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NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MEJ

CASE NO.: **13 1309**

STEVEN EDSTROM, BARRY GINSBURG,
MARTIN GINSBURG, EDWARD
LAWRENCE, SHARON MARTIN, MARK
M. NAEGER, JOHN NYPL, DANIEL
SAYLE, WILLIAM STAGE,

Plaintiffs,

v.

ANHEUSER-BUSCH InBEV SA/NV, and
GRUPO MODELO S.A.B. de C.V. ,

Defendants.

COMPLAINT FOR
INJUNCTIVE RELIEF TO
PROHIBIT THE
ACQUISITION OF GRUPO
MODELO BY ANHEUSER-
BUSCH INBEV AS A
VIOLATION OF SECTION 7
OF THE CLAYTON
ANTITRUST ACT 15 U.S.C.
§18

COMPLAINT

1
2 Plaintiffs by and through their undersigned attorneys, bring the following Complaint
3 against Defendants Anheuser-Busch InBev NV/SA (hereinafter “ABI”), and Grupo Modelo
4 S.A.B. de C.V. (“Modelo”), and allege as follows:

5 **SUMMARY OF ACTION**

6 1. This is a private antitrust suit brought under Section 16 of the Clayton Antitrust
7 Act (15 USC §26) to permanently prohibit the proposed acquisition by the largest brewer in
8 the world, ABI, of the remainder of Modelo that it does not already own, in violation of
9 Section 7 of the Clayton Antitrust Act (15 USC §18), in that the acquisition may, and most
10 probably will, substantially lessen competition and/or tend to create a monopoly in the
11 production, distribution, and sale of beer in the United States.

12
13 2. The United States is the most profitable beer market in the world.

14
15 3. The U.S. beer industry – which serves tens of millions of consumers at all
16 levels of income—is highly concentrated with just two firms accounting for approximately
17 80% of all sales nationwide. The proposed merger significantly threatens consumer welfare
18 by the threatened increase in price, elimination of quality, curtailment of innovation, and
19 destruction of consumer choice. By combining the largest and the third-largest brewers of
20 beer sold in the United States, the Defendant ABI, would have more than 54% of the beer
21 market in the United States and sufficient monopoly power to exclude competition and raise
22 prices. Plaintiffs therefore seek to enjoin this acquisition and prevent a serious violation of
23 Section 7 of the Clayton Act.

24
25 4. In 2008, the then number two and number three competitors in the United
26 States, SABMiller and Molson Coors, combined their American businesses, and now account
27 for 30% of the market. At the same time, InBev, the largest brewer in the world, acquired
28 Anheuser-Busch for \$50 billion, making the combined Anheuser-Busch InBev (“ABI”)

1 accounts for more than 50% of the US market. Consequently, with Modelo's 5% of the US
2 market, approximately 85% (and some analysts say as much as 90%) of the production,
3 distribution, and sale of beer in the United States will be controlled by only two companies,
4 substantially increasing the probability of price increases; product, service and choice
5 deterioration; price-fixing; elimination of small and regional competitors; control and
6 monopolization of distribution and retail channels; and other probable anticompetitive effects.

7
8 5. The United States market is substantially more than simply "highly
9 concentrated," as measured by the objective standards of the universally accepted Herfindahl-
10 Hersch Index ("HHI"). (HHI measures and grades market concentration by adding the
11 squared market share percentages of each of the competitors in the market.) The threshold for
12 "highly concentrated" is 1800. An additional 100 points causes great concern among antitrust
13 enforcers. Here, the market substantially exceeds that number.

14
15 6. The post-transaction HHI of the United States beer market will be greater than
16 2800, plainly a market ripe for probable if not certain collusion and a galloping tendency
17 toward monopoly.

18
19 7. The market concentration measures, coupled with the significant increases in
20 concentration, demonstrate that the acquisition is presumed to be anticompetitive.

21
22 8. Modelo and ABI aggressively compete in the United States. That competition
23 has resulted in lower prices and product innovations that have benefited consumers across the
24 country. The proposed acquisition would eliminate this competition by further concentrating
25 the beer industry, enhancing ABI's market power, and facilitating coordinated pricing between
26 ABI and the next largest brewer, MillerCoors, LLC. **See Exhibit A** for the approximate
27 market shares of U.S. beer sales.

28
29 9. Plaintiffs are consumers and purchasers of Defendants beers who are
30 threatened with loss and damage in the forms of higher prices, fewer services, fewer

1 competitive choices, deterioration of products and product diversity, suppression and
2 destruction of smaller actual competitors through exclusive distribution, full-line forcing, and
3 the like, and other anticompetitive effects and consequences that may, and most probably will,
4 result from the elimination of the actual and potential competition of ABI if the acquisition
5 were to be consummated.

6 10. More than 40% of the population of the United States are consumers of beer,
7 including the beers of ABI and Modelo, and each will be adversely affected if the proposed
8 unlawful transaction were allowed to proceed.

9 11. An interdependent pricing dynamic exists between the largest brewers, ABI
10 and MillerCoors. These brewers find it more profitable to follow each others' prices than to
11 compete aggressively for market share by cutting price. ABI typically initiates annual price
12 increases in various markets with the expectation that MillerCoors will follow. And often they
13 do.
14

15 12. Modelo has resisted ABI-led price hikes. Modelo's pricing strategy—"The
16 Momentum Plan" – seeks to narrow the "price gap" between Modelo beers and lower-priced
17 premium domestic brands, such as Bud and Bud Light (ABI brands). Modelo has put
18 "increasing pressure" on ABI by pursuing a competitive strategy directly at odds with ABI's
19 well-established practice of leading prices upward.
20

21 13. Because of Modelo's resistance to ABI price hikes, ABI and MillerCoors have
22 been forced to offer lower prices and discounts for their brands to discourage consumers from
23 "trad[ing] up" to Modelo brands. If ABI were to acquire the remainder of Modelo, this
24 competitive constraint on ABI's and MillerCoors' ability to raise prices would be eliminated.
25

26 14. The proposed acquisition will eliminate the substantial head-to-head
27 competition that currently exists between ABI and Modelo. The loss of this head-to-head
28 competition will enhance the ability of ABI to unilaterally raise the prices of the brands that it

1 would own post-acquisition, and diminish ABI's incentive to innovate with respect to new
2 brands, products, and packaging.

3 15. ABI's acquisition of the remainder of Modelo will substantially lessen
4 competition and is therefore illegal under Section 7 of the Clayton Act, 15 U.S.C. § 18.

5 16. ABI has entered into an additional transaction contingent on the approval of its
6 acquisition of the remainder of Modelo. Specifically, ABI has agreed to sell Modelo's
7 existing 50% interest in Crown Imports LLC ("Crown"), which currently imports Modelo beer
8 into the United States –to Crown's other owner, Constellation Brands, Inc. ("Constellation").
9 ABI and Constellation have also negotiated a proposed Amended and Reinstated Importer
10 Agreement (the "supply agreement"), giving Constellation the exclusive right to import
11 Modelo beer into the United States for ten years. Constellation, however, would acquire no
12 Modelo brands or brewing facilities under this arrangement – it remains simply an importer,
13 required to depend on ABI for its supply of Modelo-branded beer. At the end of the ten-year
14 period, ABI could unilaterally terminate its agreement with Constellation, thereby giving ABI
15 full control of all aspects of the importation, sale, and distribution of Modelo brands in the
16 United States.
17

18 17. The sale of Modelo's 50% interest in Crown to Constellation is designed to
19 help ABI win antitrust approval for its acquisition of Modelo, creating a façade of competition
20 between ABI and its importer. In reality, Defendants' proposed "remedy" eliminates from the
21 market Modelo, a particularly aggressive competitor, and replaces it with an entity wholly
22 dependent on ABI. Indeed, as Crown's CEO wrote to his employees after the acquisition was
23 announced: "our #1 competitor will now be our supplier...it is not currently or will not, going
24 forward, be 'business as usual.'"
25

26 18. Constellation has already shown through its participation in the Crown joint
27 venture that it does not share Modelo's incentive to thwart ABI's price leadership. Given that
28

1 Constellation was inclined to follow ABI's price leadership *before* the acquisition, it is
2 unlikely to reverse course after—when it would be fully dependent on ABI for its supply of
3 beer, and will effectively be ABI's business partner. Constellation will need to preserve a
4 strong relationship with ABI to encourage ABI from exercising its option to terminate the
5 agreement after 10 years.

6 19. For the foregoing reasons, the proposed merger will substantially lessen
7 competition in violation of Section 7 of the Clayton Act.

8 **JURISDICTION**

9
10 20. This action is brought under Section 16 of the Clayton Antitrust Act, 15 U.S.C.
11 §26, to prevent the Defendants from consummating the acquisition as a violation of Section 7
12 of the Clayton Antitrust Act, 15 U.S.C. §18. This Court has subject matter jurisdiction of the
13 federal antitrust claims asserted in this action under Section 16 of the Clayton Antitrust Act,
14 15 U.S.C. §26, and Title 28 United States Code Sections 1331 and 1337.

15 **PARTIES**

16 ***The Plaintiffs***

17
18 21. Each of the plaintiffs named herein below is an individual and a citizen of the
19 state listed as the address for each such plaintiff. Each plaintiff has purchased beer produced
20 by one or both of the defendants, and each plaintiff expects to continue to purchase beer
21 produced by one or both of the Defendants in the future:

22 Steven Edstrom, 3440 20th Street, #312, San Francisco, California 94110.

23 Barry Ginsburg, 7 Highgate Road, St. Louis, Missouri 63132.

24 Martin Ginsburg, 2033 Whitman Court, Chesterfield, Missouri 63005.

25 Edward Lawrence, 1905 Mar West Street, Tiburon, California 94920.

26 Sharon Martin, 3033 Willow Creek Estates Dr., Florissant, MO 63031.

27 Mark M. Naeger, 5914 Crane Circle, St. Louis, Missouri 63109.

1 John Nypl, 16325 State Highway 49, Grass Valley, California 95949.

2 Daniel Sayle, 12399 Maverick Dr., #E, Maryland Heights, Missouri 63043.

3 William Stage, 405 Shrewsbury Avenue, St. Louis, Missouri 63119

4 *The Defendants*

5 22. ABI is a corporation organized and existing under the laws of Belgium, with
6 headquarters in Leuven, Belgium. ABI is the largest brewer and marketer of beer sold in the
7 United States. ABI owns and operates 125 breweries worldwide, including 12 in the United
8 States. It owns more than 200 beer brands, including Bud Light, the number one brand in the
9 United States, and other popular brands such as Budweiser, Busch, Michelob, Natural Light,
10 Stella Artois, Goose Island, and Beck's. ABI employs more than 116,000 worldwide.

11 23. ABI is the resulting formation of the acquisition by InBev, the largest brewer in
12 the world, of Anheuser-Busch, the largest brewer in the United States. InBev and now ABI is
13 owned and controlled by families in South America and Belgium.

14 24. The Chief Executive Officer of ABI is Carlos Brito. By reason of his position,
15 Mr. Brito controls the manufacturer, distribution, and sale of beer in the United States through
16 ABI.

17 25. Modelo is a corporation organized and existing under the laws of Mexico, with
18 headquarters in Mexico City, Mexico. Modelo is the third-largest brewer of beer sold in the
19 United States. Modelo's Corona Extra brand is the top-selling import in the United States. Its
20 other popular brands sold in the United States include Corona Light, Modelo Especial, Negra
21 Modelo, Victoria, and Pacifico.

22 26. Both defendants are owned by foreign interests.

23 27. Grupo Modelo has approximately 62% of the market for production and sale of
24 beer in Mexico.

1 28. ABI currently holds a 35.3% direct interest in Modelo, and a 23.3% direct
2 interest in Modelo's operating subsidiary Diblo, S.A. de C.V. ABI's current part-ownership
3 of Modelo gives ABI certain minority voting rights and the right to appoint nine members of
4 Modelo's 19-member Board of Directors. However, as ABI stated in its most recent annual
5 report, ABI does "not have voting and other effective control of...Grupo Modelo."

6 29. ABI and Modelo executives agree that there is currently vigorous competition
7 between the ABI and Modelo brands in the United States. Indeed, firewalls are in place to
8 ensure that the ABI members of Modelo's Board do not become privy to information about
9 the pricing, marketing, or distribution of Modelo brands in the United States.
10

11 30. Modelo executives run its day-to-day business, including Modelo's relationship
12 and interaction with its U.S. importer, Crown. Modelo owns half of Crown and may exercise
13 an option at the end of 2013, to acquire in 2016, the half of Crown it does not already own.
14 Today, Modelo must approve Crown's general pricing parameters, changes in strategic
15 direction, borrowing activities and capital investment above certain thresholds. Modelo also
16 sets the global strategic themes for the brands it owns. Essentially, Crown is a group of
17 employees who report to Crown's owners: Modelo and Constellation.
18

19 31. The acquisition gives complete control of Modelo to ABI, and gives ABI full
20 access to competitively sensitive information about the sale of Modelo brands in the United
21 States—access that ABI does not currently enjoy. ABI presently has no day-to-day role in
22 Modelo's United States business and is walled off from strategic discussions regarding
23 Modelo sales in the United States.
24

25 32. On June 28, 2012, ABI agreed to purchase the remaining equity interest from
26 Modelo's owners, thereby obtaining full ownership and control of Modelo, for about \$20.1
27 billion.
28

1 33. Defendants simultaneously entered into another transaction in an attempt to
2 “remedy” the competitive harm caused by ABI’s acquisition of the remainder of Modelo:
3 ABI has agreed to sell Modelo’s existing 50% interest in Crown to Constellation, so that
4 Crown, previously a joint-venture between Modelo and Constellation, would become wholly
5 owned by Constellation. As part of this strategy, ABI and Constellation have negotiated a
6 supply agreement giving Constellation the exclusive right to import Modelo beer into the
7 United States for ten years. These transactions are contingent on the closing of ABI’s
8 acquisition of Modelo.
9

10 34. ABI has the country’s largest network of independent distributors/wholesalers,
11 numbering approximately 600. Almost all of the distributors are independent, and operate
12 under exclusive agreements with ABI in which they agree not to deal with any products of any
13 competitor of ABI and not to distribute any products outside of their own designated
14 territories.
15

16 35. ABI sells nearly 70 percent of the company’s volume in the United States
17 through wholesalers. ABI also owns 14 company-owned distributors/wholesale operations.
18

19 36. ABI sold 98 million barrels of beer to United States wholesalers in 2011.

20 37. The most influential factor in the sale of beer in the United States is
21 advertising.
22

23 38. ABI is a substantial advertiser, spending hundreds of millions last year alone.

24 39. ABI was created from a series of mergers and acquisitions culminating in the
25 merger between Anheuser Bush and InBev in 2008. Previously in 2004, Belgium’s Interbrew
26 merged with Brazil’s AmBev, creating the world’s largest brewer.
27

28 40. Prior to forming InBev in the merger of Belgium’s Interbrew and Brazil’s
AmBev in 2004, the world’s largest brewers were: (#1) Anheuser-Busch; (#2) SABMiller;

1 (#3) Interbrew; (#4) Heineken, and (#5) AmBev. After the combination of Interbrew and
2 AmBev, InBev became the largest brewer in the world.

3 41. When Interbrew and AmBev combined in 2004, it was then represented
4 publicly by AmBev's CEO Carlos Brito, InBev's present CEO, that the two companies would
5 "operate independently in different hemispheres..." However, after the combination, Mr.
6 Brito changed his mind and decided AmBev would expand its reach from South America into
7 Interbrew's territories in Mexico and North America, and Interbrew would oversee operations
8 in Europe and Asia.

9
10 42. As the world's largest brewer, ABI has enormous economic capabilities. ABI
11 has 14 brands that individually generate over 1 billion per year in revenue out of a portfolio of
12 more than 200 brands. Total revenue in 2012 for all ABI brands was over \$39 billion.

13 **NATURE OF TRADE AND COMMERCE**

14 43. Beer is comprised of a wide variety of brands and alcoholic beverages usually
15 made from a malted cereal grain, flavored with hops, and brewed via a process of
16 fermentation. Beer is substantially differentiated from other alcoholic beverages by taste,
17 quality, alcohol, content, image, and price.

18
19 44. In addition to brewing, beer producers typically also sell, market and develop
20 multiple brands. Marketing and brand building take various forms including sports
21 sponsorships, print advertising, national television campaigns, and increasingly, online
22 marketing. For example, Modelo recently invested in "more national advertising [and] more
23 national sports" in order to build the equity of [its] brands."

24
25 45. Most brewers use distributors to merchandise, sell, and deliver beer to retailers.
26 Those end accounts are primarily grocery stores, large retailers such as Target and Walmart,
27 and convenience stores, liquor stores, restaurants, and bars which, in turn, sell beer to the
28

1 consumer. Beer brewed in foreign countries may be sold to an importer, which then arranges
2 for distribution to retailers.

3 46. ABI groups beer into four segments: “sub-premium, premium, premium plus,
4 and high-end. The sub-premium segment, also referred to as the value segment, generally
5 consists of lager beers, such as Natural and Keystone branded beer, and some ales and malt
6 liquors, which are priced lower than premium beers, made from less expensive ingredients and
7 are generally perceived as being of lower quality than premium beers. The premium segment
8 generally consist of medium-priced American lager beers, such as ABI’s Budweiser, and the
9 Miller and Coors brand families, including the “light” varieties. The premium plus segment
10 consists largely of American beers that are priced somewhat higher than premium beers, made
11 from more expensive ingredients and are generally perceived to be of superior quality.
12 Examples of beers in the premium plus category include Bud Light Lime, Bud Light Platinum,
13 Bud Light Lime-a-Rita, and Michelob Ultra.
14

15 47. The high end category includes craft beers, which are often produced in small-
16 scale breweries, and imported beers. High-end beers sell at a wide variety of price points,
17 most of which are higher than premium and premium plus beers. The high-end segment
18 includes craft beers such as Dogfish Head, Flying Dog, and also imported beers, the best
19 selling of which is Modelo’s Corona. ABI also owns high-end beers including Stella Artois
20 and Goose Island. Brewers with a broad portfolio of brands, such as ABI, seek to maintain
21 “price gaps” between each segment. For example, premium beer is priced above the sub-
22 premium beer, but below premium plus beer.
23

24 48. Beers compete with one another across segments. Indeed, ABI and Modelo
25 brands are in regular competition with one another. For example, Modelo, acting through
26 Crown in the United States, usually selects “[d]omestic premium” beer, namely, ABI’s Bud
27 Light, as its benchmark for its own brands’ pricing.
28

1 49. The relevant product market is the production and sale of beer.

2 50. The relevant geographic market is the United States. There is competition
3 between brewers on a national level that affects local markets throughout the United States.
4 Decisions about beer brewing, marketing, and brand building typically take place on a national
5 level. In addition, most beer advertising is on national television, and brewers commonly
6 compete for national retail accounts. General pricing strategy also typically originates at a
7 national level. A hypothetical monopolist of beer sold in the United States would likely
8 increase its prices by at least a small but significant and non-transitory amount. Accordingly,
9 the United States is a relevant geographic market under Section 7 of the Clayton Act.
10

11 51. Within the relevant market, the following well-defined submarkets may exist,
12 which in themselves constitute relevant markets for antitrust purposes: Oklahoma City, OK;
13 Salt Lake City, UT; Tampa/St. Petersburg, FL; Houston, TX; Jacksonville, FL;
14 Minneapolis/St. Paul, MN; Denver, CO; Birmingham/Montgomery, AL; Memphis, TN; Las
15 Vegas, NV; Dallas/Fort Worth, TX; Orland, FL; Los Angeles, CA; Phoenix/Tucson, AZ;
16 Raleigh/Greensboro, NC; Miami/Fort Lauderdale, FL; Hartford, CT/Springfield, MA;
17 Richmond/Norfolk, VA; Chicago, IL; New York, NY; Atlanta, GA; Sacramento, CA; Boston,
18 MA; San Diego, CA; Baltimore, MD/Washington, DC; San Francisco/Oakland, CA.
19

20 52. The United States is the world's most profitable beer market.

21 53. The number of brewers operating plants in the United States has decreased
22 markedly for decades, resulting in a highly concentrated market.
23

24 54. The relevant markets are highly concentrated and would become significantly
25 more concentrated as a result of the proposed acquisition.

26 55. ABI is the largest brewer of beer sold in the United States. MillerCoors is the
27 second-largest brewer of beer sold in the United States. MillerCoors owns the Miller and
28 Coors brands and also many smaller brands including Blue Moon and Keystone Light.

1 Modelo is the third-largest brewer of beer sold in the United States, with annual U.S. sales of
2 \$2.47 billion, 5% market share nationally, and a market share that is nearly 20% in some local
3 markets. Modelo owns the Corona, Modelo, Pacifico, and Victoria brands. The remaining
4 sales of beer in the United States are divided among Heineken and fringe competitors,
5 including many craft brewers, which Defendants characterize as being “fragmented...small
6 player[s].”

7
8 56. The beer industry in the United States is highly concentrated and would
9 become substantially more so as a result of this acquisition. Market share estimates
10 demonstrate that in 20 of the 26 local geographic submarkets in paragraph 55, the post-
11 acquisition HHI exceeds 2,500 points, in one market is as high as 4,886 points, and there is an
12 increase in the HHI of at least 472 in at least 20 of those markets.

13 57. ABI dominates the production and sale of beer in the United States.

14 58. ABI has 49% of the beer market in the United States.

15 59. MillerCoors has 30% of the beer market in the United States.

16 60. Modelo has 5% of the beer market in the United States.

17 61. Heineken has 4% of the beer market in the United States.

18
19 62. The remaining producers of beer including craft beer and micro brewers have
20 12% of the beer market in the United States.

21 63. In the United States, the Defendants will have a combined market share of
22 approximately 55% post-transaction. The post-transaction HHI of the United States beer
23 market will be greater than 2,800.

24 64. The market concentration measures, coupled with the significant increases in
25 concentration, described above, demonstrate that the acquisition is presumed to be
26 anticompetitive.
27

1 65. Price is the most important consideration in the sale of beer. Indeed, ABI and
2 MillerCoors consider beer to be a commodity and that the only competition between them is
3 with regard to advertising.

4 66. Shelf space in major retail chains and other retail outlets is an important part in
5 the sale of beer. The person in charge is usually referred to as the “Category Captain” who
6 determines which beer will be placed on which part of the shelves of the store. These
7 Category Captains are induced, coerced, and given gratuities in order to give ABI and
8 MillerCoors the best possible position on the shelf.

9 67. ABI and MillerCoors typically announce annual price increases in late summer
10 for execution in early fall. The increases vary by region, but typically cover a broad range of
11 beer brands and packs. In most local markets, ABI is the market share leader and issues its
12 price announcement first, purposely making its price increases transparent to the market so its
13 competitors will get in line. In the past several years, MillerCoors has followed ABI’s price
14 increases to a significant degree.

15 68. The specifics of ABI’s pricing strategy are governed by its “Conduct Plan,” a
16 strategic plan for pricing in the United States that reads like a how-to manual for successful
17 price coordination. The goals of the Conduct Plan include: “yielding the highest level of
18 followership in the short-term” and “improving competitor conduct over the long-term.”

19 69. ABI’s Conduct Plan emphasizes the importance of being “Transparent—so
20 competitors can clearly see the plan.” According to ABI, its Conduct Plan “increases the
21 probability of [ABI] sustaining a price increase.”

22 70. In the past several years, Modelo, acting through Crown, has disrupted ABI’s
23 pricing strategy by declining to match many of the price increases that were led by ABI and
24 frequently jointed by MillerCoors.

1 71. In or around 2008, Crown implemented its “Momentum Plan” with Modelo’s
2 enthusiastic support. The Momentum Plan is specifically designed to grow Modelo’s market
3 share by shrinking the price gaps between brands owned by Modelo and domestic premium
4 brands. By maintaining steady pricing while the prices of premium beer continues to rise,
5 Modelo has narrowed the price gap between its beers and ABI’s premium beers, encouraging
6 consumers to trade up to Modelo brands. These narrowed price gaps frustrate ABI and
7 MillerCoors because they result in Modelo gaining market share at their expense.
8

9 72. Competition spurred by Modelo has benefitted consumers through lower beer
10 prices and increased innovation. It has also thwarted ABI’s vision of leading industry prices
11 upward with MillerCoors and others following.

12 73. The proposed merger will increase the ability of ABI and the remaining beer
13 firms to coordinate by eliminating an independent Modelo—which has increasingly inhibited
14 ABI’s price leadership—from the market.
15

16 74. ABI and Modelo are substantial and significant potential competitors in the
17 United States.

18 75. The production and sale of beer are in a continuous and uninterrupted flow of
19 interstate commerce. Materials used in the production of beer are purchased and shipped in a
20 continuous and uninterrupted flow of interstate commerce.
21

22 76. National brewers possess significant competitive advantages over smaller or
23 regional brewers. They are able to advertise on a nationwide basis, have greater prestige,
24 larger distribution networks, and are less affected by weather and labor issues.

25 77. Any restraint of trade in the beer sales market in the United States, including
26 the restraints specifically alleged in this Complaint, directly and substantially restrains and
27 affects interstate commerce.
28

1 78. Any agreement short of prohibiting the acquisition will result in breaking
2 through the price ceiling established by Modelo and immediately give an opening for across
3 the board price increases.

4 79. As the foregoing paragraphs show, the effect of the acquisition, if
5 consummated, may be substantially to lessen competition, or tend to create a monopoly in the
6 production and, sale of beer in the United States by eliminating Modelo as an actual or
7 potential competitor and giving to the new company monopoly power and the likelihood of
8 collusion.

9
10 80. By reason of the proposed acquisition, consumer choice and consumer welfare
11 will be eliminated.

12 81. By reason of the Defendants' proposed acquisition, Plaintiffs are threatened
13 with loss or damage in the form of higher beer prices and diminished competitive options. If
14 Defendants' acquisition is consummated, Plaintiffs will sustain irreparable harm for which
15 damages will be unable to compensate Plaintiffs, in that competition once lost cannot easily be
16 restored. Accordingly, Plaintiffs bring this action for both preliminary and permanent
17 injunctive relief against the ABI acquisition.
18

19 **VIOLATIONS ALLEGED**

20 **Section 7 of the Clayton Antitrust Act, 15 U.S.C. §18**

21 82. Plaintiffs incorporate and reallege paragraphs 1 through 81 above.

22 83. The conduct of ABI and Modelo described hereinabove, specifically the
23 agreement to allow ABI to purchase Modelo, constitutes a violation of Section 7 of the
24 Clayton Antitrust Act, 15 U.S.C. § 18, in that the effect of the proposed acquisition may be
25 substantially to lessen competition, or to tend to create a monopoly in the production and sale
26 of beer in the United States. By reason of the violation plaintiffs are threatened with loss or
27 damage in the form of higher beer prices and diminished competition, as well as irreparable
28

1 harm for which damages will be inadequate to compensate plaintiffs, such that plaintiffs are
2 entitled to bring suit under Section 16 of the Clayton Antitrust Act, 15 U.S.C. § 26, to obtain
3 preliminary and permanent injunctive relief to prohibit the defendants' acquisition, and to
4 recover their costs of suit, including a reasonable attorney's fee.

5 84. Unless restrained and enjoined, ABI will consummate the acquisition of
6 Modelo to the immediate and irreparable damage of the Plaintiffs and the consuming public in
7 that assets and personnel will be commingled and Defendants will immediately institute
8 substantial price increases.
9

10 **PRAYER FOR RELIEF**

11 WHEREFORE, plaintiffs demand the following relief from this Honorable Court:

12 A. Declaring, finding, adjudging, and decreeing that the agreement between ABI
13 and Modelo proposing that ABI purchase Modelo violates Section 7 of the Clayton Antitrust
14 Act, 15 U.S.C. § 18.

15 B. Preliminarily enjoining defendants from consummating their acquisition during
16 the pendency of this action.

17 C. Permanently enjoining defendants from consummating their acquisition.

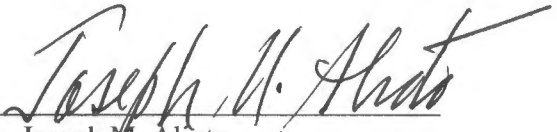
18 D. Awarding to plaintiffs their costs of suit, including a reasonable attorney's fee,
19 as provided by Section 16 of the Clayton Antitrust Act, 15 U.S.C. § 26.
20

21 E. Granting to plaintiffs such other and further relief to which they may be entitled
22 and which the Court finds to be just and appropriate.
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Dated: March 22, 2013

ALIOTO LAW FIRM

By: 

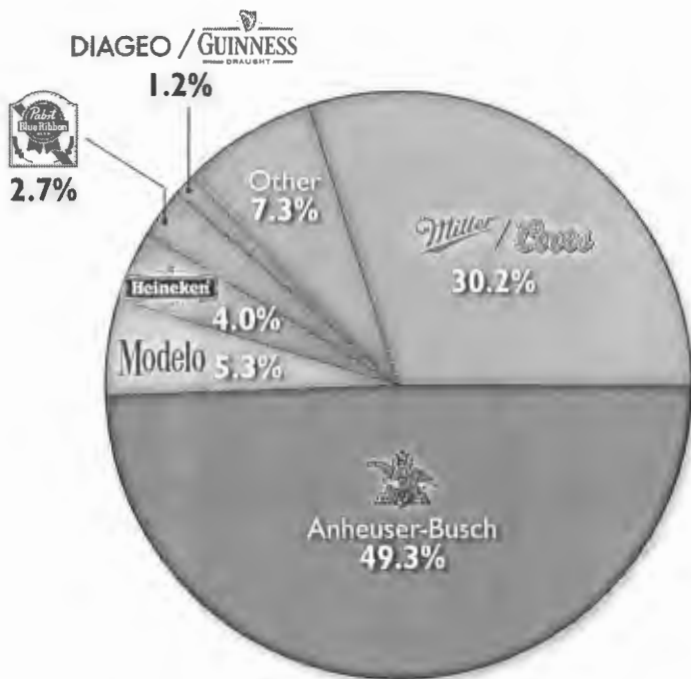
Joseph M. Alioto
Theresa D. Moore
Thomas P. Pier
Jamie L. Miller
ALIOTO LAW FIRM
225 Bush Street, 16th Floor
San Francisco, CA 94104
Telephone: (415) 434-8900
Facsimile: (415) 434-9200
Email: jmalioto@aliotolaw.com

PLAINTIFFS' COUNSEL

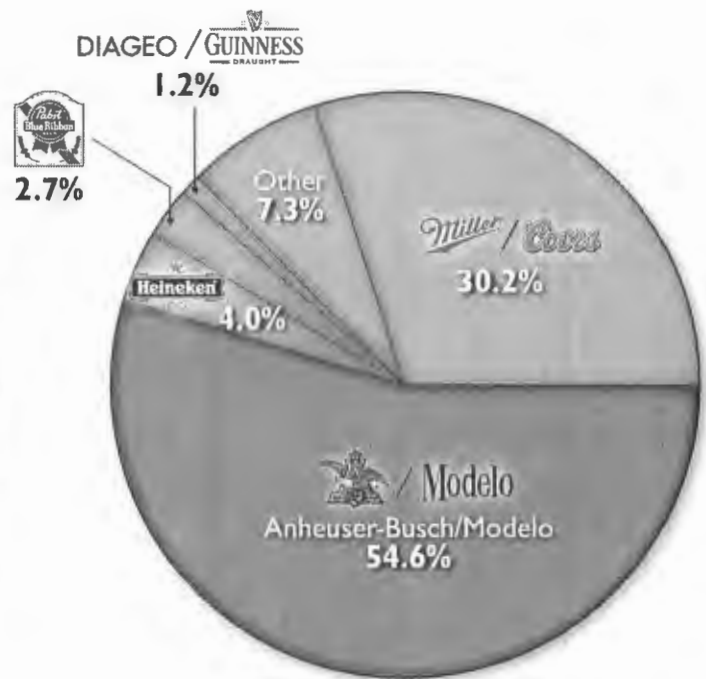
<p>Joseph M. Alioto (SBN 42680) Theresa D. Moore (SBN 99978) Thomas P. Pier (SBN 235740) Jamie L. Miller (SBN 271452) ALIOTO LAW FIRM 225 Bush Street, 16th Floor San Francisco, CA 94104 Telephone: (415) 434-8900 Facsimile: (415) 434-9200 Email: jalioto@aliotolaw.com tmoore@aliotolaw.com jmiller@aliotolaw.com</p>	<p>Jeffery K. Perkins (SBN 57996) LAW OFFICES OF JEFFERY K. PERKINS 1550-G Tiburon Blvd #344 Tiburon, CA 94920 Telephone: (415) 302-1115 Facsimile: (415) 435-4053 Email: jefferykperkins@aol.com</p>
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EXHIBIT A

Market Share Comparison – U.S. Beer Sales* Pre-Acquisition vs. Post-Acquisition



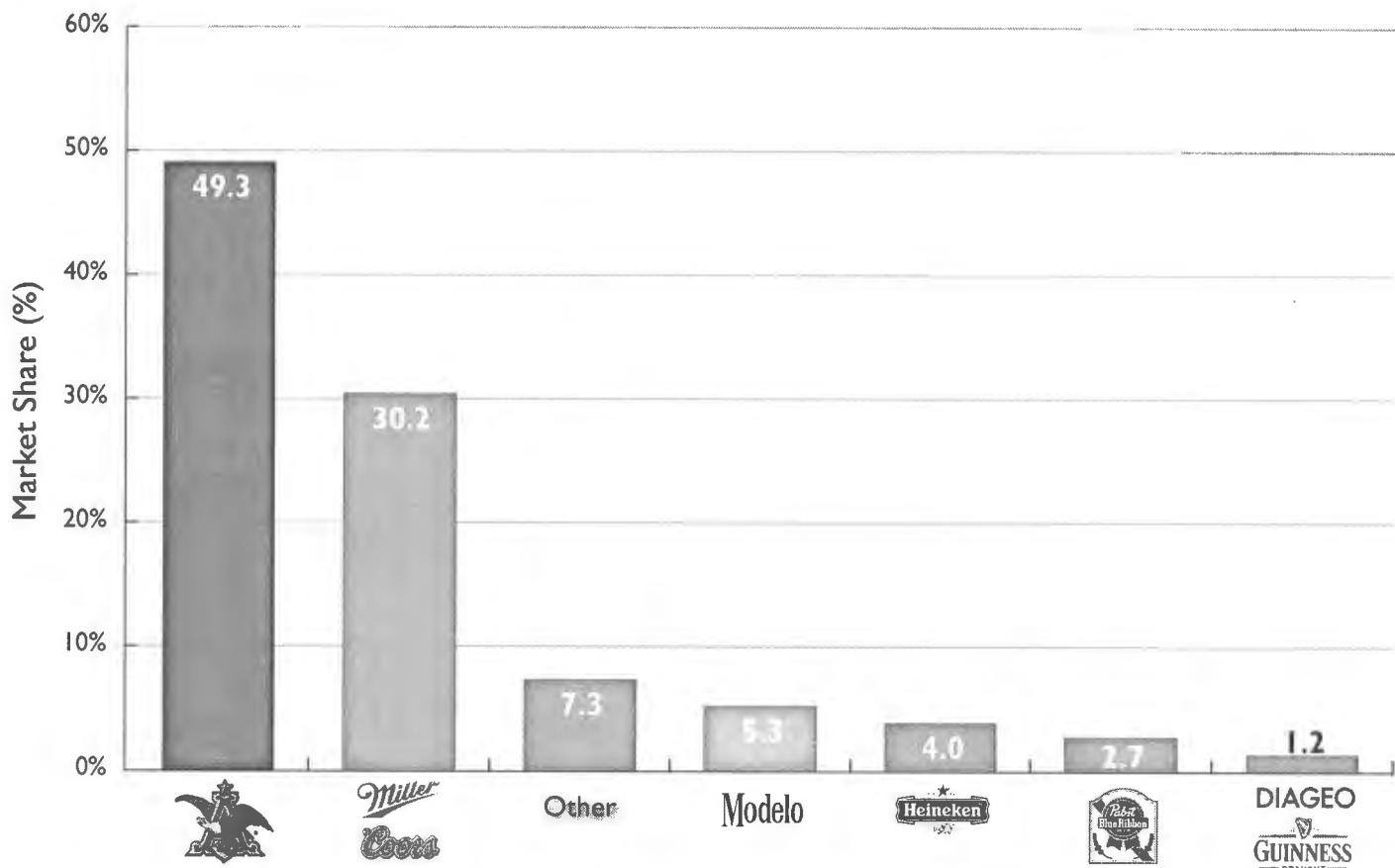
U.S. beer sales market share,
pre-acquisition



U.S. beer sales market share,
post-acquisition

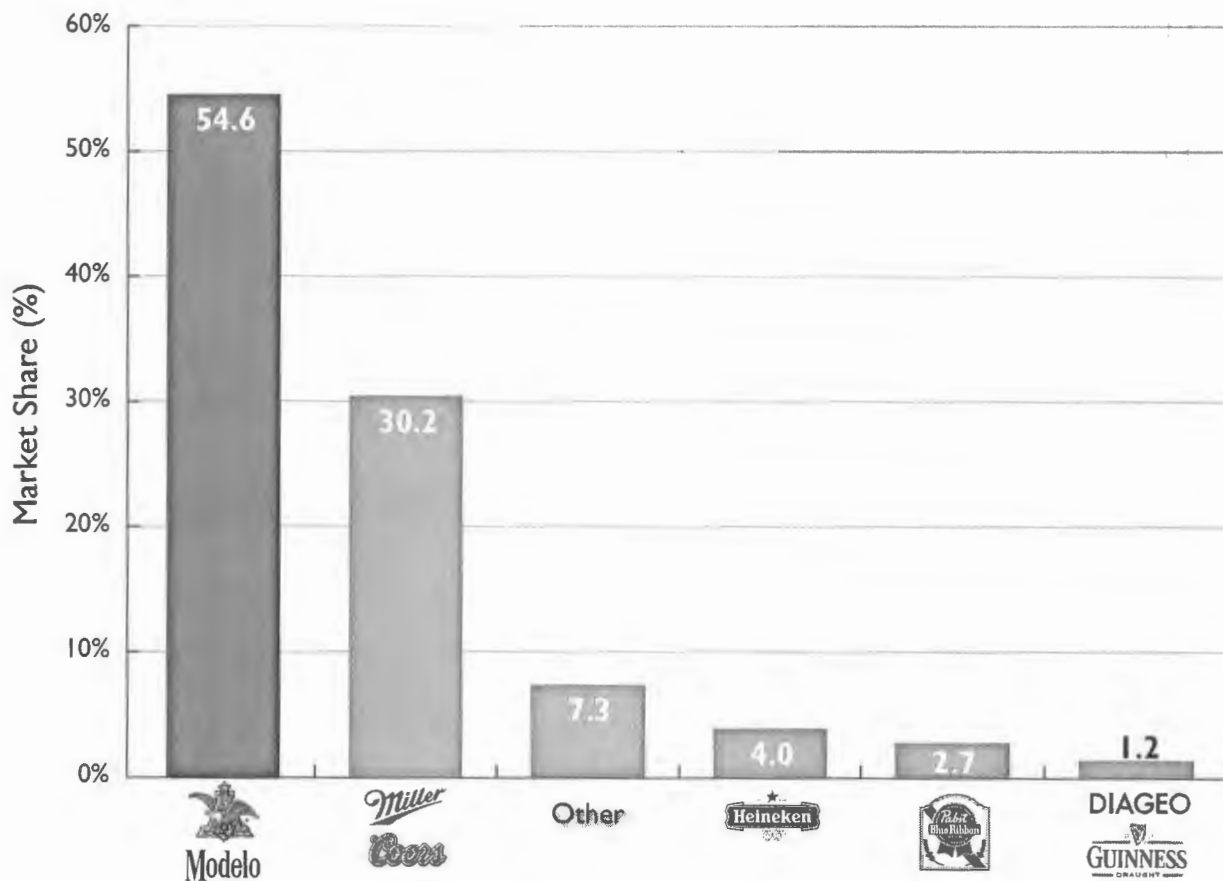
*Source: Antitrust American Institute Report by Bernard Ascher, using National Beer Wholesalers Association (NBWA) 2010 Fact Sheet

Market Share Comparison – U.S. Beer Sales* Pre-Acquisition



*Source: Antitrust American Institute Report by Bernard Ascher, using National Beer Wholesalers Association (NBWA) 2010 Fact Sheet

Market Share Comparison – U.S. Beer Sales* Post-Acquisition



*Source: Antitrust American Institute Report by Bernard Ascher, using National Beer Wholesalers Association (NBWA) 2010 Fact Sheet

CIVIL COVER SHEET

JS 44 (Rev. 12/12) cand rev (1/15/13)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Steven Edstrom, et al. (See Attached Sheet)

DEFENDANTS

Anheuser-Busch InBev SA/NV, and Grupo Modelo S.A.B. de C.V.

(b) County of Residence of First Listed Plaintiff San Francisco
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Belgium
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)
See Attached Sheet

Attorneys (If Known)

MEJ

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 136 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. Section 18; 15 U.S.C. Section 16

Brief description of cause:
Violation of Section 7 of the Clayton Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$**

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE
 03/22/2013

SIGNATURE OF ATTORNEY OF RECORD

IX. DIVISIONAL ASSIGNMENT (Civil L.R. 3-2)

(Place an "X" in One Box Only)

- SAN FRANCISCO/OAKLAND
- SAN JOSE
- EUREKA

013-1209-MMC

ATTACHMENT TO CIVIL COVER SHEET - ALL PLAINTIFF LISTING

United States District Court
Northern District of California
San Francisco Division

Steven Edstrom, et al. v. Anheuser-Busch InBev SA/NV and Grup Modelo S.A.B. de C.V.

PLAINTIFFS:

STEVEN EDSTROM, BARRY GINSBURG, MARTIN GINSBURG, EDWARD LAWRENCE, SHARON MARTIN, MARK M. NAEGER, JOHN NYPL, DANIEL SAYLE, WILLIAM STAGE,

ATTORNEYS:

Joseph M. Alioto (SBN 42680) Theresa D. Moore (SBN 99978) Thomas P. Pier (SBN 235740) Jamie L. Miller (SBN 271452) ALIOTO LAW FIRM 225 Bush Street, 16 th Floor San Francisco, CA 94104 Telephone: (415) 434-8900 Facsimile: (415) 434-9200 Email: jmalieto@aliotolaw.com tmoore@aliotolaw.com jmiller@aliotolaw.com	Jeffery K. Perkins (SBN 57996) LAW OFFICES OF JEFFERY K. PERKINS 1550-G Tiburon Blvd #344 Tiburon, CA 94920 Telephone: (415) 302-1115 Facsimile: (415) 435-4053 Email: jefferykperkins@aol.com
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AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

Steven Edstrom, et al.

Plaintiff

v.

Anheuser-Busch InBev SA/NV, and
Grupo Modelo S.A.B. de C.V.,

Defendant

Civil Action No. **C 13 1309**

MEJ

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Anheuser-Busch InBev SA/NV CT Corporation System 818 W 7th Street Los Angeles, CA 90017
Grupo Modelo S.A.B. de C.V. Campos Eliseos, #400 8th Floor Mexico, D.V. Mexico

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Joseph M. Alioto
Alioto Law Firm
225 Bush Street, 16th Floor
San Francisco, CA 94104
Telephone: (415) 434-8900

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

HELEN ALMACEN

Date: 03/22/2013

Signature of Clerk or Deputy Clerk

ATTACHMENT TO SUMMONS - ALL PLAINTIFF LISTING

United States District Court
Northern District of California
San Francisco Division

Steven Edstrom, et al. v. Anheuser-Busch InBev SA/NV and Grup Modelo S.A.B. de C.V.

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