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CONSUMER PROTECTION DIV.

IN RE:

PHUSION PROJECTS, LLC

ASSURANCE OF VOLUNTARY COMPLIANCE AND VOLUNTARY DISCONTINUANCE

I. RECITALS

WHEREAS, this Assurance of Voluntary Compliance and Voluntary Discontinuance (hereinafter "Assurance" or "Agreement") is entered into between the states and jurisdictions who are signatories to this agreement (hereinafter "Signatory Jurisdiction Attorneys"), acting pursuant to their respective consumer protection and trade practice statutes, and Phusion Projects, LLC, Jaisen Freeman, Christopher Hunter, and Jeffrey Wright, individually and as officers of Phusion Projects, LLC (collectively "Phusion") in order to resolve claims covered by the Release in Section V of this Agreement with respect to Phusion's marketing and sale of its Covered Flavored Malt Beverages ("Covered FMBs") (as defined herein), including Four, Four MaXed, and Four Loko;

WHEREAS, the states, political subdivisions and departments identified at the end of this Agreement are hereinafter collectively referred to as the "Signatory Jurisdictions";

WHEREAS, Phusion was and is engaged in the business of making and selling alcohol beverages, and its principal place of business is located at 640 North LaSalle Drive, Suite 265, Chicago, Illinois 60654;

WHEREAS, Phusion has marketed and sold Covered FMBs, including, but not limited to, Caffeinated Alcohol Beverages ("CABs") (as defined herein) and including Four, Four MaXed, and Four Loko, in the Signatory Jurisdictions;

WHEREAS, the Signatory Jurisdiction Attorneys allege that the Misuse of Alcohol (as defined herein) puts individuals at increased risk for adverse health and social consequences and that Phusion has produced, marketed, and sold its Covered FMBs in violation of their respective consumer protection and trade practice statutes[1] by, among other practices, promoting the sale of its Covered FMBs to underage persons, promoting dangerous and/or excessive consumption of its Covered FMBs, promoting the Misuse of Alcohol, failing to disclose to consumers the effects and consequences of drinking alcohol beverages that are combined with caffeine and/or other stimulants; and manufacturing, marketing and

[1] ARIZONA – *Arizona Consumer Fraud Act*, A.R.S. § 44-1521 *et seq;* CONNECTICUT - *Connecticut Unfair Trade Practices Act*, Conn. Gen. Stat. §§ 42-110b *et seq.*; IDAHO – *Idaho Consumer Protection Act*, Idaho Code Ann. §§ 48-601 through 48-619; ILLINOIS – *Consumer Fraud and Deceptive Business Practices Act*, 815 ILCS 505/1 *et seq.*; INDIANA -- Ind. Code §§ 24-5-0.5 *et seq.*; IOWA - *Iowa Consumer Fraud Act*, Iowa Code Section 714.16; KANSAS - *Kansas Consumer Protection Act*, K.S.A. 50-623 *et seq.*; KENTUCKY – KRS 367.110-367.300; MAINE – *Unfair Trade Practices Act*, 5 M.R.S. § 205-A *et seq.*; MARYLAND - *Maryland Consumer Protection Act*, Md. Code Ann., Com. Law §§ 13-101 *et seq.*; MASSACHUSETTS – Regulation of Business Practice and Consumer Protection Act, Mass. Gen Laws. Ch. 93A, § 2; MISSISSIPPI – Miss. Code Ann. Section 75-24-1, *et seq.*; NEW MEXICO – *New Mexico Unfair Practices Act*, NMSA 1978, § 57-12-1 to -26; NEW YORK – General Business Law Art. 22-A, §§ 349-50, and Executive Law § 63(12); NORTH CAROLINA – *North Carolina Unfair and Deceptive Trade Practices Act*, N.C.G.S. § 75-1.1, *et seq.*; OHIO – *Ohio Consumer Sales Practices Act*, R.C. 1345.01, *et seq.*; OREGON – *Oregon Unlawful Trade Practices Act*, Or. Rev. Stat. § 646.605 *et seq.;* PENNSYLVANIA – *Pennsylvania Unfair Trade Practices and Consumer Protection Law*, 73 P.S. §§ 201-1 *et seq.*; TENNESSEE – *Tennessee Consumer Protection Act*, Tenn. Code Ann. 47-18-101 *et seq.*; WASHINGTON – *Unfair Business Practices/Consumer Protection Act*, RCW §§ 19.86 *et seq*; SAN FRANCISCO – California Business and Professions Code Section 17200, *et seq*.

selling CABs that are unsafe and adulterated food products while representing, impliedly or expressly, that its CABs are safe for consumption;

WHEREAS, Phusion denies the Signatory Jurisdictions' allegations, as set forth herein, and denies that it violated the law, including, without limitation, the respective consumer protection and trade practice statutes of the Signatory Jurisdiction Attorneys (as set forth in Footnote 1), and alleges that it obtained all necessary federal and state approvals for its alcohol beverages, including, without limitation, approvals for the formula, alcohol content, container size, can design and labeling of such beverages; and alleges that its sale and marketing of its alcohol beverages complied with all applicable federal and state requirements and that its marketing and advertising has always been directed to consumers age 21 and over;

WHEREAS, the parties, having consented to the entry of this Agreement for the purposes of settlement only, and without trial of any issue of fact or law, and without admitting any factual allegations contained herein; moreover, nothing in this paragraph constitutes an abrogation or waiver by the Signatory Jurisdiction Attorneys of the provisions of their respective state laws relating to Assurances;

NOW THEREFORE, the parties agree to the following terms and conditions to settle the differences between them:

II. DEFINITIONS

A. "Agreement" means this Assurance of Voluntary Compliance and Voluntary Discontinuance.

B. "Binge Drinking" means a pattern of alcohol consumption generally corresponding to consuming five or more Drinks for men or four or more Drinks for women within two hours.

C. "Caffeinated Alcohol Beverages" or "CABs" means malt-based alcohol beverages to which is directly added, as a separate ingredient, caffeine, and/or other ingredients that are metabolized as caffeine, including, but not limited to, Four CABs, as defined herein.

D. "Covered Flavored Malt Beverage"[2] ("Covered FMB") means any beverage:

(1) made by the alcoholic fermentation, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without other wholesome products suitable for human food consumption; and

(2) to which flavors containing alcohol and/or nonbeverage ingredients containing alcohol have been added; provided that, such flavors and nonbeverage ingredients may contribute no more than 49% of the overall alcohol content of the finished product unless the alcohol content is more than 6% by volume, in which case no more than 1.5% of the volume of the finished product may consist

[2] The definition of "Covered Flavored Malt Beverage" in this Agreement shall not be construed to alter, impair, or interfere in any manner with any state, local or federal taxation or regulation of alcoholic beverages.

of alcohol derived from added flavors containing alcohol and non-beverage ingredients containing alcohol; and

(3) which may be filtered or otherwise processed in order to remove color, taste, aroma, bitterness, or other characteristics derived from fermentation.

"Covered FMB" includes, but is not limited to, all versions of Phusion Projects, LLC's Four, Four MaXed, and Four Loko products.

E. "Effective Date" means March 5, 2014, by which date all parties shall have executed this Agreement.

F. "Drink" means 0.60 fluid ounces of ethanol.

G. "Four CABs" means all CABs that were produced at any time by Phusion Projects, LLC, including Four, Four MaXed, and Four Loko.

H. "Misuse of Alcohol" means:

(1) the consumption of an alcoholic beverage to an extent demonstrated by the physical manifestation of intoxication, including, but not limited to, persons lacking control over their behavior, movement, speech, or bodily functions as a result of such consumption, which may include: slurred speech, bloodshot eyes, vomiting, hiccupping, hangover, impaired motor skills or reckless behavior;

(2) the consumption of an alcoholic beverage by means of a rapid or excessive ingestion technique or device, such as a beer bong, funnel, hose, or a modified container with an additional spout or vent, or the holding of two or more containers of a Covered FMB by one individual, with the apparent or implied intent to consume the content of such containers, on a single occasion, (i.e., "double fisting");

(3) consumption of alcohol by an Underage Person;

(4) driving a motor vehicle while either intoxicated or consuming alcohol;

(5) Binge Drinking (as defined herein).

Misuse of Alcohol is illustrated by, but not confined to, the images and text contained in Exhibit A to this Agreement.

I. "Promote," "Promoting," or "Promotional" means calling attention through advertising, marketing, or publicity or any other means that tend to increase awareness or sales of a product(s).

J. "Underage Person" means an individual who is not of age to legally possess alcoholic beverages in the Signatory Jurisdiction.

K. "User Generated Content" means content, including text, graphics, video and audio, that is posted on a website, social media site, or mobile application or technology by individual users or consumers, and not by Phusion Projects, LLC, its agents or representatives.

III. INJUNCTIONS

This Agreement is being entered into by and between counsel for the Signatory Jurisdictions ("Signatory Jurisdiction Attorneys") and Phusion Projects, LLC, Jaisen Freeman, Christopher Hunter, and Jeffrey Wright, individually and as officers of Phusion Projects, LLC (collectively, "Phusion"). Except as provided in Section IV and Section VI.N. – P., the Injunctions and Other Terms and Obligations set forth in Sections III and VI.A. – M. of this Agreement apply to Phusion, any successor entity, its agents, representatives, employees, or other persons directly or indirectly under its control, or Jaisen Freeman, Christopher Hunter, and Jeffrey Wright, individually, when such individual(s) is (are) a significant shareholder (5% or more equity owner) of, or when such individual(s) directly or indirectly manage(s) or control(s), any entity.

IT IS HEREBY AGREED THAT:

A. Phusion shall deliver a copy of this Agreement to all current and future principals, officers, directors, attorneys, and management level employees of Phusion, and shall secure from each such person a signed and dated statement acknowledging receipt of the Agreement. Phusion shall deliver this Agreement to such current personnel within three (3) business days after the Effective Date, and to such future personnel within three (3) business days after the person assumes such duties or responsibilities. Phusion shall retain all such statements and make them available to Signatory Jurisdictions within five (5) business days after a request.

B. Phusion shall not represent, imply, or cause to be represented or implied that Signatory Jurisdictions, or any governmental unit thereof, approved, sanctioned, or authorized, in whole or in part, any past, current or future practice, act or conduct of Phusion, except that Phusion may represent, where truthful, that it obtained a specified license issued by a Signatory Jurisdiction or a governmental unit thereof.

C. Phusion shall not manufacture, market, sell or distribute any and all CABs, including but not limited to, the Four CABs, and shall not Promote mixing Covered FMBs with products containing caffeine and/or other ingredients that are metabolized as caffeine.

D. If Phusion receives notice that a retailer in any Signatory Jurisdiction may be offering one of its CABs for sale, Phusion shall continue to facilitate the immediate removal of its CABs from all retailers' shelves, and Phusion shall report the information to the applicable Signatory Jurisdiction Attorney within five (5) business days following receipt of said notice.

E. Phusion shall not produce or provide to wholesalers, distributors or retailers any point-of-sale or other promotional materials for CABs or such materials that Promote mixing Covered FMBs with products containing caffeine and/or other ingredients that are metabolized as caffeine. If Phusion receives notice that any wholesaler, distributor, or retailer may be displaying or disseminating point-of-sale materials that Promote Four CABs or mixing its Covered FMBs with products containing caffeine and/or other ingredients that are metabolized as caffeine, Phusion shall report the information to the applicable Signatory Jurisdiction Attorney within five (5) business days following receipt of said notice.

F. Phusion shall monitor all websites, social media, or mobile applications or technology owned or controlled by Phusion Projects, LLC (collectively, "Digital Marketing Medium"). Phusion shall use its best efforts, as measured by technology that is reasonably available, priced and usable at that time for that

specific Digital Marketing Medium, to prevent the posting of, and shall remove as soon as practicable, but under any circumstances, by no later than one (1) business day after posting, all User Generated Content that depicts, describes or represents the consumption of Four CABs or mixing Covered FMBs with products containing caffeine and/or other ingredients that are metabolized as caffeine ("User Generated CAB Content"). Phusion shall remove as soon as practicable, but under any circumstances, by no later than twenty-four (24) hours after posting, User Generated CAB Content posted in response to a post by Phusion. In the event a Signatory Jurisdiction Attorney notifies Phusion in writing (which may be by e-mail) of the date, time and exact posting of prohibited User Generated CAB Content, Phusion shall remove such content as soon as practicable, but not later than twenty-four (24) hours following receipt of notice.

G. Phusion shall inform distributors and retailers that its Covered FMBs contain alcohol and shall advise or continue to advise retailers to display and sell its Covered FMBs separate and apart from non-alcoholic products.

H. Phusion shall not sell, offer for sale, distribute or Promote alcohol products to Underage Persons.

I. Phusion shall not hire or engage Underage Persons to Promote alcohol products under any circumstances. All models and actors hired or engaged to appear in Phusion's Promotional materials for its alcohol products shall be a minimum of 25 years old, substantiated by proper identification, and shall reasonably appear to be over 21 years of age.

J. Phusion shall not Promote Covered FMBs on school-, college- or university-property, except at retail establishments licensed to sell and/or serve alcohol products, provided that such Promotional activities are in full compliance with applicable laws and regulations and institutional rules and policies. Nothing in this provision shall preclude Phusion from Promoting Covered FMBs at a graduate or professional college or graduate or professional university where more than eighty-five (85) percent of the students are above the age of 21 and where Phusion fully complies with applicable laws and regulations, institutional rules and policies, and all other provisions of this Agreement.

K. Phusion shall not use the names, initials, logos, or mascots of any school, college, university, student organization, sorority, or fraternity in Phusion's Promotional materials related to Phusion's alcohol products, including on any website, social media, or mobile application or technology.

L. Phusion shall not use depictions or descriptions of Santa Claus in any Promotional materials, including on any website, social media or mobile application or technology. (*See, e.g.*, Exhibit B.)

M. Phusion shall not distribute, sell, provide or Promote merchandise bearing the brand name and/or logo of Covered FMBs to Underage Persons and shall use commercially reasonable measures to restrict such activities by third parties.

N. Phusion shall not depict or portray the Misuse of Alcohol under any circumstances or through any media.

O. Phusion shall not write, authorize or use songs and/or videos for Promotional purposes that depict or condone the Misuse of Alcohol under any circumstances or through any media, including but not limited to, Amazon, Facebook, iTunes and/or YouTube.

P. Phusion shall monitor all websites, social media, and mobile applications or technology owned or controlled by Phusion Projects, LLC (collectively, "Digital Marketing Medium"). Phusion shall use its best efforts as measured by technology that is reasonably available, priced and usable for that specific Digital Marketing Medium, to prevent the posting of, and shall remove, as soon as practicable but, under any circumstances by not later than one (1) business day after posting, all User Generated Content that depicts or condones the Misuse of Alcohol, or is otherwise prohibited under this Agreement. Phusion shall remove as soon as practicable, but under any circumstances, by no later than twenty-four (24) hours after posting, User Generated Content posted in response to a post by Phusion. In the event a Signatory Jurisdiction Attorney notifies Phusion in writing (which may be by e-mail) of the date, time and exact posting of prohibited User Generated Content that depicts or condones the Misuse of Alcohol, Phusion shall remove such content as soon as practicable, but not later than twenty-four (24) hours following receipt of notice.

Q. Phusion shall not cause or encourage third parties to engage in practices from which Phusion is prohibited by this Agreement, including, but not limited to, promoting the consumption of its CABs or mixing Covered FMBs with products containing caffeine and/or other ingredients that are metabolized as caffeine, and/or depicting, or condoning the Misuse of Alcohol.

R. If Phusion receives notice that a third party is engaging in a practice that would be prohibited by this Agreement if engaged in by Phusion, Phusion shall promptly take commercially reasonable steps to stop or limit such activity, including requesting that a website or social media site administrator remove such content.

S. Unless otherwise specified, Phusion must comply with the terms of this Agreement by the Effective Date.

IV. PAYMENT TO THE SIGNATORY JURISDICTIONS

A. Phusion Projects, LLC shall pay the Signatory Jurisdictions the total sum of Four Hundred Thousand Dollars ($400,000.00) on or before March 31, 2014, together with interest at ten percent (10%) per annum from December 31, 2013, to be distributed among those Signatory Jurisdictions as agreed by the Signatory Jurisdiction Attorneys. All payments under this Agreement shall be made by wire transfer to the Office of the Arizona Attorney General in accordance with instructions to be provided by the Arizona Attorney General ("Wire Transfer Instructions"). The Arizona Attorney General shall hold the payments made pursuant to this Agreement in an interest bearing account in trust for the Signatory Jurisdictions and, as soon as practicable, but not later than six months after receipt, shall distribute the payments among the Signatory Jurisdictions pursuant to the Signatory Jurisdiction Attorneys' agreement.

B. Such payments shall be used for attorneys' fees, and/or costs of investigation, and/or shall be placed in or applied to consumer education, public protection, or local consumer aid funds, including implementation of programs designed to prevent illegal, underage drinking, or for any other purpose

authorized by state law, at the sole discretion of each Signatory Attorney General, or in the case of San Francisco, the City Attorney.

C. At the time Phusion executes this Agreement, Phusion will also sign the Stipulation to Judgment attached hereto as Exhibit C.

V. RELEASE

A. "Covered Conduct" shall mean Phusion's manufacture, sale or Promotion of its CABs or Covered FMBs. Covered Conduct shall not include Phusion's conduct relating to the number of Drinks, or amount of alcohol, in a container of Phusion's alcoholic beverages; Phusion's conduct relating to access by, or exposure of, Underage Persons to any website, social media, or mobile application or technology; or Phusion's manufacture, sale or Promotion of any alcoholic beverage other than its CABs or its Covered FMBs or its alcohol products, but only to the extent such products are subject to the Injunctive provisions of Section III. of this Agreement.

B. Effective upon full payment of the amounts due under Sections IV.A. of this Agreement to the Office of the Arizona Attorney General, the Signatory Jurisdictions release Phusion from all civil claims under the consumer protection statutes of their respective jurisdictions[3] resulting from the Covered Conduct up to and including the Effective Date that is the subject of this Agreement, including without limitation any and all claims for payments for attorneys' fees and costs of investigation (collectively, the "Released Claims").

C. Notwithstanding any term of this Agreement, specifically reserved and excluded from the Released Claims as to any entity or person, including Released Parties, are any and all of the following:

(1) Any criminal liability that any person or entity, including Released Parties, has or may have to the Signatory Jurisdictions;

(2) Any civil or administrative liability that any person or entity, including Released Parties, has or may have to the Signatory Jurisdictions not expressly covered by the Release in Para. B above, including but not limited to, any and all of the following claims:

(a) Claims involving access by or exposure of Underage Persons to any website, social media, or mobile application or technology;

(b) Claims involving the number of Drinks, or amount of alcohol, in any container of alcoholic beverage;

(c) Claims involving the use of flavors and/or the color or other decoration of the containers; and

(d) Claims involving the manufacture, sale, or Promotion of any alcoholic beverage other than its CABs or its Covered FMBs or its alcohol products to the extent such products are subject to the Injunctive provisions of Section III. of this Agreement.

[3] *See* consumer protection statutes listed in Footnote 1.

(3) State or federal antitrust violations;

(4) Claims relating to laws enforced by a Signatory Jurisdiction's liquor control board or other similar state or local agency.

(5) Any claims that individual consumers or other persons have or may have against any person or entity, including Released Parties.

D. Nothing in this Agreement is intended, or shall be construed, as a waiver of any of Phusion's rights or defenses to any claims or potential liability excluded from the Release.

VI. OTHER TERMS AND OBLIGATIONS

A. Nothing in this Agreement shall be construed as relieving Phusion of its obligation to comply with all applicable state and federal laws, regulations, or rules, or granting it permission to engage in any acts or practices prohibited by such laws, regulations or rules.

B. Nothing in this Agreement shall be construed as affecting Phusion's rights and obligations outside the Signatory Jurisdictions.

C. Nothing in this Agreement constitutes approval of any of Phusion's past, present or future business practices.

D. Nothing in this Agreement shall prohibit Phusion from making any representation about any of its Covered FMBs that are specifically required by applicable statute, or regulation or order.

E. The Signatory Jurisdiction Attorneys are authorized to monitor compliance with this Agreement within their Jurisdictions by all lawful means. In addition, any duly authorized representative of the Signatory Jurisdiction Attorneys may request information and records relating to compliance with this Agreement, and Phusion shall make such requested information and records available within seven (7) business days of the request. Phusion may request additional time to comply with this provision.

F. A Signatory Jurisdiction Attorney may seek redress for any violation of applicable law either not covered by this Agreement or which occurs subsequent to its Effective Date.

G. The parties agree that Phusion may ask the Signatory Jurisdiction Attorneys to amend or terminate provisions of this Agreement in light of new or evolving technologies, business models, emerging science, settlements, laws, regulations, interpretations, the passage of time, or other relevant changes in circumstances, and the Signatory Jurisdiction Attorneys shall reasonably consider such requests.

H. Any notices to be sent to the parties shall be sent by nationally recognized overnight courier service, by certified mail, return receipt requested, or by personal delivery to the named party at the address set forth below:

1. Notice to the Signatory Jurisdiction Attorneys shall be directed to:

Dena Benjamin, Assistant Attorney General
Consumer Protection Advocacy Section

1275 West Washington Street
Phoenix, AZ 85007

Brendan T. Flynn, Assistant Attorney General
110 Sherman Street
Hartford, CT 06105

Brett DeLange, Deputy Attorney General
Consumer Protection Division
Office of the Attorney General
P.O. Box 83720
Boise, ID 83720-0010

Susan Ellis, Bureau Chief
Consumer Fraud Bureau
Office of Illinois Attorney General
100 W. Randolph Street., 12th Floor
Chicago, IL 60601

Luminita Nodit, Deputy Attorney General
Office of the Indiana Attorney General
302 W. Washington Street
Indianapolis, IN 46204

William L. Brauch, Director
Consumer Protection Division
1305 E. Walnut Street
Des Moines, IA 50319

Lynette R. Bakker, Assistant Attorney General
Office of the Kansas Attorney General
Consumer Protection & Antitrust Division
120 S.W. 10th Ave., 2nd Fl.
Topeka, KS 66612-1597

Michael Plumley, Assistant Attorney General
Kentucky Office of the Attorney General
700 Capitol Avenue, Suite 118
Frankfort, KY 40601

Linda Conti, Assistant Attorney General
Cross Office Building, 6th Floor
111 Sewall Street
Augusta, ME 04333

Lauren Calia, Senior Assistant Attorney General
Office of the Maryland Attorney General
Consumer Protection Division
200 St. Paul Place, 16th Floor
Baltimore, MD 21202

Amber Villa, Assistant Attorney General
Office of the Attorney General of Massachusetts
One Ashburton Place, 18th Floor
Boston, MA 02108

Bridgette W. Wiggins, Special Assistant Attorney General
Consumer Protection Division
Mississippi Attorney General's Office
Post Office Box 22947
Jackson, MS 39225

Lawrence Otero, Assistant Attorney General
Office of the New Mexico Attorney General
P.O. Drawer 1508
Santa Fe, NM 87504

Melvin L. Goldberg, Assistant Attorney General
State of New York Office of the Attorney General
Consumer Frauds and Protection Bureau
120 Broadway, 3rd Floor
New York, New York 10271

Stuart M. Saunders, Assistant Attorney General
Consumer Protection Division
North Carolina Department of Justice
114 W. Edenton Street
Raleigh, NC 27603

Melissa Szozda, Assistant Attorney General
Office of the Ohio Attorney General
30 E. Broad Street, Floor 14
Columbus, OH 43215

Drew Lianopoulos, Senior Assistant Attorney General
Financial Fraud/ Consumer Protection Section
Civil Enforcement Division
Oregon Department of Justice
1162 Court Street, NE
Salem, OR 97301-4096

Jessie L. Smith, Senior Deputy Attorney General
Pennsylvania Office of Attorney General
Health Care Section
14th Floor, Strawberry Square
Harrisburg, PA 17120

Cynthia E. Kinser, Deputy Attorney General
Consumer Advocate and Protection Division
Office of the Tennessee Attorney General
425 Fifth Avenue North
Nashville, TN 37243-3400

Shannon Smith, Senior Assistant Attorney General
Washington State Office of the Attorney General
800 5th Ave. Ste. 2000, TB-14
Seattle, WA 98104-3188

Francesca Gessner, Deputy City Attorney
City Attorney's Office
City Hall Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

2. Notice to Phusion shall be directed to:

Matthew R. Dornauer
General Counsel
Phusion Projects, LLC
640 N. LaSalle Dr., Suite 265
Chicago, IL 60654

3. Any party may change its designated notice recipient(s) by written notice to the other party.

4. Phusion Projects, LLC shall provide any new address and telephone number within two (2) days of relocating to a new address or of obtaining a new telephone number;

I. This Agreement may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect as, an original signature.

J. Nothing in this Agreement constitutes an agreement by the Signatory Jurisdictions concerning the characterization of the amounts paid hereunder for purposes of any proceeding under applicable tax laws.

K. No waiver, modification, or amendment of the terms of this Agreement shall be valid or binding unless made in writing, signed by both parties, approved by the Court as necessary, and then only to the extent specifically set forth in such written waiver, modification or amendment.

L. Any failure by any party to this Agreement to insist upon the strict performance by any other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

M. If any clause, provision or section of this Agreement shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Agreement, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

N. In the event that Phusion Projects, LLC fails to make payment in accordance with Section IV.A.,

1. The entire balance under this Agreement then remaining becomes due and payable without notice and may be collected by process authorized by law, together with interest as provided in Section IV.A. Phusion Projects, LLC agrees to pay all attorneys' fees and costs including, but not limited to, court costs, associated with any such collection efforts;

2. Phusion Projects, LLC agrees that Alan Bielawski, Esq. may accept service of process unless and until Phusion identifies an alternative agent and address for service of process; and

3. Phusion Projects, LLC agrees that it will not contest the non-dischargeability of all sums due under this Agreement. Specifically, Phusion Projects, LLC agrees not to contest a claim by the Signatory Jurisdictions that all sums due under this Agreement are civil penalties and are non-dischargeable under 11 U.S.C. § 532(a)(7). Phusion Projects, LLC further agrees that in any subsequent proceeding based upon failure to pay the monetary amount set forth in this Agreement, Phusion Projects, LLC shall not contest the Signatory Jurisdictions' rights to obtain the full amount due and owing, shall reaffirm any such debt if necessary in order to completely fulfill Phusion Project, LLC's monetary obligations to the Signatory Jurisdictions pursuant to this Agreement and shall not object in any manner or form that is contradictory to the terms of this Agreement to any proof of claim filed by a Signatory Jurisdiction.

O. The parties agreed that in evaluating whether to execute this Agreement, the parties have:

1. Intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to Phusion Projects, LLC, within the meaning of 11 U.S.C. § 547(b)(1), and

2. Concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

P. Phusion Projects, LLC shall give written notice of any bankruptcy filing on the same day of any such filing to each of the Signatory Jurisdictions at the addresses below or to such other addresses that the Signatory Jurisdictions provide.

APPROVED:

William L. Brauch
Special Assistant Attorney General
Director – Consumer Protection

PHUSION PROJECTS, LLC

By: _____
Name: Jaisen R. Freeman
Title: Managing Partner

JAISEN R. FREEMAN

By: _____
Name: Jaisen R. Freeman
Title: Managing Partner

JEFFREY R. WRIGHT

By: _____
Name: Jeffrey R. Wright
Title: Managing Partner

CHRISTOPHER E. HUNTER

By: _____
Name: Christopher E. Hunter
Title: Managing Partner

Exhibit A

i. "Get Lok'd"

ii. "Getting Loaded"

iii. "My baby boy is a result of my drunken Four binge of wonder."

iv. "I may have to have at least 4 of them [cans of Four Loko] tomorrow."

v. "I got 2 watermelon Lokos in my backpack jus beggin' to get slammed."

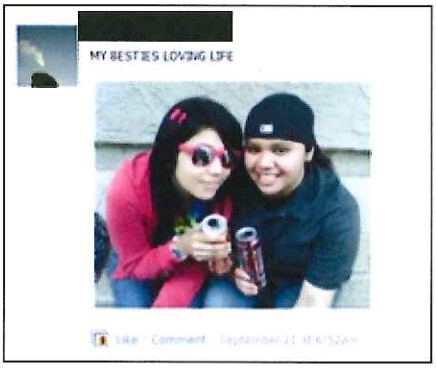
vi. [In response to the question: "'What Loko Starts the Perfect Saturday Night?'] 'The one in the 17 year olds hands.' 'The one that gets me drunk?'"

vii. Photo depicting an individual in the driver's seat of a motor vehicle holding one or more cans of Covered FMBs.

viii. Graphic depicting drinking from can of Covered FMB as a single serving (e.g., "One Hand, One Can").

ix. Photo depicting a tongue colored by Covered FMB.

x. Photo depicting one or more individuals who reasonably appear to be Underage Persons and who are unable to reasonably verify their age.



xi. Photo depicting one or more individuals who display obvious physical manifestations of Misuse of Alcohol.

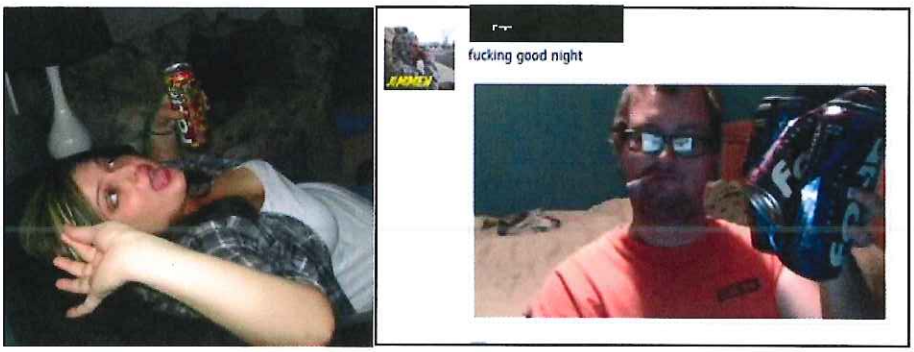


Exhibit B

Depictions of Santa Claus.

Exhibit C

Thomas C. Horne
Attorney General
(Firm State Bar No. 14000)
Dena Benjamin
State Bar No. 015421
Nancy V. Anger
Assistant Attorney General
State Bar No. 006810
Office of the Attorney General
1275 West Washington Street
Phoenix, AZ 85007-2926
Telephone: (602) 542-7710
Facsimile: (602) 542-4377
consumer@azag.gov
Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, *ex rel.* THOMAS C. HORNE, Attorney General, Plaintiff, vs. PHUSION PROJECTS, LLC Defendants.	Case No.: _____ **STIPULATION TO JUDGMENT**

Plaintiff, State of Arizona (the "State"), and Defendant, Phusion Projects, LLC ("Phusion") hereby stipulate that the Court may enter the judgment attached hereto upon the occurrence of a default, as set forth in the judgment.

In accordance with an Assurance of Voluntary Compliance and Voluntary Discontinuance ("AVC") executed by the State and certain other jurisdictions ("Signatory Jurisdictions") and Phusion, Phusion agreed to pay the State the amount of Four Hundred Thousand Dollars ($400,000.00), plus interest from and after December 31, 2013 at the rate of ten percent (10%) per annum, on or before March 31, 2014. Phusion further agreed to pay all

reasonable attorneys' fees and costs, including, but not limited to, court costs, associated with any collection efforts by the Signatory Jurisdictions in the event of a default, as set forth below.

Phusion shall be in default upon the occurrence of either of the following:

A. The State fails to receive the full payment required by the AVC from Phusion on or before March 31, 2014; or

B. Phusion files a petition under the bankruptcy laws.

Upon default, the State will file a motion with the Court certifying the amount unpaid under the AVC, with due notice given to Phusion, requesting that the Court enter the Judgment in the form attached hereto. Phusion hereby stipulates that it will not contest the entry of the Judgment, except if it contends that no default exists or the unpaid amount asserted by the State is incorrect.

The State will not proceed with any enforcement actions or collection efforts, including without limitation taking any steps to obtain a judgment lien, unless and until Phusion is in default (as set forth herein).

Phusion represents and warrants that the person signing below on behalf of Phusion is duly appointed and authorized to do so.

The State represents and warrants that it is authorized by the Signatory Jurisdictions to execute this Stipulation and take the enforcement actions described herein.

Thomas C. Horne
Attorney General

Dena Benjamin
Office of the Attorney General
State of Arizona

3/11/14
Date

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Phusion Project, LLC

J-F

Jaisen R. Freeman
Managing Partner
Phusion Project, LLC
640 North LaSalle, Suite 265
Chicago Illinois, 60654.

3-19-14

Date

Approved As To Form:

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

STATE OF ARIZONA, *ex rel.* THOMAS C. HORNE, Attorney General, Plaintiff, vs. PHUSION PROJECTS, LLC Defendants.	Case No.: _____ **JUDGMENT**

Based on the foregoing Stipulation and good cause appearing, due notice having been given to all parties; this Court hereby enters the following Judgment against Defendant, Phusion Projects, LLC, in favor of the Plaintiff, State of Arizona.

The parties entered into an Assurance of Voluntary Compliance and Voluntary Discontinuance, pursuant to A.R.S. § 44-1530 of the Arizona Consumer Fraud Act, wherein Defendant Phusion agreed to pay to the State, acting on behalf of the Signatory Jurisdictions, the amount of Four Hundred Thousand Dollars ($400,000.000), plus interest at the rate of ten percent (10%) per annum from December 31, 2013, on or before March 31, 2014. Defendant

Phusion, having defaulted on the payment provisions and having signed a Stipulation to Judgment that authorizes entry of a Judgment against it in the amount unpaid upon default (as set forth in the Stipulation),

NOW, therefore, it is ordered, adjudged and decreed:

1. The State is awarded judgment against Defendant Phusion for civil penalties in the amount of $_____.

2. The State shall recover from Defendant Phusion all reasonable attorneys' fees and costs, including, but not limited to, court costs, associated with this action and enforcement of this Judgment.

2. Jurisdiction is retained by this Court for the purpose of entertaining an application by Plaintiff for the enforcement of this Judgment.

3. Pursuant to Rule 54(b) of the Rules of Civil Procedure, the Court has determined that all issues and parties are conclusively disposed of by this Judgment, there is no reason for delay and it is therefore directed that Judgment as provided herein shall be entered forthwith.

DATED this ____ day of _____, 20____.

_____

Judge of the Maricopa County Superior Court

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