

2017 Wyoming High School Mock Trial

Johnson v JJJ Beverages, LLC
(10-4-17)



Acknowledgements:

WHSMT thanks the Wyoming State Bar for its continued generous financial support for Wyoming High School Mock Trial, a program that is open to any secondary school team of students in 8th to 12th grades.

We recognize George Powers Jr. for his invaluable help with case documents.

Names, persons and events in this case are entirely fictional. They are not intended to refer to any actual persons, events or products.

2017 Wyoming High School Mock Trial

Johnson v JJJ Beverages, LLC

Katie Johnson was a 14 year-old freshman and rising star on the Carter City High School speech and debate team. But on the afternoon of May 5, 2015 in the middle of the regional final in Lincoln Douglas debate, she suddenly fell unconscious to the floor. An ambulance was called and the ambulance crew determined that her heart was in ventricular fibrillation.

Although the ambulance crew was able to electro-convert her heart beat, she did not recover consciousness. Katie was transported from the competition to the Carter County Memorial Hospital, where she was seen and evaluated by Dr. Alex Montgomery. Ultimately Katie was diagnosed with acquired long QT syndrome, a cardiac arrhythmia. However, she also suffered a severe hypoxic brain injury from this incident and today has permanent and profound physical and mental disabilities.

Tests performed at Memorial Hospital confirmed that at the time Katie had an unusually high level of caffeine in her system. Tests also disclosed that she had a low potassium level. Dr. Montgomery concluded that the caffeine had triggered the onset of the ventricular fibrillation that caused the injury. Upon further inquiry, it was learned that Katie had consumed more than one can of an energy drink, Jackalope Java Juice, together with several of her teammates immediately before the final round. Dr. Montgomery believes that energy drinks generally pose an unreasonable risk of injury to young people because of the toxic effects of excess caffeine and that Jackalope Java Juice is particularly dangerous.

Jackalope Java Juice, sometimes referred to simply as “Jack,” was recently introduced to the market in January 2015 by JJJ Beverages, LLC, a Wyoming limited liability company, which was trying to make its mark in the booming energy drink market. The company markets this product with the slogans: “Need a jump start? You need Jack!” and “If you can’t go the distance, you don’t know Jack!” Each 8 ounce can of Jack contains 300 mg of caffeine and in 2015 carried the following warning label:

Consume responsibly. Not recommended for children, pregnant women or people sensitive to caffeine. Contains high levels of caffeine, a stimulant known to restore mental awareness and improve cognitive function. May cause sleeplessness, irritability, high blood pressure and, occasionally, rapid heart rate.

These statements have not been evaluated by the Food and Drug Administration. This product should not be used to diagnose, treat, cure or prevent any disease.

Before the incident at issue, there were reports that other users experienced adverse reactions following consumption of Jack. The head of marketing for JJJ Beverages, Carol Hudson, commissioned a review by toxicologist, Hayden Moran, who concluded that Jack! was safe, if used as directed. Nevertheless, following



the incident involved in this case the warning on the can was amended to include the following additional language: **“MAY CAUSE HEART ATTACK, CONVULSIONS OR DEATH.”**

Katie’s parent, Robin Johnson, spoke with Parker Collins, one of Katie’s friends, after the incident. Collins reported that members of the debate team had been using energy drinks regularly throughout the 2014-2015 season to get a boost for competitions. Collins also said that the coach, Andy Stone, advised against this practice but was also aware that it had continued. Once Jack hit the market, it became the Carter City High School debaters’ favorite, because it promised to deliver the biggest jolt. When Robin Johnson picked up Katie’s backpack after the incident, it contained an opened six-pack of Jack! with two unopened cans and a receipt reflecting that the six-pack had been purchased that morning at a local convenience store.

Robin Johnson has filed a lawsuit on behalf of Katie Johnson against JJJ Beverages, LLC. Robin Johnson alleges that Jackalope Java Juice, a/k/a Jack was an unreasonably dangerous product and that the warning label was inadequate. JJJ Beverages, LLC, has denied liability. The issue for trial is limited to the question of liability. The amount of damages will be determined in a separate and later proceeding, if the jury first concludes that JJJ Beverages is liable for the injury and damages sustained by Katie.

This case is posted on www.wyomingmocktrial.com, along with extensive resources to help students, teachers and attorney coaches prepare for the state tournament Nov. 18, 2017, in Cheyenne. For more information about Wyoming High School Mock Trial, this case or the competition, contact program coordinators at wyomingmocktrial@gmail.com.

**TENTH JUDICIAL DISTRICT COURT
STATE OF WYOMING
COUNTY OF CARTER**

ROBIN JOHNSON, as parent)	
and next friend and natural parent)	
of KATIE JOHNSON, Plaintiff)	
)	
v.)	Docket No. 2017-000013
)	
JJJ BEVERAGES, LLC, a)	
Wyoming Limited Liability)	
Company, Defendant)	

COMPLAINT

COMES NOW the Plaintiff, Robin Johnson, individually and as next friend and natural parent of Katie Johnson, a minor, by and through retained counsel, and does state and allege as follows:

1. I am a resident and citizen of Carter City in the State of Wyoming.
2. I am the natural parent of Katie Johnson, a minor, who was born on June 3, 2001 and who also is a resident and citizen of Carter City in the State of Wyoming.
3. JJJ Beverages, LLC, is a limited liability company organized and existing under the laws of Wyoming with its principle place of business in Wyoming. The members of JJJ Beverages, LLC, are all citizens and residents of the State of Wyoming.
4. This action has been brought to recover damages caused by the Defendant. The damages include claims for medical expenses, pain and suffering, disability and other legally recoverable damages in amounts in excess of the sum of \$50,000. This Court has jurisdiction over the subject matter of this action.
5. The events described and alleged herein occurred in Carter City, Carter County, Wyoming. Venue is properly laid in this court.
6. The Defendant, JJJ Beverages, LLC, manufactures, cans, distributes and sells an energy drink under the trade name "Jackalope Java Juice." At all times relevant to this lawsuit the Defendant was responsible for the design, manufacture, testing, study, inspection, mixture, labeling, marketing, advertising, sales, promotion and/or distribution of this product. Defendant had a duty to exercise reasonable care in connection with these activities. Defendant also had a duty not to place into commerce a product that was unreasonably dangerous to persons using the product.
7. Jackalope Java Juice is marketed as an energy drink for the use of people who want a burst of energy and claims to "restore mental awareness and improve cognitive function." The main active ingredient in Jackalope Java Juice is caffeine. Each eight (8) ounce can contains 300 milligrams of caffeine or the equivalent of at least six cups of coffee.

8. Prior to May 5, 2015, JJJ Beverages knew or should have known that so-called energy drinks containing amounts of caffeine less than that contained in its product, Jackalope Java Juice, had been linked to reported cases of injuries and deaths caused by acute caffeine intoxication. Such products pose an extreme and unreasonable risk to users generally and to users, who may have pre-existing cardiac conditions and/or arrhythmias.

9. Up until May 5, 2015 Katie Johnson was a bright, talented teenager, active in her school, her church and her community. She was a member of the Carter County High School Speech and Debate Team and had qualified for the regional championships despite being only a Freshman.

10. Prior to May 5, 2015 Katie Johnson was in good health generally and had no history of cardiac related disease, abnormality or symptoms.

11. On May 5, 2015 Katie Johnson consumed one or more cans of Jackalope Java Juice during the regional tournament. At 5:45 pm, while performing in the final round of her debate, Katie Johnson fell to the floor unconscious and unresponsive. Medical personnel at the scene determined that Katie Johnson was suffering from an acute cardiac event, that she was experiencing ventricular fibrillation and that she did not have a pulse.

12. Due to the heroic efforts of emergency medical technicians and an ambulance crew, Katie Johnson's heart rhythm was restored using electro-conversion, but not before she suffered a serious and permanent hypoxic brain injury from the loss of circulation and oxygen to her brain.

13. Following her admission to the hospital, tests that were performed led to a diagnosis of acquired long QT syndrome, a form of cardiac arrhythmia in which the QT interval, as measured on an electrocardiogram, is elongated. This condition can be caused by exposure to high levels of caffeine and can in turn lead to episodes of ventricular fibrillation. The unreasonably high and unsafe levels of caffeine contained in the cans of Jackalope Java Juice caused and/or exacerbated this condition and caused Katie Johnson to suffer her cardiac event and resulting damages.

14. As a result of these events, Katie Johnson has been severely and permanently injured. Her damages include past, present and future medical expenses; past, present and future costs of long-term care; past, present and future pain and suffering; past, present and future loss of enjoyment of life; past, present and future loss of earnings and/or earning capacity and other damages to be proven at trial.

15. As a result of these events, Robin Johnson has suffered damages as well for the costs of medical expenses and services incurred and to be incurred for the diagnosis, care, treatment and maintenance of Katie Johnson from the date of injury until she reaches adulthood.

COUNT I: NEGLIGENCE

16. Plaintiff realleges paragraphs 1 through 15 of this Complaint.

17. The Defendant, JJJ Beverages, LLC, was negligent in the design, manufacture, testing, study, inspection, mixture, labeling, marketing, advertising, sales, promotion and/or distribution of this product. Such negligence included, but was not limited to, the following:

a) The concentration of caffeine in Jackalope Java Juice is excessive and dangerous. The high levels of caffeine alone or together with synergistic effects of other ingredients can and will cause toxic reactions, including cardiac arrhythmias.

b. The testing of product was inadequate and failed to determine that with ordinary use the ingredients used to manufacture the produce were likely to deliver toxic doses of caffeine and other substances to the consumer.

c. The labels and warnings on the cans and packaging of Jackalope Java Juice are inadequate to disclose accurate information about the substantial, health risks of this product to the consumer. Furthermore the labels and warnings convey false information to the consumer that emphasizes false claims of alleged “benefits” to the user.

d. Despite the well-known risks that are associated with high caffeine drinks, such as jackalope Java Juice, Defendant has advertised and marketed its product to children, such as Katie Johnson, who are particularly susceptible to the toxic effects of high doses of caffeine.

18. The negligence of the Defendant was a cause of the injuries sustained by Katie Johnson and the damages resulting from those injuries, as alleged herein.

COUNT II: STRICT LIABILITY

19. Plaintiff realleges paragraphs 1 through 18 of this Complaint.

20. Defendant manufactured, sold, supplied and distributed the Jackalope Java Juice that was consumed by Katie Johnson. In doing so, Defendant placed its product into the stream of consumer commerce with the expectation and knowledge that it would reach consumers, such as Katie Johnson, without substantial change in its condition. Katie consumed the Jackalope Java Juice orally, as intended by Defendant, and it caused her to suffer harm from a cardiac event.

21. The Jackalope Java Juice that Katie Johnson consumed was an unreasonably dangerous product, which posed inherent risks of injury to consumers, such as Katie Johnson, far beyond any risks within the contemplation of the ordinary consumer. Moreover, these risks outweigh any claimed or perceived benefits and could have been avoided entirely by using safer, practical and feasible alternative formulations or designs.

22. Despite knowing about the unreasonable risks that Jackalope Java Juice posed to consumers, such as Katie Johnson, Defendant placed its product into the stream of commerce without adequate warnings regarding the risks associated with the use of the product, including but not limited to risks associated with cardiac events.

23. Defendant’s actions were a direct and proximate cause of the cardiac event that Katie Johnson suffered and of the injuries and damages alleged herein.

WHEREFORE Plaintiff prays that this Court enter judgment in favor of Plaintiff and against Defendant, that this Court award Plaintiff an amount sufficient to compensate Plaintiff for all damages caused by the fault of Defendant, that this Court award Defendant its costs incurred in bringing this case and that this Court award such other and further relief as may be just and proper in the premises.

DATED this 3rd day of March, 2017.

Kenneth Baggs

Kenneth Baggs 10-2234
Baggs Law Office
P.O. Box 23
Carter City, WY 82999-0028
(307) 555-8888

Attorney for Plaintiff

Complaint - 4
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**TENTH JUDICIAL DISTRICT COURT
STATE OF WYOMING
COUNTY OF CARTER**

ROBIN JOHNSON, as parent)
and next friend and natural parent)
of KATIE JOHNSON, Plaintiff)
)
v.)
)
JJJ BEVERAGES, LLC, a)
Wyoming Limited Liability)
Company, Defendant)

Docket No. 2017-000013

ANSWER

COMES NOW the DEFENDANT, JJJ Beverages, LLC, by and through retained counsel, and does state and allege as follows:

1. Defendant admits the allegations contained in paragraphs 1, 2, 3, 6 and 7 of Plaintiff's Complaint.
2. Defendant is without information sufficient to form a belief as to the allegations contained in paragraphs 3, 4, 9, 10, 11, 12, 13, 14 and 15 of Plaintiff's Complaint, and therefore denies the same.
3. Defendant denies the allegations contained in paragraphs 8, 17, 18, 20, 21, 22 and 23 of Plaintiff's Complaint.
4. In response to paragraphs 16 and 19 of Plaintiff's Complaint Defendant realleges the pertinent portions of paragraphs 1 through 3 of this answer.
5. As a further affirmative defense, Defendant states that Plaintiff's Complaint fails to state a cause of action upon which relief may be granted.
6. As a further affirmative defense, Defendant states that Plaintiff's alleged injuries and damages are the result of fault on the part of persons for whom this Defendant is not responsible, which may include, but not be limited to, the misuse of the product by the consumer.
7. As a further affirmative defense, Defendant states that Plaintiff's alleged injuries and damages are the result of medical condition unrelated to and not caused by the alleged use of the product.
8. As a further affirmative defense, Defendant states that the product was reasonably safe for use by consumers in light of the risks known at the time.
9. As a further affirmative defense, Defendant states that the warnings and labelling gave appropriate and adequate notice of the risks that were known or that reasonably could have been known at the time.
10. Defendant reserves the right to assert additional defenses that may come to light in the course of discovery.

WHEREFORE Defendant prays that this Court enter judgment in favor of Defendant and against Plaintiff, award Defendant its costs incurred herein and award such other and further relief and may be proper.

DATED this 15th day of April, 2017.

Sarah Jackson

Sarah Jackson Attorney No. 10-3244
Jackson and Thayne
P.O. Box 445
Carter City, WY 82999-0445
(307) 555-1234

Attorney for Defendant

CERTIFICATE OF SERVICE

I certify the foregoing pleading was served on this 15th day of April 2017, and that copies were served as follows:

(Address of counsel) U.S. Mail

Fed Ex

Fax

Hand Delivered

E-mailed

Sarah Jackson

**TENTH JUDICIAL DISTRICT COURT
STATE OF WYOMING
COUNTY OF CARTER**

ROBIN JOHNSON, as parent)	
and next friend and natural parent)	
of KATIE JOHNSON, Plaintiff)	
)	
v.)	Docket No. 2017-000013
)	
JJJ BEVERAGES, LLC, a)	
Wyoming Limited Liability)	
Company, Defendant)	

ORDER ON FINAL PRETRIAL CONFERENCE

THIS MATTER came before the Court for Final Pretrial Conference pursuant to notice. Plaintiff and Defendant appeared by and through their respective attorneys. The Court conferred with the attorneys of record regarding their Joint Pretrial Memorandum and considered their arguments.

IT IS ORDERED as follows:

1. **Plaintiff’s Witnesses:** The plaintiff will call the following witnesses in whatever order counsel may choose:

Robin Johnson
Alex Montgomery, MD
Parker Collins

2. **Defendant’s Witnesses:** The defendants will call the following witnesses in whatever order counsel may choose:

Hayden Moran, MD
Carol Hudson
Andy Stone

3. **Exhibits:** The exhibits that may be used at trial have been premarked as follows:

- Exhibit 1 Resume of Alex Montgomery, MD
- Exhibit 2 Resume of Hayden Moran, MD, FAAEM, FACWT
- Exhibit 3 Jackalope Java Juice Labelling (2015)
- Exhibit 4 Jackalope Java Juice Labeling (2016)
- Exhibit 5 Letter from Sagebrush Media Consultants
- Exhibit 6 Receipt from Jim’s Stop and Pop

- Exhibit 7 Carter City High School Student Activity No Alcohol/Drug Pledge
- Exhibit 8 Consumer Research: Caffeine Ratings for Tested Beverages
- Exhibit 9 CAERS Adverse Events Reports Allegedly Related to Jackalope Java Juice
- Exhibit 10 American Beverage Association Guidance for Responsible Labeling and Marketing of Energy Drinks
- Exhibit 11 Carter County Memorial Hospital Laboratory Report
- Exhibit 12 Wyoming Poison Center Laboratory Report
- Exhibit 13 ECG Diagram

4. **Stipulations:** The parties have stipulated and agreed as follows:

- a) The parties stipulate to the authenticity of all listed exhibits. However, foundation (i.e. identification) will have to be established at trial and all other objections to exhibits under the Rules of Evidence are reserved until trial, subject to the following exceptions.
 - i) The parties have further stipulated to the admissibility of Exhibits 11 and 12, which may be identified and offered by any party through any witness at any time without further objection.
 - ii) Exhibit 13 can only be used as a demonstrative exhibit to be identified by a witness and used to illustrate testimony. It may not be offered or received into evidence.
- b) All witness affidavits were signed before trial. Each witness has reviewed his/her affidavit for accuracy, and no changes were made. Each exhibit or affidavit that bears a signature block was signed on the date indicated on the exhibit or affidavit.
- c) Dr. Montgomery and Dr. Moran have both had full access to Katie Johnson's complete medical records.
- d) Katie Johnson is incapacitated and unavailable to testify as a witness.
- e) The issue of damages has been bifurcated for separate trial.
- f) On admission to Carter County Memorial Hospital, Katie Johnson weighed 118 pounds.

5. **Expert Witnesses:** Attorneys will not tender expert witnesses to the Court. Once a party has laid the foundation to establish the expert witness's qualification, the expert may offer any admissible opinions. Opposing counsel may challenge the expert's qualifications and foundation as well as the admissibility of any opinion by lodging objections under the rules of evidence.

6. **Jury Instructions:** The attached jury instructions are approved and counsel may refer to them in the closing arguments.

Dated this 10th day of July, 2017.

Franklin Pierce

District Judge

TENTH JUDICIAL DISTRICT COURT
STATE OF WYOMING
COUNTY OF CARTER

ROBIN JOHNSON, as parent)
and next friend and natural parent)
of KATIE JOHNSON, Plaintiff)
)
v.) Docket No. 2017-000013
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JJJ BEVERAGES, LLC, a)
Wyoming Limited Liability)
Company, Defendant)

GENERAL INSTRUCTIONS BEFORE OPENING STATEMENT

You must determine the facts only from the evidence produced here in the courtroom. To do that, you may consider whatever I allow to be presented to you, for example:

1. the testimony of witnesses;
2. documents, photographs, charts, and other papers or things;
3. video or audio tape recordings; and
4. in-court demonstrations.

You must not decide this case upon information that you or other jurors may have received outside of the trial from any source, including but not limited, to radio, television, newspaper, internet, or third parties. However, in evaluating the evidence presented, you may rely upon your common sense and the general insights you have gained about human affairs as a result of your life experiences.

To save time, attorneys sometimes stipulate, that is agree, that certain things are true. You will be told of any stipulated facts and must accept them as proved. Also, if any party admits a fact to be true, you may consider that admission.

Occasionally, during the trial one party will object to evidence offered by another. I will then decide whether that evidence can be admitted for you to consider. I will admit lawful evidence but will exclude improper evidence. You are not to be concerned with the reasons for my rulings; whether evidence is admissible is a question of law. If I admit evidence over an objection, then you may consider it. But, by admitting it I do not determine the weight or value to be placed upon it - that is for you to decide. If I sustain

an objection and refuse evidence, you must not guess as to what the evidence might have been or the reason for that objection. If a question is answered and I strike the answer, you must disregard the question and the answer and not consider them for any purpose. If, by a question, an attorney hints that certain things are or are not true, you should disregard that hint. A question is not evidence and should be considered only to the extent that it supplies meaning to the answer.

You will decide which witnesses you believe and how much weight you assign to testimony. A witness is any person, including a party, who testifies during the trial; it does not matter whether the testimony was in the courtroom or by deposition. In deciding what you believe, you may consider anything about a witness which tends to prove or disprove truthfulness, including the following:

1. the conduct, attitude and manner of the witness while testifying;
2. the physical and mental capacity of the witness to have heard or seen that about which the testimony relates;
3. the ability of the witness to remember and tell you, here in court, what was heard or seen;
4. evidence, if any, of the reputation of the witness for honesty and truthfulness or for dishonesty and untruthfulness;
5. whether the witness has a bias, a prejudice, an interest in the outcome of the trial, or any other motive for not telling the truth; and,
6. whether the facts related are inherently believable or unbelievable.

In evaluating witness credibility, other facts are also important:

1. You should consider statements made by a witness at some other time or place that are either consistent or inconsistent with testimony given in this trial.
2. If a witness admits to untruthfulness at some other time, you may consider that admission but you should take into account all the circumstances surrounding it, for instance, whether it was sworn statement, whether it was made under pressure, whether it was self-serving, and whether it was an important or merely a minor misstatement.
3. If you conclude that a witness has willfully lied under oath about any material fact in this case, you may distrust all of the testimony of that witness. On the other hand, if you think the testimony, or some of it, is reliable, giving fair consideration to all the other evidence, you may accept what you find to be reliable.

Differences between one witness' testimony and that of others does not necessarily mean someone is untruthful. Two persons who witness an incident may see or hear it differently. In resolving differences in testimony, you should consider all the circumstances of the case and whether the discrepancy concerns an important fact or a trivial one.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

There are two types of evidence from which you may find the truth as to the facts of a case - direct evidence and circumstantial evidence. An example of direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is the proof of facts or circumstances from which the existence or non-existence of other facts may be reasonably inferred. The law makes no

distinction between the weight to be given to either direct or circumstantial evidence. Both direct evidence and circumstantial evidence are acceptable forms of proof and should be given the weight you feel is appropriate in light of all the evidence.

EXPERT TESTIMONY

A person is qualified to testify as an expert if the person has special knowledge, skill, experience, training, or education sufficient to qualify the person as an expert on the subject about which the person testifies.

An expert witness may offer opinions on questions regarding the issues in the case to assist you in deciding the issues. You are not bound to accept an expert's opinion as conclusive, but should give it the weight to which you feel it is entitled.

In determining the weight, if any, to be given to an opinion, you may consider the qualifications of the expert, the credibility of the expert, the information upon which the opinion is based, and the reason for the opinion. You may disregard any opinion if you find it to be unreasonable or not adequately supported.

OPINION TESTIMONY BY LAY WITNESS

In determining the weight to be given to an opinion expressed by any witness who did not testify as an expert witness, you should consider credibility, the extent of the witness's opportunity to perceive the matters upon which the opinion is based, and the reasons, if any, given for it. You may disregard any opinion if you find it to be unreasonable or not adequately supported.

BURDEN OF PROOF

In this action, the Plaintiff has the burden of proving by a preponderance of the evidence all of the facts necessary to prove the following:

- 1)
 - a) that the Defendant was negligent and
 - b) that the Defendant's negligence caused the injury at issue; and/or
- 2)
 - a) that the sellers were engaged in the business of selling the product that caused the harm;
 - b) that the product was defective when sold;
 - c) that the product was unreasonably dangerous to the user or consumer;
 - d) that the product was intended to and did reach the consumer without substantial change in the condition in which it was sold; and
 - e) that the product caused physical harm to the plaintiff/consumer.

.Issues relating to the amount of any alleged damages have been reserved for a separate trial.

The Defendant has the burden of establishing by a preponderance of the evidence all of the facts necessary to prove the following:

1) that the negligence of other persons, including but not limited to the Plaintiff caused or contributed to the injury at issue; and/or

2) that any injury caused by its product was the result of product misuse.

In determining whether an issue has been proved by a preponderance of the evidence, you should consider all of the evidence bearing upon that issue regardless of who produced it.

PREPONDERANCE OF THE EVIDENCE - DEFINITION

“A preponderance of the evidence” is defined as the amount of evidence, taken as a whole, that leads the jury to find that the existence of a disputed fact is more probable than not. You should understand that ‘a preponderance of the evidence’ does not necessarily mean the greater number of witnesses or exhibits.

NEGLIGENCE AND ORDINARY CARE – DEFINED

When the word negligence is used in these instructions, it means the failure to use ordinary care. Ordinary care means the degree of care which should reasonably be expected of the ordinary careful person under the same or similar circumstances. The law does not say how such an ordinary careful person would act. That is for you to decide.

STANDARD OF CONDUCT FOR A MINOR

A minor is not held to the same standard of conduct as an adult. The minor is only required to exercise the degree of care that ordinarily is exercised by minors of like age and experience under similar circumstances. It is for you to determine whether the conduct of [the plaintiff][the defendant] met this standard.

CAUSE – DEFINED

An injury or damage is caused by a negligent act, or a negligent failure to act, whenever it appears from the evidence that the negligent act, or negligent failure to act, played a substantial part in bringing about the injury or damage.

An injury or damage is caused by a product defect whenever it appears from the evidence that the product defect played a substantial part in bringing about the injury or damage.

MULTIPLE CAUSES

If more than one act or failure to act contributed to the claimed injury, then each act or failure to act may have been a “cause” of the injury within the meaning of these instructions. A cause does not have to be the only cause or the last or nearest cause. It is sufficient if the act or failure to act joins in a natural and probable way with some other act or failure to act to cause some or all of the claimed injury.

**COMPARATIVE FAULT (MULTIPLE THEORIES OF LIABILITY) –
THEORY AND EFFECT
(SINGLE PLAINTIFF AND SINGLE DEFENDANT)**

Your verdict in this case must be determined on the basis of the comparative fault of the parties.

A defendant is at fault when the defendant is negligent or manufactured, sold, distributed, assembled, etc. a defective product and you determine this to be a cause of plaintiff's injury or damage. The terms [negligence, defective product and cause are explained in other instructions.

A plaintiff is at fault when the plaintiff is negligent or wrongfully misused a product and you determine this to be a cause of the plaintiff's injury or damage.

It will be necessary for you to determine the comparative fault, if any, of each of the parties involved in the occurrence. The amount of damages, if any, will be determined in a later proceeding.

Your findings as to fault will affect the plaintiff's recovery. It is my duty to explain how that may occur.

The defendant's liability for damages is limited to the percentage of fault, if any, that you find is attributable to the defendant.

The plaintiff's recovery is reduced by the percentage, if any, of fault that you find is attributable to the plaintiff. If you find that the plaintiff's fault exceeds fifty percent (50%), the plaintiff will not be entitled to recover any damages.

The verdict form provided to you includes spaces for you to record your determination of the parties' comparative fault on a percentage basis.

If you find that the plaintiff was at fault in some percentage, do not make an adjustment to account for the percentage of fault you attribute to the plaintiff when you record the total amount of the plaintiff's damages on the verdict form. The judge – not the jury - is responsible for reducing the plaintiff's recovery to account for the percentage of fault, if any, that the jury attributes to the plaintiff.

In explaining the consequences of your verdict, I have not meant to imply that either the plaintiff or the defendant is at fault. That is for you to decide in conformity with these instructions.

STRICT LIABILITY IN TORT

One who manufactures and sells a product in a defective condition unreasonably dangerous to the user or consumer is liable for physical harm caused thereby to the ultimate user or consumer, if the defective product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

This rule applies although the seller has exercised all possible care in the preparation and sale of the product and the user or consumer has not bought the product from or entered into any contractual relation with the seller.

DEFINITION OF UNREASONABLY DANGEROUS PRODUCT

A product is defective when it is in an unreasonably dangerous condition. The term "unreasonably dangerous" means unsafe when put to a use that is reasonably foreseeable considering the nature and function

of the product.

PRODUCTS LIABILITY – DEFECTIVE CONDITION

A product is defective if, at time of sale or distribution, it contains a manufacturing defect, a design defect, or is defective because of inadequate instructions or warnings in the design of the product in the product's preparation or manufacture in the product's container or package in the instructions or warnings reasonably necessary for the product's safe use.

PRODUCT MISUSE – DEFINED

Misuse of a product is the use of a product for an unintended or unforeseeable purpose or the use of a product in an obviously dangerous manner.

INADEQUATE WARNING

Even if a product is flawlessly manufactured, there is a duty to warn if there is a likelihood that the product could cause harm unless properly used.

DUTY OF MANUFACTURER AND SELLER

Negligence in the manufacture, distribution and/or sale of a product means the failure of a manufacturer or seller to do something that a reasonably careful manufacturer or seller] in the same business would do, or doing something that a reasonably careful manufacturer or seller in the same business would not do.

DUTY OF MANUFACTURER – PRODUCT DESIGN AND MANUFACTURE

A manufacturer of a product owes a duty of care to those who use its product. The manufacturer is required to exercise reasonable care in the planning, design, and manufacturing of a product in order to produce a product that it is reasonably safe for an intended use or for a use which the manufacturer should reasonably anticipate.

DUTY OF BUYER, USER, OR CONSUMER

A manufacturer or seller is entitled to expect a use of his product that is reasonably foreseeable by the ordinary consumer who purchases or uses it with the ordinary knowledge common to the community as to its characteristics. A consumer has a duty to use the product in a reasonable fashion consistent with the characteristics of the product.

1 **AFFIDAVIT OF ROBIN JOHNSON**

2
3 STATE OF WYOMING)
4) SS
5 COUNTY OF CARTER)
6

7 I, ROBIN JOHNSON, having been duly sworn do hereby make the following statement
8 under oath and under penalty of perjury:

9 May 5, 2015, started out as one of the proudest days of my life. It ended up as the worst
10 day because JJJ Beverages needed to make a buck selling that poison in a can, Jackalope Java
11 Juice.

12 I remember getting Katie ready for the tournament that day. She had just had a bout
13 of the 24-hour flu and had spent most of the previous day in the bathroom between bouts of
14 throwing up and diarrhea. When I asked her how she felt, she assured me that she was feeling
15 much better and ready for the tournament. I do not think anything would have kept her home
16 that day. Looking back on it, she seemed a little tired and she did not eat all her breakfast. But
17 she assured me that she would be able to snack at the tournament. She had a ride to school with
18 a friend and I followed in my own car, thinking how lucky I was that the regional tournament
19 was in Carter City that year.

20 It had been amazing to watch her make the debate team as a freshman and have such
21 success going up against the upperclassmen. It was even more than amazing to watch her march
22 her way through the competition at that regional tournament, defeating experienced debater after
23 experienced debater all the way to the finals. I knew that she had been putting in long hours
24 working on her material, preparing to address the proposition: “Resolved: National security
25 justifies the use of racial profiling,” but I did not know how hard.

26 Things went really well that morning and into the afternoon. Katie cruised through the
27 semi-final and then it was just one more step to the championship against a student who was the
28 defending state champion debater. I was there when her coach, Andy Stone, took her aside and
29 told her that she needed to “power up” her game, if she was going to meet this last challenge. I
30 thought that she had been doing fine, but the coach told her that she seemed flat during her last
31 round – no energy -- and that was not going to get it done in the final. Katie said she understood
32 the message and she would be sharp for the finals. She went off with several teammates and I
33 lost track of her for the next hour or so, while we waited for the last debate to begin. I was not
34 concerned. I know kids like to run through their arguments before they compete, so she would
35 naturally want time to herself.

36 The final round began at 5:30 p.m. sharp. Katie was on fire, speaking with assurance and
37 blending logic, humor and speed in ways that I had never seen before. The arguments went back
38 and forth, until they reached the final summation. When it was Katie’s turn to speak, she stood
39 and then suddenly she collapsed on stage. No one moved for what seemed like ages, then Coach
40 Stone ran up to her and called her name. She did not respond. I tried to push my way through

41 the crowd, but it was unmitigated chaos. All I could see was Katie lying there, not moving and
42 turning blue. There was a team of EMTs on duty and they began to attend to Katie, but she was
43 not responding. My heart sank and I began to think that I was watching my child die right there
44 before my eyes.

45 The next thing I remember was the arrival of the ambulance crew. They pushed everyone
46 back, but I could hear them talking with the original EMTs and saying that her heart was
47 fibrillating and that they would need to use the paddles. One thing I can tell you, is that no parent
48 should ever have to watch their child being zapped like that. It was all so surreal. They got
49 her heart beating again, but Katie was still unconscious, when they got her bundled up onto the
50 boards for transport and out of there for the run to the hospital. I went to get her stuff from the
51 break room and followed them.

52 At the hospital, I met and spoke with Katie's doctor, Alex Montgomery. I learned that
53 physically Katie was stable, but she had suffered a brain injury from the loss of oxygen during
54 the time her heart was unable to circulate oxygenated blood. Dr. Montgomery said that Katie's
55 EKG had shown that she had had an abnormal heart rhythm and that something had triggered
56 the onset of ventricular fibrillation. As I understood it, her heart had gone into some kind of
57 spasm and had been unable to circulate blood and oxygen to her brain for several minutes. Dr.
58 Montgomery said that they did not know what had caused this event. Then the doctor started
59 asking about what Katie might have eaten or had to drink that day. I told Dr. Montgomery that
60 she had not eaten much for breakfast and that I did not know anything about what she might have
61 eaten after leaving the house that morning.

62 I had picked up her backpack and personal things before leaving the tournament site.
63 The next day, I opened the pack and found an open six pack box of Jackalope Java Juice and
64 four empty cans in the backpack and the purchase receipt. So, I started questioning Katie's
65 friends and her coach. That was when I learned that Katie had been using energy drinks to get
66 an edge during her debates. I told Dr. Montgomery what I had found, when I stopped in to
67 check on Katie at the hospital later in the afternoon. Doctor Montgomery said that might explain
68 everything. Some of Katie's blood had been sent to the lab for analysis and Dr. Montgomery
69 called the lab to specifically ask them to test for caffeine. The report came back soon thereafter.
70 Katie had a huge amount of caffeine in her blood. Dr. Montgomery explained that the caffeine
71 had affected Katie's heart and prolonged something called the QT interval and that this had then
72 triggered the ventricular fibrillation.

73 Katie has not recovered from her brain injury. The doctors tell me that she never will.
74 Today, she is a 17-year-old with the mental capacity of a 4-year-old. Until this horrible tragedy,
75 she was a bright young woman with unlimited potential. Now, she knows who she is and she
76 recognizes me, but she will never be able to take care of herself. Her life has been put on hold
77 forever and her future is ruined.

78 I was barely aware of these so-called "energy" drinks when this happened. I saw the ads
79 on television that claimed the drinks would give you "wings" and help boost your performance.
80 Jackalope Java Juice claimed it gave people a "jump" on everyone else. And I saw these drinks
81 on store shelves with health food – you know, with those nutrition supplements and granola bars.
82 I can see how young people would want to use these drinks. Who wouldn't want more energy?
83 Well, I have spent the past two years learning everything I can about these so-called "energy"

84 drinks – all the lawsuits and all the settlements and all the science -- and I can tell you there's
85 nothing healthy about them. They're just a jolt of caffeine. All those other ingredients? There's
86 no proof they give you "wings" or a "jump start" or anything else. They just add to the caffeine.
87 Jack is dangerous for the young people who drink it all the time and believe those commercials,
88 like my Katie, and that's why I'm suing.

89 JJJ tries to hide behind warnings on the label, but that's a joke. It says children and
90 pregnant women shouldn't drink them. It's in tiny print on the back. And I'm sure Katie and her
91 friends didn't consider themselves "children." And the list of ingredients? That's a joke, too. The
92 label says 300 mg of caffeine "per serving." Young people are finishing one drink and reaching
93 for more.

94 Another thing I found is that JJJ uses a "loophole" in the law to avoid being regulated by
95 the Food and Drug Administration. If JJJ marketed its products as conventional food, the FDA
96 could regulate the labeling, contents and claims. But they say Jack is a nutritional supplement,
97 so they are free to market and claim whatever they want. However, the Center for Food Safety
98 does collect reports of "adverse events," so we know Jack is hurting people. Heart attacks,
99 convulsions and more. Those reports just make my case. These are nothing but caffeine bombs,
100 no matter what JJJ Beverages says.

101 Katie was funny, smart and courageous before she drank that toxic drink. If she could
102 argue for herself, she would want people to know that these energy drinks can be dangerous –
103 what this particular drink took away from her. This was not some kid hurt because of an overdose
104 of illegal drugs. Katie did not do drugs. No, Katie was struck down because she drank Jack, a
105 caffeine timebomb that is legally marketed to young people with no thought about the risks it
106 poses to people like Katie.

107 I filed this lawsuit so that the people who did this to her could be held responsible and
108 made to pay for what she has lost.

Robin Johnson

Robin Johnson
June 3, 20167

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1 **AFFIDAVIT OF ALEX MONTGOMERY, M.D.**

2 STATE OF WYOMING)
3) SS
4 COUNTY OF CARTER)

5
6 I, ALEX MONTGOMERY, having been duly sworn do hereby make the following
7 statement under oath and under penalty of perjury:

8 I am a board-certified emergency medicine specialist practicing at Carter County
9 Memorial Hospital (“CCMH”). I graduated from Wyoming State University with a B.S. degree
10 in chemistry in 2002. I then attended the University of Washington School of Medicine and
11 obtained my M.D. in 2006. I went on to a residency program in emergency medicine at the
12 University of Utah Medical Center from 2006 until 2009, followed by a two year fellowship
13 in toxicology at Boston University. At that point I came back home to Wyoming and began
14 practicing at CCMH. I work approximately 40 hours a week in the emergency room and I
15 also have a private consulting practice in toxicology through the Carter County Poison Control
16 Center.

17 I was the emergency room physician on duty, when Katie Johnson arrived at 6:35 p.m.
18 on May 5, 2015. We had received calls from the EMTs and ambulance crew and knew that we
19 had a 14 year old female en route following what sounded like a heart attack. That, in and of
20 itself, was pretty unusual, so I made sure that she got a full work up when she arrived. The first
21 job was to make sure she was stable and going to survive, but at the same time we needed to
22 figure out what had happened both to treat her and to make sure that we took any steps necessary
23 to see that this did not happen again.

24 One of the first things we did was to get a look at the electrical function of the heart using
25 the electrocardiogram (“ECG”) machine. When I looked at the strip of data recorded by the
26 ECG, I saw that Katie had an abnormal pattern, known as long QT.

27 Let me provide a brief lesson in reading results of an ECG as they are printed out on a
28 strip of paper. Every heartbeat is broken into segments and waves. The “QRS complex” is a
29 name for the combination of three of the spikes seen on a typical ECG – one small negative dip,
30 a large central positive spike and then another small negative dip. I believe one of the exhibits
31 provides an example. The QRS complex corresponds to the depolarization of the right and
32 left ventricles of the human heart. A “T wave” follows the QRS complex and represents the
33 repolarization (or recovery) of the ventricles. We look at the interval from the beginning of the
34 QRS complex to the apex of the T wave, and we get very concerned when it takes a heart too
35 long to repolarize.

36 In Katie’s strip, that QT interval was very long. Normally the QT interval should be
37 between 0.36 and 0.44 seconds. On Katie’s ECG strip the interval was 0.49 seconds. Reports
38 from the ambulance crew strongly suggested that Katie’s episode was related to this finding,
39 because long QT syndrome is associated with episodes of ventricular fibrillation. Next, we
40 needed to determine what was causing this finding. Some people have chronic long QT, which

41 may be congenital. People could be completely unaware of this condition, if they do not have
42 any symptoms or episodes that would cause them to undergo an ECG. There is also a form of
43 long QT called “acquired long QT.” In these cases, the patient may experience transient episodes
44 of long QT caused by acute condition or agent – some drugs can affect the QT interval and
45 imbalances in the blood chemistry can do the same.

46 It is important to distinguish between chronic long QT and acquired long QT. If a long
47 QT condition is chronic, the patient will likely need life-long anti-arrhythmia medications and
48 counselling to avoid certain activities. If it’s a case of acquired long QT, then the treatment may
49 be simple preventative advice to avoid certain drugs and observe dietary guidelines to prevent
50 another imbalance in the future.

51 I also ordered a chemical panel, which yielded more clues. First, Katie had low
52 potassium. Her potassium level was measured at 2.2 millimoles per liter (“mmo/L”), which was
53 significantly lower than the normal range of between 3.5 and 5.1 mmo/L. I thought that this
54 might explain the event because low potassium levels are associated with longer QT intervals.
55 We provided Katie with potassium supplements and were able to get her levels back up to the
56 normal range. When we reran the ECG her QT interval was reduced to 0.45, but it was still not
57 completely normal. The rest of the studies were essentially normal, so I made arrangements to
58 send samples of her blood out for additional studies at a specialized toxicology lab.

59 I remember talking to Katie’s mom/dad, Robin Johnson, the next day. That was
60 when s/he explained that Katie had been drinking energy drinks at the tournament. I have read a
61 great deal about those so-called energy drinks and I have counseled my patients to avoid them.
62 While most of the literature supports the conclusion that small or moderate amounts of caffeine
63 are most likely harmless, these drinks are capable of delivering massive quantities of caffeine,
64 especially if consumed in multiple doses over a short period of time. Most healthy adults are fine
65 with 400 milligrams of caffeine a day. But the American Academy of Pediatrics recommends
66 no more than 100 milligrams of caffeine a day for children and teens. Take a look at the list of
67 drinks and caffeine totals compiled by Consumer Research. Jackalope Java Juice is one of the
68 most popular drinks on the market. But many of the drinks exceed 100 mg of caffeine in just one
69 serving, and we still don’t know how high levels of caffeine interact with the other ingredients in
70 energy drinks.

71 Those energy drinks are not regulated by the Food and Drug Administration, because
72 they are marketed as nutritional supplements, not food beverages. However, the Center for
73 Food Safety (CFS) does require reporting of what’s called “adverse events” suffered by people
74 who consume them. I looked at the Adverse Events Reports made to the CFS by people who
75 consumed Jack, and there were 18 reports in less than 18 months Jack was on the market.

76 I know the FDA does not substantiate and verify these reports of toxic reactions, and
77 there’s no proof Jack caused the reported vomiting, heart arrhythmia and worse reactions. But I
78 have to believe this is more than just coincidence and pre-existing conditions. These reports –
79 which probably are just a fraction of actual incidents -- indicate something is going on. If I had
80 my way, these products would be regulated like any other drug delivery system, but unfortunately
81 the Food and Drug Administration has not seen fit to act.

82
83 So, after Robin Johnson told me that Katie had drunk Jack just before she collapsed, I

84 put a call into the lab and I asked them to run a special analysis to check for caffeine in Katie's
85 blood. Shortly thereafter, the lab called with the results. Katie's blood tests showed that she had
86 had a blood concentration of 23.2 milligrams per liter ("mg/L"), when she arrived at the hospital.
87 While this is well below the level of caffeine commonly regarded as lethal (80-180 mg/L), it is
88 still a tremendously high level and well within a range believed to have toxic or harmful effects
89 on some subjects. Based on this information, I told Robin Johnson that to a reasonable degree
90 of medical probability I believed that Katie's event was directly caused by the caffeine in the
91 energy drinks that she had consumed. This conclusion was reinforced, when I ordered a new set
92 of tests several days later. The blood tests showed no evidence of caffeine. That drug had been
93 processed and eliminated through the body's natural chemistry, as expected. Katie's QT interval
94 was re-measured at 0.36 seconds, well within the normal range. I believed then and I believe
95 today that Katie suffered from a case of acquired long QT caused by an excessive and toxic
96 amount of caffeine.

97 After this lawsuit was filed, I learned that on the day before the tournament Katie had
98 had a brief episode of vomiting and diarrhea on the day before the episode. I had not been
99 aware of this before then. While it is true that this illness might have been the cause of Katie's
100 low potassium level and a 2.2 millimoles per liter potassium level can be sufficient to trigger an
101 episode of acquired long QT in and of itself, I firmly believe that you need to look at the whole
102 picture. Even if the potassium level did contribute to this episode, you cannot ignore the fact
103 that Katie drank the energy drink and had a high caffeine level. The low potassium may have
104 caused some cardiac irritation and may have made Katie more vulnerable to the effects of the
105 caffeine, but it was the caffeine that caused the problem.

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111 *Alex Montgomery, M.D.*
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114 **Alex Montgomery**
115 **July 2, 2017**
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1 **AFFIDAVIT OF PARKER COLLINS**

2 STATE OF WYOMING)
3) SS
4 COUNTY OF CARTER)

5
6 I, PARKER COLLINS, having been duly sworn do hereby make the following statement
7 under oath and under penalty of perjury:

8 I was there on May 5, 2015, and I know what happened to Katie Johnson. Katie was my
9 friend and teammate on the Carter City High School (CCHS) debate team, and what happened to
10 her was wrong. Now I understand just how bad those Jackalope Java Juices are, and those folks
11 at JJJ Beverages need to be called to account for the harm they caused. Sure, I am upset about
12 what happened to her, but that does not change the facts. I know what I know and I am not go-
13 ing to lie for anybody.

14 Katie was a bit of a “phenom,” when it came to speech and debate. There had been other
15 freshman who had made the CCHS team before, but Katie was the first to take it to the highest
16 levels. She was a natural and, believe me, I should know. She beat me to win that slot on the
17 regional squad and I was a senior at the time. Since I was not competing, the coach asked me to
18 work with Katie to get her ready for the meet and to keep tabs on her during the meet. It was her
19 first regional meet and the schedule is pretty tricky for people who have never been to such a big
20 meet before. There were teams from more than 25 schools and three states competing for slots at
21 nationals. It’s not easy to maintain energy and focus through all the rounds, especially for a freshman.

22 I had seen Katie in other meets and I knew that she had the right stuff, but even so I could
23 tell that this meet was different for her. She blew through the first rounds, but the sheer number
24 of rounds was wearing on her. Then the semi-final round was really tough. She came up against
25 a senior and a veteran of these regional tournaments, and she struggled to keep up with him. She
26 won that round, but I could tell that her energy level was starting to fade. If she was going to
27 have a shot in the finals, she needed to get a kick start and she needed it now.

28 Back in 2015, whenever someone on the team felt tired or rundown, we all had one
29 solution: take a shot of energy. The kids had their own favorites: a Red Bear, or a Troll, or a
30 4 Hour Energy. Everyone had a go-to answer when they needed a boost to get that edge for the
31 next round. Everyone had an energy drink in their bags on competition day. When Jackalope
32 Java Juice came out, it quickly became my favorite, because it promised to deliver the biggest
33 kick ounce-for-ounce of any energy drink. It lives up to its claim that it gives you a jump start.
34 Lots of caffeine but also lots of other ingredients. Plus, I kind of like that it is made right here in
35 Wyoming, and that Jackalope logo is kind of cool.

36 I remember that Katie had asked me about energy drinks just before the regional meet.
37 She had heard the coach’s speech about not using artificial stimulants to try and get an edge. She
38 had signed the “pledge” not to use any performance enhancing substances, just like everyone
39 else. She also heard all her teammates, me included, telling her that at regionals you need to
40 be willing to take it to a new level. I told her that, if she was going to try it, Jack was the best.

41 Someone was always drinking it in the speech and debate room at school. I guess she listened,
42 because she brought a six-pack of Jack to the last day of the tournament and showed me. We
43 opened the six pack together in the break room and I had one with her at the start of the day. I
44 remember that right after that first can, she said, “Wow. That stuff is kicking in. I can feel my
45 heart beating and I feel sharp. I’m ready to go.” I also remember that Coach Stone was in and
46 out of the break room, while Katie was drinking that can of Jack. We tried to be inconspicuous,
47 but Coach Stone would have to be blind not to see that six pack sitting on the bench between us.

48 Later after that semi-final round, we went back to the break room. It had been hours since
49 she had that first can and I asked her how she felt. She said that she was feeling tired. It had been
50 a long day and she had been through multiple rounds. I suggested she might want to refuel and
51 have another can of the Jack, before finals. She asked if it would be safe and I said something
52 like, “Hey, it works for everybody else. Just two more hours, Katie!” She popped the top on
53 another can and drained it right there and then. Coach Stone was looking right at us, and I heard
54 coach tell Katie that she just needed to fire it up for one more round and then she would be a
55 champion.

56 I don’t know why coach made a big deal about staying off energy drinks, because coach
57 sure saw Katie drinking Jack and it seemed to be okay. I was called away at that point and had
58 to leave her for about 15 or 20 minutes, because someone from our team was late for a round and
59 we all had to go look for him. When I came back, Katie said that she was ready to rumble and we
60 left the break room to go to the auditorium for the final round. As we walked over, I asked how
61 she felt. I remember her saying that she felt even better than she had in the morning. She said,
62 “If one can of Jack was good, then two cans have got to be better.”

63 I was there when Katie collapsed. I couldn’t believe it. One minute she was running good
64 in complete control of the argument and the next she was down and out on the floor. I couldn’t
65 see much. The coaches got the kids out of the room as quickly as they could. I went back to the
66 break room and looked in Katie’s backpack. I found four empty cans of Jack and two full cans. I
67 had drunk one and I knew Katie had two cans. I have no idea what happened to that fourth can. It
68 could have been Katie, but it also could have been anyone else in the break room that day. Jack
69 was everyone’s favorite. I took the backpack and gave it to Coach Stone. Coach flipped out at the
70 sight of the empty cans of Jack. Coach got red in the face and said, “Was that what you and Katie
71 were drinking in the break room?” But just then Robin Johnson walked up and Coach Stone
72 quickly zipped up the backpack and handed it to Johnson, who then left for the hospital.

73 I saw Robin Johnson a few days later at the hospital. That was when I explained that
74 everyone, Katie included, used energy drinks. I also explained that Coach Stone had to know
75 what was going on and that, although the team policy “officially” discouraged the use of energy
76 drinks, Coach Stone always treated the use of energy drinks with a wink and a nod, like it was no
77 big deal.

78 I can’t believe Katie is in such bad shape. I feel bad that I may have had something to do
79 with it. I can tell you, I’m not drinking Jack anymore.

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Parker Collins

Parker Collins
June 10, 2017

41 into synthetic sources, but I wanted a product that would deliver a natural jolt of energy and I did
42 just that. In late 2014 we got the final green lights and on January 1, 2015, Jackalope Java Juice
43 began rolling off the canning line. Packed with 300 mg of caffeine in every eight ounce can, we
44 had a natural product that was stronger than almost any other drink on the market, a fact that we
45 made sure we advertised from day one.

46 We called it “Jack” for short. Sales were good from the beginning and they only got
47 better with each passing month. Things really took off when we started advertising. People
48 loved our spots with the animated jackalopes drinking a can of Jack and then taking off like a
49 bullet, outrunning cars and leaping canyons. They said the commercials seemed like a mash-
50 up of Popeye meets Roadrunner cartoons. Check out our logo, too. When we tested the ads
51 against various age groups, we found that the ads had an almost universal appeal across all age
52 groups and that trend has continued to this day. JJJ Beverages does not target minors with its
53 advertising. We do not belong to the American Beverage Association because that organization
54 is just a front for big corporations that want to feel good about themselves. But we do voluntarily
55 observe the ABA recommendations for responsible labeling and marketing of energy drinks.

56 When we were developing the product, I learned about some of the lawsuits that had
57 been filed against other manufacturers of energy drinks. But when we looked into it, most of the
58 cases were dismissed. I heard a couple of companies had paid millions to settle some cases. But
59 people will sue over anything. They claimed that they had a bad reaction from energy drinks
60 – from the caffeine or the other ingredients or a combination of both. But nobody has proved
61 anything. Companies settle lawsuits for all kinds of reasons. Sometimes it is just cheaper to settle
62 rather than to keep fighting, but that is not my philosophy. If I hurt someone, then sure I would
63 be willing to pay a reasonable amount for the damage I caused. But the fact is that caffeine is
64 completely legal, and it’s safe. People drink caffeine in coffee all the time, and they’re fine.

65 The Food and Drug Administration says that for healthy adults, a caffeine intake of up to
66 400 mg a day should not cause any general toxicity or cardiovascular effects whatsoever. But
67 honestly, do you know how much Jackalope Java Juice you would have to drink to reach a level
68 that is scientifically considered lethal? If you were a person weighing 150 pounds, the scientists
69 tell me you would need to drink 34 cans. You would have to be out of your mind to drink that
70 much, even if it were possible.

71 The wording on our label was reviewed and approved by our legal department in
72 consultation with our outside consultants. No, it was not approved by the Federal Food and Drug
73 Administration for the simple reason that the FDA does not regulate energy drinks. No one is
74 required to put any warning on this type of product or list amounts of caffeine, but most energy
75 drink companies do provide caffeine content because we want consumers to know what they’re
76 drinking. The warning we used, when we introduced Jackalope Java Juice read:

77
78 **Consume responsibly.** Not recommended for children, pregnant or
79 nursing women or people sensitive to caffeine. Contains high levels of
80 caffeine, a stimulant known to restore mental awareness and improve
81 cognitive function. May cause sleeplessness, irritability, high blood
82 pressure and, occasionally, rapid heart rate.

83

84 These statements have not been evaluated by the Food and Drug
85 Administration. This product should not be used to diagnose, treat, cure
86 or prevent any disease.

87
88 What more do you really need to know?

89 About a year after the incident with Katie Johnson, there were some new studies
90 that came out in one of the medical journals. JJJ Beverages does not subscribe, but we have
91 consultants, including Dr. Hayden Moran, who keep up to date with reports on our products. I
92 remember him calling me one day in 2016 to say that he had just seen a study that suggested
93 a possible link between excess caffeine and heart problems in people who already had some
94 underlying heart disease. The study did not say that there was a proven link, only that there was
95 a possible link suggested by statistics. We had been hearing rumors that the Johnson family was
96 thinking about filing a suit based on Katie’s unfortunate incident and I did not want to take a
97 chance, so I told our marketing folks to develop an additional warning to be added to our original
98 one.

99 They came up with the idea of adding another caution: “MAY CAUSE HEART
100 ATTACK, CONVULSIONS OR DEATH.” I agreed and that is what is on our cans today.

101 Now I want to correct some claims that are being made by plaintiffs who sue energy
102 drink companies. First of all, we care very much about our customers. We make sure the label
103 on the Jack can complies with every law and regulation and gives information so our consumers
104 can be responsible for their own health. We clearly warn off children, pregnant women and
105 people sensitive to caffeine. Meanwhile, the FDA has never identified any safety studies that call
106 into question the safety of the combination of various ingredients added to energy drinks under
107 intended conditions of use. In fact the FDA does not regulate energy drinks at all. If there was
108 really a problem, don’t you think those federal investigators would be all over my company and
109 every other manufacturer?

110 Of course I am concerned for the health of Jack consumers. I’m also a businessman and
111 wouldn’t want to make a product that is unsafe. Yes, I am aware of the adverse events reports
112 to the federal Center for Food Safety. Some of those people had very serious problems and I
113 sympathize with them. But there is no solid proof that our product caused the problems. The
114 FDA doesn’t investigate or substantiate the claims, so that’s all they are – claims. We don’t
115 know what else people may have been consuming or what they were doing or if they had health
116 problems before they took one sip of Jack. There is no medical evidence that caffeine or other
117 ingredients caused the injuries. Over the past two years, millions of people have gotten a safe and
118 healthy boost from Jack with no proven adverse consequences.

119 You know, all products come with a risk and anything can kill. We all assume some
120 degree of risk based on our own body’s chemistry and condition. Why, there are 120 deaths a
121 year from peanuts. Drinking too much water kills at least one person a year in the United States.
122 Consumers have to bear some responsibility. They should know if they have some underlying
123 health condition that could worsen as a result of using energy drinks. The plaintiff in this case
124 wants the FDA to regulate energy drinks to make sure the ingredients and their amounts are safe.
125 That’s not necessary. Jack is perfectly safe for anyone who uses it responsibly.

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We make our energy drink for hard-working healthy people who need an extra boost of energy, and that's how we market it.

Carol Hudson

Carol Hudson
July 31, 2017

1 **AFFIDAVIT OF HAYDEN MORAN, M.D.**

2
3 STATE OF WYOMING)
4) SS
5 COUNTY OF CARTER)

6
7 I, HAYDEN MORAN, having been duly sworn do hereby make the following statement
8 under oath and under penalty of perjury:

9 I am a board-certified internist and emergency room physician. I am also board certified
10 in the sub-specialties of cardiology and toxicology. I attended Princeton University and obtained
11 my A.B. degree summa cum laude in biochemistry in 1980. Next I went to medical school at the
12 University of Southern California, where I earned my M.D. in 1984. I completed a residency
13 program at the University of California Los Angeles in 1987.

14 I then went into private practice for a brief time before returning to UCLA to complete
15 a fellowship in cardiology followed by another fellowship in toxicology, which I completed in
16 1992. I returned to private practice for several years in southern California. In 2005 I decided
17 to change my career path. While in private practice, I had been retained by several corporations
18 to offer medical advice regarding a variety of medical and toxicological issues because there
19 are very few multiple-board certified physicians with my impressive credentials. I became very
20 interested in working on projects that involved the development and testing of new products.
21 The work was very challenging and often involved medical, scientific and engineering issues
22 that were on the cutting edge of these disciplines. I have been personally involved in work
23 that has led to more than 150 patents and I hold 10 patents of my own. It is lucrative work,
24 of course, but it also is very rewarding personally, because my work has helped to advance
25 understanding of how new products and substances are metabolized and assessing their effects
26 on human physiology and psychology.

27 I have worked on several projects for Carter City Enterprises and JJJ Beverages over the
28 years. Carol Hudson, the president and owner of Carter City Enterprises, has been a client and
29 over the years s/he has become a friend, too. Carol was just starting up JJJ Beverages, when
30 I first went to work for the company. Carol was committed to doing for soft drinks what the
31 microbrewery industry had done for beer. There was a time when every major city and state had
32 its own locally made favorite soft drink. I attended prep school in Maine when I was growing up
33 and we loved our Moxie, especially when those tourists from New York spit it out because the
34 flavor was “different.” Well, that was Carol’s dream and JJJ Beverages was born to make that
35 dream a reality.

36 When you start a new product, there is a lot of work. You start with an idea and then do
37 the tests. Is the idea practical? Taste testing and quality testing are essential to ensure that you
38 have a product and a formula that is stable and that can be manufactured uniformly. Then you
39 have to throw in market research and all that entails. My job was to make sure that the product
40 was safe, and that involved a careful evaluation of everything from the raw ingredients through

41 to the packaging and storage of the product until it was ready to be handed over to the consumer.
42 One advantage we had was the fact that we had the purest source of water known to man. The
43 water in the aquifer tapped by JJJ Beverages had been a snowfield during the last ice age before
44 man even walked in these mountains.

45 Carol started talking about developing an energy drink in 2012. Carol had seen that
46 segment of the market growing and it did not take a genius to see that this was a product that had
47 potential to be one of JJJ Beverages biggest sellers. We got to work and over the next few years
48 we came up with a formula. Then JJJ Beverages had to locate sources for the raw materials and
49 build an addition onto the plant that was dedicated to this new line Carol insisted that this drink
50 was going to be the strongest energy drink out there and asked me repeatedly about the risks
51 associated with caffeine. I researched it and I was able to assure Carol that caffeine was one of the
52 oldest and safest natural stimulants known to man. While there had been some health and safety
53 concerns raised in the 1990s about the cardiovascular effects of products that combined caffeine
54 and ephedrine, more recent research had demonstrated that moderate caffeine consumption by
55 itself was either harmless or possibly beneficial in reversing the effects of Parkinson's disease and
56 Alzheimer's disease.

57 I recommended using guarana seeds as the source for our caffeine base. Guarana seeds
58 contain more caffeine than any other plant and are widely used in the industry. In addition, the
59 use of a natural source would be a boon for advertising to the modern consumer. Carol wanted to
60 produce a product that would deliver a significant but safe dose of caffeine. We settled on 300 mg
61 per can. If you assume an average consumer weighing 150 pounds or 68 kilograms, that would
62 be a dose of 4.4 mg/kg, and frankly that dose should not pose a risk to anyone. However, due to
63 the low body weight of children, we decided it would be prudent to include a directive that the
64 use of Jack by children was not recommended.

65 You can find plenty of reports in popular media about the effects of caffeine on the heart.
66 When Jack hit the market in 2015, there were reports of adverse events turned in through the
67 Center for Food Safety and Adverse Events Reporting System (CAERS). However, those reports
68 are just that: isolated reports based on incomplete and unverifiable information. The Center
69 for Food Safety recognizes that and says right there on its report, "There is no certainty that a
70 reported adverse event can be attributed to a particular product or ingredient." In comparison, the
71 actual controlled studies that experts like myself rely upon and that were available in 2015, when
72 Jack first went on the market, could not scientifically support any of those stories.

73 With respect to long QT syndrome, two published studies in 2011 showed no correlation
74 between caffeine consumption by coffee drinkers and prolonged QT syndrome. In fact, one of
75 the 2011 studies suggested that, although caffeinated coffee had no effect on the QT interval, a
76 similar dose of decaffeinated coffee appeared to cause a minor elongation. Whatever was going
77 on, it did not seem like caffeine was a significant risk factor, since the decaffeinated drinks
78 seemed to have more of an effect. Research has continued, of course, and more recent studies
79 published after the incident involved in this case have generated results that seem to suggest that
80 in some persons the consumption of energy drinks may cause prolongation of the QT interval
81 and could pose a risk to people who already have long QT syndrome. However, it is still not
82 clear whether this is due entirely to the caffeine or to other ingredients that may be in some of
83 the beverages, so it is impossible to say that anyone has scientifically established a causal link

84 between caffeine and acquired long QT syndrome. There will need to be more studies conducted
85 to develop the answer to that question.

86 I have reviewed Katie Johnson's medical records and, while I agree with Dr.
87 Montgomery's diagnosis of acquired long QT, I disagree with the conclusion that this episode
88 was caused by Katie's consumption of Jack. The records show that Katie had a low potassium
89 level, most likely due to vomiting and diarrhea caused by her recent bout of flu. Low potassium
90 is a well known cause of acquired long QT. In my business, when you hear hoofbeats at night,
91 you think horses, not zebras. Dr. Montgomery is leaping to conclusions that simply are not the
92 most likely explanation to a fairly common problem.

93 I am a highly credentialed consultant to several corporations, including JJJ Beverages. As
94 such, I am being compensated for my time, expertise and knowledge as a witness in this case, at
95 the customary rate of \$600 an hour. The compensation in no way presents a conflict of interest or
96 incentive to tell the court anything but the facts as I know them.

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Hayden Moran

Hayden Moran, MD
August 15, 2017

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1 **AFFIDAVIT OF ANDY STONE**

2
3 STATE OF WYOMING)
4) SS
5 COUNTY OF CARTER)

6
7 I, ANDY STONE, having been duly sworn do hereby make the following statement
8 under oath and under penalty of perjury:

9 I am the coach of the Carter City High School Speech and Debate Team. I have held
10 that position for the past 17 years and in that time our school has won 12 state titles and eight
11 regional titles. Here at Carter City, I have had the pleasure and privilege to coach innumerable
12 individual champions, but none of them had the promise that Katie Johnson showed as a
13 freshman. Katie was more than good. Sure, she had native talent. That part was a gift. But she
14 had another gift, one that I thought would make her one of the best competitors to ever wear the
15 black and silver colors of CCHS. She was committed to do whatever she had to do to win. She
16 practiced hard, she listened to her coaches and she took criticism constructively. I always felt
17 that Katie could be trusted to follow instructions and obey the rules, but I guess even I could be
18 fooled.

19 CCHS has a strong policy against the use of drugs and that does not just mean the illegal
20 drugs. We lectured the kids about the so-called performance enhancing drugs too. I told all my
21 kids that, when they won, they wanted to know that they won on the strength of their arguments
22 and character, not because of some pill or other substance. What the football coaches told their
23 students about steroids was exactly what I told my kids about products that promised to make
24 them smarter, sharper and more focused. Everyone on my teams had to sign a pledge to obey
25 my rules or they were not allowed to even be on the team.

26 That pledge did not include caffeine as a banned substance. Heck, if that was the rule, I
27 would not even be able to field a team. Whenever we went on the road for a meet, our last stop
28 out of Carter City was always one of the coffee bars. You have never seen so many lattes and
29 mocha grandes go down the hatch as my kids could drink. But I tried to discourage the team
30 from using those so-called energy drinks. I remember reading somewhere that those products
31 had been linked to some kind of health problems and I did not feel that those things were good
32 for you. But then again, I never saw anything from the school district and it was not unusual to
33 see kids at school drinking some so-called energy drink between classes or before a test. So long
34 as it was not in my classes or during a speech and debate practice, I couldn't do anything about
35 it. Even during practices, my kids probably were indulging, although I didn't examine every can
36 they were drinking from, so I probably missed a few. It was not all that unusual to find an empty
37 can of something left behind at the end of the period.

38 Have I ever caught one on my kids drinking an energy drink during a tournament? Sure,
39 I have. Have I ever suspended a kid for doing so? No. Now that you ask, I have not. I do
40 not think it would have been fair to do so -- not fair to the student and not fair to the team. I

41 discouraged the use of energy drinks, but in the end, it is not illegal and some of the parents were
42 supplying the drinks. Moreover, our district was and is highly competitive. If we expected to
43 maintain our success, then 1) we needed to put our best team on the floor every time and 2) we
44 were only doing what everyone else was doing. If those drinks gave my kids a boost, whether it
45 was energy or just confidence, then I might give them an earful, but I was not going to penalize
46 them. I might even take the stuff away, when I found it, but I was not going to suspend someone
47 for drinking something that was on sale at every grocery store and gas station in town.

48 Katie was a rising star and I asked one of our seniors, Parker Collins, to help her get
49 oriented to what she should expect at the regional tournament. Parker had been disappointed
50 not to make the team and I heard that Parker had even remarked about how unfair the judges
51 and coaches had been to select Katie, who was just a freshman, and leave Parker off the regional
52 competition team. But Parker had been a reliable team player for four years and I knew that
53 Katie would benefit from a chance to have an experienced teammate as a guide. I trusted Parker
54 to take care of Katie.

55 The tournament itself went pretty smoothly as I recall. There were the usual
56 “emergencies,” a forgotten file, a missing kid and the like, but on the whole things were looking
57 good for the team and especially for Katie. When she took down that kid from Nebraska in the
58 semi-final, I knew that we were looking at the next regional champion from CCHS. Katie looked
59 a little pale and tired when she came out of the competition room, so I told Parker to take her
60 back to the break room and see what she needed. I could not go with them, because the drama
61 final was starting and I had a student in that as well. I know Parker says that I came down to
62 the break room before Katie’s final, but that just is not true. The next time I saw Katie was just
63 before the final round, probably an hour later, give or take 10 minutes. I asked her how she felt
64 and she said she felt fine. I could see determination in her eyes, but I also noticed that she was
65 sweating more than normally. Her hands were shaking a little bit and occasionally she would put
66 her hand on her chest. I wrote that off to nerves.

67 Everything was good in the final. Her arguments and rebuttals were confounding her
68 opponent, who just could not keep up with her. But then it all went wrong. In mid-sentence
69 Katie stopped and then collapsed. Everyone froze for just a second, then I found myself pushing
70 my way up onto the stage. When I got there, Katie was lying there motionless and her lips were
71 blue. She was not breathing. I felt for a pulse, but there was nothing. The next thing I knew
72 the paramedics were there and later the ambulance crew. I heard them say something about
73 fibrillation and the next thing I saw was one of the paramedics applying the cardiac paddles to
74 shock her. They hit her with the electric current at least two times, maybe more, before they
75 said that they had a heartbeat and a pulse. Katie’s color improved, but she did not recover
76 consciousness, before they got her loaded up and off to the hospital.

77 Afterwards, I saw Parker Collins in the breakroom and Parker seemed to be acting funny.
78 I figured Parker was in shock, so I went over to offer some comfort. That was when Parker
79 handed me Katie’s backpack and said “I’m sorry, Coach.” I looked inside and there was the open
80 six pack and four empty cans of Jackalope Java Juice. I asked Parker what those cans were doing
81 there, but I could not get Parker to say another word. Just then, Robin Johnson came up and
82 grabbed the backpack. Johnson left in a hurry, before I could say anything.

83 I feel awful about this whole thing. The Johnson family has been through a terrible ordeal

84 that no one should have to go through. But in my heart, I have to believe that this was just one
85 of those lightning bolt out of the blue events that no one will ever fully understand. Besides, if it
86 was the Jackalope Java Juice that caused this, then that raises a couple of questions that I would
87 rather not face. Was Katie responsible for what happened, when she tried to amp herself up for
88 that last round? Was I responsible for not taking a harder line on my kids, when it came to those
89 energy drinks? One thing I do know is that, if I ever see another one of my kids using that stuff,
90 they are going to get more than an earful from me now.

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Andy Stone

Andy Stone

May 30, 2017

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EXHIBIT 1

Alex Montgomery, MD
456 Hyperion Drive
Carter City, WY 82999
307-555-5555
alex_montgomery@freemail.net

I am a board-certified emergency medicine specialist with additional training and certification in toxicology. My practice is primarily oriented to the delivery of direct patient care services. However, I am available to consult privately on medico-legal issues on a case by case basis.

Education and Training:

Wyoming State University	B.S. Chemistry	2002
Washington School of Medicine	M.D.	2006
University of Utah	Residency in Emergency Medicine	2006-2009
Boston University	Fellowship in Toxicology	2009-2011

Board Certifications:

Diplomate	National Board of Medical Examiners	2006
Diplomate	American Board of Emergency Medicine	2010
Diplomate	American Board of Emergency Medicine with Special Qualifications in Medical Toxicology	2013

Medical Licenses:

Utah #38387465	2006 (active)
Massachusetts #859038985	2009 (inactive)
Wyoming #299873	2011 (active)

Employment:

Carter County Memorial Hospital	
Emergency room physician	2011 – 2015
Director of emergency services	2015 to present
Carter County Poison Control Center	
Director	2013 to present

EXHIBIT 2

Hayden Moran, MD, FAAEM, FACWT

Name: Hayden Moran, MD, FAAEM, FACWT

Date of Birth: March 13, 1959

Place of Birth: Wyoming, PA

Address: 34256 Rancho Grande Drive
Vacaville, CA 95625

Telephone: 999-324-4325

Email: toxdox234@dose.net

Education and Professional Training

1976-1980	Princeton University Princeton, NJ	A.B. Biochemistry (summa cum laude)
1980-1984	University of Southern California Los Angeles, CA	M.D.
1984-1987 at Los Angeles Los Angeles, CA	University of California Emergency Medicine	Residency in Internal Medicine and
1988-1990 at Los Angeles Los Angeles, CA	University of California	Fellowship in Cardiology
1990-1992 at Los Angeles Los Angeles, CA	University of California	Fellowship in Toxicology

Certifications and Licensures

Medical Toxicology	1993 to present
Internal Medicine with Cardiology Subspecialty	1990 to present
Emergency Medicine	1988 to present
California License 34562987	1980 to present

Publications

1. Moran, H., Beesley, D.F., Witmann, H.H., Emergency treatment of acute atrial fibrillation in teen-aged patients, Emergency Medicine Today, 1990 June

EXHIBIT 3

Jackalope Java Juice (JACK) Label 2015

NUTRITION FACTS

Serving Size 8 oz. (1 Can)

Amount Per Serving	% Daily Value
Calories: 160	
Total Fat: 0g	0%
Sodium: 150 mg	10%
Total Carb: 40g	13%
Sugars: 40g	
Protein: 0g	
Niacin	150%
Vitamin B6	150%
Vitamin B12	150%
Pantothenic Acid	150%

(Percent daily values based on 2000-calorie diet.)

ENERGY BLEND

Taurine, guarana, glucuronic acid, Malic Acid, Ginseng Blend, L-Carnitine, glucose, L-Phenlalanine, Caffeine.
Caffeine from all sources: 300 mg per 8 oz serving.

CONSUME RESPONSIBLY: Not recommended for children, people sensitive to caffeine or pregnant or nursing women. Contains high levels of caffeine, a stimulant known to restore mental awareness and improve cognitive function. May cause sleeplessness, irritability, high blood pressure and, occasionally, rapid heart rate.

These statements have not been evaluated by the Food and Drug Administration. This product should not be used to diagnose, treat, cure or prevent any disease.

EXHIBIT 4

Jackalope Java Juice (JACK) Label 2016

NUTRITION FACTS

Serving Size 8 oz. (1 Can)

Amount Per Serving	% Daily Value
Calories: 160	
Total Fat: 0g	0%
Sodium: 150 mg	10%
Total Carb: 40g	13%
Sugars: 40g	
Protein: 0g	
Niacin	150%
Vitamin B6	150%
Vitamin B12	150%
Pantothenic Acid	150%

(Percent daily values based on 2000-calorie diet.)

ENERGY BLEND

Taurine, guarana, glucuronic acid, Malic Acid, Ginseng Blend, L-Carnitine, glucose, L-Phenlalanine, Caffeine.
Caffeine from all sources: 300 mg per 8 oz serving.

CONSUME RESPONSIBLY: Not recommended for children, people sensitive to caffeine or pregnant or nursing women. Contains high levels of caffeine, a stimulant known to restore mental awareness and improve cognitive function. May cause sleeplessness, irritability, high blood pressure and, occasionally, rapid heart rate.

These statements have not been evaluated by the Food and Drug Administration. This product should not be used to diagnose, treat, cure or prevent any disease.

MAY CAUSE HEART ATTACK, CONVULSIONS OR DEATH

EXHIBIT 5

SAGEBRUSH MEDIA CONSULTANTS
1004 MAIN STREET, SUITE 104
CARTER CITY, WYOMING 82999
TEL: (307) 555-9876
FAX: (307) 555-9872
sagebrush@wyocom.net



October 12, 2014

Carol Hudson
JJJ Beverages, LLC
234 Cold Creek Drive
Carter City, WY 82999

Re: Pre-Market Study for Jackalope Java Juice Campaign

Dear Carol:

Thank you for selecting Sagebrush Media Consultants to conduct the pre-market survey for the proposed Jackalope Java Juice Campaign. The full report will follow, but this letter will summarize our findings:

The proposed ads and slogans that we tested showed the following results for the different age groups:

Need a jump? You need JACK!

Group:	Positive %	Neutral %	Negative %
Baby Boomers (1946-1964)	23	42	35
Gen X (1965-1980)	32	34	34
Gen Y (Millennials) (1981-2000)	42	31	27
Gen Z (2001-present)	48	32	20

Kick it up with JACK!

Group:	Positive %	Neutral %	Negative %
Baby Boomers (1946-1964)	32	45	23
Gen X (1965-1980)	30	33	37
Gen Y (Millennials) (1981-2000)	35	32	33
Gen Z (2001-present)	24	43	33

If you can't go the distance, you don't know JACK!

Group:	Positive %	Neutral %	Negative %
Baby Boomers (1946-1964)	25	43	32
Gen X (1965-1980)	35	35	30
Gen Y (Millennials) (1981-2000)	40	32	28
Gen Z (2001-present)	44	32	24

JACK! It's not just for fun!

Group:	Positive %	Neutral %	Negative %
Baby Boomers (1946-1964)	35	33	32
Gen X (1965-1980)	35	37	28
Gen Y (Millennials) (1981-2000)	22	36	42
Gen Z (2001-present)	20	37	43

The proposed video and print ads featuring the Jackalope Jack cartoon character also tested well for all age groups.

Group:	Positive %	Neutral %	Negative %
Baby Boomers (1946-1964)	36	34	30
Gen X (1965-1980)	34	37	29
Gen Y (Millennials) (1981-2000)	41	37	22
Gen Z (2001-present)	51	32	17

Thank you for the chance to be of service.

Yours truly,

Addie Freeman

Addie Freeman

EXHIBIT 6

**Jim's Stop and Pop
23 Main Street
Carter City, WY 82999**

5/5/15

7:34 am

Quantity	Description	Price
1	Jackalope Java Juice (6 pack)	6.99
Tax		0.42
Total		7.41
Tendered		10.00
Change		2.59



Carter City High School
Home of the Fighting Ravens

CARTER CITY HIGH SCHOOL
STUDENT ACTIVITY NO ALCOHOL/DRUG PLEDGE

Carter City High School has a strict no drug and no alcohol policy, which is strictly enforced. As a condition of participation in any student activity, every student is required to read and sign this form.

I, **Katie Johnson**, have been advised of the “zero tolerance” policies and practices of Carter City High School and I pledge to obey and adhere to those policies and practices as a condition of my participation in school activities, including **Speech and Debate**.

I will not use or consume alcohol or illegal drugs for any purpose. I will not use or consume any other legal or illegal substance for pleasure or to enhance my performance. I understand that any failure on my part to strictly follow these rules may result in discipline, including but not limited to my immediate dismissal from the activity or team.

Dated this **15** day of **September**, 20 **14**.

Signature: Katie Johnson

Print name: **Katie Johnson**

EXHIBIT 8

Consumer Research: Caffeine levels for 15 products 6- 242 milligrams per serving

CAFFEINE RATINGS OF TESTED BEVERAGES In order of caffeine content, lowest to highest (Includes “energy drinks,” coffee and soft drinks)

Product	Size (fl oz)	Calories	Sugar (g)	Caffeine mg)
4-hour Energy Decaf	1.9	4	0	6
Valley Dew Soda	16	170	46	54
Volt Energy	8	110	29	71
Folkstar Double Strength	8	140	31	80
Red Bear Energy	8.4	110	27	83
Troll Energy	8	100	27	92
Voodoo Energy Drink	8.4	100	25	118
Nevada Energy	8	100	26	129
Cliff Shot Turbo Gel	1.2 (grams)	100	12	133
Starducks Coffee Doubleshot	15	210	26	162
4-hour Energy	1.9	4	0	215
Folkstar Energy Shot	2.5	10	0	229
Jackalope Java Juice	8	100	25	300

EXHIBIT 9

CAERS Adverse Events Reports Allegedly Related to Jackalope Java Juice

The Center for Food Safety Adverse Event Reporting System (CAERS) is a post-market surveillance system that collects reports about events or problems that are allegedly related to Center for Food Safety regulated products. In some reports, information in the reports cannot be verified for accuracy. In many reports, individuals may have used other products, and many products contain multiple ingredients, which further complicates the evaluation of adverse event reports.

There is no certainty that a reported adverse event can be attributed to a particular product or ingredient. The number of adverse event reports in CAERS received by FDA and the adverse event report itself about a particular product reflect only information as reported and does not represent any conclusion by FDA regarding a causal relationship or association with the product or ingredient.

Each report received by CAERS regarding an individual who experiences an adverse event is assigned a unique report number.

Report #	Received Date	Product Name	Symptoms	Outcomes
79009	1-25-15	Jackalope Java Juice	Flushing, lethargy, dizziness, anxiety, dyspnoea, blood pressure fluctuation, heart rate abnormal, dyspnoea, shock, chest pain, syncope, vomiting, diarrhea, visual disturbance, tachycardia, headache, anaphylactic reaction	Life-threatening, visited an ER, visited a health care provider, required intervention to prevent permanent impairment
90017	3-4-15	Jackalope Java Juice	Heart rate abnormal, faecal incontinence, loss of consciousness, dizziness, vomiting, disorientation, aggression, loss of consciousness, lethargy, headache, tenderness, dizziness, c]vomiting projectile, heart rate increased, drug toxicity	Life-threatening, hospitalization
11003	4-10-15	Jackalope Java Juice	Arrhythmia, supraventricular tachycardia, pallor, angina pectoris	Visited a health care provider
11267	4-25-15	Jackalope Java Juice	Hyperhidrosis, heart rate increased, anxiety, dizziness, fear	Visited an ER, non-serious injuries/illness

Report #	Received Date	Product Name	Symptoms	Outcomes
11555	5-10-15	Jackalope Java Juice	Arterial disorder, infarction, cerebrovascular accident, biopsy blood vessel abnormal	Hospitalization, disability
11890	6-29-15	Jackalope Java Juice	Vomiting, crying, anxiety	Visited a health care provider, visited an ER
11990	8-3-15	Jackalope Java Juice	Death	Death
12002	9-15-15	Jackalope Java Juice	Cardiac arrest, cerebrovascular accident, dizziness, feeling jittery, respiratory arrest	Disability, other serious (important medical events), life threatening, hospitalization
12355	11-14-15	Jackalope Java Juice	Anaphylactic shock, urticaria, dyspnoea, lethargy, hypersomnia, asthenia	Lifethreatening, visited an ER, visited a health care provider, other serious (important medical events)
12979	1-15-16	Jackalope Java Juice	Coma, cerebrovascular accident, hypoaesthesia, visual impairment	Hospitalization, disability
13011	2-23-16	Jackalope Java Juice	Dehydration, paralysis, feeling jittery, tremor, muscle contractions involuntary, blood potassium decreased, blood caffeine increased	Visited an ER, life threatening

Report #	Received Date	Product Name	Symptoms	Outcomes
13467	3-18-16	Jackalope Java Juice	Myocardial infarction, death	Death
13999	5-31-16	Jackalope Java Juice	Lethargy, abdominal pain, heart rate abnormal	Non-serious injuries/illness
14424	6-17-16	Jackalope Java Juice	Abdominal pain upper nausea, pain, body temperature increased, vomiting, jaundice, hepatitis, ammonia increased, alanine aminotransferase increased, blood bilirubin increased, aspartate aminotransferase increased, blood bilirubin increased, gamma-glutamyltransferase increased	Visited an ER, hospitalization
14897	7-3-16	Jackalope Java Juice	Cerebrovascular accident, cerebral haemorrhage	Life threatening, hospitalization
15034	9-27-16	Jackalope Java Juice	Erythema, pruritus, tongue edema, urticaria, obstructive airways disorder, dysphagia	Visited an ER, life threatening
15722	10-19-16	Jackalope Java Juice	Dyspnoea, Pollakiuria, blood potassium decreased.	Visited an ER, hospitalization
16535	12-30-16	Jackalope Java Juice	Mania, psychotic disorder	Visited an ER, hospitalization

EXHIBIT 10



ABA Guidance for the Responsible Labeling and Marketing of Energy Drinks

The American Beverage Association (ABA) is the trade association representing the broad spectrum of companies that manufacture and distribute non-alcoholic beverages, including energy drinks, in the United States. ABA member companies, which include The Coca-Cola Company, Dr Pepper Snapple Group, Monster, PepsiCo, Red Bull and ROCKSTAR, represent approximately 95 percent of the energy drink category in the United States and have agreed to the following common commitments regarding the labeling and marketing of energy drinks. These commitments were adopted by the ABA Board of Directors on April 30, 2014:

Labeling

- Energy drinks will be labelled as conventional foods/beverages, and not as dietary supplements.
- Energy drink labels will declare the total quantity of caffeine (from all sources) in the container, on a per can/bottle basis and, for multi-serving containers, on a per serving basis (e.g., “caffeine content: xx mg/8 fl oz; yy mg/per can.”). This quantitative caffeine declaration will be separate and apart from the ingredient statement and the Nutrition Facts Panel.
- Energy drinks labels will include the following advisory statement, or its equivalent: “Not intended/recommended) for children, pregnant or nursing women (and/or persons/those) sensitive to caffeine.”
- Energy drink labels will not promote mixing with alcohol nor make any claims that the consumption of alcohol together with energy drinks counteracts the effects of alcohol.
- Energy drink labels will not promote excessive or unduly rapid consumption.

Marketing

- Energy drink manufacturers will not market their energy drink products to children under 12 years of age (“Children”) as set forth in the International Council of Beverages Associations’ (ICBA) Global Policy on Marketing to Children.
- Energy drink manufacturers will not sell or market their energy drink products in K-12 schools, in accordance with the industry’s School Beverage Guidelines and in the ABA statement regarding the Sale of Energy Drinks in Schools. In addition, energy drink manufacturers will not market or Sell their energy drink products at K-12 school events or activities on K-12 school premises, and will use commercially reasonable efforts to encourage third party distributors that deliver and sell their energy drink products to comply with these practices.
- Energy drink manufacturers will not provide energy drink product samples or product coupons to Children, nor will they provide energy drink product samples or product coupons in the immediate

vicinity of K-12 schools. In addition, energy drink manufacturers will use commercially reasonable efforts to encourage their third-party distributors that deliver and sell their products to comply with these practices.

- Energy drink manufacturers will not highlight images of Children or other images featuring persons where those pictured are predominantly Children on their company-managed websites.
- Energy drink manufacturers will not purchase advertising on television, radio or print media and, when audience data are available, Internet and mobile media, in each case where the target audience is predominantly comprised of Children.
- Energy drink manufacturers will not promote excessive or unduly rapid consumption of their
- energy drink products in any marketing or advertising materials.

Compliance

ABA Member Companies will modify their labels and practices as set forth above, as soon as commercially practicable. ABA will work with an independent third party validator to monitor implementation progress of these commitments on an annual basis, beginning one year after their adoption.

CARTER COUNTY MEMORIAL HOSPITAL LABORATORY REPORT

Patient: Katie Johnson
DOB: 6/3/01
Admission #: 23987

Sample collected: 5/5/15 1835
Sample tested: 5/5/15 1847
Results reported: 5/5/15 1907

GENERAL BLOOD CHEMISTRY

Procedure	Level	Units	Reference Range
Glucose Level	110	mg/dL	65-115
BUN	20	mg/dL	5-23
Creatinine	1.1	mg/dL	0.6-1.5
BUN/Creat ratio	18.2		12.0-28.0
Sodium	138	mmol/L	132-148
Potassium	2.2 L	mmol/L	3.5-5.1
Chloride	99	mmol/L	96-113
CO2	21	mmol/L	21-32
Calcium	9.2	mg/dL	8.3-10.4
Protein, Total	7.2	g/dL	5.6-7.8
Albumin	4.4	g/dL	3.4-5.0

Values marked H (high) or L (low) will be called to the floor immediately.

WYOMING POISON CENTER LABORATORY
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Re: SAMPLE NUMBER 2015-188374

Following a telephone request from Alex Montgomery, M.D., on May 6, 2015, this laboratory ran additional tests on a previously received blood sample from a patient identified as Katie Johnson (dob: 6/3/2001). Earlier tests for alcohol and other drugs of abuse had come back negative. Following Dr. Montgomery's instruction, an additional test for caffeine was conducted and produced the following findings:

Caffeine plasma level: 23.2 mg/L High

This result was telephoned to Dr. Montgomery with this report to follow.

Exhibit 13

HOW TO READ AN ECG STRIP

ECG paper is a grid where time is measured along the horizontal axis.

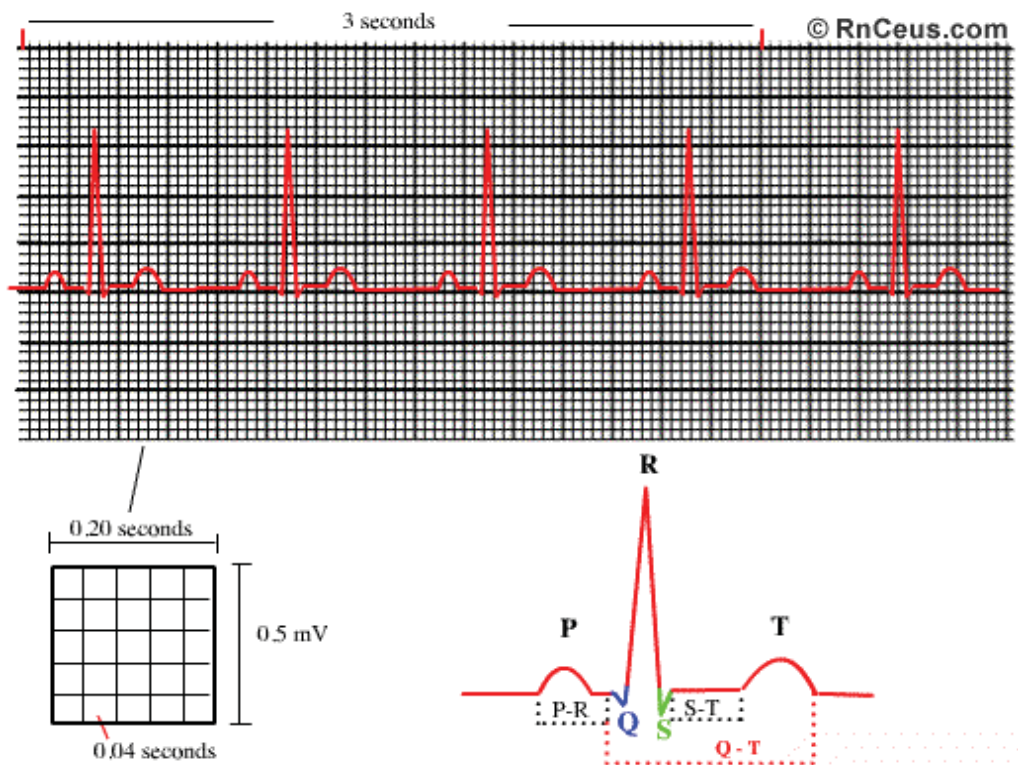
Each small square is 1 mm in length and represents 0.04 seconds.

Each larger square is 5 mm in length and represents 0.2 seconds.

Voltage is measured along the vertical axis.

10 mm is equal to 1mV in voltage.

The diagram below illustrates the configuration of ECG graph paper and where to measure the components of the ECG wave form.



Heart rate can be easily calculated from the ECG strip:

When the rhythm is regular, the heart rate is 300 divided by the number of large squares between the QRS complexes.

For example, if there are 4 large squares between regular QRS complexes, the heart rate is 75 ($300/4=75$).

The second method can be used with an irregular rhythm to estimate the rate. Count the number of R waves in a 6 second strip and multiply by 10.

For example, if there are 7 R waves in a 6 second strip, the heart rate is 70 ($7 \times 10 = 70$).