compensation for serving on the Board, the Director Defendants lavished the Company's executives with the following compensation in fiscal years 2017, 2018, and 2019:

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Stock Awards (\$)(1)	Option Awards (\$)(2)	All Other Compensation (\$)(3)	Total (\$)(4)
Rodney C. Sacks Chairman, CEO and Director	2019	850,000	508,000	6,486,726	6,012,646	125,062	13,982,434
	2018	800,000	484,000	6,464,411	6,063,050	103,470	13,914,931
	2017	750,000	462,000	5,645,403	5,550,332	97,445	12,505,080
Hilma H. Schlosberg Vice Chairman, CFO, COO, President, Secretary and Director	2019	850,000	508,000	6,486,726	6,012,646	81,927	13,939,299
	2018	800,000	484,000	6,464,411	6,063,050	73,746	13,885,207
	2017	750,000	462,000	5,645,403	5,550,332	44,652	12,452,287
Guy P. Carling President, EMEA	2019	549,652	279,154	507,195	504,393	45,557	1,885,951
	2018	507,469	227,406	618,000	1,641,518	44,778	3,039,171
Thomas J. Kelly Executive Vice President, Finance, MEC	2019	450,000	225,000	310,284	302,636	38,781	1,326,701
	2018	400,000	200,000	-	1,239,216	36,408	1,875,624
	2017	350,000	180,000	-	-	33,667	563,667
Emelie C. Turre President, Americas	2019	630,000	320,000	507,195	504,393	35,345	1,996,933
	2018	554,615	275,000	618,000	1,641,518	33,645	3,122,778

229. These huge salaries to the Company's executives have been awarded by the Compensation Committee Directors (Polk, Selati, and Vidergauz) while systematically underpaying minorities and women. The Compensation Committee Defendants have consistently awarded massive pay packages to the Company's CEOs which dwarf the median pay of the Company's other employees. The pay of the Company's CEO in fiscal year 2020 was 253 times as high as the median pay of all other employees:

Based on this information, for 2019, the ratio of the compensation of the Chief Executive Officer to the median annual total compensation of all other employees (other than the Chief Executive Officer) was estimated to be 253:1.⁶⁸

⁶⁸ See Monster 2020 Proxy Statement at p. 47.

1 **H. The Director Defendants Breached Their Duties of Loyalty**
2 **and Good Faith by Failing to Ensure the Company's**
3 **Compliance with Federal and State Laws Regarding Diversity**
4 **and Anti-Discrimination**

5 230. The Director Defendants have known for years that Monster has
6 been violating federal and state laws regarding diversity, equal pay, and
7 discrimination against women and minorities.

8 231. Defendants' knowledge is reflected by the fact that the lawsuits
9 filed by at least five former female employees allege that: (1) Monster paid
10 women less than men for the same or similar jobs and refused to provide
11 stock options to women; and (2) Monster illegally retaliated against
12 numerous women who reported sexual harassment and discrimination by
13 Company executives, in violation of the Company's own alleged "zero
14 tolerance" policy and federal and state laws making such retaliation illegal.

15 232. As just one of many examples, former employee Jamie Leigh
16 Hogan was discriminated against because she was a woman, was paid less
17 than male workers, and was constructively discharged after reporting the
18 discrimination to Company executives, including David van Winkle, Vice
19 President. Her supervisor, Phil Dietrich, Central Division On-Premise Food
20 Service Manager, directly discriminated against Hogan because she was a
21 woman and violated federal and state laws by disclosing private details
22 about Hogan's medical issues and a leave of absence to co-workers in an
23 effort to embarrass and undermine Hogan. When Hogan filed a complaint
24 with the Company's Human Resources department, the department
25 disclosed Hogan's complaints to Dietrich in violation of Company policy.⁶⁹

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⁶⁹ See *Hogan v. Monster Energy Company*, Case No. 17-cv-02156 (N.D. Texas).

1 To avoid public disclosure of further facts regarding the Company's
2 wrongdoing, Monster forced Hogan to arbitrate her claims and insisted
3 upon the sealing of all further information.

4 233. The Director Defendants continued to approve the Company's
5 policy of mandating arbitration of female employees' claims of sexual
6 harassment and discrimination in order to keep this and similar
7 wrongdoing concealed and shielded from public inquiry. This represented
8 a breach of the Director Defendants' fiduciary duty of loyalty and good
9 faith, since the mandatory arbitration policy, coupled with mandatory
10 confidentiality provisions which preclude female employees from publicly
11 reporting the wrongdoing, allowed the male executives such as Kenneally
12 and Dietrich and many others to persist in their disgusting, demeaning
13 misconduct towards women, thereby exposing the Company to liability,
14 materially harming its reputation, and causing severe emotional distress
15 and economic harm to a key element of the Company's workforce – female
16 employees.

17 234. The Director Defendants knew that Monster had not corrected
18 these problems with respect to rampant, long-standing, and egregious
19 sexual harassment and discrimination of women, fair and equitable pay to
20 women and minorities, unlawful retaliation and violation of Company HR
21 policies, and lack of adequate internal controls at Monster regarding these
22 issues.

23 235. In their efforts to avoid detailed disclosures that would shed
24 light of the true extent of pay inequity at Monster afflicting African
25 Americans and minorities, the Director Defendants continue to refuse to
26 publish unadjusted median gender/racial pay information which is industry
27 best practices and standards.

1 236. Monster has refused to publish annual diversity reports, thus
2 enabling the Company to attempt to hide the lack of diversity. The Director
3 Defendants were aware of this and were complicit in these acts, thus
4 demonstrating their scienter about Monster's failure to ensure diversity and
5 failure to pay minorities equal pay.

6 **I. The Unjust Compensation Awarded to Defendants Sacks and**
7 **Schlosberg**

8 237. Defendants Sacks and Schlosberg received unjust compensation
9 and/or compensation and payments that were higher due to Defendants'
10 wrongdoing and because the Company was more profitable by paying
11 women, Blacks and minorities less.

12 238. Much of the information about the exact amount of the unjust
13 payments is not publicly available, and has been fraudulently concealed by
14 Defendants. As a result, Plaintiff requires discovery in order to properly
15 allege the full extent and details of Defendants' wrongdoing.

16 239. However, at a minimum, based on publicly available
17 information, Defendants Sacks and Schlosberg have received substantial
18 unjust compensation during the time the wrongdoing has occurred and
19 persisted.

20 240. Defendants' receipt of this compensation during the relevant
21 time period was unjust in light of their direct participation in the wrongful
22 conduct alleged herein, which constituted bad faith and disloyal conduct.
23 Defendants' receipt of such compensation while knowingly or recklessly
24 breaching their fiduciary duties to the Company constitutes unjust
25 compensation that should be recouped by Monster.

26 241. The tables set forth *supra* provide some additional information
27 about some of Defendants' compensation during part of the relevant time
28 period (*i.e.*, 2018-2020).

1 242. *In fiscal year 2018, the Company paid its CEO Sacks total*
2 *compensation of \$13,914,931. In fiscal year 2019, the Company paid its*
3 *CFO, COO, and President, Hilton H. Schlosberg, \$13,939,299.*

4 243. And the lack of diversity at the top at Monster has resulted in
5 economic discrimination. Defendants' compensation during the relevant
6 period was also unjust because it significantly exceeded the average
7 employees' pay, as disclosed by the Company in its Proxy. In fiscal year
8 2018, Defendant Sack's pay ratio was 253:1, as reported in the Proxy:

9 As reported in the Summary Compensation Table, **Mr.**
10 **Sacks' annual total compensation for 2019 was \$13,982,434.** In
11 accordance with Item 402(u), we are using the same "median
12 employee" identified in our 2019 and 2018 pay ratio
13 calculations, as we believe that there has been no change in our
14 employee population or employee compensation arrangements
15 that we believe would result in a significant change to our pay
16 ratio disclosure. See our 2019 and 2018 proxy statements for
17 information regarding the process we utilized to identify our
18 "median employee." We then identified and calculated the
19 elements of this employee's total compensation for 2019 in
20 accordance with the requirements of Item 402(c)(2)(x) of
21 Regulation S-K, resulting in *a median annual total*
22 *compensation of all employees of the Company and its*
23 *subsidiaries (other than the Chief Executive Officer) of \$55,169.*
24 *Based on this information, for 2019, the ratio of the*
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1 *compensation of the Chief Executive Officer to the median*
2 *annual total compensation of all other employees (other than*
3 *the Chief Executive Officer) was estimated to be 253:1.*⁷⁰

4
5 244. Instead of acknowledging the problem and demanding change,
6 Monster has instead issued false statements claiming success in achieving
7 diversity and inclusion.

8 245. If Defendant Sacks' 2019 pay was more than 253 times the
9 median employees' compensation, then it was an even higher multiple of
10 the median pay of Black and minority employees if Monster paid such
11 employees less than other employees for similar jobs.

12 246. When viewed in light of these facts, Defendants' compensation
13 was unjust under equitable principles.

14 247. Defendants' compensation detailed herein was unjust and
15 should be disgorged or returned by them because they acted in bad faith
16 and in a disloyal manner by virtue of the conduct alleged in this complaint.

17 **VIII. THE COMPANY HAS SUFFERED SIGNIFICANT DAMAGES**

18 248. The Company has suffered significant harm and damages due
19 to Defendants' wrongdoing and breaches of duties.

20 249. As a direct and proximate result of the Individual Defendants'
21 conduct, the Company has expended and will continue to expend
22 significant sums of money. Such expenditures include, but are not limited
23 to, the amounts paid to outside lawyers, accountants, and investigators in
24 connection with internal and external investigations into issues pertaining

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26 ⁷⁰ See Monster 2020 Proxy Statement at p. 47.

1 to the lack of diversity at Monster, discrimination lawsuits, harassment
2 claims, wrongful termination lawsuits, and lack of pay equity claims.

3 250. Moreover, Monster's reputation, goodwill, and market
4 capitalization have been harmed as a result of the Individual Defendants'
5 misconduct.

6 251. Further, as a direct and proximate result of the Individual
7 Defendants' actions, Monster has expended, and will continue to expend,
8 significant sums of money. Such expenditures include, but are not limited
9 to:

10 (a) costs incurred from having to hire new employees,
11 as employees have quit in protest over Defendants' misconduct
12 and the discriminatory practices employed by Monster;

13 (b) costs incurred from defending and paying
14 settlements in discrimination lawsuits, since the Individual
15 Defendants' wrongdoing caused discrimination to proliferate at
16 Monster;

17 (c) loss of reputation; and

18 (d) costs incurred from compensation and benefits paid
19 to the Individual Defendants who have breached their duties to
20 Monster.

21 **IX. DEMAND FUTILITY**

22 252. Plaintiff brings this action derivatively in the right and for the
23 benefit of Monster to redress injuries suffered, and to be suffered, by
24 Monster and its stockholders as a direct result of the Defendants' violations
25 of federal securities laws and breaches of fiduciary duty.

26 253. Monster is named as a nominal defendant solely in a derivative
27 capacity.

1 254. This is not a collusive action to confer jurisdiction on this Court
2 that it would not otherwise have.

3 255. At the time this action was commenced, Monster's Board
4 consisted of the following 10 members: Defendants Ciaramello, Fayard,
5 Hall, Jackson, Pizula, Polk, Sacks, Schlosberg, Selati, and Vidergauz.

6 256. Plaintiff has not made any demand on Monster to institute this
7 action because such a demand would be a futile, wasteful, and useless act.

8 257. Under Delaware law, demand is futile if a majority of the
9 directors are either interested in or not independent of a person interested
10 in the claims asserted. Further, where a board is made up of an even
11 number of directors, a majority of directors is considered to be half the
12 Board. Because Monster's Board is currently comprised of ten (10)
13 directors, Plaintiff need only allege that demand is futile as to five (5) of the
14 current Board members.

15 **A. Demand on the Board is Excused as Futile**

16 258. The challenged misconduct at the heart of this case involves the
17 direct facilitation of illegal activity, including the Board knowingly and/or
18 consciously presiding over the Company's discrimination and retaliation
19 against women, Blacks and other minorities at Monster. In their capacity as
20 corporate directors, the Board members affirmatively adopted,
21 implemented, and/or condoned a business strategy based on Monster's
22 deliberate and widespread violations of law. The Board members cannot
23 plausibly claim ignorance concerning these wide-ranging compliance
24 failures. Indeed, the Board was specifically and uniquely accountable and
25 responsible for the compliance failures discussed herein given that the
26 Board was repeatedly made aware of the Company's failed internal controls
27 and failure to comply with regulations. The Company's Proxy Statements
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1 challenged in this case admit that the Defendants – the Company’s Board of
2 Directors – is directly responsible for risk oversight.

3 259. Indeed, the lack of diversity challenged by this lawsuit pertains
4 to the Board itself, which does not contain a single African American
5 individual. Moreover, when the Company hired an outside firm to
6 investigate the wrongful termination of female employees who had been
7 fired for reporting sexual harassment by male executives at the Company,
8 the Board instructed the firm to report directly to it. But before the
9 investigation had even begun, the Board caused the Company to issue
10 statements to the effect that the former female employees at the Company
11 were merely “disgruntled employees” and that the Board was sure the
12 Company would be vindicated in the investigation. The Board thus acted
13 in bad faith and is directly responsible for the wrongful conduct, including
14 the establishment of a bogus investigation where the result was dictated by
15 the Board from the outset. All Board members are thus interested in the
16 conduct alleged herein; they are alleged to have acted in bad faith and
17 therefore are not independent or disinterested. Their conduct represents a
18 breach of the duty of loyalty, which cannot be indemnified by the
19 Company. All Board members therefore face a substantial likelihood of
20 liability.

21 260. Defendants Ciaramello, Fayard, Hall, Jackson, Pizula, Polk,
22 Sacks, Schlosberg, Selati, and Vidergauz also all knew that the Company’s
23 Board composition was required to reflect the benefits of diversity,
24 including diversity as to race and ethnicity.

25 261. Despite having actual knowledge of this requirement,
26 Defendants Ciaramello, Fayard, Hall, Jackson, Pizula, Polk, Sacks,
27 Schlosberg, Selati, and Vidergauz all knew that, year after year, Monster did
28

1 not choose any racially or ethnically diverse candidates to be Board
2 members.

3 262. Rather than undertake their duty to investigate all complaints
4 and concerns related to the wrongdoing at the Company and the
5 Company's highly deficient internal controls, the Board took action to
6 conceal the wrongdoing and make misrepresentations about the matters in
7 the Company's public filings. Such conduct in the face of information
8 evidencing the systematic violations of applicable laws and regulations is
9 not a legally protected business decision and such conduct can in no way be
10 considered a valid exercise of business judgment. A derivative claim to
11 recoup damages for harm caused to the Company by pervasive unlawful
12 activity represents a challenge to conduct that is outside the scope of
13 appropriate business judgment — conduct for which the Individual
14 Defendants should face potential personal liability. As such, the protections
15 of the "business judgment rule" do not extend to such malfeasance. Nor can
16 such malfeasance ever involve the "good faith" exercise of directorial
17 authority. Accordingly, any demand on the Board to initiate this action
18 would be futile.

19 **B. Demand Is Excused Because a Majority of the Director**
20 **Defendants is Either Not Independent or is Conflicted**
21 **Because These Defendants Face a Substantial Likelihood of**
22 **Liability Arising from Their Misconduct**

23 263. Even if knowingly presiding over illegal conduct somehow falls
24 within the ambit of the business judgment rule (which it does not), demand
25 is also futile and excused because a majority of the members of the Board
26 are not disinterested or independent and cannot, therefore, properly
27 consider any demand.

28 264. As an initial matter, the Board has conceded in the Company's
SEC filings, including its April 21, 2020 proxy statement, that Sacks and

1 Schlosberg are not independent directors of the Company. Specifically,
2 Sacks is not independent and faces a substantial likelihood of liability
3 because his principal occupation is serving as the Company's Chief
4 Executive Officer. Schlosberg is not independent and faces a substantial
5 likelihood of liability because his principal occupation is serving as the
6 Company's Chief Operating Officer. Moreover, a significant portion of
7 Sacks' and Schlosberg's compensation is incentive-based, which means that
8 they were personally incentivized to perpetuate misconduct (such as that
9 described herein) that artificially inflates the performance of the Company.
10 As Monster executives, they had exposure to and knowledge of the
11 wrongdoing alleged, including any "red flags." Sacks and Schlosberg
12 cannot realistically distance themselves from the misconduct alleged herein.
13 Sacks and Schlosberg are therefore incapable of impartially considering a
14 demand to commence this action.

15 265. Furthermore, Defendants Fayard, Pizula, and Selati have all
16 been members of the Audit Committee during the relevant period, and are
17 conflicted from considering a demand because they each face a substantial
18 likelihood of liability as a result of their conduct on the committee. As
19 stated in the 2020 Proxy Statement, "the Audit Committee assists the Board
20 of Directors in fulfilling its oversight responsibilities with respect to:

- 21 • the integrity of the Company's financial statements;
- 22 • the Company's systems of internal controls regarding finance
23 and accounting as established by management;
- 24 • the qualifications and independence of the independent
25 registered public accounting firm;
- 26 • the performance of the Company's independent registered
27 public accounting firm;

- 1 • the Company’s auditing, accounting and financial reporting
- 2 processes generally; and
- 3 • compliance with the Company’s ethical standards for senior
- 4 financial officers and all personnel.”

5 266. In accordance with its charter, the Audit Committee also
6 reviews the Company’s policies and practices with respect to the financial
7 reporting and control aspects of risk management, and must review the
8 status of risk oversight activities performed by the Board and its other
9 committees.

10 267. As members of the Audit Committee, Defendants Fayard,
11 Pizula, and Selati violated their fiduciary duties to act in good faith to
12 address the pervasive legal violations discussed herein, including the
13 rampant sexual harassment and discrimination against female employees,
14 the unlawful retaliation against female employees who complained about
15 the harassment, and false statement approved by the Board regarding
16 diversity and inclusion at the Company. Accordingly, Defendants Fayard,
17 Pizula, and Selati face a substantial likelihood of liability and cannot
18 impartially consider a demand. Therefore, demand is excused with respect
19 to these defendants.

20 268. Furthermore, the Director Defendants were on the Board during
21 the relevant period, and thus were exposed to and had knowledge of the
22 “red flags” alleged herein regarding unlawful harassment and
23 discrimination and failure to abide by the Company’s stated policies to
24 promote diversity. The directors’ inaction in the face of red flags subjects
25 them to a substantial likelihood of liability for their conduct and, therefore,
26 demand is excused.

27 269. The Board is likewise conflicted from and unable to pursue
28

1 Monster's claims against members of the Company's management,
2 including Defendants Sacks and Schlosberg. Any effort to prosecute such
3 claims against these Defendants for their direct roles in implementing a
4 business strategy designed to ignore or otherwise circumvent federal and
5 state laws prohibiting discrimination would necessarily expose the Board's
6 own culpability for the very same conduct. In other words, given that the
7 Board had been on notice of the wrongdoing, any effort by the Board to
8 hold Defendants liable would surely lead these executives to defend on the
9 ground that their own conduct was consistent with Monster's corporate
10 policy and practice, as established by and known to the Board.

11 **C. The Entire Board Faces a Substantial Likelihood of Liability**
12 **for Failure to Discharge Their Oversight Obligations in Good**
13 **Faith**

14 270. Under Delaware law and Monster's Corporate Governance
15 Principles, the Board, as the Company's highest decision-making body, is
16 charged with ensuring that processes are in place for ensuring legal and
17 regulatory compliance. This is particularly true when such compliance
18 concerns a core operation of the Company such as its employment practices.
19 Here, the misconduct alleged was pervasive, took place over many years,
20 and involved the Company's core business operations since the
21 employment practices affected all Company operations. Organized and
22 long-running violations of the law do not result from an isolated failure of
23 oversight. The entire Board was obligated to oversee the Company's risk,
24 including potential liability for Monster's violations of federal and state
25 laws regarding sexual harassment and discrimination. At the very least, the
26 Director Defendants consciously turned a blind eye to these pervasive
27 violations of law, creating a substantial likelihood of liability. Accordingly,
28 demand is excused.

1 271. All of the Board’s directors, at the time this action was initiated,
2 failed to act in the face of known duties. Indeed, as explained herein, they
3 were presented with — but consciously ignored (and/or perpetuated) —
4 substantial “red flag” warnings that Monster was discriminating against
5 women, Blacks and other minorities with respect to hiring, promotion, and
6 evaluation of Board candidates. The Board also knew that the Company’s
7 workforce has consistently only had a very small percentage of African
8 American workers, and no African Americans in leadership positions. The
9 Board was also aware of other systematic gender discrimination at Monster,
10 as reflected in at least five (5) lawsuits filed against the Company by former
11 female employees detailing disgusting and abusive behavior toward
12 women by male executives.

13 272. These and other wrongful acts have caused and will continue to
14 cause the Company to be subjected to significant potential fines and
15 penalties, and numerous lawsuits. They have also resulted in severe harm
16 to the Company’s business reputation. Since the wrongdoing and harm
17 alleged in this Complaint flows directly from the Board’s conscious decision
18 to permit the sustained and systemic violations of law in question, the
19 Director Defendants are incapable of exercising the independent judgment
20 required to determine whether the initiation of an action against the
21 Defendants is appropriate.

22 **X. CAUSES OF ACTION**

23 **COUNT I**

24 **Breach of Fiduciary Duty**

25 **Against All Individual Defendants and Does 1–10**

26 273. Plaintiff incorporates by reference and realleges each and every
27 allegation contained above, as though fully set forth herein.

28 274. The Individual Defendants and Does 1–10 owed and owe the

1 Company fiduciary obligations. By reason of their fiduciary relationships,
2 the Individual Defendants owed and owe the Company the highest
3 obligation of good faith, fair dealing, loyalty, and due care.

4 275. The Individual Defendants and Does 1–10, and each of them, as
5 a result of the facts alleged herein, violated and breached their fiduciary
6 duties of candor, good faith, and loyalty.

7 276. As a direct and proximate result of the Individual Defendants’
8 and Does 1–10’s breaches of their fiduciary obligations, the Company has
9 sustained significant damages, as alleged herein. As a result of the
10 misconduct alleged herein, Defendants are liable to the Company.

11 **COUNT II**

12 **Aiding and Abetting Breach of Fiduciary Duty**
13 **Against All Individual Defendants and Does 1–10**

14 277. Plaintiff incorporates by reference and re-alleges each of the
15 preceding paragraphs as if fully set forth herein.

16 278. Each of the Individual Defendants aided and abetted the other
17 Individual Defendants in breaching their fiduciary duties owed to the
18 Company.

19 279. The Individual Defendants owed the Company certain fiduciary
20 duties as fully set out herein. By committing the acts alleged herein, the
21 Individual Defendants breached their fiduciary duties owed to the
22 Company.

23 280. Each of the Individual Defendants colluded in or aided and
24 abetted the other Individual Defendants’ breaches of fiduciary duties, and
25 actively and knowingly participated in the other Individual Defendants’
26 breaches of fiduciary duties. Each of the Individual Defendants knew about
27 or recklessly disregarded the other Individual Defendants’ breaches of
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1 fiduciary duty, which were and are continuing, as set forth in particularity
2 herein.

3 281. The Company was injured as a direct and proximate result of
4 the aforementioned acts.

5 **COUNT III**
6 **Abuse of Control**
7 **Against all Defendants**

8 282. Plaintiff incorporates by reference and realleges each and every
9 allegation contained above, as though fully set forth herein.

10 283. By virtue of their positions and financial holdings at Monster,
11 the Director Defendants exercised control over Monster and its operations,
12 and owed duties as controlling persons to Monster not to use their positions
13 of control for their own personal interests and contrary to Monster's
14 interests.

15 284. Defendants' conduct alleged herein constitutes an abuse of their
16 ability to control and influence the Company, for which they are legally
17 responsible.

18 285. As a result of Defendants' abuse of control, the Company has
19 sustained and will continue to sustain damages and injuries for which it has
20 no adequate remedy at law.

21 **COUNT IV**
22 **Unjust Enrichment**
23 **Against All Individual Defendants and Does 1-10**

24 286. Plaintiff incorporates by reference and realleges each and every
25 allegation contained above as though fully set forth herein.

26 287. By their wrongful acts and omissions, the Individual Defendants
27 were unjustly enriched at the expense of, and to the detriment of, the
28 Company.

1 288. During the Relevant Period, the Individual Defendants either
2 received annual stipends, bonuses, stock options, or similar compensation
3 from the Company that was tied to the financial performance of the
4 Company or received compensation that was unjust in light of the
5 Individual Defendants' bad faith conduct.

6 289. Plaintiff, as shareholder and representative of the Company,
7 seeks restitution from the Individual Defendants and seeks an order from
8 this Court disgorging all profits, benefits, and other compensation,
9 including any performance-based compensation, obtained by the Individual
10 Defendants due to their wrongful conduct and breach of their fiduciary
11 duties.

12 290. Plaintiff, on behalf of the Company, has no adequate remedy at
13 law.

14 **COUNT V**
15 **Violation of Section 14(a) of the Exchange Act and SEC Rule 14a-9**
16 **Against All Director Defendants**

17 291. Plaintiff incorporates by reference and re-alleges each allegation
18 contained above, as though fully set forth herein, except to the extent those
19 allegations plead knowing or reckless conduct by Defendants. This claim is
20 based solely on negligence, not on any allegation of reckless or knowing
21 conduct by or on behalf of Defendants. Plaintiff specifically disclaims any
22 allegations of, reliance upon any allegation of, or reference to any allegation
23 of fraud, scienter, or recklessness with regard to this claim.

24 292. SEC Rule 14a-9 (17 C.F.R. § 240.14a-9), promulgated under
25 Section 14(a) of the Exchange Act, provides:

26 No solicitation subject to this regulation shall be made by
27 means of any proxy statement form of proxy, notice of meeting
28 or other communication, written or oral, containing any

1 statement which, at the time and in the light of the
2 circumstances under which it is made, is false or misleading
3 with respect to any material fact, or which omits to state any
4 material fact necessary in order to make the statements therein
5 not false or misleading or necessary to correct any statement in
6 any earlier communication with respect to the solicitation of a
7 proxy for the same meeting or subject matter which has become
8 false or misleading.

9 293. Defendants negligently issued, caused to be issued, and
10 participated in the issuance of materially misleading written statements to
11 stockholders that were contained in the 2019 and 2020 Proxy Statements.
12 The Proxy Statements contained proposals to the Company's stockholders
13 urging them to reelect the members of the Board and to approve "say on
14 pay" executive compensation proposals.

15 294. The 2019 and 2020 Proxy Statements were false and misleading
16 because, among other things, they omitted and failed to disclose:

17 (a) That the statement in the Proxies that "the
18 Nominating and Corporate Governance Committee considers
19 the experience, knowledge, skills, expertise, diversity, personal
20 and professional integrity, character, business judgment, time
21 available in light of other commitments and dedication of any
22 particular candidate, as well as such candidate's past or
23 anticipated contributions to the Board and its committees so that
24 the Board includes members, where appropriate, with diverse
25 backgrounds, knowledge and skills relevant to the business of
26 the Company" was misleading because it suggested that the
27 Company was actively seeking to achieve racial and ethnic
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1 diversity in its Board membership, while the undisclosed reality
2 is that Monster either has no intention to actually nominate such
3 persons to its Board or it engages in efforts to thwart the
4 nomination of such persons and prefers non-diverse applicants
5 in the pool;

6 (b) That the Company does not have term limits due to
7 a desire to retain the experience of the incumbent Director
8 Defendants, but instead to keep minorities off the Board;

9 (c) That the Company's failure to disclose its median
10 salary and pay/employment data is due to a desire to conceal
11 existing, known pay disparity at the Company which adversely
12 affects women and minorities;

13 (d) That the Company's executive compensation
14 decisions do not take into consideration in any way the
15 executives' success or lack thereof in achieving the Company's
16 diversity and inclusion goals; moreover, that the Company's
17 stated policies with respect to diversity and anti-discrimination
18 were not effective and were not being complied with, and that
19 the Company's executives were retaliating against female
20 employees such as Jamie Hogan and Fran Pulizzi;

21 (e) That the Board's Nominating and Governance
22 Committee did not take racial and ethnic diversity into
23 consideration when nominating Board candidates and instead
24 simply sought to create a false appearance of seeking diversity
25 among potential Board candidates;

26 (f) That Defendants had knowledge that the Company's
27 internal controls and systems were inadequate and ineffective to
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1 protect women and minorities against discrimination in hiring,
2 promotion, and other critical terms of employment and equal
3 access;

4 (g) That Defendants failed to maintain appropriate
5 policies, internal controls, and procedures to ensure that the
6 Company's stated policies with respect to sexual harassment,
7 diversity and inclusion were being complied with;

8 (h) That the statement in the Proxies that "*The*
9 *Compensation Committee annually evaluates risks and*
10 *rewards associated with the Company's overall compensation*
11 *philosophy and structure and does not believe the program*
12 *promotes excessive risk-taking*" was false and misleading.
13 Because the undisclosed truth was that the Compensation
14 Committee did not factor legal compliance into its
15 compensation decisions, the Company's executive
16 compensation program necessarily entailed excessive risks since
17 the Company's executives were motivated to boost financial
18 performance at any cost and regardless of legal compliance; and

19 (i) That the Company's diversity and inclusion
20 programs were not achieving measurable and actionable results,
21 and needed substantial improvement.

22 295. Defendants' statements and omissions in the Proxies were
23 material. A company's statements about Board diversity are highly
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25
26
27
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1 material to investors.⁷¹

2 296. By reasons of the conduct alleged herein, Defendants violated
3 Section 14(a) of the Exchange Act and SEC Rule 14a-9. As a direct and
4 proximate result of Defendants' wrongful conduct, the Company misled or
5 deceived its stockholders by making misleading statements that were an
6 essential link in stockholders heeding the Company's recommendation to
7 reelect the current Board and vote in favor of executive compensation
8 proposals.

9 297. Plaintiff, on behalf of the Company, seeks injunctive and
10 equitable relief because the conduct of the Individual Defendants interfered
11 with Plaintiff's voting rights and choices at the 2018, 2019 and 2020 annual
12 meetings. Plaintiff does not seek any monetary damages for the proxy law
13 violations.

14 298. This action was timely commenced within three years of the
15 date of the 2019 and 2020 Proxy Statements and within one year from the
16 time Plaintiff discovered or reasonably could have discovered the facts on
17 which this claim is based.

18 **XI. PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff, on behalf of the Company, requests
20 judgment and relief as follows:

21 A. Against all of the Defendants, jointly and severally, and in
22 favor of the Company for the amount of damages sustained by the

23 ⁷¹ See Arleen Jacobius, "Calpers Turns Focus to Board Diversity in
24 Proxy Voting," PENSIONS & INVESTMENTS, Sept. 17, 2018 (in 2018, Calpers
25 voted against 438 directors at 141 different companies based on the
26 companies' failure to respond to Calpers' efforts to increase board
27 diversity).
28

1 Company along with pre- and post-judgment interest as allowed by law
2 resulting from Defendants' breaches of fiduciary duty;

3 B. Directing the Company to take all necessary actions to reform
4 and improve its corporate governance and internal procedures to comply
5 with applicable laws and to protect the Company and its shareholders
6 from a repeat of the damaging events described herein, including, but not
7 limited to, putting forward for shareholder vote, resolutions for
8 amendments to the Company's By-Laws or Articles of Incorporation and
9 taking such other action as may be necessary to place before shareholders
10 for a vote the following Corporate Governance Policies:

11 (1) Monster should establish the position of a Chief
12 Diversity Officer who reports directly to the Board;

13 (2) At least one of Monster's directors should
14 immediately resign prior to the Company's annual meeting set
15 for April 2021 and a Black person nominated to the Board at that
16 time. Thereafter, within a year and prior to the next annual
17 meeting at least one other person from an underrepresented
18 community should be nominated to the Board;

19 (3) All Director Defendants named in this suit should
20 return all of their 2020 compensation received from Monster
21 (including any stock grants), and donate the money to an
22 acceptable charity or organization whose efforts include the
23 advancement of Blacks and minorities in corporate America;

24 (4) Monster should agree to publish an annual Diversity
25 Report that contains particularized information about the hiring,
26 advancement, promotion, and pay equity of all minorities at
27 Monster;

1 (5) Monster should create a \$800 million fund to hire
2 Blacks and minorities, promote minorities to more management
3 positions at the Company, establish and maintain a mentorship
4 program at Monster for minorities that is committed to
5 providing the skills and mentorship necessary to succeed in
6 corporate America;

7 (6) Monster should require annual training of its entire
8 Board and all Section 16 executive officers, which training
9 should at a minimum focus on diversity, affirmative action, anti-
10 discrimination and anti-harassment, and other relevant topics;

11 (7) Monster should establish a Board-level Diversity
12 Equity and Inclusion Council; and

13 (8) Monster should immediately set specific goals with
14 respect to the number of Blacks and minorities to hire at the
15 Company over the next five years, and Monster should adopt a
16 revised executive compensation program that makes 30% of
17 executives' compensation tied to the achievement of the
18 diversity goals.

19 C. Extraordinary equitable and/or injunctive relief as permitted by
20 law, equity, and state statutory provisions sued hereunder, including
21 attaching, impounding, imposing a constructive trust on, or otherwise
22 restricting the proceeds of Defendants' trading activities or their other
23 assets so as to assure that Plaintiff on behalf of Monster has an effective
24 remedy;

25 D. Awarding to Monster restitution from Defendants, and each of
26 them, and ordering disgorgement of all profits, benefits, and other
27 compensation obtained by Defendants;

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1 E. Awarding punitive damages at the maximum amount permitted
2 by law;

3 F. Awarding to Plaintiff the costs and disbursements of the action,
4 including reasonable attorneys' fees, accountants' fees, experts' fees, costs,
5 and expenses; and

6 G. Granting such other and further relief as the Court deems just
7 and proper.

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff, on behalf of Monster, hereby demands a trial by jury of all
10 issues that are subject to adjudication by a trier of fact.

11 Dated: September 18, 2020

12 Respectfully submitted,
13 BOTTINI & BOTTINI, INC.
14 Francis A. Bottini, Jr. (SBN 175783)
15 Albert Y. Chang (SBN 296065)
16 Anne Beste (SBN 326881)

17 s/ Francis A. Bottini, Jr.
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Attorneys for Plaintiff Frank Falat

VERIFICATION

I, Frank Falat, verify that I am a shareholder of Monster Beverage Corp. I have reviewed the allegations in this Verified Shareholder Derivative Complaint. As to those allegations of which I have personal knowledge, I believe them to be true; as to those allegations of which I lack personal knowledge, I rely upon my counsel and counsel's investigation, and believe them to be true. Having received a copy of the complaint and reviewed it with counsel, I authorize its filing.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 9/16/2020 | 2:59 PM PDT.



Frank Falat