



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Case Number: CGC-15-544985

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COMPLAINT

WILLIAM NIXON ET AL VS. ANHEUSER-BUSCH COMPANIES, LLC

001C04848767

Instructions:

Please place this sheet on top of the document to be scanned.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Matthew J. O'Connor (203334) O'Connor Law APC 402 West Broadway, 29th Floor San Diego Ca 92101 TELEPHONE NO.: 619.398.4764 FAX NO.: 619.756.6991 ATTORNEY FOR (Name): Plaintiffs		FOR COURT USE ONLY <div style="text-align: center; font-size: 2em; font-weight: bold;">FILED</div> Superior Court of California County of San Francisco <div style="text-align: center; font-size: 1.5em; font-weight: bold;">MAR 27 2015</div> CLERK OF THE COURT BY: <u>[Signature]</u> Deputy Clerk	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco CA 94102 BRANCH NAME:		CASE NAME: William Nixon and Michael O'Neill v. Anheuser-Busch Companies, LLC	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	
		CASE NUMBER: CGC-15-544985 JUDGE: DEPT:	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): **2**

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

BY FAX

Date: **March 26, 2015**
 Matthew J. O'Connor
 (TYPE OR PRINT NAME)

[Signature]
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/WD Tort (35)

Employment

- Wrongful Termination (36)
- Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
- Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
- Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
- Collection Case—Seller Plaintiff
- Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
- Auto Subrogation
- Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
 - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment (*non-domestic relations*)
 - Sister State Judgment
 - Administrative Agency Award (*not unpaid taxes*)
 - Petition/Certification of Entry of Judgment on Unpaid Taxes
 - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (*not specified above*) (42)
 - Declaratory Relief Only
 - Injunctive Relief Only (*non-harassment*)
 - Mechanics Lien
 - Other Commercial Complaint Case (*non-tort/non-complex*)
 - Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief From Late Claim
 - Other Civil Petition

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

ANHEUSER-BUSCH COMPANIES, LLC, a Delaware limited liability company,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

WILLIAM NIXON AND MICHAEL O'NEILL, individually and on behalf of all others similarly situated,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

San Francisco Superior Court
400 McAllister Street, San Francisco CA 94102

CASE NUMBER:
(Número del Caso):

CGC-15-544985

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
O'Connor Law APC - 402 W. Broadway, 29th Floor, San Diego CA 92101; Tel: (619) 398-4760

DATE: **MAR 27 2015**
(Fecha)

Clerk, by **DAVID W. YUEN**, Deputy
(Secretario) *DW* (Adjunto)

CLERK OF THE COURT

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):

BY FAX

1 Matthew J. O'Connor (SBN 203334)
2 O'CONNOR LAW
3 A Professional Corporation
4 402 West Broadway, 29th Floor
5 San Diego, CA 92101
6 Telephone: 619.398.4764
7 Facsimile: 619.756.6991

8 Steven L. Woodrow
9 (swoodrow@woodrowpeluso.com)*
10 Patrick H. Peluso
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12 Woodrow & Peluso, LLC
13 3900 East Mexico Ave., Suite 300
14 Denver, Colorado 80210
15 Telephone: (720) 213-0675
16 Facsimile: (303) 927-0809

17 *Attorneys for Plaintiffs*

18 *Pro hac vice application to be filed

19 **SUPERIOR COURT OF CALIFORNIA**
20 **COUNTY OF SAN FRANCISCO**

21 WILLIAM NIXON AND MICHAEL
22 O'NEILL, individually and on behalf of all
23 others similarly situated,

24 *Plaintiff,*

25 v.

26 ANHEUSER-BUSCH COMPANIES, LLC, a
27 Delaware limited liability company,

28 *Defendant.*

F I L E D
Superior Court of California
County of San Francisco

MAR 27 2015

CLERK OF THE COURT

BY: David W. Yuen
Deputy Clerk

Case No: **CGC 15-544985**

COMPLAINT FOR:

1. Violation of Business & Professions Code Section 17533.7 (False "Made in USA" Claim)
2. Violations of California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

CLASS ACTION

BY FAX

1 Plaintiffs William Nixon (“Nixon”) and Michael O’Neill (“O’Neill”) (collectively
2 “Plaintiffs”) bring this Class Action Complaint (“Complaint”) against Defendant Anheuser-Busch
3 Companies, LLC (“AB” or “Defendant”) to obtain redress for, and put an end to, Defendant’s
4 violations of California’s Business & Professions Code, specifically its false claim that its Busch
5 beer is a “Product of USA”. Plaintiffs, for their Complaint, allege as follows upon personal
6 knowledge as to themselves and their own acts and experiences and as to all other matters, upon
7 information and belief, including investigation conducted by their attorneys.

8 NATURE OF THE ACTION

9 1. A “Made in America” claim on a product is a powerful thing. To many consumers,
10 such claims signify superior quality, and the opportunity to support American jobs and trumpet
11 patriotism.

12 2. Over five decades ago, California’s legislature engaged Business & Professions
13 Code Section 17533.7 (“Made in USA Law”) to make it “unlawful for any person, firm,
14 corporation or association to sell or offer or sale in this State any merchandise on which
15 merchandise or on its container there appears the words ‘Made in USA,’ ‘U.S.A.’ or similar words
16 when the merchandise or any article, unit, or part thereof, has been entirely or substantially made,
17 manufactured, or produced outside of the United States.”

18 3. The law has endured to this day. As the California Supreme Court held in a 2011
19 decision upholding the Made in USA Law: “Simply stated: labels matter.” *Kwikset Corp. v.*
20 *Superior Court*, 246 P.3d 877, 889 (Cal. 2011)

21 4. Here, Defendant AB has misled consumers and has violated the Made in USA Law
22 by placing the phrase “Product of U.S.A.” on the cans for its Busch beer when, in fact, Busch beer
23 is brewed with imported hops—a crucial component part of beer.

24 5. As a result of Defendant’s violations of California law, consumers such as Plaintiffs
25 have been injured by being misled into paying for something they believed was genuinely a
26 “Product of USA” when in reality it was and is not. Plaintiffs and the Class members are thus
27
28

1 entitled to relief in the form of actual damages, injunctive and declaratory relief, and attorneys'
2 fees.

3 **PARTIES**

4 6. Plaintiff William Nixon is a natural person and citizen of the state of California. He
5 resides in San Francisco, CA.

6 7. Plaintiff Michael O'Neill is a natural person and citizen of the state of California.
7 He resides in Sacramento County, CA.

8 8. Defendant AB is a Delaware limited liability company with its corporate
9 headquarters located at One Busch Place, St. Louis, MO 63118. It is a wholly-owned subsidiary of
10 Anheuser-Busch InBev, the world's largest brewer. AB has an American market share of nearly
11 50%, operates 12 breweries, and owns dozens of beer brands, including Busch.

12 **JURISDICTION AND VENUE**

13 9. This Court has jurisdiction over this matter because Defendant routinely transacts
14 business in San Francisco County and throughout the state of California.

15 10. Venue is proper pursuant to Code of Civil Procedure Section 395 and 395.5,
16 Business & Professions Code Sections 17203 and 17204, and Civil Code Section 1780(c) because
17 Defendant does business in San Francisco County and Plaintiff Nixon's transaction took place in
18 San Francisco County.

19 **FACTS RELATING TO ALL COUNTS**

20 11. AB's Busch beer is the 9th most popular beer in the United States. According to the
21 St. Louis Business Journal, annual sales of Busch beer total more than \$673 million. A significant
22 portion of those sales are in California.

23 12. AB markets and represents to the public that Busch is a "Product of U.S.A." by
24 placing that statement on Busch cans in an effort to evoke feelings of patriotism and images of
25 quality in consumers who see the cans labeled "Product of U.S.A." on the shelf.
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1 13. Despite the “Product of U.S.A.” claim, Busch beer is substantially and/or partially
2 made, manufactured, or produced with foreign component parts. The most notable foreign
3 component part is hops—Busch beer is brewed with imported hops.

4 14. Beer has few ingredients—typically it consists of only water, grains (such as
5 barley), yeast, and hops. By using imported hops, a significant portion of Busch beer is not
6 produced in the United States and AB cannot, under California law, label it with “Product of
7 U.S.A.”

8 15. By doing so, Defendant misleadingly and fraudulently conceals the material facts at
9 issue herein by failing to disclose on Busch cans the true facts regarding the country of origin of
10 the product. The disclosure of this information was is necessary to make AB’s representation not
11 misleading. AB possesses superior knowledge of the true facts, which were not disclosed to
12 Plaintiffs and the other class members.

13 16. California consumers are vulnerable to deceptive and fraudulent practices.
14 Consumers have little to no knowledge of the country of origin of products on the shelf and must
15 rely on labels. Consumers must be able to trust that products, including the component parts, that
16 are claimed to be “Product of U.S.A.” are not in fact made or produced in foreign countries. This is
17 a material fact in many individuals’ buying decisions, as they believe they are supporting
18 American companies or just generally feel good about buying American. Either way, it materially
19 impacts whether or not consumers buy the product.

20 17. Consumers generally believe that made in America products are higher quality than
21 foreign products. Due to AB’s scheme to defraud the market, consumers were fraudulently induced
22 to purchase AB’s Busch beer at inflated prices. On information and belief, and during the entirety
23 of the relevant time period, AB charged inflated prices for beer that was not truly a “Product of
24 U.S.A.” California laws are designed to protect consumers from this type of false representation
25 and predatory conduct. Defendant’s scheme to defraud consumers is ongoing and will victimize
26 consumers each and every day throughout California until Defendant’s conduct is stopped.

1 18. Plaintiff Nixon purchased Busch beer in 2015. Plaintiff O'Neill purchased Busch
2 beer throughout the relevant time period. At the time of each purchase, the Busch cans that
3 Plaintiffs purchased stated "Product of U.S.A." directly on the cans. At the time of each purchase,
4 this label was unlawful under California law because, at the very least, of the use of imported hops.

5 19. In each case when Plaintiffs and Class members bought Busch beer, they relied on
6 the "Product of U.S.A." representation in their purchasing decision, which is typical of most
7 consumers, and they were deceived by AB's actions.

8 20. The purchase decisions were supported by the "Product of U.S.A." representation
9 that is not made by most of AB's competitors. Absent the "Product of U.S.A." representation,
10 Plaintiffs would not have purchased Busch at all or would have purchased it much less frequently,
11 and would have paid less for the beer on the rare occasions they would've bought it.

12 21. Plaintiffs were injured because money was taken by AB as a result of AB's false
13 "Product of U.S.A." claim. Furthermore, Plaintiffs suffered injury by paying for something
14 believed to be genuinely an American product when it wasn't and that was in reality worth less
15 than what it should have been worth had the "Product of U.S.A." claim been true.

16 22. Simply put, Plaintiffs and Class members were falsely induced to purchase a
17 product they otherwise would not have purchased or that they would have paid less money for.
18 Plaintiffs and Class members suffered injury as a result of Defendant's conduct.

19 CLASS ALLEGATIONS

20 23. **Class Definitions:** Plaintiff brings this class action on behalf of himself and a
21 Class of similarly situated individuals, defined as follows:

22 All persons who, on or after March 18, 2011, purchased Busch beer in California
23 where the can, bottle, or package contained the statement "Product of U.S.A."

24 Excluded from the Classes and Subclass are (1) Defendant, Defendant's agents, subsidiaries,
25 parents, successors, predecessors, and any entity in which Defendant or its parent have a
26 controlling interest, and those entities' current and former employees, officers, and directors, (2)
27
28

1 the Judge or Magistrate Judge to whom this case is assigned and the Judge's or Magistrate Judge's
2 immediate family, (3) persons who execute and file a timely request for exclusion, (4) persons who
3 have had their claims in this matter finally adjudicated and/or otherwise released, and (5) the legal
4 representatives, successors, and assigns of any such excluded person.

5 24. **Numerosity:** The exact number of Class members is unknown to Plaintiffs at this
6 time, but it is clear that joinder of each individual member is impracticable. Defendant sells
7 millions of dollars worth of Busch beer each year in California.

8 25. **Commonality:** Common questions of law and fact exist as to all members of the
9 Class for which this proceeding will provide common answers in a single stroke, including:

10 a. Whether AB uses imported hops in its Busch beer and whether doing so
11 violates California's "Made in USA" law, Section 17533.7, and Business & Professions Code
12 Section 17200 *et seq.*;

13 b. Whether imported hops are used to brew Busch beer;

14 c. Whether "Product of U.S.A." is similar to "Made in U.S.A."; and

15 d. Whether Plaintiffs and the Class members are entitled to relief and the
16 nature of such relief.

17 26. **Typicality:** As a result of Defendant's uniform disclosures and conduct, Plaintiffs
18 and the Class members suffered the same injury and similar damages. Thus, Plaintiffs' claims are
19 typical of the claims of the other Class members.

20 27. **Adequate Representation:** Plaintiffs are members of the Class and both they and
21 their counsel will fairly and adequately represent and protect the interests of the Class, as neither
22 has interests adverse to those of the Class members and Defendant has no defenses unique to
23 Plaintiffs. In addition, Plaintiffs have retained counsel competent and experienced in complex
24 litigation and class actions. Further, Plaintiffs and their counsel are committed to vigorously
25 prosecuting this action on behalf of the members of the Class, and they have the financial
26 resources to do so.

1 **28. Injunctive and Declaratory Relief:** In using uniform labeling that violates
2 California law, AB has acted or refused to act on grounds generally applicable to the Class a whole
3 so as to render injunctive and declaratory relief appropriate. Stated differently, Defendant's
4 uniform conduct requires the Court's imposition of uniform relief to ensure compatible standards
5 of conduct toward the Class members, thus making final injunctive and/or declaratory relief
6 appropriate with respect to the Class as a whole. Further, because Defendant's uniform practices
7 result in similar, if not identical, injuries for all Class members, Plaintiffs' challenge of those
8 practices hinges on Defendant's conduct with respect to the Class, not on facts or law applicable
9 only to Plaintiffs.

10 **29. Predominance:** The common questions of law and fact set forth above go to the
11 very heart of the controversy and predominate over any supposed individualized questions.
12 Irrespective of any given Class member's situation, the answer to whether Defendant's "Product of
13 U.S.A." claim is unlawful is the same for each class member and will be proven using common
14 evidence.

15 **30. Superiority and Manageability:** A class action is superior to all other methods of
16 adjudicating the controversy. Joinder of all claims is impractical, and the damages suffered
17 by/available to the individual Class members will likely be small relative to the cost associated
18 with prosecuting an action. Thus, the expense of litigating an individual action will likely prohibit
19 the Class members from obtaining effective relief for Defendant's misconduct. In addition, there
20 are numerous common factual and legal questions that could result in inconsistent verdicts should
21 there be several successive and differing trials. In contrast, a class action will present far fewer
22 management difficulties, as it will increase efficiency and decrease expense. Further, class-wide
23 adjudication will also ensure a uniform decision for the Class members.

24 **31.** Plaintiffs reserves the right to revise the definition of the Class as necessary based
25 upon information learned in discovery.
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1 **FIRST CAUSE OF ACTION**

2 **Violations of Business & Professions Code § 17533.7**
3 **(On behalf of Plaintiffs and the Class)**

4 32. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth
5 herein.

6 33. California Business and Profession Code Section 17533.7 states that:

7 It is unlawful for any person, firm, corporation or association to sell or offer for sale
8 in this State any merchandise on which merchandise or on its container there appears
9 the words "Made in U.S.A." "Made in America," "U.S.A." or similar words when
10 the merchandise or any article, unit, or part thereof, has been entirely or substantially
11 made, manufactured, or produced outside of the United States.

12 34. AB violates Section 17533.7 by selling and offering to sell merchandise—
13 specifically Busch beer—in California labeled "Product of U.S.A." when in fact the beer contains
14 foreign-produced hops.

15 35. AB labeled its beer "Product of U.S.A." with awareness of the fact that the beer
16 contained imported hops, that such labeling was false under California law, and was motivated by
17 increased profits.

18 36. As a direct and proximate cause of AB's violation of Section 17533.7, Plaintiffs and
19 Class members are entitled to restitution of excess monies paid on the false belief that the beer was
20 actually made in the USA consistent with the can's "Product of U.S.A." claim.

21 37. Plaintiffs and Class members were injured by paying for something believed to be
22 genuinely a "Product of U.S.A." when it wasn't and were misled into purchasing Busch beer on
23 false pretenses and into paying more for the beer.

24 38. Accordingly Plaintiffs and the Class seek actual damages, reasonable cost and
25 attorneys' fees, an injunction against further violations, a declaration that Defendant's conduct is
26 unlawful, and a *cy pres* payment to a non-profit organization protecting California consumer rights
27 and/or truth in advertising.

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SECOND CAUSE OF ACTION
Cal. Bus. & Prof. Code §§ 17200, *et seq.*
(On Behalf of Plaintiffs and the Class)

3 39. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth
4 herein.

5 40. California's Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
6 ("UCL"), protects both consumers and competitors by promoting fair competition in commercial
7 markets for goods and services.

8 41. The UCL prohibits any unlawful, unfair, or fraudulent business acts or practices. A
9 business practice need only satisfy one of the three prongs to be considered a violation of Section
10 17200.

11 42. AB has violated the "unlawful" prong of the UCL. As set forth above, Defendant's
12 conduct violates California law, specifically the Made in USA Law. Plaintiffs have suffered
13 damages as a result of such unlawful conduct as described herein.

14 43. AB has also violated the "unfair" prong of the UCL by placing the statement
15 Product of U.S.A. on its cans when in fact the beer contains imported hops. The injuries caused by
16 AB's unfair conduct are not outweighed by any countervailing benefits, and they could not
17 reasonably have been avoided by consumers.

18 44. AB's unlawful and unfair conduct occurred in the course of the AB's business
19 practices.

20 45. Plaintiffs and the Class members have suffered harm in the form of actual monetary
21 damages as a proximate result of Defendant's unlawful and unfair conduct.

22 46. Plaintiff seeks an order (i) enjoining Defendant from continuing to engage in the
23 unlawful and unfair conduct described herein, (ii) awarding Plaintiff and the Class members all
24 appropriate damages, and (iii) awarding them reasonable costs and attorneys' fees pursuant to Cal.
25 Code Civ. Proc. § 1021.5.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs William Nixon and Michael O'Neill, on behalf of themselves
3 and the Class, respectfully requests that this Court issue an order:

4 A. Certifying this case as a class action on behalf of the Class defined above,
5 appointing Plaintiffs as class representatives and appointing their counsel as class counsel;

6 B. Declaring that Defendant's actions, as set out above, constitute violations of
7 California law;

8 C. Awarding damages, including punitive damages where applicable, to Plaintiffs and
9 the Class in amounts to be determined at trial;

10 D. Awarding injunctive and other equitable relief as is necessary to protect the
11 interests of the Class, *inter alia*: (i) an order prohibiting Defendant from engaging in the wrongful
12 and unlawful acts described herein; and (ii) requiring Defendant to correct its false labeling and
13 implement a correct advertising campaign;

14 E. Awarding Plaintiffs and the Class their reasonable litigation expenses and
15 attorneys' fees;

16 F. Awarding Plaintiffs and the Class pre- and post-judgment interest, to the extent
17 allowable;

18 G. Providing such other injunctive and/or declaratory relief as is necessary to protect
19 the interests of Plaintiffs and the Class;

20 H. Requiring Defendant to make a *cy pres* payment to a consumer rights non-profit
21 organization dedicated to the education of consumers and truth in advertising; and

22 I. Awarding such other and further relief as equity and justice may require.
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DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for all claims so triable.

* * *

Respectfully submitted,

Dated: March 26, 2015

WILLIAM NIXON AND MICHAEL O'NEILL,
individually and on behalf of all others similarly
situated,

By: Matthew J. O'Connor

One of Plaintiff's Attorneys

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**Pro hac vice application to be filed*