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 ANHEUSER-BUSCH, INC.

9 UNITED STATES DISTRICT COURT
 10 SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED BRANDS COMPANY, INC.,
 12 Plaintiff,
 13 v.
 14 ANHEUSER-BUSCH, INC.,
 15 Defendant.

Case No. 10-CV-2281-AJB (WMc)

Hon. Anthony J. Battaglia
 Courtroom A

**ANSWER TO SECOND AMENDED
 COMPLAINT FOR:**

**FEDERAL DILUTION; FEDERAL
 TRADE DRESS AND TRADEMARK
 INFRINGEMENT AND FALSE
 DESIGNATION OF ORIGIN IN
 VIOLATION OF THE LANHAM ACT
 SECTION 43(A); FEDERAL
 COPYRIGHT INFRINGEMENT;
 CALIFORNIA TRADEMARK
 INFRINGEMENT AND DILUTION;
 UNFAIR COMPETITION UNDER
 CALIFORNIA BUSINESS AND
 PROFESSIONS CODE SECTION 17200
 ET SEQ.; CALIFORNIA COMMON LAW
 TRADEMARK INFRINGEMENT;
 CALIFORNIA COMMON LAW UNFAIR
 COMPETITION**

DEMAND FOR JURY TRIAL

1 Defendant Anheuser-Busch, Inc. (“Defendant”) hereby responds to Plaintiff United Brands
2 Company, Inc.’s (“Plaintiff”) Second Amended Complaint (“SAC”) as follows:

3 **INTRODUCTION**

4 1. As to paragraph no. 1 of the SAC, Defendant admits that the SAC alleges causes of
5 action for trademark infringement, copyright infringement, unfair competition, and other claims.
6 Defendant is without knowledge or information sufficient to form a belief as to the truth of the
7 remaining allegations set forth therein, and, on that basis, denies each and every allegation set forth
8 therein.

9 2. As to paragraph no. 2 of the SAC, Defendant admits the allegations set forth therein.

10 3. As to paragraph no. 3 of the SAC, Defendant admits that it changed the packaging of
11 its Tilt line of products. Except as expressly admitted, Defendant denies each and every allegation set
12 forth therein.

13 **JURISDICTION AND VENUE**

14 4. As to paragraph no. 4 of the SAC, Defendant admits that the SAC asserts the causes of
15 action enumerated in paragraph 4.

16 5. As to paragraph no. 5 of the SAC, the allegations state arguments or legal conclusions
17 to which no answer is required. To the extent further response is required, Defendant denies each and
18 every allegation set forth therein.

19 6. As to paragraph no. 6 of the SAC, the allegations state arguments or legal conclusions
20 to which no answer is required. To the extent further response is required, Defendant denies each and
21 every allegation set forth therein.

22 **THE PARTIES**

23 7. As to paragraph no. 7 of the SAC, Defendant is without knowledge or information
24 sufficient to form a belief as to the truth of the allegations set forth therein, and, on that basis, denies
25 each and every allegation set forth therein.

26 8. As to paragraph no. 8 of the SAC, Defendant denies that it is a Delaware corporation.
27 Defendant admits that it has offices at Executive Office, One Busch Place, St. Louis, Missouri 63118-
28 1852. The remaining allegations state arguments or legal conclusions to which no answer is required.

1 To the extent further response is required, Defendant denies each and every allegation set forth
2 therein.

3 **ALLEGATIONS FOR ALL CLAIMS FOR RELIEF**

4 9. As to paragraph no. 9 of the SAC, Defendant is without knowledge or information
5 sufficient to form a belief as to the truth of the allegations set forth therein, and, on that basis, denies
6 each and every allegation set forth therein.

7 10. As to paragraph no. 10 of the SAC, Defendant is without knowledge or information
8 sufficient to form a belief as to the truth of the allegations set forth therein, and, on that basis, denies
9 each and every allegation set forth therein.

10 11. As to paragraph no. 11 of the SAC, Defendant is without knowledge or information
11 sufficient to form a belief as to the truth of the allegations set forth therein, and, on that basis, denies
12 each and every allegation set forth therein.

13 12. As to paragraph no. 12 of the SAC, Defendant denies all of the allegations set forth
14 therein.

15 13. As to paragraph no. 13 of the SAC, Defendant is without knowledge or information
16 sufficient to form a belief as to the truth of the allegations set forth therein, and, on that basis, denies
17 each and every allegation set forth therein.

18 14. As to paragraph no. 14 of the SAC, Defendant admits that the records of the United
19 States Copyright Office reflect that Plaintiff is the author and copyright claimant of registration
20 numbers VA 1-737-466 and VA 1-736-747. Except as expressly admitted, Defendant denies each and
21 every allegation set forth therein.

22 15. As to paragraph no. 15 of the SAC, Defendant is without knowledge or information
23 sufficient to form a belief as to the truth of the allegations set forth therein, and, on that basis, denies
24 each and every allegation set forth therein.

25 16. As to paragraph no. 16 of the SAC, Defendant admits that the records of the United
26 States Patent and Trademark Office reflect that Plaintiff is the registrant of federal trademark
27 registration numbers 3,263,454 and 3,465,813. Except as expressly admitted, Defendant denies each
28 and every allegation set forth therein.

1 17. As to paragraph no. 17 of the SAC, Defendant admits that the records of the California
2 Secretary of State reflect that Plaintiff is the registrant of California state trademark registration
3 numbers 114379, 114380, 114381, and 114382. Except as expressly admitted, Defendant denies each
4 and every allegation set forth therein.

5 18. As to paragraph no. 18 of the SAC, the allegations state arguments or legal conclusions
6 to which no answer is required. To the extent further response is required, Defendant denies each and
7 every allegation set forth therein.

8 19. As to paragraph no. 19 of the SAC, the allegations state arguments or legal conclusions
9 to which no answer is required. To the extent further response is required, Defendant denies each and
10 every allegation set forth therein.

11 20. As to paragraph no. 20 of the SAC, the allegations state arguments or legal conclusions
12 to which no answer is required. To the extent further response is required, Defendant denies each and
13 every allegation set forth therein.

14 21. As to paragraph no. 21 of the SAC, Defendant is without knowledge or information
15 sufficient to form a belief as to the truth of the allegations set forth therein, and, on that basis, denies
16 each and every allegation set forth therein.

17 22. As to paragraph no. 22 of the SAC, Defendant is without knowledge or information
18 sufficient to form a belief as to the truth of the allegations set forth therein, and, on that basis, denies
19 each and every allegation set forth therein.

20 23. As to paragraph no. 23 of the SAC, Defendant is without knowledge or information
21 sufficient to form a belief as to the truth of the allegations set forth therein, and, on that basis, denies
22 each and every allegation set forth therein.

23 24. As to paragraph no. 24 of the SAC, Defendant admits the allegations set forth therein
24 except to the extent those allegations imply that Defendant is using or has used the DRAGON JOOSE
25 Marks, which Defendant denies.

26 25. As to paragraph no. 25 of the SAC, Defendant admits the allegations set forth therein.

27 26. As to paragraph no. 26 of the SAC, Defendant admits that in or about August 2005 it
28 began marketing an alcoholic, malt-based flavored beverage, under the mark Tilt. Defendant further

1 admits that the Tilt product was sold in 16-ounce silver cans which featured a stylized letter “T” which
2 was tilted to the left, as reflected in the photograph appearing in paragraph 26 of the SAC. Except as
3 expressly admitted, Defendant denies each and every allegation set forth therein.

4 27. As to paragraph no. 27 of the SAC, Defendant admits that for approximately five years
5 since the launch of the Tilt line of beverages, it sold the product in silver cans with the tilted “T.”
6 Defendant further admits that it changed the packaging and design of its Tilt product as reflected in
7 the photograph appearing in paragraph 27 of the SAC. Except as expressly admitted, Defendant
8 denies each and every allegation set forth therein.

9 28. As to paragraph no. 28 of the SAC, Defendant denies that it began selling Tilt in the
10 redesigned cans, including in 24 ounce cans, in July 2010. Defendant admits it has introduced several
11 Tilt colors and cans as depicted in the photograph appearing in paragraph 28 of the SAC.

12 29. As to paragraph no. 29 of the SAC, Defendant denies all of the allegations set forth
13 therein.

14 30. As to paragraph no. 30 of the SAC, Defendant denies all of the allegations set forth
15 therein.

16 31. As to paragraph no. 31 of the SAC, Defendant admits that its Tilt line of beverages are
17 packaged as reflected in the photograph appearing in paragraph 28 of the SAC. To the extent further
18 response is required, Defendant denies each and every allegation set forth therein.

19 32. As to paragraph no. 32 of the SAC, Defendant admits that its Tilt line of beverages are
20 packaged as reflected in the photograph appearing in paragraph 28 of the SAC. To the extent further
21 response is required, Defendant denies each and every allegation set forth therein.

22 33. As to paragraph no. 33 of the SAC, Defendant denies all of the allegations set forth
23 therein.

24 34. As to paragraph no. 34 of the SAC, Defendant admits the allegations set forth therein.

25 35. As to paragraph no. 35 of the SAC, Defendant is without knowledge or information
26 sufficient to form a belief as to the truth of the allegations set forth therein, and, on that basis, denies
27 each and every allegation set forth therein.

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1 36. As to paragraph no. 36 of the SAC, Defendant denies the allegations set forth therein.

2 37. As to paragraph no. 37 of the SAC, Defendant denies the allegations set forth therein.

3 38. As to paragraph no. 38 of the SAC, Defendant is without knowledge or information
4 sufficient to form a belief as to the truth of the allegations set forth therein, and, on that basis, denies
5 each and every allegation set forth therein.

6 39. As to paragraph no. 39 of the SAC, Defendant is without knowledge or information
7 sufficient to form a belief as to the truth of the allegations set forth therein, and, on that basis, denies
8 each and every allegation set forth therein.

9 40. As to paragraph no. 40 of the SAC, Defendant is without knowledge or information
10 sufficient to form a belief as to the truth of the allegations set forth therein, and, on that basis, denies
11 each and every allegation set forth therein.

12 41. As to paragraph no. 41 of the SAC, Defendant is without knowledge or information
13 sufficient to form a belief as to the truth of the allegations set forth therein, and, on that basis, denies
14 each and every allegation set forth therein.

15 42. As to paragraph no. 42 of the SAC, Defendant is without knowledge or information
16 sufficient to form a belief as to the truth of the allegations set forth therein, and, on that basis, denies
17 each and every allegation set forth therein.

18 43. As to paragraph no. 43 of the SAC, Defendant is without knowledge or information
19 sufficient to form a belief as to the truth of the allegations set forth therein, and, on that basis, denies
20 each and every allegation set forth therein.

21 44. As to paragraph no. 44 of the SAC, Defendant is without knowledge or information
22 sufficient to form a belief as to the truth of the allegations set forth therein, and, on that basis, denies
23 each and every allegation set forth therein.

24 45. As to paragraph no. 45 of the SAC, Defendant is without knowledge or information
25 sufficient to form a belief as to the truth of the allegations set forth therein, and, on that basis, denies
26 each and every allegation set forth therein.

27 46. As to paragraph no. 46 of the SAC, Defendant denies all of the allegations set forth
28 therein.

1 47. As to paragraph no. 47 of the SAC, Defendant is without knowledge or information
2 sufficient to form a belief as to the truth of the allegations set forth therein, and, on that basis, denies
3 each and every allegation set forth therein.

4 48. As to paragraph no. 48 of the SAC, the allegations state arguments or legal conclusions
5 to which no answer is required. To the extent further response is required, Defendant denies each and
6 every allegation set forth therein.

7 49. As to paragraph no. 49 of the SAC, Defendant denies all of the allegations set forth
8 therein.

9 50. As to paragraph no. 50 of the SAC, Defendant denies all of the allegations set forth
10 therein.

11 51. As to paragraph no. 51 of the SAC, Defendant denies all of the allegations set forth
12 therein.

13 52. As to paragraph no. 52 of the SAC, Defendant denies all of the allegations set forth
14 therein.

15 53. As to paragraph no. 53 of the SAC, Defendant denies all of the allegations set forth
16 therein.

17 54. As to paragraph no. 54 of the SAC, Defendant denies all of the allegations set forth
18 therein.

19 55. As to paragraph no. 55 of the SAC, Defendant denies all of the allegations set forth
20 therein.

21 56. As to paragraph no. 56 of the SAC, Defendant denies all of the allegations set forth
22 therein.

23 57. As to paragraph no. 57 of the SAC, Defendant denies all of the allegations set forth
24 therein.

25 58. As to paragraph no. 58 of the SAC, Defendant denies all of the allegations set forth
26 therein.

27 59. As to paragraph no. 59 of the SAC, Defendant denies all of the allegations set forth
28 therein.

1 60. As to paragraph no. 60 of the SAC, Defendant denies all of the allegations set forth
2 therein.

3 61. As to paragraph no. 61 of the SAC, Defendant denies all of the allegations set forth
4 therein.

5 62. As to paragraph no. 62 of the SAC, Defendant denies all of the allegations set forth
6 therein.

7 **FIRST CLAIM FOR RELIEF**

8 **(Trade Dress Infringement and False Designation of Origin)**

9 **Under 15 U.S.C. § 1125(a))**

10 63. As to paragraph no. 63 of the SAC, Defendant incorporates by reference its responses
11 to the above paragraphs as set forth fully herein.

12 64. As to paragraph no. 64 of the SAC, Defendant denies all of the allegations set forth
13 therein.

14 65. As to paragraph no. 65 of the SAC, Defendant denies all of the allegations set forth
15 therein.

16 66. As to paragraph no. 66 of the SAC, Defendant denies all of the allegations set forth
17 therein.

18 67. As to paragraph no. 67 of the SAC, Defendant denies all of the allegations set forth
19 therein.

20 68. As to paragraph no. 68 of the SAC, Defendant denies all of the allegations set forth
21 therein.

22 69. As to paragraph no. 69 of the SAC, Defendant denies all of the allegations set forth
23 therein.

24 70. As to paragraph no. 70 of the SAC, Defendant denies all of the allegations set forth
25 therein.

26 71. As to paragraph no. 71 of the SAC, Defendant denies all of the allegations set forth
27 therein.

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1 **SECOND CLAIM FOR RELIEF**

2 **(Trademark Infringement Under 15 U.S.C. § 1125(a))**

3 72. As to paragraph no. 72 of the SAC, Defendant incorporates by reference its responses
4 to the above paragraphs as set forth fully herein.

5 73. As to paragraph no. 73 of the SAC, Defendant denies all of the allegations set forth
6 therein.

7 74. As to paragraph no. 74 of the SAC, Defendant denies all of the allegations set forth
8 therein.

9 75. As to paragraph no. 75 of the SAC, Defendant denies all of the allegations set forth
10 therein.

11 76. As to paragraph no. 76 of the SAC, Defendant denies all of the allegations set forth
12 therein.

13 77. As to paragraph no. 77 of the SAC, Defendant denies all of the allegations set forth
14 therein.

15 78. As to paragraph no. 78 of the SAC, Defendant denies all of the allegations set forth
16 therein.

17 **THIRD CLAIM FOR RELIEF**

18 **(Federal Dilution Under 15 U.S.C. § 1125(c))**

19 79. As to paragraph no. 79 of the SAC, Defendant incorporates by reference its responses
20 to the above paragraphs as set forth fully herein.

21 80. As to paragraph no. 80 of the SAC, Defendant denies all of the allegations set forth
22 therein.

23 81. As to paragraph no. 81 of the SAC, Defendant denies all of the allegations set forth
24 therein.

25 82. As to paragraph no. 82 of the SAC, Defendant denies all of the allegations set forth
26 therein.

27 83. As to paragraph no. 83 of the SAC, Defendant denies all of the allegations set forth
28 therein.

1 84. As to paragraph no. 84 of the SAC, Defendant denies all of the allegations set forth
2 therein.

3 85. As to paragraph no. 85 of the SAC, Defendant denies all of the allegations set forth
4 therein.

5 86. As to paragraph no. 86 of the SAC, Defendant denies all of the allegations set forth
6 therein.

7 87. As to paragraph no. 87 of the SAC, Defendant denies all of the allegations set forth
8 therein.

9 88. As to paragraph no. 88 of the SAC, Defendant denies all of the allegations set forth
10 therein.

11 89. As to paragraph no. 89 of the SAC, Defendant denies all of the allegations set forth
12 therein.

13 **FOURTH CLAIM FOR RELIEF**

14 **(Copyright Infringement Under 17 U.S.C. § 101 and 501)**

15 90. As to paragraph no. 90 of the SAC, Defendant incorporates by reference its responses
16 to the above paragraphs as set forth fully herein.

17 91. As to paragraph no. 91 of the SAC, Defendant denies all of the allegations set forth
18 therein.

19 92. As to paragraph no. 92 of the SAC, Defendant denies all of the allegations set forth
20 therein.

21 93. As to paragraph no. 93 of the SAC, Defendant admits that it had access to the Dragon
22 Design Copyrights.

23 94. As to paragraph no. 94 of the SAC, Defendant denies all of the allegations set forth
24 therein.

25 95. As to paragraph no. 95 of the SAC, Defendant denies all of the allegations set forth
26 therein.

27 96. As to paragraph no. 96 of the SAC, Defendant denies all of the allegations set forth
28 therein.

1 109. As to paragraph no. 109 of the SAC, Defendant denies all of the allegations set forth
2 therein.

3 110. As to paragraph no. 110 of the SAC, Defendant denies all of the allegations set forth
4 therein.

5 111. As to paragraph no. 111 of the SAC, Defendant denies all of the allegations set forth
6 therein.

7 112. As to paragraph no. 112 of the SAC, Defendant denies all of the allegations set forth
8 therein.

9 113. As to paragraph no. 113 of the SAC, Defendant denies all of the allegations set forth
10 therein.

11 114. As to paragraph no. 114 of the SAC, Defendant denies all of the allegations set forth
12 therein.

13 115. As to paragraph no. 115 of the SAC, Defendant denies all of the allegations set forth
14 therein.

15 116. As to paragraph no. 116 of the SAC, Defendant denies all of the allegations set forth
16 therein.

17 **SIXTH CLAIM FOR RELIEF**

18 (California Statutory Trademark Infringement Under
19 Business & Professions Code § 14245)

20 117. As to paragraph no. 117 of the SAC, Defendant incorporates by reference its responses
21 to the above paragraphs as set forth fully herein.

22 118. As to paragraph no. 118 of the SAC, Defendant admits that the records of the
23 California Secretary of State reflect that Plaintiff is the registrant of California state trademark
24 registration numbers 114379, 114380, 114381, and 114382.

25 119. As to paragraph no. 119 of the SAC, Defendant denies all of the allegations set forth
26 therein.

27 120. As to paragraph no. 120 of the SAC, Defendant denies all of the allegations set forth
28 therein.

1 121. As to paragraph no. 121 of the SAC, Defendant denies all of the allegations set forth
2 therein.

3 122. As to paragraph no. 122 of the SAC, Defendant denies all of the allegations set forth
4 therein.

5 123. As to paragraph no. 123 of the SAC, Defendant denies all of the allegations set forth
6 therein.

7 124. As to paragraph no. 124 of the SAC, Defendant denies all of the allegations set forth
8 therein.

9 125. As to paragraph no. 125 of the SAC, Defendant denies all of the allegations set forth
10 therein.

11 **SEVENTH CLAIM FOR RELIEF**

12 **(California Statutory Unfair Competition**

13 **Under Business & Professions Code § 17200)**

14 126. As to paragraph no. 126 of the SAC, Defendant incorporates by reference its responses
15 to the above paragraphs as set forth fully herein.

16 127. As to paragraph no. 127 of the SAC, Defendant denies all of the allegations set forth
17 therein.

18 128. As to paragraph no. 128 of the SAC, Defendant denies all of the allegations set forth
19 therein.

20 129. As to paragraph no. 129 of the SAC, Defendant denies all of the allegations set forth
21 therein.

22 130. As to paragraph no. 130 of the SAC, Defendant denies all of the allegations set forth
23 therein.

24 131. As to paragraph no. 131 of the SAC, Defendant denies all of the allegations set forth
25 therein.

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1 **EIGHTH CLAIM FOR RELIEF**

2 **(California Common Law Trademark Infringement)**

3 132. As to paragraph no. 132 of the SAC, Defendant incorporates by reference its responses
4 to the above paragraphs as set forth fully herein.

5 133. As to paragraph no. 133 of the SAC, Defendant denies all of the allegations set forth
6 therein.

7 134. As to paragraph no. 134 of the SAC, Defendant denies all of the allegations set forth
8 therein.

9 135. As to paragraph no. 135 of the SAC, Defendant denies all of the allegations set forth
10 therein.

11 136. As to paragraph no. 136 of the SAC, Defendant denies all of the allegations set forth
12 therein.

13 137. As to paragraph no. 137 of the SAC, Defendant denies all of the allegations set forth
14 therein.

15 138. As to paragraph no. 138 of the SAC, Defendant denies all of the allegations set forth
16 therein.

17 **NINTH CLAIM FOR RELIEF**

18 **(California Common Law Unfair Competition)**

19 139. As to paragraph no. 139 of the SAC, Defendant incorporates by reference its responses
20 to the above paragraphs as set forth fully herein.

21 140. As to paragraph no. 140 of the SAC, Defendant denies all of the allegations set forth
22 therein.

23 141. As to paragraph no. 141 of the SAC, Defendant denies all of the allegations set forth
24 therein.

25 142. As to paragraph no. 142 of the SAC, Defendant denies all of the allegations set forth
26 therein.

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AFFIRMATIVE DEFENSES TO THE SAC
AND EACH ALLEGED CAUSE OF ACTION THEREOF

Defendant states that investigation and discovery may reveal that any one or more of the following listed affirmative defenses should be available to Defendant in this matter. Defendant, therefore, asserts said defenses in order to preserve its right to assert them later. Upon completion of discovery, if the facts warrant, Defendant may withdraw any of these defenses as may be appropriate. Defendant further reserves the right to amend this Answer to assert additional claims or affirmative defenses as the facts and discovery may justify.

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Cause of Action)

The SAC, and each purported cause of action therein, fails to state facts sufficient to constitute a cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE
(Merger and Scenes a Faire)

Plaintiff’s copyright infringement claim is barred by the doctrines of merger and scenes a faire.

THIRD AFFIRMATIVE DEFENSE
(Functionality)

Plaintiff’s claim for trade dress infringement is barred because Plaintiff’s trade dress is functional.

FOURTH AFFIRMATIVE DEFENSE
(Estoppel)

Defendant alleges that Plaintiff is estopped from obtaining any and all of the relief sought against Defendant in the SAC, by virtue of its acts, conduct, representations and/or omissions.

FIFTH AFFIRMATIVE DEFENSE
(Unclean Hands)

To the extent that Plaintiff seeks relief based upon equitable principles, the relief sought is barred by Plaintiff’s unclean hands.

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SIXTH AFFIRMATIVE DEFENSE

(Laches)

Plaintiff is barred by laches from recovery under the SAC, or at all, by reason of its unreasonable delay in notifying Defendant of the claims alleged, and by reason of its unreasonable delay in seeking the recovery requested herein.

SEVENTH AFFIRMATIVE DEFENSE

(Lack of Causation)

No act or omission of Defendant was the cause in fact or the proximate cause of the injuries and damages, if any, sustained by Plaintiff.

EIGHTH AFFIRMATIVE DEFENSE

(Compliance With Applicable Laws)

Plaintiff's claims are barred in whole or in part by reason of Defendant's compliance with all applicable laws, statutes and regulations.

NINTH AFFIRMATIVE DEFENSE

(No Entitlement to Attorneys' Fees)

Plaintiff has failed to allege an adequate basis upon which to seek attorneys' fees.

TENTH AFFIRMATIVE DEFENSE

(Lack of Standing)

Plaintiff's unfair competition, statutory or otherwise, are barred in whole or in part as a result of Plaintiff's lack of standing to assert such claims.

ELEVENTH AFFIRMATIVE DEFENSE

(Valid Business Purpose)

Plaintiff's claims are barred for the reason that the alleged conduct of Defendant was at all times undertaken in the good faith exercise of a valid business purpose.

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TWELFTH AFFIRMATIVE DEFENSE

(Mitigation)

Defendant is informed and believes, and thereon alleges that Plaintiff’s alleged damages, if any, are the result, in whole or in part, of Plaintiff’s failure to exercise reasonable care to reduce or mitigate the damages.

THIRTEENTH AFFIRMATIVE DEFENSE

(No Nexus)

Plaintiff’s claims are barred, in whole or in part, due to Plaintiff’s failure to meet its burden of demonstrating a nexus between Defendant’s alleged acts, conduct or statements and any impact on Plaintiff.

FOURTEENTH AFFIRMATIVE DEFENSE

(Acts of Third Parties)

Some or all of the conduct alleged in paragraphs 36-48 of the SAC may have been the acts of third parties over whom Defendant exercised no control and who were not authorized to act on Defendant’s behalf.

FIFTEENTH AFFIRMATIVE DEFENSE

(No Liability Under Cal. Bus. & Prof. Code § 17200 for Acts in Arizona)

The conduct alleged in paragraphs 46-47 of the SAC is not actionable under Cal. Bus. & Prof. Code § 17200 to the extent the alleged conduct occurred outside of California.

SIXTEENTH AFFIRMATIVE DEFENSE

(No Right To Punitive Damages)

Plaintiff is not entitled to punitive damages in this action. Further, Plaintiff’s claim for punitive damages violates Defendant’s rights guaranteed under the United States Constitution and the California Constitution.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Insufficient Claim for Punitive Damages)

Plaintiff’s SAC fails to state facts sufficient to constitute a claim for punitive damages against Defendant. Defendant further alleges that it has not taken any action in conscious disregard of

1 Plaintiff's rights that would constitute oppression, fraud or malice under California Civil Code section
2 3294.

3 **EIGHTEENTH AFFIRMATIVE DEFENSE**

4 **(California Civil Code § 3294 is Unconstitutionally Vague)**

5 Defendant alleges that California Civil Code section 3294 is unconstitutionally vague under
6 the Due Process Clause of the United States and California Constitutions.

7 **NINETEENTH AFFIRMATIVE DEFENSE**

8 **(Claim for Punitive Damages Violates Due Process)**

9 To the extent Plaintiff's claim for punitive damages is excessively disproportionate to
10 Plaintiff's claim for compensatory damages, it violates Defendant's rights under the Due Process
11 Clause of the United States and California Constitutions. *See State Farm Mutual Automobile Ins. Co.*
12 *v. Campbell* (2003) 538 U.S. 408, 424-426; *Romo v. Ford Motor Co.* (2003) 113 Cal. App. 4th 738,
13 750-725.

14 **WHEREFORE**, Defendant prays as follows:

- 15 1. That Plaintiff's Second Amended Complaint and all claims therein be dismissed with
16 prejudice;
- 17 2. That Plaintiff takes nothing by this action;
- 18 3. That judgment be entered against Plaintiff and in favor of Defendant;
- 19 4. That Defendant recover reasonable costs and expenses incurred in this action, including
20 its reasonable attorneys' fees as may be provided for by statute; and
- 21 5. That this Court grant Defendant such other relief as the Court deems just and
22 proper.

23
24 DATED: October 14, 2011

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

25
26 By: s/ Jeffrey A. Feasby

Jeffrey A. Feasby

jfeasby@luce.com

Attorneys for Defendant

ANHEUSER-BUSCH, INC.

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DEMAND FOR JURY TRIAL

Under Fed.R.Civ.P. 38(b), Defendant demands a jury trial on all issues triable of right by a jury.

DATED: October 14, 2011

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

By: s/ Jeffrey A. Feasby
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