

# SECURITIES & EXCHANGE COMMISSION EDGAR FILING

## New Age Beverages Corp

Form: 8-K

Date Filed: 2018-12-27

Corporate Issuer CIK: 1579823

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

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FORM 8-K

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CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): December 21, 2018

**New Age Beverages Corporation**

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(Exact name of registrant as specified in its charter)

**Washington**

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(State or other jurisdiction of incorporation)

**001-38014**

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(Commission File Number)

**27-2432263**

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(IRS Employer Identification No.)

**1700 E. 68th Avenue, Denver, CO 80229**

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(Address of principal executive offices) (Zip Code)

**(303) 289-8655**

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(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging Growth Company ☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☒

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## **Item 2.01. Completion of Acquisition**

On December 21, 2018, the transactions contemplated by the Plan of Merger (the "Merger Agreement") between New Age Beverages Corporation, a Washington corporation (the "Company"), Morinda Holdings, Inc., a Utah corporation ("Morinda") and New Age Health Sciences Holdings, Inc., a newly formed Utah corporation and wholly owned subsidiary of the Company ("Merger Sub"), were completed. Merger Sub was merged with and into Morinda and Morinda became a wholly-owned subsidiary of the Company. This transaction is referred to herein as the "Merger."

Pursuant to the Merger Agreement, the Company paid the following consideration to Morinda's equity holders and phantom stockholder, subject to certain adjustments described in the Merger Agreement: (i) \$75 million in cash; (ii) 2,016,480 shares of the Company's common stock; and (iii) 43,804 shares of Series D Preferred Stock (the "Preferred Stock") providing for the potential payment of up to \$15 million contingent upon Morinda achieving certain post-closing milestones, as further discussed herein.

Pursuant to the Certificate of Designations of Series D Preferred Stock (the "Certificate of Designations"), the holders of the Preferred Stock shall be entitled to receive a dividend of up to an aggregate of Fifteen Million Dollars (\$15,000,000) (the "Milestone Dividend") if the Adjusted EBITDA (as defined in the Certificate of Designations) of the Surviving Corporation (as defined in the Merger Agreement) is at least Twenty Million Dollars (\$20,000,000) for the year ended December 31, 2019. The Milestone Dividend is payable on April 15, 2020 (the "Dividend Payment Date"). If the Adjusted EBITDA of the Surviving Corporation is less than Twenty Million Dollars (\$20,000,000), the Milestone Dividend shall be adjusted based on applying a five times multiple to the difference between the Adjusted EBITDA of \$20 million and actual Adjusted EBITDA for the year ended December 31, 2019 and adjusting accordingly to the \$15 million Milestone Dividend. Additionally, the Company is required to pay an annual dividend to the holders of the Preferred Stock equal to an aggregate of 1.5% of the Milestone Dividend amount, payable on a pro rata basis. The Company may pay the Milestone Dividend and /or the annual dividend in cash or in kind, provided that if the Company chooses to pay in kind, the shares of common stock issued as payment therefore must be registered under the Securities Act of 1933, as amended (the "Securities Act"). The Preferred Stock shall terminate on the Dividend Payment Date.

The Company paid \$1,062,500 in cash and 214,250 shares of common stock to a broker dealer in connection with the consummation of the Merger.

The common stock, Preferred Stock and the shares of common stock issuable upon conversion of the Preferred Stock have not been registered under the Securities Act, or the securities laws of any state, and were offered and issued (or will be issued) in reliance on the exemption from registration under the Securities Act, afforded by Section 4(a)(2).

## **Item 3.02. Unregistered Sales of Equity Securities.**

The information set forth in Item 2.01 of this Current Report on Form 8-K is incorporated herein by reference.

## **Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.**

On December 21, 2018, the Company filed the Certificate of Designations with the Secretary of State of the State of Washington.

The information set forth in Item 2.01 of this Current Report on Form 8-K is incorporated herein by reference.

**Item 9.01 Financial Statements and Exhibits.**

- (a) *Financial Statements of Businesses Acquired.* In accordance with Item 9.01(a), (i) audited financial statements for the prior two fiscal years and (ii) unaudited financial statements for the nine-month interim period ended September 30, 2018 will be filed within 71 days of the filing of this Current Report.
- (b) *Pro Forma Financial Information.* In accordance with Item 9.01(b), our pro forma financial statements will be filed within 71 days of the filing of this Current Report.
- (d) Exhibits.

The exhibit listed in the following Exhibit Index is filed as part of this Current Report on Form 8-K.

Exhibit	Description
<a href="#">3.1</a>	Certificate of Designations filed on December 21, 2018
<a href="#">99.1</a>	Press Release

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: December 27, 2018

**NEW AGE BEVERAGES CORPORATION**

By: /s/ Gregory A. Gould  
Gregory A. Gould  
Chief Financial Officer

FILED

Secretary of State

State of Washington

Date Filed: 12/21/2018

Effective Date: 12/21/2018

UBI No: 603 011 278

## ARTICLES OF AMENDMENT

OF

NEW AGE BEVERAGES CORPORATION

Pursuant to RCW 23B.06.020, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation, as amended:

FIRST: The name of the Corporation is New Age Beverages Corporation (the "Corporation")

SECOND: Article IV of the Articles of Incorporation, as amended, of the Corporation is amended to add the following section G creating a class of Series D Convertible Preferred Stock, the text of which is attached hereto as Exhibit A.

THIRD: The foregoing amendment was duly adopted by the Board of Directors of the Corporation on November 30, 2018, in accordance with the provisions of RCW 23B.06.020. Shareholder approval was not required.

Dated December 21, 2018

NEW AGE BEVERAGES CORPORATION

By: /s/ Brent Willis

Brent Willis

Chief Executive Officer

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Received Date: 12/21/2018

Amount Received: \$80.00

Exhibit A

**Section G - Series D Convertible Preferred Stock**

Section 1. Designation, Amount and Par Value. The series of preferred stock shall be designated as its Series D Convertible Preferred Stock (the "Preferred Stock") and the number of shares so designated shall be Forty Four Thousand (44,000) (which shall not be subject to increase without the written consent of holders of a majority in interest of the Preferred Stock then outstanding (each, a "Holder" and collectively, the "Holders")). Each share of Preferred Stock shall have a par value of \$0.001 per share and a stated value equal to \$0.001 (the "Stated Value").

Section 2. Definitions. For the purposes hereof, the following terms shall have the following meanings. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Merger Agreement.

"Adjusted EBITDA" means the net income before interest, income taxes, depreciation and amortization of the Surviving Corporation for the Calculation Period, determined in accordance with GAAP but applied and calculated in a manner consistent with the EBITDA calculation derived from the 2017 Audited Financial Statements for the Surviving Corporation, adjusted to exclude non-cash share based compensation, other income and other expenses,

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act.

"Business Day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"Calculation Period" means January 1, 2019 to December 31, 2019.

"Common Stock" means the Corporation's common stock, par value \$0.001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed.

"Dividend Payment" means the dividend payable on the Dividend Payment Date.

"Dividend Multiple" means Five (5).

"Dividend Payment Date" shall mean April 15, 2020.

"EBITDA Threshold" means Twenty Million Dollars (\$20,000,000).

"Holder" shall have the meaning given such term in Section 1.

"Liquidation" shall have the meaning set forth in Section 5.

"Maximum Milestone Dividend Payment" means Fifteen Million (\$15,000,000) Dollars.

"Merger Agreement" shall mean that Agreement and Plan of Merger dated as of December 2, 2018 by and between the Corporation, New Age Health Sciences Holdings, Inc. and Morinda Holdings, Inc.

"Milestone Calculation Date" shall mean March 31, 2020.

"Morinda Representative" shall mean Kerry Orlo Asay.

"Per Share Milestone Dividend Payment" shall mean the quotient of (x) Fifteen Million Dollars (\$15,000,000) divided by (y) the number of shares of Preferred Stock outstanding on the Dividend Payment Date.

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"Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"Preferred Stock" shall have the meaning set forth in Section 1.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Stated Value" shall have the meaning set forth in Section 1.

"Trading Day" means a day on which the principal Trading Market is open for business.

"Trading Market" means the New York Stock Exchange, the NYSE American, the Nasdaq Global Select Market, the Nasdaq Global Market, the Nasdaq Capital Market or the OTCQB of the OTC Markets marketplace (or any successors to any of the foregoing).

"Transfer Agent" means ClearWater Trust, LLC, the current transfer agent of the Corporation, with a mailing address of 1650 Pointe Village Dr., Suite 205, Lutz, FL 33558, and any successor transfer agent of the Corporation.

"VWAP" means, for any security as of any date, the dollar volume-weighted average price for such security on the Trading Market during the period beginning at 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by Bloomberg through its "HP" function set to "weighted average" or, if the foregoing does not apply, the dollar volume-weighted average price of such security in the .over-the-counter market on the electronic bulletin board for such security during the period beginning at 9:30:01 a.m., New York time, and ending at 4:00:00 p.m., New York time, as reported by Bloomberg, or, if no dollar volume-weighted average price is reported for such security by Bloomberg for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for such security as reported in the "pink sheets" by OTC Markets Group Inc. (formerly Pink Sheets LLC). If the VWAP cannot be calculated for such security on such date on any of the foregoing bases, the VWAP of such security on such date shall be the fair market value as mutually determined by the Corporation and such Holder. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period.

**Section 3. Dividends.** (a) Annual Dividend. For as long as any Preferred Stock remains outstanding, the Preferred Stock shall receive an aggregate annual dividend (the "Annual Dividend") equal to 1.5% of the Maximum Milestone Dividend Payment on a pro rata basis on the outstanding shares of Preferred Stock, payable quarterly on March 31, June 30, September 30 and December 31 of each year (the "Annual Dividend Date"), with the first dividend payable for the period commencing on the Closing Date.

(b) Milestone Dividend. The holders of shares of the Preferred Stock shall be entitled to receive a dividend (the "Milestone Dividend") equal to the Per Share Milestone Dividend Payment, as adjusted pursuant to the terms herein, for each share of Preferred Stock held on the Dividend Payment Date, payable on the Dividend Payment Date, subject and pursuant to the terms below.

(c) Within ten (10) days of the Milestone Calculation Date, the Chief Financial Officer shall prepare and deliver to the Morinda Representative a statement setting forth the Adjusted EBITDA of the Surviving Corporation, on a stand-alone basis (the "Dividend Calculation Statement"), setting forth in reasonable detail its determination of Adjusted EBITDA for the Calculation Period and its calculation of the resulting Dividend Payment (the "Dividend Calculation"). The Morinda Representative shall have ten (10) days after receipt of the Dividend Calculation Statement (the "Review Period") to review the Dividend Calculation Statement and the Dividend Calculation set forth therein. During the Review Period, the Morinda Representative shall have the right to inspect the Corporation's books and records during normal business hours at the Corporation's offices, upon reasonable prior notice and solely for purposes reasonably related to the determinations of Adjusted EBITDA and the resulting Dividend Payment. Prior to the expiration of the Review Period, the Morinda Representative may object to the Dividend Calculation set forth in the Dividend Calculation Statement for the applicable Calculation Period by

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delivering a written notice of objection (a "Dividend Calculation Objection Notice") to the Corporation. Any Dividend Calculation Objection Notice shall specify the items in the applicable Dividend Calculation disputed by the Morinda Representative and shall describe in reasonable detail the basis for such objection, as well as the amount in dispute. If the Morinda Representative fails to deliver a Dividend Calculation Objection Notice to the Corporation prior to the expiration of the Review Period, then the Dividend Calculation set forth in the Dividend Calculation Statement shall be final and binding on the parties hereto. If the Morinda Representative timely delivers a Dividend Calculation Objection Notice, Corporation and the Morinda Representative shall negotiate in good faith to resolve the disputed items and agree upon the resulting amount of the Adjusted EBITDA and the Dividend Payment for the Calculation Period. If the Corporation and the Morinda Representative are unable to reach agreement within ten (10) days after such an Dividend Calculation Objection Notice has been given, all unresolved disputed items shall be promptly referred to an impartial nationally recognized firm of independent certified public accountants, other than the Morinda Representative's Accountants or Corporation's Accountants, appointed by mutual agreement of the Corporation and the Morinda Representative (the "Independent Accountant"). The Independent Accountant shall be directed to render a written report on the unresolved disputed items with respect to the applicable Dividend Calculation as promptly as practicable, but in no event greater than fifteen (15) days after such submission to the Independent Accountant, and to resolve only those unresolved disputed items set forth in the Dividend Calculation Objection Notice. If unresolved disputed items are submitted to the Independent Accountant, the Corporation and the Morinda Representative shall each furnish to the Independent Accountant such work papers, schedules and other documents and information relating to the unresolved disputed items as the Independent Accountant may reasonably request. The Independent Accountant shall resolve the disputed items based solely on the applicable definitions and other terms in this Agreement and the presentations by the Corporation and the Morinda Representative, and not by independent review. The resolution of the dispute and the calculation of Adjusted EBITDA that is the subject of the applicable Dividend Calculation Objection Notice by the Independent Accountant shall be final and binding on the parties hereto. The fees and expenses of the Independent Accountant shall be borne by the Morinda Representative and Corporation in proportion to the amounts by which their respective calculations of Adjusted EBITDA differ from Adjusted EBITDA as finally determined by the Independent Accountant.

(d) If the Adjusted EBITDA for the Calculation Period of the Surviving Corporation is at least the EBITDA Threshold then the Corporation shall pay each Holder, on the Dividend Payment Date, an amount equal to the Per Share Milestone Dividend Payment multiplied by the number of shares owned by the Holder. If the Adjusted EBITDA of the Surviving Corporation is less than the EBITDA Threshold, then the Corporation shall pay each Holder on the Dividend Payment Date, an adjusted Per Share Milestone Dividend Payment equal to:

$$\frac{E - [(B-A) \times (C)]}{D}$$

A=Actual Adjusted EBITDA for the Calculation Period

B=EBITDA Threshold

C=Dividend Multiple

D=Total number of shares of Preferred Stock outstanding on the Dividend Payment Date

E=Maximum Milestone Dividend Payment

Notwithstanding anything to the foregoing, in no event shall the Corporation be required to pay more than the Maximum Milestone Dividend Payment to the holders of Preferred Stock, in the aggregate. If the Adjusted EBITDA is less than the threshold and the calculation above equals a negative number, then the Corporation will have no obligation to pay any Dividend to any of the Holders.

(e) Post-closing Operation of the Surviving Corporation. Subject to the terms of this Certificate of Designations and the Merger Agreement, subsequent to the Closing, the Corporation shall have sole discretion with regard to all matters relating to the operation of the Surviving Corporation; provided, that (1) the Corporation shall use commercially reasonable efforts to market and sell the Surviving Corporation's products and to maximize the Adjusted EBITDA, and (2) not, directly or indirectly, take, or fail to take, in bad faith, any actions that would have the purpose of avoiding or reducing Adjusted EBITDA. In addition, in the event of a change in control of the

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Surviving Corporation or the Corporation prior to the Dividend Payment Date, the Corporation will pay the Holders the Maximum Milestone Dividend Payment upon the closing of such change in control. For purposes of this section, a change in control will be deemed to occur upon the consummation of a merger or consolidation of the Corporation or the Surviving Corporation with or into another entity, the sale of a majority of shares of the Corporation or the Surviving Corporation, or the sale, transfer or other disposition of all or substantially all of the assets of the Corporation or the Surviving Corporation.

(f) No Security. The parties hereto understand and agree that (i) the contingent rights to receive any Dividend Payment shall not be represented by any form of certificate or other instrument (other than the Preferred Stock certificate), are transferable, and do not constitute an equity or ownership interest in Corporation or the Surviving Corporation (except for equity rights associated with the Preferred Stock), (ii) no Holder shall have any rights as a securityholder of Corporation or the Surviving Corporation as a result of its contingent right to receive any Dividend Payment hereunder (except for equity rights associated with the Preferred Stock), and (iii) no interest is payable with respect to any Dividend Payment, except interest at the rate of 3% shall be paid on any unpaid Dividend not paid within 15 days after the due date.

(g) Payment of Dividends. At the option of the Corporation, the Corporation may pay all or any portion of any Milestone Dividends and Annual Dividends on the Preferred Stock in shares of Common Stock, with each share of Common Stock being valued for this purpose as the VWAP of the Common Stock for the five trading days immediately prior to the Dividend Payment Date or the Annual Dividend Date, as applicable. In order to pay the dividends in Common Stock, the Corporation must provide the Holders of the Preferred Stock with at least 10 days' notice, prior to the Dividend Payment Date or the Annual Dividend Date, as applicable, of its election to pay any dividend in shares of Common Stock (the Corporation may indicate in such notice that the election contained in such notice shall continue for later periods until revised by a subsequent notice). If the Corporation elects to pay all or any portion of any Milestone Dividends or Annual Dividends on the Preferred Stock in shares of Common Stock, it will, prior to issuance of such shares of Common Stock, cause a registration statement on Form S-1 or Form S-3 under the Securities Act of 1933, as amended, to be declared effective (and remain effective) by the Securities and Exchange Commission covering the issuance or resale of such shares of Common Stock such that upon receipt of such shares of Common Stock, each Holder can sell such shares of Common Stock without reliance upon Rule 144 or other exemption until such time as such shares of Common Stock can be sold pursuant to Rule 144 without regard to volume limitations. In the event such registration statement is not declared effective by the time of the issuance of such shares of Common Stock, the Corporation will not have the option to pay such portion of any Milestone Dividends or Annual Dividends on the Preferred Stock in shares of Common Stock and instead will pay such portion of any Milestone Dividends or Annual Dividends in cash.

(h) Issuance Restrictions. If the Corporation has not obtained the approval of its shareholders in accordance with NASDAQ Listing Rule 5635(d), then the Corporation may not elect to issue as payment for dividends pursuant to Section 3(g) herein, a number of shares of Common Stock, which, when aggregated with any shares of Common Stock issued or issuable pursuant to the Merger Agreement, would exceed 19.99% of the shares of Common Stock issued and outstanding as of the Closing Date, subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date of the Merger Agreement. In the event that the Corporation cannot issue shares of Common Stock due to the limitations contained in this Section 3(h), it will instead make such payments in cash.

Section 4. Voting Rights. Except as required by the laws of the State of Washington, Holders of Preferred Stock shall not possess any voting rights.

Section 5. Liquidation. Subject to Section 3(e), upon the complete liquidation, dissolution or winding-up of the Corporation pursuant to the federal bankruptcy laws, whether voluntary or involuntary (a "Liquidation"), the Holders shall be entitled to receive out of the assets, whether capital or surplus, an amount per share equal to the Stated Value, which shall be paid before payment to all holders of Common Stock but after payment to any other outstanding shares of any other series of preferred stock. The Corporation shall mail written notice of any such Liquidation, not less than 45 days prior to the payment date stated therein, to each Holder.

Section 6. Termination. At the close of business on the Dividend Payment Date, all shares of Preferred Stock shall automatically terminate and return to the authorized but unissued capital stock of the Corporation,

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regardless of whether all or any portion of the Dividend Payment is paid. Notwithstanding the foregoing, it is understood that a Dividend Payment may be received by a Holder after the Dividend Payment Date and the termination of the Preferred Stock shall not terminate the Corporation's obligations to pay the Dividend Payment, if required pursuant to the terms hereunder.

#### Section 7. Miscellaneous.

a) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder, shall be in writing and delivered personally, by facsimile or email, or sent by a nationally recognized overnight courier service, addressed to the Corporation, at its principal offices Attention: Chief Financial Officer. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by facsimile or email, or sent by a nationally recognized overnight courier service addressed to each Holder at the facsimile number, email address or address of such Holder appearing on the books of the Corporation. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via email at the email address set forth in this Section prior to 5:30 p.m. (New York City time) on any date, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number or via email at the email address set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

b) Absolute Obligation. Except as expressly provided herein, no provision of this Certificate of Designation shall alter or impair the obligation of the Corporation, which is absolute and unconditional, to pay liquidated damages and accrued dividends, as applicable, on the shares of Preferred Stock at the time, place, and rate, and in the coin or currency, herein prescribed.

c) Lost or Mutilated Preferred Stock Certificate. If a Holder's Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof reasonably satisfactory to the Corporation.

d) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designation shall be governed by and construed and enforced in accordance with the internal laws of the State of Washington, without regard to the principles of conflict of laws thereof. Each party agrees that all legal proceedings concerning the interpretation, enforcement and defense of the transactions contemplated hereby (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the courts of the State of Washington (the "Courts"). The Corporation and each Holder hereby irrevocably submits to the exclusive jurisdiction of the Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such Courts, or such Courts are improper or inconvenient venue for such proceeding. The Corporation and each Holder hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Certificate of Designation and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. The Corporation and each Holder hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Certificate of Designation or the transactions contemplated hereby. If any party shall commence an action or proceeding to enforce any provisions of this Certificate of Designation, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

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e) Waiver. Any waiver by the Corporation or a Holder of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or a waiver by any other Holders. The failure of the Corporation or a Holder to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation on any other occasion. Any waiver by the Corporation or a Holder must be in writing.

f) Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

g) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day.

h) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

i) Status of Redeemed or Reacquired Preferred Stock. If any shares of Preferred Stock shall be redeemed or reacquired by the Corporation, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series D Convertible Preferred Stock.



**NEW AGE BEVERAGES CORPORATION ANNOUNCES  
COMPLETION OF MERGER WITH MORINDA HOLDINGS, INC.**

**DENVER, COLORADO, December 24, 2018** - **New Age Beverages Corporation (NASDAQ: NBEV)**, the Colorado-based organic and natural beverage company focused on becoming the world's leading healthy beverage company, today announced the closing of the merger with Morinda Holdings, Inc., a Utah-based healthy beverages and lifestyles company with operations in more than 60 countries around the world.

**KEY HIGHLIGHTS:**

- Merger creates one of the largest healthy beverage companies in the world with \$300 million in net revenue, \$20 million in adjusted EBITDA, \$200 million in assets, and over \$40 million in working capital*
- Combination brings a leading portfolio of healthy beverages, with multi-channel penetration spanning traditional retail, e-commerce, and in-home; with a hybrid route-to-market spanning direct-store-delivery (DSD), wholesale, and direct-to-consumer.*
- Merger provides infrastructure and market access for New Age's Health Sciences products and portfolio of CBD-infused beverages worldwide*

Consideration for the transaction was \$85 million, comprised of \$75 million in cash and \$10 million in New Age common stock based on the 40-day volume-weighted average price ("VWAP") calculated through December 20, 2018. The 40-day VWAP was calculated to be \$4.96 per share and equated to a total of 2,016,480 shares issued. The cash consideration for the transaction was sourced from New Age's cash balance. The transaction closed on December 21, 2018.

At closing Morinda will be bringing \$25 million in working capital. In 2020, New Age may provide up to a \$15 million one-time payment in either cash or common stock to the former Morinda owners based on Morinda achieving a minimum of \$20 million in EBITDA in 2019.

The newly combined global company will be headquartered in Denver, Colorado with major operations in Shanghai, Tokyo, Taipei, Stockholm, Munich, Utah, and more than 20 other countries, and further strengthens New Age with the infrastructure to expand its portfolio of healthy beverages worldwide.

Since announcement of the merger on December 3, 2018 , New Age's and Morinda's teams have been working on convergence including capturing more than \$10 million in anticipated cost and revenue synergies. Management has also held meetings with key executives and distributors around the world to discuss the merger, its implications, benefits, and the potential revenue synergies in each major market. The convergence work and market reviews have confirmed the potential of the cost synergies and revenue synergies, in particular the potential for the sale of New Age's existing brand portfolio, New Age's Health Sciences portfolio, and New Age's impending portfolio of CBD-infused beverages.

Brent Willis, Chief Executive Officer of New Age Beverages commented, "Since announcement of the merger, we have been extremely busy. New Age continues to secure major national retail distribution on its key brands, and Morinda has been rapidly expanding its new Noni+Collagen brand globally. More cost synergies are emerging from the convergence teams and the countries are extremely enthusiastic about the potential of New Age's current and impending brand portfolio through their system. Integration is already well on track, and we have a high degree of confidence in our plans for 2019."

The scale, critical mass and profitability of the combined company, coupled with an expanded portfolio of healthy beverages, positions New Age to be able to capture significant growth in major markets around the world. Its multi-channel penetration and hybrid route-to-market will allow New Age to disintermediate its brand building approach to complement an already disruptive brand portfolio, and accelerate accomplishment of its mission to become the world's leading healthy beverage company.

**About New Age Beverages Corporation (NASDAQ: [NBEV](#))**

New Age Beverages Corporation is a Colorado-based healthy beverage company focused on inspiring, educating, and hydrating consumers. The Company is the only one-stop-shop of healthy beverages and includes the brands Tahitian Noni, Búcha Live Kombucha, XingTea, Coco-Libre, Marley, and others. New Age competes in the growth segments of the >\$1 trillion-dollar non-alcoholic beverage industry, has become one of the 40<sup>th</sup> largest non-alcoholic beverage companies, one of the largest healthy beverage companies, and is the fastest growing in the world over the past two years. The Company's brands are sold across all 50 states within the US and will now be sold in more than 60 countries internationally across all channels via a hybrid of direct-to-consumer and traditional distribution and route-to-market systems.

The Company operates the websites [www.newagebev.com](http://www.newagebev.com), [www.Morinda.com](http://www.Morinda.com), [www.newagehealth.com](http://www.newagehealth.com), [www.mybucha.com](http://www.mybucha.com), [www.xingtea.com](http://www.xingtea.com), [www.drinkmarley.com](http://www.drinkmarley.com), and [www.cocolibre.com](http://www.cocolibre.com).

New Age has exclusively partnered with the world's 5th largest water charity, WATERisLIFE, to end the world water crisis with the most innovative technologies available. Donate at [WATERisLIFE.com](http://WATERisLIFE.com) to help us #EndItToday.



**About Morinda Holdings, Inc**

Morinda Holdings, Inc. is a Utah-based healthy lifestyles and beverage company with more than 700 employees, operations in more than 60 countries around the world, and manufacturing operations in Tahiti, Germany, Japan, the US, and China. Morinda is primarily a direct-to-consumer and E-commerce business, and was founded in 1996. Morinda works with over 160,000 distributors worldwide, with more than 70% of its business generated in the key Asia Pacific markets of Japan, Korea, Taiwan, Indonesia and China. As a standalone company, Morinda would rank as the one of the top 50 non-alcoholic beverage companies in the world.

**Safe Harbor Disclosure**

This press release contains forward-looking statements that are made pursuant to the safe harbor provisions within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements are any statements that express the current beliefs and expectations of management, including but not limited to statements related to the Company's integration of the Morinda acquisition and convergence synergies related to cost savings and increased revenues and our future growth projections including our 2019 plan. Any statements contained herein that do not describe historical facts are forward-looking statements that are subject to risks and uncertainties that could cause actual results, performance and achievements to differ materially from those discussed in such forward-looking statements. The Company cautions readers not to place undue reliance on any forward-looking statements, which speak only as of the date they were made. The Company undertakes no obligation to update or revise forward-looking statements, except as otherwise required by law, whether as a result of new information, future events or otherwise.

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